# 1NC

### CP

#### The Executive Branch of the United States federal government should:

#### Begin to transfer Guantanamo detainees that are already slated for release to their home or third party countries.

#### Provide assistance to these third party countries to ensure safe transfer and detention

#### Waive the requirement that receiving countries take certain steps to ensure detainees do not engage in terrorist activity

#### Lift its moratorium on releasing detainees to Yemen

#### Prosecute or release the remaining detainees

#### Appoint a high-level official to intensify transfer negotiations with third party receiving countries

#### Issue formal apologies and reparations to persons detained erroneously

#### Ensure these detainees receive civilian trials.

#### Halt military bioweapons research

#### Obama can end indefinite detention

Pitter ’13, Laura Pitter is counterterrorism advisor at Human Rights Watch, MAY 1, 2013, Foreign Policy, How to Close Guantanamo, <http://www.foreignpolicy.com/articles/2013/05/01/how_to_close_guantanamo?page=full>, jj

In his remarks, made in response to questions at the White House press briefing, Obama pointed the finger at Congress saying it had been "determined" not to let him close the facility, and that he promised to "re-engage with Congress" on the issue. While it's true that Congress has certainly placed obstacles in the way of closing the facility, such as restricting the use of funds to transfer detainees to the United States for trial, there are still a number of steps the Obama administration could have taken -- and can still take now -- to begin closing the facility and ending indefinite detention without trial. ¶ For one, it can begin to transfer the 86 of the 166 detainees at Guantanamo already slated for release to their home or third countries. In 2011 and again in 2012, Congress enacted some restrictions on the transfer of detainees from the facility, but those restrictions are not insurmountable. They require receiving countries to take certain steps to ensure that those being transferred do not engage in terrorist activity and that the secretary of defense certify such steps have taken place. If, however, the secretary of defense cannot, for one reason or another, certify those steps have been taken, he can waive the certification requirement in lieu of "alternative actions" -- a term which has no clear legal or procedural definition. The only guidelines are that they "substantially mitigate" the risk that the detainee being transferred may engage in terrorism. Clearly then, the administration's ability to transfer detainees out of Guantanamo exists now, even with congressional restrictions. And with Obama again reiterating that keeping Guantanamo open harms U.S. security, the certification -- and even more so the waiver -- process seems to offer a clear path forward to emptying the facility of more than half its prisoners, if not closing it down.¶ Yes, there is some risk that detainees released from Guantanamo may engage in terrorism. The government has stated that some of the detainees released from Guantanamo have already been involved in terrorism, though the number is disputed and the government refuses to publicly release the information on which it is basing those claims. The director of national intelligence claims (though these claims have been discredited) that about 16 percent of the approximately 600 people released from the facility over the past 12 years are confirmed, and 11 percent are suspected, of having engaged in terrorism after their release. Independent, credible analyses of those figures by researchers at the New America Foundation indicate the number is more like 6 percent, or 1 in 17. Even if the Pentagon figures were true, clearly the vast majority of people released from Guantanamo have not engaged in terrorism; in fact, it's well below the estimated 60 percent U.S. recidivism rate for criminal convictions overall. There are many people in the world who may commit crimes in the future, but the United States has not locked them up indefinitely. The bottom line is that the administration needs to assume some risk that those released may become involved in terrorism -- even though that risk is objectively low. But even on a purely moral level, the fear that someone may engage in terrorist or criminal behavior in the future is not a legitimate basis for prolonged indefinite detention. Furthermore, the decision about whether to release a detainee should be made on an individual basis, not based on the behavior of other detainees.¶ The administration could also lift its self-imposed moratorium on returning Guantanamo detainees to Yemen; some 56 of the 86 detainees slated for release are from that country. The president imposed a moratorium on returns to Yemen after Umar Farouk Abdulmutallab, a Nigerian trained in Yemen, tried to blow up a Detroit-bound plane with explosives hidden in his underwear on Christmas Day 2009. Abdulmutallab was convicted in federal court and is now serving a life sentence. But the Yemeni government has requested the return of their citizens from Guantanamo and promised to build a rehabilitation center there to facilitate the process. Senator Dianne Feinstein (D-CA), an initial supporter of the moratorium, recently asked Obama's national security director to reevaluate the hold and consider whether, with appropriate assistance, Yemeni detainees can begin being transferred home.¶ Of the other 80 detainees at Guantanamo, the administration has designated 46 for indefinite detention. They were put in this category because an interagency task force deemed them too dangerous to release and yet the administration either did not have sufficient admissible evidence against them to prosecute or concluded that their acts did not amount to a chargeable crime.¶ Obama signed an executive order on March 7, 2011, providing these detainees the ability to challenge this designation. But the panel before which they would appear, called a Periodic Review Board (PRB), has yet to even be formed -- even though an executive order mandated that it begin reviews within the year. And while 31 prisoners have been slated for prosecution, only six of those -- including the five defendants accused in the attacks of September 11, 2001, face any formal charges. The remaining three men at Guantanamo are serving sentences following convictions in military commission proceedings.¶ The administration should either prosecute these 80 detainees against whom they have any credible evidence -- and in courts that comport with fair trial standards -- or release them. Though starting the PRB process would provide detainees in the indefinite detention category with at least some ability to challenge their designation, if these individuals cannot be prosecuted, they should be released.¶ Even though they have been revised three times since first formed in 2005, and improved under Obama's presidency, it's clear that military commissions at Guantanamo do not comport with fair trial standards. Among other things, they lack judicial independence, allow the admission of certain coerced testimony, and fail to protect privileged attorney-client communications. In February, defense attorneys in one of the only two cases currently being prosecuted at Guantanamo discovered listening devices disguised as smoke detectors in attorney-client meeting rooms. Additionally, proceedings were halted because a courtroom feed to the media and observers that supposedly only the judge was able to control was cut off by an unnamed U.S. agency. Then in mid-April, hearings were further delayed by two months because an enormous number of prosecution and defense files disappeared from the server that both legal teams are required to use to process the highly classified documents in the case. Furthermore, it's not entirely clear why even the court's supporters would be so in favor of continuing the status quo -- the only two military commission verdicts obtained by full trials were recently overturned on appeal. In those cases, the appellate court found that the charges of conspiracy and material support for terrorism, for which the defendants were accused, were not war crimes and hence not within the jurisdiction of the commissions.¶

### Pltx

***GOP will capitulate to demands for a clean debt ceiling bill and it will pass – Obamacare and other issues will not appear in the final bill.***

Greg **Giroux 9/19, 2013**, I See No Deals on Debt Ceiling, Republicans Will Capitulate – Senator Murray, Wall Stree Pit, <http://wallstreetpit.com/101182-i-see-no-deals-on-debt-ceiling-republicans-will-capitulate-senator-murray/>, KEL

**Republicans seeking to curb** President Barack **Obama’s health-care law** probably **will capitulate to demands from Democrats to enact a “clean” bill** raising the nation’s debt ceiling, the Senate’s top Democratic budget writer said. “I see no deals on the debt ceiling,” Senator Patty Murray of Washington state, who leads the Budget Committee, said in an interview on Bloomberg Television’s “Political Capital with Al Hunt” airing this weekend. “The downside of not paying our bills is our credit-rating tanks,” Murray said. “That affects every family, every business, every community. It affects Main Street. It affects Wall Street.” **Murray** said she also **expects Republicans to relent on their demands for stripping spending from Obama’s health plan** as part of action on a spending bill needed to keep the government running after Sept. 30. Republicans led by House Speaker John Boehner of Ohio have clashed with Obama over the debt ceiling, with the lawmakers demanding changes to spending programs as a condition of raising the $16.7 trillion federal borrowing limit. **Republicans “will come together with some mishmash policy of everything in the bag they’ve ever promised” to anti-tax Tea Party activists, though “they haven’t been able to get the votes for anything yet,**” said Murray, 62, fourth-ranking Democrat in the Senate’s leadership.

***Restrictions on authority are a loss that spills over to the debt ceiling***

Parsons, 9/12/13(Christi, Los Angeles Times, “Obama's team calls a timeout”

[http://www.latimes.com/nation/la-na-obama-congress-20130913,0,2959396.story](http://www.latimes.com/nation/la-na-obama-congress-20130913%2C0%2C2959396.story))

After a week in which President Obama ***narrowly averted a bruising defeat*** on Capitol Hill over a military strike on Syria, the decision had the feeling of a much-needed timeout. The messy debate over a resolution to authorize military force put a harsh light on the president's already rocky relationship with Congress. Despite a charm offensive earlier this year, complete with intimate dinners and phone calls, Obama faced contrary lawmakers in both parties, a climate that is certain to persist through the next round of legislative fights, if not to the end of his second term. In deciding to seek approval for military action, Obama banked on the long-standing deference to the commander in chief on matters of national defense. But by the time he pressed "pause" on the intense White House lobbying effort, he was finding as much defiance as deference. Although the White House cast the issue as a matter of national security and a crucial test of U.S. power, dozens of lawmakers from both parties were set to deliver a rare rebuke to a president on foreign policy. Even Democratic loyalists seemed unswayed by appeals to preserve the prestige of the presidency — and this president. Hawkish Republicans offering to reach across the aisle to support the president said they found the White House distant and uninterested. The canceled picnic punctuated a week of aggravated feelings. "We obviously have divided government. We have sometimes contentious, sometimes very effective relations with Congress. But we keep at it," said White House spokesman Jay Carney, who denied the picnic cancellation had anything to do with the state of relations between the two branches of government. On Capitol Hill, the week's episode strained Obama's traditional alliance with his fellow Democrats, many of whom were wary of another military involvement, unclear about the president's plans for a missile strike and surprised by his decision to ask them to vote on it. "Not only was it a hard ask, but it was not a well-prepared ask," said Sen. Sheldon Whitehouse (D-R.I.). "His willingness to back away from the ultimatum and pursue the disarmament proposal was extremely welcome, and I think that helped all of us in our relationship with him." Obama's relationship with his Republican critics was not helped. As lawmakers look ahead to the rest of the fall agenda, including the coming budget battles, the administration's performance this week will not be easy to forget, some said. "It's just more lack of confidence that they know what they're doing," said Sen. Tom Coburn (R-Okla.). "***There's only so much political capital***," said Sen. Rob Portman (R-Ohio). Democrats defended the president, blaming Republicans for a "knee-jerk" opposition to any initiative tied to this White House, a phenomenon that Obama aides regularly cite but that the president appears to have disregarded in his decision to put a use-of-force resolution before Congress. "Historically, when it comes to military force, Republicans and conservatives have led that. Now they're opposed to it," said Sen. Richard J. Durbin (D-Ill.). In a private meeting this week, Durbin said, Obama himself joked that "a lot of Republicans on Capitol Hill are discovering their inner doves on Syria." The next set of negotiations will be far more predictable and on familiar territory. By the end of the month, the president and Congress must agree on a plan to continue funding the government, or it will shut down. And by mid-October, they will have to agree to raise the debt limit, or risk a default. The White House has said it won't negotiate on the debt limit, as it did twice before, counting on the public and business groups to pressure Republicans. Democrats were hopeful the budget issues would put the White House back on more solid political footing. "I think the public has a heck of a lot more confidence in the president on economics and budget than [in] the House Republicans," said Sen. Carl Levin (D-Mich.). That may be wishful thinking, said Ross Baker, a political science professor at Rutgers University, who studies the Senate. "These things carry over. ***There's no firewall between issues***," he said. "***Failure in one area leads to problems in other areas***." The debate over the war in Syria may be on an extended pause, although prospects of Obama returning to Congress to ask for a use-of-force authorization seem slim. A bipartisan group of senators is drafting an amended authorization, but the group is not expected to fully air its proposal until diplomatic talks conclude. There were some signs that the debate may have ***won the president some empathy***, if not support. At a private lunch with Republican senators this week, Obama asked them ***not to undermine him*** on the world stage. Sen. Ron Johnson of Wisconsin, who is part of a group of GOP senators working with the White House on fiscal issues, said the appeal resonated.

***Loss of PC forces Obama to negotiate over debt ceiling preconditions – causes extended battle***

**Chait, 13**

Jonathan Chait, commentator and writer for New York magazine. He was previously a senior editor at The New Republic and a former assistant editor of The American Prospect. He also writes a periodic column in the Los Angeles Times, New York Magazine, 4/26/13, <http://nymag.com/daily/intelligencer/2013/04/democrats-lost-sequestration-two-years-ago.html>

**"Obama's mistake** wasn't the design of sequestration. It **was *finding himself in that negotiation to begin with*. Earlier this year, Obama refused to negotiate over the debt ceiling, and Republicans *caved* and raised it. If he had done that in 2011, they would probably have done the same thing. Instead, Obama took their demand to reduce the deficit at face value and thought**, Hey, I want to reduce the deficit, too — **why don't we use this opportunity to strike a deal?** As it happened, Republicans care way, way, way more about low taxes for the rich than low deficits, which made a morally acceptable deal, or even something within hailing distance of a morally acceptable deal, completely impossible. "By the point at which Obama figured this out in 2011, the debt ceiling loomed and it was too late to credibly insist he wouldn't negotiate over it. Sequestration was a pretty good way to escape fiscal calamity**. The mistake was *getting jacked up* over the debt ceiling in the first place."** http://nymag.com/daily/intelligencer/2013/04/democrats-lost-sequestration-two-years-ago.html[17] **In 2011 though, the GOP had a little *more political capital and the President considerably less so he may have had to negotiate*. Overall, though the point is well taken: Obama was right not to negotiate this year and it's hard to argue that he-or the Democrats- should have agreed to this**. However, time will tell and I'd like to be proved wrong. And even if they made a mistake, as Chait points out maybe they'll realize their blunder and do better next time.

***Even if a deal is eventually reached to prevent hitting the ceiling a protracted fight is economic sabotage – collapse growth, markets and confidence.***

Dave **Johnson**, Campaign for America's Future | Op-Ed Fresh Hell When Congress Returns

**September 4** 2013 11:25

<http://truth-out.org/opinion/item/18597-fresh-hell-when-congress-returns>

**There are two different levels of economic damage from a debt-ceiling fight. First there is the cost of the fight itself, as the world worries over whether Republicans would actually pull the trigger. The fact that they would talk about this at all causes considerable damage to growth and confidence.**¶ But **the other level of damage** – far more serious – **comes if they actually do it. If the U.S. defaulted, the consequences to the country’s and world’s economic system are literally unimaginable**.¶ In January, The Washington Post looked at reports of **the economic damage caused by the last debt-ceiling fight** – the one that led to the economic damage of the “sequester.” The Post report summarized:¶ The protracted, unsettling nature of the negotiations between the White House and Republicans dramatically **slowed the recovery**, economists conclude, looking back at the episode**. Consumer confidence collapsed, reaching its worst level since the depths of the financial crisis**. Hiring stalled, with the private sector creating jobs at its slowest pace since the economy exited the recession. The stock market plunged, sending the Standard & Poor’s 500-stock index down more than 10 percent.¶ **In the last debt-ceiling hostage battle, the government spent an extra $1.3 billion to borrow because of lender uncertainty over whether they would be paid back**, according to the Government Accounting Office (GAO). Following the battle the Standard & Poor’s credit agency “downgraded” the U.S. credit rating, saying that any country that would even discuss default does not deserve the top rating.¶ On top of that, the 10-year cost of higher interest rates from that fight is $18.9 billion. The unemployment rate increased as job growth was cut in half by the fight. Consumer confidence plunged “more than it did following the collapse of Lehman Brothers Holdings Inc. in 2008.”¶ **The consequences of actually letting the country default would begin with a panic in the stock market. And there would likely be a “run” on money markets**, because the safety of the U.S. dollar is the foundation of the entire financial system.¶ Next, many of the things the U.S. government must pay for would not be paid for. Because raising the debt ceiling is about allowing the government to get the money to pay for the things Congress has already spent money on, existing invoices would not be paid. So the government would default on paying for contracts, hospitals and doctors who had already performed services, fuel purchases, everything right up to payments to Social Security recipients and people trying to redeem their government bonds. The government would have to prioritize who to pay based on what is coming in from tax receipts, fees and market transactions, which would all drop dramatically as the world’s economy exploded. In any event, the government doesn’t have the computer systems in place to prioritize payments, and wouldn’t have the time or funds to get those running.¶ **There would be a dramatic rise in interest rates for borrowing. The United States would no longer be a “safe” borrower, so the price of loans** – the interest rate – **would go up. That would ripple out to the price of a loan to a business, a mortgage, a car loan and everything else that Americans finance**.¶ **No matter how fast a default of the country was resolved, the shock to the confidence of the entire economic system would not go away**. If the United States was no longer a “safe haven,” then a restructuring of the world’s core understanding of debt and repayment would follow.¶ With the effect of the last fight now understood, **any new fight has to be seen for what it is: “economic sabotage.”**

***Nuclear war***

**Khalilzad ’11** Zalmay was the United States ambassador to Afghanistan, Iraq, and the United Nations during the presidency of George W. Bush and the director of policy planning at the Defense Department from 1990 to 1992, “ The Economy and National Security”, 2-8-11, <http://www.nationalreview.com/articles/print/259024>, MCR

Today, **economic** and fiscal **trends pose the *most severe*** long-term ***threat* to the U**nited **S**tates’ **position as global leader**. While the United States suffers from fiscal imbalances and low economic growth, the economies of rival powers are developing rapidly. The **continuation of** these two **trends could lead to a shift from American primacy toward a multi-polar global system, leading in turn to increased *geopolitical rivalry* and** even ***war* *among*** the ***great powers***. The current recession is the result of a deep financial crisis, not a mere fluctuation in the business cycle. Recovery is likely to be protracted. The crisis was preceded by the buildup over two decades of enormous amounts of debt throughout the U.S. economy — ultimately totaling almost 350 percent of GDP — and the development of credit-fueled asset bubbles, particularly in the housing sector. When the bubbles burst, huge amounts of wealth were destroyed, and unemployment rose to over 10 percent. The decline of tax revenues and massive countercyclical spending put the U.S. government on an unsustainable fiscal path. Publicly held national debt rose from 38 to over 60 percent of GDP in three years. Without faster economic growth and actions to reduce deficits, publicly held national debt is projected to reach dangerous proportions. If interest rates were to rise significantly, annual interest payments — which already are larger than the defense budget — would crowd out other spending or require substantial tax increases that would undercut economic growth. Even worse, if unanticipated events trigger what economists call a “sudden stop” in credit markets for U.S. debt, **the U**nited **S**tates **would be unable to roll over its outstanding obligations, precipitating a sovereign-debt crisis that would *almost certainly* compel a *radical retrenchment* of the U**nited **S**tates **internationally**. **Such scenarios would *reshape the international order***. It was the **economic devastation** of Britain and France **during World War II**, as well as the rise of other powers, that **led** both **countries to relinquish their empires**. In the late 1960s, British leaders concluded that they lacked the economic capacity to maintain a presence “east of Suez.” Soviet economic weakness, which crystallized under Gorbachev, contributed to their decisions to withdraw from Afghanistan, abandon Communist regimes in Eastern Europe, and allow the Soviet Union to fragment. If the U.S. debt problem goes critical, **the U**nited **S**tates **would be compelled to retrench, reducing its military spending and shed**ding **international commitments**. We face this domestic challenge while other major powers are experiencing rapid economic growth. Even though **countries** such as China, India, and Brazil have profound political, social, demographic, and economic problems, their **economies are growing faster than ours, and this could alter the global distribution of power.** **These trends could** in the long term **produce a multi-polar world**. ***If U.S. policymakers fail to act*** and other powers continue to grow, ***it is not a question of whether but when* a new international order will emerge**. **The closing of the gap** between the United States and its rivals **could *intensify geopolitical competition among major powers*, increase incentives for local powers to play major powers against one another, and undercut our will to *preclude* or respond to *international crises* because of the *higher risk of escalation*.** **The stakes are high**. In modern history, ***the longest period of peace among the great powers has been the era of U.S. leadership***. By contrast**, multi-polar systems have been unstable, with their competitive dynamics resulting in frequent crises and major wars among the great powers**. **Failures of multi-polar international systems produced *both world wars***. **American retrenchment could have *devastating consequences*.** **Without an American security blanket, regional powers could *rearm* in an attempt to balance against emerging threats**. Under this scenario, **there would be a heightened possibility of *arms races*, *miscalc***ulation, **or *other crises spiraling into all-out conflict*.** Alternatively, **in seeking to accommodate the stronger powers, weaker powers may shift their geopolitical posture away from the U**nited **S**tates. Either way, **hostile states would be emboldened to make *aggressive moves* in their regions**.

### Legit

#### Court legitimacy is stable now—the Roberts court has ruled moderately and narrowly on key cases

The Economist 6-27-’13, Moderately legitimate, <http://www.economist.com/blogs/democracyinamerica/2013/06/supreme-courts-term-review>, jj

THE SUPREME COURT struck down an unusually large number of statutes this term. Just this week, the court nullified Section 3 of the Defense of Marriage Act (DOMA) and Section 4 of the Voting Rights Act (VRA), both federal laws. Last week, it struck down another federal statute requiring organizations fighting AIDS abroad to explicitly denounce prostitution as a condition for federal funding. It also rejected Arizona’s law requiring voters to prove their citizenship as inconsistent with federal law and reinterpreted a federal statute protecting Native American children from estrangement from their tribe.

In striking down or altering the meaning of all these legislative provisions, the court acted in line with public opinion at times and counter to it at others. But in a conceptual sense every episode of judicial review is a “counter-majoritarian” act, as Alexander Bickel explained in his 1962 book, The Least Dangerous Branch. The power of judicial review has defined the Supreme Court since Chief Justice John Marshall first asserted it in his brilliant Marbury v. Madison opinion, but its use is never unproblematic. In our day, accusations of judicial activism arise whenever the court overturns the will of elected representatives in Congress or a state legislature. Here is how Bickel put the dilemma:

The root difficulty is that judicial review is a countermajoritarian force in our system....[W]hen the Supreme Court declares unconstitutional a legislative act or the act of an elected official it thwarts the will of the actual people of the here and now; it exercises control, not in behalf of the prevailing majority, but against it. That, without mystic overtones, is what actually happens...[I]t is the reason the charge can be made that judicial review is undemocratic.

In recent years, the charge of judicial activism has been heard from the left in complaints about the Citizens United decision. It was a trope a year ago from the right when the court upheld the constitutionality of Obamacare on grounds some thought were judicially invented. This season, liberals are unhappy with the court’s decision to ignore the huge margin by which Congress voted to reauthorise the VRA in 2006. Adam B at the Daily Kos writes that the “conservative activist Supreme Court” erred by brushing off the 15,000 pages of evidence establishing discriminatory practices in jurisdictions covered by Section 4. (Matt Berreto shares more evidence of voting discrimination that Chief Justice Roberts willfully ignored.) At the same time, conservatives callthe DOMA ruling a “judicial activist opinion which will create disorder and confusion.” Justice Scalia is being mocked on Comedy Central for overturning a law he doesn’t like (the VRA) and upholding one he does (DOMA). But liberals could just as easily be called to account for their inverted views: had the court issued a more sweeping ruling in Hollingsworth and recognised a fundamental, nationwide right to marriage equality, few on the left would have complained about activist intrusions on the rights of Alabamans to define marriage more traditionally.

It would be very hard to find someone who is happy with every decision the court has issued this term. This fact alone lends legitimacy to the Supreme Court as an institution and eases the “counter-majoritarian difficulty” diagnosed by Mr Bickel. Several patterns in the court’s 78 opinions this year give it an air of moderation. First, while there were many 5-4 splits (23% of the total), a surprising proportion of decisions—43 percent—were unanimous. So the Roberts court is often cohesive, but it is not ideologically monolithic the way, say, the Warren court was. While it leans conservative and is undoubtedly pro-business (witness the two cases sharply limiting the rights of employees to sue their employers for sexual harassment or retaliation), the Roberts court splits differences and tends to rule on narrow grounds in hot-button cases. Second, this year's court has splintered in unpredictable ways over some sensitive issues: in the Native American adoption case, liberal stalwart Justice Breyer joined the conservatives in the majority and Justice Scalia sided with the liberals in dissent. Justice Scalia is a favorite whipping boy of the left, but he received kudos from the editorial board of the New York Times for opposing Arizona's proof of citizenship law in Arizona v. Inter Tribal Council of Arizona.

Approval ratings for the Supreme Court are about five times higher than they are for Congress, and there seems to be good reason for this: both the left and the right have reason to cheer certain rulings and to jeer others. Love them, hate them, or (more likely), love them and hate them, there is little reason to worry that the institution's legitimacy in the eyes of the public is in much trouble as the gavel comes down for the last time this summer.

#### Judicial intervention into war powers crushes legitimacy

Nzelibe ’06, Jide Nzelibe, Assistant Professor of Law, Northwestern University Law School. B.A. 1993, St. John's College; M.P.A. 1995, Princeton; J.D. 1998, Yale, Iowa Law Review¶ March, 2006¶ 91 Iowa L. Rev. 993, ARTICLE: A Positive Theory of the War-Powers Constitution, Lexis, jj

Furthermore, the risk of non-compliance with judicial decisions also implicates the institutional legitimacy of the courts to adjudicate on war-powers claims. As some commentators have observed, courts seem to be especially wary about intervening in separation-of-powers issues in foreign affairs, because the popular legitimacy that underlies judicial resolution of domestic constitutional disputes does not tend to extend to foreign-affairs [\*1061] disputes. n298 In other words, when issues involve the adjudication of individual-rights claims or domestic separation-of-powers disputes, courts can often tap into the popular acceptance of their role in resolving such disputes. n299 In disputes regarding the allocation of war powers, however, it is unlikely that the judicial branch will be able to draw on the popular underpinnings of its legitimacy to secure political-branch compliance with its decisions. This is because there does not seem to be much of a public appetite for increased judicial involvement in foreign-affairs disputes. n300 Moreover, unlike in the domestic realm where the courts play a key legitimating function in separation-of-powers disputes, the political branches have very little incentive to embrace a more active judicial role in disputes over the allocation of war powers. n301¶ In any event, even if greater judicial intervention in war-powers disputes were politically feasible, it is not clear that such intervention would compel Congress to play a more active role on war-powers issues. In other words, members of Congress are not likely to embrace a war-powers role that has significant electoral risks simply because such a role has been judicially sanctioned. Indeed, not only will members of Congress lack an incentive to comply with such judicial decisions, but judicial monitoring of legislative compliance will often prove very difficult to carry out. At most, if compelled to take on a more active role by a judicial decision when it is not in their political interest to do so, members of Congress will likely substitute legislative rubberstamping for silent acquiescence as the preferred response to the President's use-of-force initiatives. In sum, if greater political accountability for use-of-force decisions is the end goal, there is little evidence that judicially prompted congressional intervention will change the current war-powers landscape.

#### Legitimacy key to the rule of law

Schapiro 8-5-’13, Robert A. Schapiro, dean and Asa Griggs Candler professor of law at Emory University School of Law., Op-ed contributor, Christian Science Monitor, Objection! Americans' opinion of Supreme Court can't keep dropping, Lexis, jj

Public confidence in the judiciary provides a critical foundation for a society committed to the rule of law. As America's unelected justices confront controversial questions, the legitimacy of their decisions depends on public support for the institution. The court must rely on other government officials, including elected leaders and law enforcement officers, to implement its rulings. Examples around the world suggest that obedience to judicial decisions may well depend on the level of respect that the courts enjoy.

#### Rule of law’s crucial to uphold unipolarity and maintain hegemony --- outweighs the aff

Knowles ’09 Robert Knowles, Acting Assistant Professor, New York University School of Law, Spring, 2009, ARIZONA STATE LAW JOURNAL, 41 Ariz. St. L.J. 87, American Hegemony and the Foreign Affairs Constitution, LEXIS, jj

The hegemonic model also reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability. n422 G. John Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors: "The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability." n423 Stable interpretation of the law bolsters the stability of the system because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states." n424

### K

#### The affirmative radically depoliticizes the economy - this can never obtain the dimensions of universality because it precludes acts of authentic politics

**Zizek, ’99** (Slavoj, Senior Researcher and professor at the Institute for Social Studies, Ljubljana, The Ticklish Subject, page 352-355)

**The big news of today’s post-political age** of the ‘end of ideology’ **is** thus **the radical depoliticization of the sphere of the economy:** the way the economy functions (the need to cut social welfare, etc.) is accepted as a simple insight into the objective state of things. However, **as long as this fundamental depoliticization of the economic sphere is accepted, all the talk about active citizenship, about public discussion leading to responsible collective decisions, and so on, will remain limited to the ‘cultural’ issues of** religious, sexual, ethnic and other **way-of-life differences, without actually encroaching upon the level at which long-term decisions that affect us all are made.** In short, **the only way effectively to bring about a society in which risky long-term decisions would ensue from public debate involving all concerned is some kind of radical limitation of Capital’s freedom,** the subordinated of the process of production to social control – **the radical** repoliticization of the economy.That is to say: if the problem with today’s post-politics (‘administration of social affairs’) is that it increasingly undermines the possibility of a proper political act, this undermining is directly due to the depoliticization of economics, to the common acceptance of Capital and market mechanisms as neutral tools/ procedures to be exploited. We can now see why today’s **post-politics cannot attain** the properly political dimension of **universality; because it silently precludes the sphere of economy from politicization.** The domain of global capitalist market relations in the Other Scene of the so-called repoliticization of civil society advocated by the partisans of ‘identity politics’ and other postmodern forms of politicization: **all the talk about new forms of politics bursting out all over, focused on particular issues** (gay rights, **ecology,** ethnic minorities…), **all this incessant activity** of fluid, shifting identities, **of building multiple** ad hoc **coalitions,** and so on, has something inauthentic about it, and **ultimately resembles the obsessional neurotic who talks all the time and is otherwise frantically active precisely in order to ensure that something – what** really matters **– will** not **be disturbed, that it will remain immobilized.** 35 So, instead of celebrating the new freedoms and responsibilities brought about by the ‘second modernity’, **it is much more crucial to focus on what** remains the same **in this global fluidity and reflexivity, on what serves as the very motor of this fluidity: the inexorable logic of Capital.** The spectral presence of Capital is the figure of the big Other which not only remains operative when all the traditional embodiments of the symbolic big Other disintegrate, but even directly causes this disintegration: far from being confronted with the abyss of their freedom – that is, laden with the burden of responsibility that cannot be alleviated by the helping hand of Tradition or Nature – today’s subject is perhaps more than ever caught in an inexorable compulsion that effectively runs his life.

#### Cap cause extinction

**Zizek, ’89**

(Slavoj, Senior Researcher at the Institute for Social Studies, The Sublime Object of Ideology, page 3-4)

It is upon the unity of these two features that the Marxist notion of the revolution, of the revolutionary situation, is founded: **a situation of metaphorical condensation in which it finally becomes clear to the everyday consciousness that it is not possible to solve any particular ques­tion without** solving them all - that is, **without solving the fundamental question which embodies the antagonistic character of the social totality. In a 'normal', pre-revolutionary state of things, everybody is fighting his own particular battles** (workers are striking for better wages, feminists are fighting for the rights of women, democrats for political and social freedoms, ecologists against the exploitation of nature, participants in the peace movements against the danger of war, and so on). Marxists are using all their skill and adroimess of argument to convince the partici­pants in these particular struggles that the only real solution to their problem is to be found in the global revolution: **as long as social relations are dominated by Capital, there will always be sexism in relations between the sexes, there will always be a threat of global war, there will always be a danger that political and social freedoms will be suspended, nature itself will always remain an object of ruthless exploitation**. . . . **The global revolution will then abolish the basic social antagonism, enabling the formation of a transparent, rationally governed society.**

#### Our alternative is to completely withdraw from the ideology of capital - this solves

**Johnston ’04** (Adrian, interdisciplinary research fellow in psychoanalysis at Emory, The Cynic’s Fetish: Slavoj Zizek and the Dynamics of Belief, Psychoanalysis, Culture and Society)

Perhaps the absence of a detailed political roadmap in Žižek’s recent writings isn’t a major shortcoming. Maybe, at least for the time being, the most important task is simply the negativity of the critical struggle, the effort to cure an intellectual constipation resulting from capitalist ideology and thereby to truly open up the space for imagining authentic alternatives to the prevailing state of the situation. Another definition of materialism offered by Žižek is that it amounts to accepting the internal inherence of what fantasmatically appears as an external deadlock or hindrance ( Žižek, 2001d, pp 22–23) (with fantasy itself being defined as the false externalization of something within the subject, namely, the illusory projection of an inner obstacle, Žižek, 2000a, p 16). From this perspective, seeing through ideological fantasies by learning how to think again outside the confines of current restrictions has, in and of itself, the potential to operate as a form of real revolutionary practice (rather than remaining merely an instance of negative/critical intellectual reflection). Why is this the case? Recalling the analysis of commodity fetishism, the social efficacy of money as the universal medium of exchange (and the entire political economy grounded upon it) ultimately relies upon nothing more than a kind of ‘‘magic,’’ that is, the belief in money’s social efficacy by those using it in the processes of exchange. Since the value of currency is, at bottom, reducible to the belief that it has the value attributed to it (and that everyone believes that everyone else believes this as well), derailing capitalism by destroying its essential financial substance is, in a certain respect, as easy as dissolving the mere belief in this substance’s powers. The ‘‘external’’ obstacle of the capitalist system exists exclusively on the condition that subjects, whether consciously or unconsciously, ‘‘internally’’ believe in it – capitalism’s life-blood, money, is simply a fetishistic crystallization of a belief in others’ belief in the socio-performative force emanating from this same material. And yet, this point of capitalism’s frail vulnerability is simultaneously the source of its enormous strength: its vampiric symbiosis with individual human desire, and the fact that the late-capitalist cynic’s fetishism enables the disavowal of his/her de facto belief in capitalism, makes it highly unlikely that people can simply be persuaded to stop believing and start thinking (especially since, as Žižek claims, many of these people are convinced that they already have ceased believing). Or, the more disquieting possibility to entertain is that some people today, even if one succeeds in exposing them to the underlying logic of their position, might respond in a manner resembling that of the Judas-like character Cypher in the film The Matrix (Cypher opts to embrace enslavement by illusion rather than cope with the discomfort of dwelling in the ‘‘desert of the real’’): faced with the choice between living the capitalist lie or wrestling with certain unpleasant truths, many individuals might very well deliberately decide to accept what they know full well to be a false pseudo-reality, a deceptively comforting fiction (‘‘Capitalist commodity fetishism or the truth? I choose fetishism’’).

## Adv 1

### Legitimacy

***Heg high and sustainable now – overwhelming power***

**Tufts Daily 2-23-11** (Prashanth Parameswaran, master's candidate at the Fletcher School of Law and Diplomacy, writer for the New Strait Times, Strait Times and China Post, and former CSIS intern, “America is not in decline” <http://www.tuftsdaily.com/op-ed/prashanth-parameswaran-the-asianist-1.2478466>, jj)

I don't. **Very little about "American decline" is real or new. Similar predictions of U.S. decline have surfaced every decade or so** since Washington rebuilt the international system after World War II, from the aftermath of Sputnik in the 1960s to the economic distress of the 1980s. Foreign Policy is also hardly the only peddler of the latest declinism fetish. Everyone from [Newsweek's](http://newsweek.com) Fareed Zakaria to former Singaporean diplomat Kishore Mahbubani to American intelligence agencies themselves has parroted a version of it. But every myth has a grain of truth. In this case it's the fact that — God forbid — other powers are rising. Goldman Sachs says China will overtake the U.S. economy by 2027 and that the BRIC nations (**Brazil, Russia, India and China) will emerge as major world players**. But **so what? Other powers have been rising for decades**. **Yet,** to take one statistic**, the American economy in 2004 was the same size relative to the world's total GDP as it was in 1975 — 20 percent.** The real and more useful questions about decline are therefore not who is growing and by how much, but whether emerging powers can dent American power sufficiently and whether the United States will lose the key advantages that have sustained it as the world's sole superpower. **For all the fretting, the United States,** as Mr. Rachman himself admits, **remains the leader across the board. U.S. military power is still unmatched and vastly technologically superior to any other nation. Military spending is almost as much as the rest of the world combined. The American economy dominates futuristic industries like biotechnology and nanotechnology with a potent combination of technological prowess and entrepreneurial flair.** According to China's own Jiao Tong University's rankings, **17 of the world's top 20 universities are American. Millions still flock here to pursue the American Dream, while America's melting pot of cultures bodes well for its exceptional innovative capacity**. Provided the United States continues to encourage immigration and starts controlling its debt, **there is little reason to believe that such a *resilient colossus* will see its vast advantages perish**. **There are also few signs of a "global multipolar system" emerging anytime soon.** Despite doomsday realist predictions, **no country has attempted to balance Washington's hegemony since 1991**. And while the future rise of Asian powers may boost the case for eventual American decline, the truth is that **each of the United States' potential balancers also faces significant challenges going forward. For China, it is the growing disparity between its coastal and inland areas, its physical isolation and the risk that it will get old before it gets rich. For India and the European Union, the challenge will be to painfully negotiate the divergent interests of states in a noisy democratic system. As for Iran, Russia and Venezuela, they are flexing their muscles as proud spoilers, not global powers. It is also quite unlikely that these states will soon form a coalition to confront the United States, given their own divergent interests.** Even China and Russia compete ferociously in Central Asia today. Don't get me wrong. I don't believe we've reached Francis Fukuyama's "end of history," particularly with the slowing of democracy's progress during the last decade. Nor do I think the United States will be able to dominate and dictate terms to others all the time in the future. Still, **I just don't see the irreversible decline in U.S. power and the rise of a new world order that many seem to reflexively accept.**

#### Ending detention doesn’t solve soft power

Nemish ’09, Mark C. Nemish, Major, U.S. Air Force, AIR COMMAND AND STAFF COLLEGE¶ AIR UNIVERSITY¶ To Close or Not to Close: Guantanamo Bay, April 2009, [http://dtlweb.au.af.mil///exlibris/dtl/d3\_1/apache\_media/L2V4bGlicmlzL2R0bC9kM18xL2FwYWNoZV9tZWRpYS8zMzgzOA==.pdf](http://dtlweb.au.af.mil///exlibris/dtl/d3_1/apache_media/L2V4bGlicmlzL2R0bC9kM18xL2FwYWNoZV9tZWRpYS8zMzgzOA%3D%3D.pdf), jj

Another popular argument for leaving Guantanamo Bay open is that merely closing the ¶ prison will not guarantee a change in world opinion. Most likely, criticism will follow ¶ Guantanamo Bay to its next home of record. While many claim detainee abuse and poor living ¶ conditions, the fact is that these same people are going to believe these conditions will exist ¶ anywhere. Former Vice President Cheney offered, “My own personal view is that those who are¶ most urgently advocating that we shut down Guantanamo Bay probably don’t agree with our ¶ policies anyway.”40 Senator Lindsey Graham also stated, “I would like every terrorist wannabe ¶ to understand that if you take up arms against us or coalition members, you do so at your own ¶ peril, because a couple of things await you, death or injury on the battlefield, or detention and ¶ accountability.”41¶ These are solid perspectives surrounding the need to keep the prison open. ¶ People that hated it before will hate it as long as Guantanamo Bay or its successor exists.¶ Moreover, by virtue of the isolated nature of Guantanamo Bay, it serves as a warning sign for ¶ those considering terrorist action against us. Housing the detainees in the U.S. may seem like a ¶ moral victory to human rights activists, but it will place suspected terrorists on the soil of the ¶ very country they intend to harm. The image of the U.S. will not change overnight with the ¶ closing of Guantanamo Bay.

#### Alt caus – drones

Dowd 6-7-’13, Alan W. Dowd is an award-winning writer with experience in opinion journalism, public-policy research and communications consultancy. He is nationally recognized for his commentaries on issues ranging from faith to foreign policy. Front Page Magazine, Obama’s Renewed War on Guantanamo, <http://frontpagemag.com/2013/alan-w-dowd/obamas-renewed-war-on-guantanamo/>, jj

Bush’s successor is learning that motives don’t matter to critics of the drone war, either, which means Nobel Peace Prize holder Barack Obama finds himself on the wrong side of global opinion—exactly where Bush spent his presidency. According to a Pew survey, the drone war feeds “a widespread perception that the U.S. acts unilaterally and does not consider the interests of other countries.” Indeed, what looks like a successful counterterrorism campaign to Americans, looks very different to international observers. “In 17 of 20 countries,” Pew found, “more than half disapprove of U.S. drone attacks targeting extremist leaders and groups in nations such as Pakistan, Yemen and Somalia.” Moreover, the UN has formed “an investigation unit” within the Human Rights Council to “inquire into individual drone attacks…in which it has been alleged that civilian casualties have been inflicted.”¶ “Reliance on drone strikes allows our opponents to cast our country as a distant, high-tech, amoral purveyor of death,” argues Kurt Volker, former U.S. ambassador to NATO. “It builds resentment, facilitates terrorist recruitment and alienates those we should seek to inspire.”¶ To borrow a phrase, it seems the drone war hurts our international standing.

### Terror

#### Resentment and recruitment inevitable

Krauthammer ’10, Charles Krauthammer, Pulitzer Prize winner & Columnist for Time Magazine, 1-8-10, The Washington Post, Obama's Guantanamo obsession, <http://www.washingtonpost.com/wp-dyn/content/article/2010/01/07/AR2010010703245.html>, jj

Imagine that Guantanamo were to disappear tomorrow, swallowed in a giant tsunami. Do you think there'd be any less recruiting for al-Qaeda in Yemen, Saudi Arabia, Pakistan, London?¶ Jihadism's list of grievances against the West is not only self-replenishing but endlessly creative. Osama bin Laden's 1998 fatwa commanding universal jihad against America cited as its two top grievances our stationing of troops in Saudi Arabia and Iraqi suffering under anti-Saddam sanctions.¶ Today, there are virtually no U.S. troops in Saudi Arabia. And the sanctions regime against Iraq was abolished years ago. Has al-Qaeda stopped recruiting? Ayman al-Zawahiri, al-Qaeda's No. 2, often invokes Andalusia in his speeches. For those not steeped in the multivolume lexicon of Islamist grievances, Andalusia refers to Iberia, lost by Islam to Christendom -- in 1492.¶ This is a fanatical religious sect dedicated to establishing the most oppressive medieval theocracy and therefore committed to unending war with America not just because it is infidel but because it represents modernity with its individual liberty, social equality (especially for women) and profound tolerance (religious, sexual, philosophical). You going to change that by evacuating Guantanamo?¶ Nevertheless, Obama will not change his determination to close Guantanamo. He is too politically committed. The only hope is that perhaps now he is offering his "recruiting" rationale out of political expediency rather than real belief. With suicide bombers in the air, cynicism is far less dangerous to the country than naivete.

#### Plan boosts recruitment.

Gaffney 7-24-’13, FRANK J. GAFFNEY, JR, President, Center for Security Policy, 24 July 2013, Submitted Testimony of¶ FRANK J. GAFFNEY, JR.¶ President, Center for Security Policy¶ Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights ¶ and Human Rights¶ On the Need to Continue Operation of the¶ Unlawful Enemy Combatant Incarceration Facility ¶ at Guantanamo Bay, Cuba, <http://www.judiciary.senate.gov/pdf/7-24-13GaffneyTestimony.pdf>, jj

Finally, it has been asserted that the existence of Guantanamo Bay has served as a ¶ “recruitment tool” for terrorists and that the facility should be shut down for that reason. ¶ In fact, shutting down Guantanamo Bay detention operations would rightly be seen by the ¶ jihadist movement worldwide as evidence of our submission, and a greatly emboldening ¶ victory. It would likely have the effect of increasing recruitment, while at the same time ¶ denying us a vital tool for incarcerating and interrogating those we capture rather than kill. ¶ What is more, such a victory would embolden not only the violent jihadists, but also the previolent jihadists (most prominently the Muslim Brotherhood), here and abroad. The latter seek ¶ the same outcome as the former – the imposition globally of shariah under the rule of a new ¶ caliphate. The only difference is one of tactics driven by the Brotherhood’s perception that, for ¶ the moment, the correlation of forces is not conducive to success via direct and violent forms of ¶ jihad. ¶ Conclusion¶ For all of these reasons, it is, in my professional judgment, not only desirable but necessary to ¶ continue to incarcerate detainees at Guantanamo Bay. We should, moreover, be free to add to ¶ their number at Gitmo, if that will help us gather vital intelligence and keep dangerous jihadist ¶ enemy combatants off the battlefield.

#### Status quo solves --- Al Qaeda is weak and doesn’t threaten the U.S.

Roth 8-2-’13, Kenneth Roth is executive director of Human Rights Watch, 8-2-’13, Washington Post, The war against al-Qaeda is over, <http://www.washingtonpost.com/opinions/the-war-against-al-qaeda-is-over/2013/08/02/3887af74-f975-11e2-b018-5b8251f0c56e_story.html>, jj

The al-Qaeda threat to the United States, while still real, no longer meets those standards. At most, al-Qaeda these days can mount sporadic, isolated attacks, carried out by autonomous or loosely affiliated cells. Some attacks may cause considerable loss of life, but they are nothing like the military operations that define an armed conflict under international law.¶ Obama himself has said that the core of al-Qaeda — the original enterprise now based, if anywhere, in the tribal areas of northwestern Pakistan — has been “decimated.” Its affiliates, such as al-Qaeda in the Arabian Peninsula and al-Qaeda in the Islamic Maghreb, are more robust armed groups but have limited capacity to pro­ject their violence beyond their regions.¶ These affiliates are significant actors in Yemen and northern Africa, but it is far from clear that they pose a threat to the United States greater than, for example, Mexican drug cartels or international ­organized-crime networks — organizations for which few would characterize U.S. containment efforts as “war.” That the United States continues to deploy military force against al-Qaeda is not enough to qualify that effort as an armed conflict, because if it were, a government could justify the summary killing of “combatants” simply by using its armed forces to do so.

#### No risk of nuclear or WMD terror

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

Over the course of time, such essentially delusionary thinking has been internalized and institutionalized in a great many ways. For example, an extrapolation of delusionary proportions is evident in the common observation that, because terrorists were able, mostly by thuggish means, to crash airplanes into buildings, they might therefore be able to construct a nuclear bomb. Brian Jenkins has run an internet search to discover how often variants of the term “al-Qaida” appeared within ten words of “nuclear.” There were only seven hits in 1999 and eleven in 2000, but the number soared to 1,742 in 2001 and to 2,931 in 2002.47

By 2008, Defense Secretary Robert Gates was assuring a congressional committee that what keeps every senior government leader awake at night is “the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear.” 48

Few of the sleepless, it seems, found much solace in the fact that an al-Qaida computer seized in Afghanistan in 2001 indicated that the group’s budget for research on weapons of mass destruction (almost all of it focused on primitive chemical weapons work) was $2,000 to $4,000.49

In the wake of the killing of Osama bin Laden, officials now have many more al-Qaida computers, and nothing in their content appears to suggest that the group had the time or inclination, let alone the money, to set up and staff a uranium-seizing operation, as well as a fancy, super-high-technology facility to fabricate a bomb. This is a process that requires trusting corrupted foreign collaborators and other criminals, obtaining and transporting highly guarded material, setting up a machine shop staffed with top scientists and technicians, and rolling the heavy, cumbersome, and untested finished product into position to be detonated by a skilled crew—all while attracting no attention from outsiders.50

If the miscreants in the American cases have been unable to create and set off even the simplest conventional bombs, it stands to reason that none of them were very close to creating, or having anything to do with, nuclear weapons—or for that matter biological, radiological, or chemical ones. In fact, with perhaps one exception, none seems to have even dreamed of the prospect; and the exception is José Padilla (case 2), who apparently mused at one point about creating a dirty bomb—a device that would disperse radiation—or even possibly an atomic one. His idea about isotope separation was to put uranium into a pail and then to make himself into a human centrifuge by swinging the pail around in great arcs.51 Even if a weapon were made abroad and then brought into the United States, its detonation would require individuals in-country with the capacity to receive and handle the complicated weapons and then to set them off. Thus far, the talent pool appears, to put mildly, very thin. There is delusion, as well, in the legal expansion of the concept of “weapons of mass destruction.” The concept had once been taken as a synonym for nuclear weapons or was meant to include nuclear weapons as well as weapons yet to be developed that might have similar destructive capacity. After the Cold War, it was expanded to embrace chemical, biological, and radiological weapons even though those weapons for the most part are incapable of committing destruction that could reasonably be considered “massive,” particularly in comparison with nuclear ones. 52

And as explicitly rendered into U.S. law, the term was extended even further to include bombs of any kind, grenades, and mines; rockets having a propellant charge of more than four ounces; missiles having an explosive or incendiary charge of more than onequarter ounce; and projectile-spewing weapons that have a barrel with a bore more than a half inch in diameter.53

It turns out then that the “shot heard round the world” by revolutionary war muskets was the firing of a WMD, that Francis Scott Key was exultantly, if innocently, witnessing a WMD attack in

1814; and that Iraq was full of WMD when the United States invaded in 2003—and still is, just like virtually every other country in the world.

After September 11, the delusional—or at least preposterous—expanded definition of WMD has been routinely applied in the United States. Many of those arrested for terrorism have been charged with planning to use “weapons of mass destruction” even though they were working, at most, on small explosives or contemplating planting a hand grenade in a trash bin.

#### No nuclear retaliation

Neely 3/21/13 Meggaen Neely is a research intern for the Project on Nuclear Issues, Center for Strategic & International Studies, 3/21/13, Doubting Deterrence of Nuclear Terrorism, <http://csis.org/blog/doubting-deterrence-nuclear-terrorism>, jj

Because of the difficulty of deterring transnational actors, many deterrence advocates shift the focus to deterring state sponsors of nuclear terrorism. The argument applies whether or not the state intended to assist nuclear terrorists. If terrorists obtain a nuclear weapon or fissile materials from a state, the theory goes, then the United States will track the weapon’s country of origin using nuclear forensics, and retaliate against that country. If this is U.S. policy, advocates predict that states will be deterred from assisting terrorists with their nuclear ambitions.¶ ¶ Yet, let’s think about the series of events that would play out if a terrorist organization detonated a weapon in the United States. Let’s assume forensics confirmed the weapon’s origin, and let’s assume, for argument’s sake, that country was Pakistan. Would the United States then retaliate with a nuclear strike? If a nuclear attack occurs within the next four years (a reasonable length of time for such predictions concerning current international and domestic politics), it seems unlikely.¶ ¶ Why? First, there’s the problem of time. Though nuclear forensics is useful, it takes time to analyze the data and determine the country of origin. Any justified response upon a state sponsor would not be swift. Second, even if the United States proved the country of origin, it would then be difficult to determine that Pakistan willingly and intentionally sponsored nuclear terrorism. If Pakistan did, then nuclear retaliation might be justified. However, if Pakistan did not, nuclear retaliation over unsecured nuclear materials would be a disproportionate response and potentially further detrimental. Should the United States launch a nuclear strike at Pakistan, Islamabad could see this as an initial hostility by the United States, and respond adversely. An obvious choice, given current tensions in South Asia, is for Pakistan to retaliate against a U.S. nuclear launch on its territory by initiating conflict with India, which could turn nuclear and increase the exchanges of nuclear weapons.¶ ¶ Hence, it seems more likely that, after the international outrage at a terrorist group’s nuclear detonation, the United States would attempt to stop the bleeding without a nuclear strike. Instead, some choices might include deploying forces to track down those that supported the suicide terrorists that detonated the weapon, pressuring Pakistan to exert its sovereignty over fringe regions such as the Federally Administered Tribal Areas, and increasing the number of drone strikes in Waziristan. Given the initial attack, such measures might understandably seem more of a concession than the retaliation called for by deterrence models, even more so by the American public.¶ ¶ This is not an argument against those technologies associated with nuclear forensics. The United States and International Atomic Energy Agency (IAEA) should continue their development and distribution.¶ ¶ Instead, I question the presumed American response that is promulgated by deterrence advocates. By looking at possibilities for a U.S. response to nuclear terrorism, a situation in which we assume that deterrence has failed, we cast doubt on the likelihood of a U.S. retaliatory nuclear strike and hence cast doubt on the credibility of a U.S. retaliatory nuclear strike as a deterrent. Would the United States launch a nuclear weapon now unless it was sure of another state’s intentional sponsorship of nuclear terrorism? Any reasonable doubt of sponsorship might stay the United States’ nuclear hand. Given the opaqueness of countries’ intentions, reasonable doubt over sponsorship is inevitable to some degree. Other countries are probably aware of U.S. hesitance in response to terrorists’ use of nuclear weapons. If this thought experiment is true, then the communication required for credible retaliatory strikes under deterrence of nuclear terrorism is missing.

### Russia

#### No Russia collapse

PARTICIPANTS: Moderator: DAVID **IGNATIUS et. al**, Columnist, The Washington Post

Panelists: JOHN IKENBERRY, Professor, Princeton University, ROBERT KAGAN, Senior Fellow, The Brookings Institution

CHARLES KUPCHAN, Professor, Georgetown University, Whitney Shepardson Senior Fellow, Council on Foreign Relations

**3-15-12**, THE BROOKINGS INSTITUTION, THE FUTURE OF THE INTERNATIONAL ORDER: AMERICA’S WORLD, EVERYONE’S WORLD OR NO ONE’S WORLD?, transcript, <http://www.brookings.edu/~/media/Files/events/2012/0315_international_order/20120315_international_order.pdf>, jj

And so, you know, **as long as Putin is around, and I think we’re talking** about at least 12 more years**, Russia is going to be** another one of these -- another power that is outside in some respect -- I mean, **both inside and outside this liberal world order but pushing against major elements of it.**

#### No risk of civil war – opposition divided, Putin is inev

Hugh **Cortazzi** served as Britain's ambassador to Japan from 1980 to 1984, **3-21-12**, the Japan Times,

Nearing the end of tyranny?, <http://www.japantimes.co.jp/text/eo20120321hc.html>, jj

LONDON — President Vladimir Putin in Russia, President Bashar Assad in Syria and President Robert Mugabe in Zimbabwe are detested by many of their fellow countrymen who would like to see them overthrown and tried for human rights abuses. They depend on a close coterie of guards and aides who have to be kept happy. If they ride roughshod over their entourage there is the possibility of assassination by the "Praetorian Guard." Commentators suggest that all three are doomed to fall in the end and that we are seeing the beginning of the end of their power. But **the end could still be quite a long way off and we should beware of wishful thinking.** Putin's majority in the recent election was boosted by some dubious electoral practices including multiple voting and strong arm tactics against opponents and critics. Corruption in modern Russia is so extensive and violence against critics so endemic that the correspondent in Moscow of The Guardian, an English newspaper known for its independent views, titled his book about his terrifying years in Moscow as "The Mafia State." Russia' inclusion in the quartet of major emerging powers (Brazil, Russia, China and India) is questioned by some observers. But Russia is a nuclear weapons state and has significant armed forces, although these still depend on conscription and the treatment of the rank and file is brutal. The economy remains too dependent on oil and gas. Expectation of life is significantly lower than in Western Europe and the population is aging and declining. But all pervading corruption and the absence of an independent judicial system threaten long-term political and economic stability. The Russian middle class has grown significantly in recent years and recent demonstrations in Moscow show that many are thoroughly disgruntled with the present state of their country. But **Putin has cleverly ensured that the opposition is weak and divided. The media generally does his bidding. There is unfortunately at present no credible alternative**. Gorbachev is too old and weak. Medvedev has been shown up as a puppet and leading oligarchs are either in jail, abroad or see it as being in their best interests to be subservient to Putin. **Putin is still relatively young and boasts of his physique. He is well guarded. He could remain president of Russia and continue to wield power for many years. It would be unwise to predict that his end is nigh.**

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

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

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

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

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

## Deference

### No Solvency

#### Deference is inevitable – the best they can achieve is inconsistent application of precedent.

Posner and Vermeule, 10- \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 52-54)

THE COURTS

We now turn from Congress to the courts, the other main hope of liberal legalism. In both economic and security crises, courts are marginal participants. Here two Schmittian themes are relevant: that courts come too late to the crisis to make a real difference in many cases, and that courts have pragmatic and political incentives to defer to the executive, whatever the nominal standard of review. The largest problem, underlying these mechanisms, is that courts possess legal authority but not robust political legitimacy. Legality and legitimacy diverge in crisis conditions, and the divergence causes courts to assume a restrained role. We take up these points in turn.

The Timing of Review

A basic feature of judicial review in most Anglo-American legal systems is that courts rely upon the initiative of private parties to bring suits, which the courts then adjudicate as “cases and controversies” rather than as abstract legal questions. This means that there is always a time lag, of greater or lesser duration, between the adoption of controversial government measures and the issuance of judicial opinions on their legal validity ensures that courts are less likely to set precedents while crises are hot, precedents that will be warped by the emotions of the day or by the political power of aroused majorities.70

Delayed review has severe costs, however. For one thing, courts often face a fait accompli. Although it is sometimes possible to strangle new programs in the crib, once those measures are up and running, it is all the more difficult for courts to order that they be abolished. This may be because new measures create new constituencies or otherwise entrench themselves, creating a ratchet effect, but the simpler hypothesis is just that officials and the public believe that the measures have worked well enough. Most simply, returning to the pre-emergency status quo by judicial order seems unthinkable; doing so would just re-create the conditions that led the legislature and executive to take emergency measures in the first place.

For another thing, even if courts could overturn or restrict emergency measures, by the time their review occurs, those measures will by their nature already have worked, or not. If they have worked, or at least if there is a widespread sense that the crisis has passed, then the legislators and public may not much care whether the courts invalidate the emergency measures after the fact. By the time the courts issue a final pronouncement on any constitutional challenges to the EESA, the program will either have increased liquidity and stabilized financial markets, or not. In either case, the legal challenges will interest constitutional lawyers, but will lack practical significance.

Intensity of Review

Another dimension of review is intensity rather than timing. At the level of constitutional law, the overall record is that courts tend to defer heavily to the executive in times of crisis, only reasserting themselves once the public sense of imminent threat has passed. As we will discuss in chapter 3, federal courts deciding administrative cases after 9/11 have tended to defer to the government’s assertion of security interests, although more large number work is necessary to understand the precise contours of the phenomenon. Schmitt occasionally argued that the administrative state would actually increase the power of judges, insofar as liberal legislatures would attempt to compensate for broad delegations to the executive by creating broad rights of judicial review; consider the Administrative Procedure Act (APA), which postdates Schmitt’s claim. It is entirely consistent with the broader tenor of Schmitt’s thought, however, to observe that the very political forces that constrain legislatures to enact broad delegations in times of crisis also hamper judges, including judges applying APA-style review. While their nominal power of review may be vast, the judges cannot exercise it to the full in times of crisis.

Legality and Legitimacy

At a higher level of abstraction, the basic problem underlying judicial review of emergency measures is the divergence between the courts’ legal powers and their political legitimacy in times of perceived crisis. As Schmitt pointed out, emergency measures can be “exceptional” in the sense that although illegal, or of dubious legality, they may nonetheless be politically legitimate, if they respond to the public’s sense of the necessities of the situation.71 Domesticating this point and applying it to the practical operation of the administrative state, courts reviewing emergency measures may be on strong legal ground, but will tend to lack the political legitimacy needed to invalidate emergency legislation or the executive’s emergency regulations. Anticipating this, courts pull in their horns.

When the public sense of crisis passes, legality and legitimacy will once again pull in tandem; courts then have more freedom to invalidate emergency measures, but it is less important whether or not they do so, as the emergency measure will in large part have already worked, or not. The precedents set after the sense of crisis has passed may be calmer and more deliberative, and thus of higher epistemic quality—this is the claim of the common lawyers, which resembles an application of the Madisonian vision to the courts—but the public will not take much notice of those precedents, and they will have little sticking power when the next crisis rolls around.

#### They can’t solve but the interference still undermines executive decision-making

**Posner and Vermeule, 7** – \*Kirkland and Ellis Professor of Law at the University of Chicago Law School AND \*\*professor at Harvard Law School (Eric and Adrian,Terror in the Balance: Security, Liberty, and the Courts p. 30-31)

As a matter of fact, this baseline picture is almost certainly incorrect. Government does not always act rationally; sometimes government officials enjoy agency slack and use it to engage in self-dealing, opportunism, or other welfare-reducing actions; sometimes government officials act as tightly constrained agents for the majority and enact policies that oppress minorities. But the baseline picture helps us to clarify the position we will defend: government is not more likely to do these things during emergencies than during normal times, whereas courts are less able to police such behavior during emergencies than during normal times. This is an empirical and institutional claim, which we shall support in every succeeding chapter, not a conceptual claim. If courts were perfectly informed and well motivated, then they might weed out bad emergency policies chosen by irrational or ill-motivated governments. But we just do not have courts of that sort. In particular cases, judges may do better than government at assessing the relative likelihood of threats to security and liberty or the overall costs of particular policies. But this will be wholly fortuitous, and judges who think they have guessed better than government may guess worse instead. Judges are generalists, and the political insulation that protects them from current politics also deprives them of information,33 especially information about novel security threats and necessary responses to those threats. If government can make mistakes and adopt unjustified security measures, then judges can make mistakes as well, sometimes invalidating justified security measures.

On this comparative institutional view, there is no general reason to think that judges can do better than government at balancing security and liberty during emergencies. Constitutional rules do no good, and some harm, if they block government’s attempts to adjust the balance as threats wax and wane. When judges or academic commentators say that government has wrongly assessed the net benefits or costs of some security policy or other, they are amateurs playing at security policy, and there is no reason to expect that courts can improve upon government’s emergency policies in any systematic way.

#### Deference good --- secrecy, speed, and flexibility

Posner & Vermeule ’07, Eric Posner is Kirkland & Ellis Distinguished Service Professor of Law and Aaron Director Research Scholar at the University of Chicago. Adrian Vermeule - John H. Watson, Jr. Professor of Law – Harvard Law School, “Terror in the Balance : Security, Liberty, and the Courts”.¶ Cary, NC, USA: Oxford University Press, 2007. p 4-6.¶ http://site.ebrary.com/lib/wayne/Doc?id=10180654&ppg=13¶ Copyright © 2007. Oxford University Press. All rights reserved. , jj

A different view, however, is that the history is largely one of political and constitutional success. The essential feature of the emergency is that national security is threatened; because the executive is the only organ of government with the resources, power, and flexibility to respond to threats to national security, it is natural, inevitable, and desirable for power to flow to this branch of government. Congress rationally acquiesces; courts rationally defer. Civil liberties are compromised because civil liberties interfere with effective response to the threat; but civil liberties are never eliminated because they remain important for the well-being of citizens and the effective operation of the government. People might panic, and the government must choose policies that enhance morale as well as respond to the threat, but there is nothing wrong with this. The executive implements bad policies as well as good ones, but error is inevitable, just as error is inevitable in humdrum policymaking during normal times. Policy during emergencies can never be mistake-free; it is enough if policymaking is not systematically biased in any direction, so that errors are essentially random and wash out over many decisions or over time. Both Congress and the judiciary realize that they do not have the expertise or the resources to correct the executive during an emergency. Only when the emergency wanes do these institutions reassert themselves, but this just shows that the basic constitutional structure remains unaffected by the emergency. In the United States, unlike in many other countries, the constitutional system has never collapsed during an emergency.¶ The two views of history have opposite normative implications. Those who hold the first view devote their energies to persuading Congress and judges to scrutinize executive actions during emergencies. The simplest view, which we label the civil libertarian view, holds that courts should be willing to strike down emergency measures that threaten civil liberties to the same extent that they strike down security measures during normal times; perhaps courts should be even less deferential during emergencies, given that emergencies create new opportunities for taking advantage of the public. Some scholars who are sympathetic to the civil libertarian view, but who do not go so far, think that courts should be more deferential during emergencies than during normal times; but these scholars also think that the judges should assert themselves more than they have historically and that the judges should wield constitutional doctrines that require the executive to work in tandem with Congress. Except when the context requires greater precision, we will refer to both types of scholars as civil libertarians. The second view of history suggests that the traditional practice of judicial and legislative deference has served Americans well, and there is no reason to change it. This view reflects the collective wisdom of the judges themselves, and although no one doubts that injustices occur during emergencies, the type of judicial scrutiny that would be needed to prevent the injustices that have occurred during American history would cause more harm than good by interfering with justified executive actions. Those who hold this view usually have little confidence in congressional leadership and argue that Congress should defer to the executive as well. This book argues for the latter view. We maintain that the civil libertarian view, in any version, rests on implausible premises and is too weak to overcome the presumptive validity of executive action during emergencies. Our argument has two components. First, the tradeoff thesis holds that governments should, and do, balance civil liberties and security at all times. During emergencies, when new threats appear, the balance shifts; government should and will reduce civil liberties in order to enhance security in those domains where the two must be traded off. Governments will err, but those errors will not be systematically skewed in any direction and will not be more likely during emergencies than during normal times, in which governments also make mistakes about quotidian matters of policy. Second, the deference thesis holds that the executive branch, not Congress or the judicial branch, should make the tradeoff between security and liberty. During emergencies, the institutional advantages of the executive are enhanced. Because of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times. The deference thesis does not hold that courts and legislators have no role at all. The view is that courts and legislators should be more deferential than they are during normal times; how much more deferential is always a hard question and depends on the scale and type of the emergency.¶ To that extent, we agree with the subset of civil libertarians who concede that courts and legislators should defer somewhat more during emergencies than during normal times. Nonetheless, even these civil libertarians criticize the courts and Congress for their excessive deference during emergencies. We agree with the descriptive premise, but not the normative one. Courts and legislators are far more deferential during emergencies than any civil libertarians would have them be, but we think this is good and, for the most part, inevitable. Accordingly, we will argue for a much higher degree of deference than any version of the civil libertarian view permits. In our view, the historical baseline of great deference during emergencies is also the right level of deference. To be clear, we do not argue that government always acts rationally, or with public-regarding motivations, nor that it always strikes the correct balance between security and liberty. Our two theses are just two halves of our central claim, which is about the comparison of institutional performance during normal times, on the one hand, and during emergencies, on the other. Our central claim is that government is better than courts or legislators at striking the correct balance between security and liberty during emergencies. Against the baseline of normal times, government does no worse during emergencies, or at least its performance suffers less than that of courts and legislators. By contrast, the institutional structures that work to the advantage of courts and Congress during normal times greatly hamper their effectiveness during emergencies; and the decline in their performance during emergencies is much greater than the decline in governmental performance. Therefore, deference to government should increase during emergencies.

#### Executive flexibility solves nuclear war

Yoo 12

(John Yoo, American attorney, law professor, and author. He served as a political appointee, the Deputy Assistant US Attorney General in the Office of Legal Counsel, Department of Justice (OLC), during the George W. Bush administration. “War Powers Belong to the President”¶ Posted Feb 1, 2012,¶ <http://www.abajournal.com/magazine/article/war_powers_belong_to_the_president>)

A radical change in the system for making war might appease critics of presidential power. But it could also seriously threaten American national security. In order to forestall another 9/11 attack, or to take advantage of a window of opportunity to strike terrorists or rogue nations, the executive branch needs flexibility. It is not hard to think of situations where congressional consent cannot be obtained in time to act. Time for congressional deliberation, which leads only to passivity and isolation and not smarter decisions, will come at the price of speed and secrecy.¶ The Constitution creates a presidency that can respond forcefully to prevent serious threats to our national security. Presidents can take the initiative and Congress can use its funding power to check them. Instead of demanding a legalistic process to begin war, the framers left war to politics. As we confront the new challenges of terrorism, rogue nations and WMD proliferation, now is not the time to introduce sweeping, untested changes in the way we make war.

### CMR

#### Civil military relations stable now --- discussions are candid and open

Ricks & Crist 8-16-’13, Thomas E. Ricks covered the U.S. military for the Washington Post from 2000 through 2008. Dr. David Crist is a senior historian for the U.S. government and a special advisor to senior officals in the U.S. government. He frequent advises senior government officials on the Middle East. As an officer in the U.S. Marine Corps Reserve, Crist served two tours with special operations forces in Afghanistan and Iraq. His prior publications include Gulf of Conflict: A History of U.S.-Iranian Confrontation at Sea (Washington Institute, 2009). He holds a B.A. from the University of Virginia and a master's and doctorate in Middle Eastern history from Florida State University., The 'Foreign Policy' transcript (I): Our basic problem over the last 10 years has been decisionmaking at the top level, <http://ricks.foreignpolicy.com/posts/2013/08/16/the_fp_transcript_xth_and_last_what_the_last_9_segments_tell_us_about_the_state_of_>, jj

Crist: Well I think it's all interrelated -- issues in Afghanistan, issues in Iraq, all affect how we look at Iran and how we are positioned to be able to do something about Iran. I think it's all interrelated. Lessons I think have been institutionalized at least within senior leaders on some of the problems we had in Afghanistan and Iraq, especially second- and third-order effects. What are the consequences of different actions we take? What are consequences of conflict in general? Is regime change a viable option? Isn't it a viable option? If not, then how do we...? I mean, all that is in the background of all the discussions. And I think it's been very healthy in many ways.¶ Ricks: One of the issues that we've been talking about is the quality of civil-military relations and straightforward, candid, honest advice from generals to civilian leaders -- for which we have apparently just seen General Mattis quietly fired. [Ricks note: I should have said "pushed out early."]¶ Crist: On the record I won't comment on General Mattis's views.¶ I will say and I can say this with a certain honesty since I've helped draft many of the memos: He has been very candid on what his views of what needs to be done. I haven't seen anything like the Rumsfeldian approach to stifling alternative views, and so as a consequence while...And some people in the U.S. military -- maybe the political leadership isn't as receptive as they would like on authority issues and some other response...the dialogue is there, and frankly a lot of it gets to these ideas of what I have always thought of as one of the intangibles where you have breakdown in discourse between civilian and military leadership is as you say trust. And a lot of it is personality based. Just personalities of the individual players and how they personally get along, as well as concerns of political leadership.¶ Ricks: And you have seen a trusting, candid exchange?¶ Crist: I have from my level, absolutely. And I've sat in many -- not as many as Michèle and some of the others here -- but a number of meetings with senior leaders on both sides of it. And I have seen it be quite candid.

#### Plan kills CMR

McAuliff 5-24-’13 Michael McAuliff was a Washington correspondent for the New York Daily News, where he covered Sen. Hillary Clinton, the 2008 presidential campaign, and the fight over the 9/11 health and compensation law. Before coming to the paper in 2003 as a national and metro desk editor, he was the national editor of ABCNews.com. He was also the national editor of the groundbreaking crime-news site APB News.com. He went to Brooklyn College, and got his start covering news in New York City. 5-24-’13, Huffington Post, Guantanamo Bay: Obama Prescription Is At Odds With Top Military Advisers, <http://www.huffingtonpost.com/2013/05/24/guantanamo-bay-obama_n_3333432.html>, jj

Guantanamo Bay: Obama Prescription Is At Odds With Top Military Advisers¶ WASHINGTON -- President Barack Obama's suggestion Thursday that "history will cast a harsh judgment" if the nation fails to deal with the detainees at Guantanamo Bay in 10 to 20 years might come as a harsh surprise to some of his top military and civilian defense advisers.¶ That's because they told Congress just one week earlier that the United States could be saddled with the prisoners even longer.¶ Obama was calling on Congress Thursday to end the laws they have passed restricting the administration from moving the 166 captives who remain at the United States' jail for terrorism suspects in Cuba.¶ "I know the politics are hard, but history will cast a harsh judgment on this aspect of our fight against terrorism and those of us who fail to end it," Obama said in a speech to the National Defense University. "Imagine a future -- 10 years from now or 20 years from now -- when the United States of America is still holding people who have been charged with no crime on a piece of land that is not a part of our country."¶ "Look at the current situation, where we are force-feeding detainees who are being held on a hunger strike," Obama said. "Is that who we are? Is that something our founders foresaw? Is that the America we want to leave our children?"¶ The answer to his rhetorical question was certainly meant to be no, but when the Senate Armed Services Committee questioned a panel of defense officials exactly a week earlier, on May 16, the answer was more like yes.¶ The hearing was called "The Law of Armed Conflict, the Use of Military Force, and the 2001 Authorization for Use of Military Force." It examined how the United States has been running the war on terror launched under that post-9/11 act of Congress, and whether the authorization was still relevant.¶ The officials argued that while it might be time to review the AUMF, as the authorization is known, it was currently being used appropriately and would be of use as long as there is a war on terror, or, as the administration describes it, a war on "Al Qaeda, the Taliban and associated forces."¶ And that war will not end any time soon, defense officials said. "I believe it's at least years in advance, based on my understanding of the organization, of resiliency of Al Qaeda and its affiliate forces. It's many years in advance," Michael Sheehan, the assistant defense secretary for special operations and low-intensity conflict, told Sen. Carl Levin (D-Mich.).¶ He was even more specific when pressed on the matter by Sen. Lindsey Graham (R-S.C.), who himself sees no soon end to the conflict.¶ "Yes, sir, I think it's at least 10 to 20 years," Sheehan offered as an estimated timeline for when the war effort may end.¶ The duration of declared hostilities is a key element of Obama's hopes to close Guantanamo and deal with detainees -- wherever they are held -- because as long as there is a conflict, international law permits the holding of prisoners of that war. When the war ends, the prisoners eventually must be freed.¶ "There will come a point when our enemy in this armed conflict is defeated, or so defeated that there is no longer an ongoing armed conflict," Robert Taylor, the acting general counsel for the Department of Defense, told Levin. "At that point, we will face difficult questions about what to do with those still remaining in military detention without a criminal conviction and sentence," he said.¶ But he noted that even after the hostilities are ended, there is precedent for the nation taking even longer to release the prisoners.¶ "I do point out that, following World War II, we continued to hold some people for several years as part of a general mopping up authority," Taylor said, apparently surprising Levin, who asked if war crimes were involved.¶ "No, sir," Taylor said. "They were prisoners of war, but who were assessed that they would so disrupt the delicate situation in -- back in Germany and elsewhere, that we held them for a few years."¶ Before Congress barred the administration from relocating the prisoners held at Gitmo, it had run into exactly that problem, finding it difficult to find countries willing to accept former terrorism suspects.

***Their impact claims are hype that have been consistently empirically disproven .***

**Feaver and Kohn ‘5** [Peter Feaver, professor of Political Science and Public Policy and the director of the Triangle Institute for Security Studies at Duke University, and Richard H. Kohn, Professor of History at the University of North Carolina, 2005, “The Gap: Soldiers, Civilians, and Their Mutual Misunderstanding,” in American Defense Policy, 2005 edition, ed. Paul J. Bolt, Damon V. Coletta, Collins G. Shackelford, p. 339]

**Concerns about a** troublesome **divide between the armed forces and** the **society** they serve **are hardly new** and in fact **go back to the beginning of the Republic**. Writing in the 1950s, Samuel Huntington argued that the divide could best be bridged by civilian society tolerating, if not embracing, the conservative values that animate military culture. Huntington also suggested that politicians allow the armed forces a substantial degree of cultural autonomy. Countering this argument, the sociologist Morris Janowitz argued that in a democracy, military culture necessarily adapts to changes in civilian society, adjusting to the needs and dictates of its civilian masters.2 The end of the Cold War and the extraordinary changes in American foreign and defense policy that resulted have revived the debate. The **contemporary heirs** of Janowitz **see the all volunteer military as drifting too far away from the norms of American society, thereby posing problems for civilian control. They make tour principal assertions. First, the military has grown out of step ideologically with the public,** showing itself to be inordinately right-wing politically, and much more religious (and fundamentalist) than America as a whole, having a strong and almost exclusive identification with the Republican Party. Second, **the military has become increasingly alienated from,** disgusted with, **and sometimes even explicitly hostile to, civilian culture. Third, the armed forces have resisted change**, particularly the integration of women and homosexuals into their ranks, and have generally proved reluctant to carry out constabulary missions. Fourth, civilian control and military effectiveness will both suffer as the military—seeking ways to operate without effective civilian oversight and alienated from the society around it—loses the respect and support of that society. By contrast, the heirs of Huntington argue that a degenerate civilian culture has strayed so far from traditional values that it intends to eradicate healthy and functional civil-military differences, particularly in the areas of gender, sexual orientation, and discipline. This camp, too, makes four key claims. First, its members assert that the military is divorced in values from a political and cultural elite that is itself alienated from the general public. Second, it believes this civilian elite to be ignorant of, and even hostile to, the armed forces—eager to employ the military as a laboratory for social change, even at the cost of crippling its warfighting capacity. Third, it discounts the specter of eroding civilian control because it sees a military so thoroughly inculcated with an ethos of subordination that there is now too much civilian control, the effect of which has been to stifle the military's ability to function effectively Fourth, because support for the military among the general public remains sturdy, any gap in values is inconsequential. The problem, if anything, is with the civilian elite. The debate has been lively (and inside the Beltway, sometimes quite vicious), but it **has rested on very thin evidence**—(tunneling anecdotes and claims and counterclaims about the nature of civilian and military attitudes. Absent has been a body of systematic data exploring opinions, values, perspectives, and attitudes inside the military compared with those held by civilian elites and the general public. Our project provides some answers.

***CMR resilient – inherent patriotism and support for the troops***

**Carafano 8** (James Jay, senior research fellow for national security at The Heritage Foundation, “Soldiers, Civilians, and ‘The Great War’” accessed 7-22, http://www.heritage.org/press/commentary/ed050808b.cfm)JFS

Civil-military relations are back in the news. There could not be a better time for fresh views on this vital subject. Nancy Gentile Ford's The Great War and America: Civil-Military Relations During World War I is a welcome contribution. Ford, a professor of history at Bloomsburg University of Pennsylvania, provides a broad historical survey of the critical issues that confronted the United States leading up to, during and after World War I. In The Great War and America, Ford argues that this period of American history is worthy of particular attention—and she is absolutely right. The dawn of the 20th century was a turning point for how America's military and American society are interwoven. **Many of the fundamental military institutions that we rely on today, from recruiting military officers from civilian universities to relying on the National Guard, emanate from this era. The United States has traditionally enjoyed a remarkably resilient and healthy civil society. When civil society is strong, relations between soldiers and the state tend to remain pretty stable. The Great War and America supports this thesis. America's sudden entry into World War I and the rush of transforming a constabulary force scattered throughout the United States into a mass citizen army to fight on the world's first "high-tech" battlefield raised innumerable concerns and challenges. America survived them all—and helped win the war.**

### Bioterror

#### Our general terrorism defense takes out their bioterror adv

#### Terrorists can’t get bioweapons

**The Economist** 1-8-**11** (“A bug’s life; Bioterror; Africa and security,” lexis, jj)

Sceptics say Mr **Lugar is scaremongering abroad for political gain** at home. **He may be right**, as he complained in Kenya, **that pathogens are easier to package than nuclear materials. But "weaponising" them is still difficult. Many organisms mooted as terror agents are tricky to handle and hard to make into weapons. It is** **unlikely that Somalia's al-Shabab, the most threatening terrorist group in east Africa, or organised criminals, have the technical ability to do that**.

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

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

The second problem is much more serious. Eliminating the toxins, we’re left with a list of infectious bacteria and viruses. With a single exception, these organisms are probably near-useless as weapons, and history proves it.¶ There have been at least three well-documented military-style deployments of infectious agents from the list, plus one deployment of an agent that’s not on the list. I’m focusing entirely on the modern era, by the way. There are historical reports of armies catapulting plague-ridden corpses over city walls and conquistadors trying to inoculate blankets with Variola (smallpox), but it’s not clear those “attacks” were effective. Those diseases tended to spread like, well, plagues, so there’s no telling whether the targets really caught the diseases from the bodies and blankets, or simply picked them up through casual contact with their enemies.¶ Of the four modern biowarfare incidents, two have been fatal. The first was the 1979 Sverdlovsk anthrax incident, which killed an estimated 100 people. In that case, a Soviet-built biological weapons lab accidentally released a large plume of weaponized Bacillus anthracis (anthrax) over a major city. Soviet authorities tried to blame the resulting fatalities on “bad meat,” but in the 1990s Western investigators were finally able to piece together the real story. The second fatal incident also involved anthrax from a government-run lab: the 2001 “Amerithrax” attacks. That time, a rogue employee (or perhaps employees) of the government’s main bioweapons lab sent weaponized, powdered anthrax through the US postal service. Five people died.¶ That gives us a grand total of around 105 deaths, § Marked 18:57 § entirely from agents that were grown and weaponized in officially-sanctioned and funded bioweapons research labs. Remember that.¶ Terrorist groups have also deployed biological weapons twice, and these cases are very instructive. The first was the 1984 Rajneeshee bioterror attack, in which members of a cult in Oregon inoculated restaurant salad bars with Salmonella bacteria (an agent that’s not on the “select” list). 751 people got sick, but nobody died. Public health authorities handled it as a conventional foodborne Salmonella outbreak, identified the sources and contained them. Nobody even would have known it was a deliberate attack if a member of the cult hadn’t come forward afterward with a confession. Lesson: our existing public health infrastructure was entirely adequate to respond to a major bioterrorist attack.¶ The second genuine bioterrorist attack took place in 1993. Members of the Aum Shinrikyo cult successfully isolated and grew a large stock of anthrax bacteria, then sprayed it as an aerosol from the roof of a building in downtown Tokyo. The cult was well-financed, and had many highly educated members, so this release over the world’s largest city really represented a worst-case scenario.¶ Nobody got sick or died. From the cult’s perspective, it was a complete and utter failure. Again, the only reason we even found out about it was a post-hoc confession. Aum members later demonstrated their lab skills by producing Sarin nerve gas, with far deadlier results. Lesson: one of the top “select agents” is extremely hard to grow and deploy even for relatively skilled non-state groups. It’s a really crappy bioterrorist weapon.¶ Taken together, these events point to an uncomfortable but inevitable conclusion: our biodefense industry is a far greater threat to us than any actual bioterrorists.

#### Attack would fail

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

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

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

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

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

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

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

# 2NC

## XO

### A2: Do Both – vs. Courts

#### Links to politics – no shielding arg – odnt let them make one

#### Judicial review of foreign policy decks the executive flexibility necessary to solve prolif, terror, and the rise of hostile powers---link threshold is low

Robert Blomquist 10, Professor of Law, Valparaiso University School of Law, THE JURISPRUDENCE OF AMERICAN NATIONAL SECURITY PRESIPRUDENCE, 44 Val. U.L. Rev. 881

Supreme Court Justices--along with legal advocates--need to conceptualize and prioritize big theoretical matters of institutional design and form and function in the American national security tripartite constitutional system. By way of an excellent introduction to these vital issues of legal theory, the Justices should pull down from the library shelf of the sumptuous Supreme Court Library in Washington, D.C. (or more likely have a clerk do this chore) the old chestnut, The Legal Process: Basic Problems in the Making and Application of Law by the late Harvard University law professors Henry M. Hart and Albert M. Sacks. n7 Among the rich insights on institutional design coupled with form and function in the American legal system that are germane to the Court's interpretation of national security law-making and decision-making by the President are several pertinent points. First, "Hart and Sacks' intellectual starting point was the interconnectedness of human beings, and the usefulness of law in helping us coexist peacefully together." n8 By implication, therefore, the Court should be mindful of the unique [\*883] constitutional role played by the POTUS in preserving peace and should prevent imprudent judicial actions that would undermine American national security. Second, Hart and Sacks, continuing their broad insights of social theory, noted that legal communities establish "institutionalized[] procedures for the settlement of questions of group concern" n9 and regularize "different procedures and personnel of different qualifications . . . appropriate for deciding different kinds of questions" n10 because "every modern society differentiates among social questions, accepting one mode of decision for one kind and other modes for others-e.g., courts for 'judicial' decisions and legislatures for 'legislative' decisions" n11 and, extending their conceptualization, an executive for "executive" decisions. n12 Third, Professors Hart and Sacks made seminal theoretical distinctions between rules, standards, principles, and policies. n13 While all four are part of "legal arrangements [\*884] in an organized society," n14 and all four of these arrangements are potentially relevant in judicial review of presidential national security decisions, principles and policies n15 are of special concern because of the sprawling, inchoate, and rapidly changing nature of national security threats and the imperative of hyper-energy in the Executive branch in responding to these threats. n16

The Justices should also consult Professor Robert S. Summers's masterful elaboration and amplification of the Hart and Sacks project on enhancing a flourishing legal system: the 2006 opus, Form and Function in a Legal System: A General Study. n17 The most important points that [\*885] Summers makes that are relevant to judicial review of American national security presiprudence are three key considerations. First, a "conception of the overall form of the whole of a functional [legal] unit is needed to serve the founding purpose of defining, specifying, and organizing the makeup of such a unit so that it can be brought into being and can fulfill its own distinctive role" n18 in synergy with other legal units to serve overarching sovereign purposes for a polity. The American constitutional system of national security law and policy should be appreciated for its genius in making the POTUS the national security sentinel with vast, but not unlimited, powers to protect the Nation from hostile, potentially catastrophic, threats. Second, "a conception of the overall form of the whole is needed for the purpose of organizing the internal unity of relations between various formal features of a functional [legal] unit and between each formal feature and the complementary components of the whole unit." n19 Thus, Supreme Court Justices should have a thick understanding of the form of national security decision-making conceived by the Founders to center in the POTUS; the ways the POTUS and Congress historically organized the processing of national security through institutions like the National Security Council and the House and Senate intelligence committees; and the ways the POTUS has structured national security process through such specific legal forms as Presidential Directives, National Security Decision Directives, National Security Presidential Decision Directives, Presidential Decision Directives, and National Security Policy Directives in classified, secret documents along with typically public Executive Orders. n20 Third, according to Summers, "a conception of the overall form of the whole functional [legal] unit is needed to organize further the mode of operation and the instrumental capacity of the [legal] unit." n21 So, the Supreme Court should be aware that tinkering with national security decisions of the POTUS--unless clearly necessary to counterbalance an indubitable violation of the text of the Constitution--may lead to unforeseen negative second-order consequences in the ability of the POTUS (with or without the help of Congress) to preserve, protect, and defend the Nation. n22

 [\*886] B. Geopolitical Strategic Considerations Bearing on Judicial Interpretation

Before the United States Supreme Court Justices form an opinion on the legality of national security decisions by the POTUS, they should immerse themselves in judicially-noticeable facts concerning what national security expert, Bruce Berkowitz, in the subtitle of his recent book, calls the "challengers, competitors, and threats to America's future." n23 Not that the Justices need to become experts in national security affairs, n24 but every Supreme Court Justice should be aware of the following five basic national security facts and conceptions before sitting in judgment on presiprudential national security determinations.

(1) "National security policy . . . is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice." n25 While "[y]esterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers" n26, the twenty-first century reality is that "[t]hreats are also more likely to be intertwined--proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers." n27

(2) "Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat--the Soviet Union--was brittle, most of the potential adversaries and challengers America now faces are resilient." n28

(3) "The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events." n29 Importantly, "[w]hen you hold [\*887] the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not." n30

(4) While "keeping the strategic advantage may not have the idealistic ring of making the world safe for democracy and does not sound as decisively macho as maintaining American hegemony," n31 maintaining the American "strategic advantage is critical, because it is essential for just about everything else America hopes to achieve--promoting freedom, protecting the homeland, defending its values, preserving peace, and so on." n32

(5) The United States requires national security "agility." n33 It not only needs "to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources." n34

 [\*888] As further serious preparation for engaging in the jurisprudence of American national security presiprudence in hotly contested cases and controversies that may end up on their docket, our Supreme Court Justices should understand that, as Walter Russell Mead pointed out in an important essay a few years ago, n35 the average American can be understood as a Jacksonian pragmatist on national security issues. n36 "Americans are determined to keep the world at a distance, while not isolating ourselves from it completely. If we need to take action abroad, we want to do it on our terms." n37 Thus, recent social science survey data paints "a picture of a country whose practical people take a practical approach to knowledge about national security. Americans do not bother with the details most of the time because, for most Americans, the details do not matter most the time." n38 Indeed, since the American people "do know the outlines of the big picture and what we need to worry about [in national security affairs] so we know when we need to pay greater attention and what is at stake. This is the kind of knowledge suited to a Jacksonian." n39

Turning to how the Supreme Court should view and interpret American presidential measures to oversee national security law and policy, our Justices should consider a number of important points. First, given the robust text, tradition, intellectual history, and evolution of the institution of the POTUS as the American national security sentinel, n40 and the unprecedented dangers to the United States national security after 9/11, n41 national security presiprudence should be accorded wide latitude by the Court in the adjustment (and tradeoffs) of trading liberty and security. n42 Second, Justices should be aware that different presidents [\*889] institute changes in national security presiprudence given their unique perspective and knowledge of threats to the Nation. n43 Third, Justices should be restrained in second-guessing the POTUS and his subordinate national security experts concerning both the existence and duration of national security emergencies and necessary measures to rectify them. "During emergencies, the institutional advantages of the executive are enhanced", n44 moreover, "[b]ecause of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times." n45 Fourth, Supreme Court Justices, of course, should not give the POTUS a blank check--even during times of claimed national emergency; but, how much deference to be accorded by the Court is "always a hard question" and should be a function of "the scale and type of the emergency." n46 Fifth, the Court should be extraordinarily deferential to the POTUS and his executive subordinates regarding questions of executive determinations of the international laws of war and military tactics. As cogently explained by Professors Eric Posner and Adrian Vermeule, n47 "the United States should comply with the laws of war in its battle against Al Qaeda"--and I would argue, other lawless terrorist groups like the Taliban--"only to the extent these laws are beneficial to the United States, taking into account the likely response of [\*890] other states and of al Qaeda and other terrorist organizations," n48 as determined by the POTUS and his national security executive subordinates.

### CP Solves – Soft Power / Legitimacy

#### Modeling – no reason that key. WE end indefinite detention – prevents recruitment, shores up legitimacy and lets us bully Putin

#### We agree we don’t solve deference. We are impact turning that adv

#### Executive action solves signal

Feldman 5-7-’13, Noah Feldman, a law professor at Harvard University and the author of the forthcoming “Cool War: The Future of Global Competition,” is a Bloomberg View columnist, 5-7-’13, Bloomberg, Obama Can Close Guantanamo. Here’s How., <http://www.bloomberg.com/news/2013-05-07/obama-has-leverage-to-get-his-way-on-guantanamo.html>, jj

President Barack Obama’s renewed request to close the prison at Guantanamo Bay, Cuba, confirms what the detainees have already shown with their hunger strike: Permanent detention at the U.S. naval station isn’t viable as a matter of practicality or conscience.¶ It’s easy to blame Congress for standing in the way of a rational solution. But if the Obama administration would take some of the legal ingenuity that it has applied in justifying indefinite detention and apply it instead to closing the island prison, maybe something could actually be done, despite the organized madness that is our constitutional separation of powers.¶ Start with the most fundamental reason that Obama should be able to act unilaterally. The president is commander in chief, and the Guantanamo detainees were all held pursuant to the executive power to wage war. The Obama administration says the detainees are being held as, in effect, prisoners of war pursuant to the Geneva Conventions, until the end of hostilities with al-Qaeda -- whenever that may be. So why doesn’t the president, who has the absolute power to hold and release the detainees, have the authority to move them around according to his sound judgment?¶ Reputation Cost¶ To deepen the argument beyond executive power, the president is also in charge of foreign affairs. Keeping the detainees at Guantanamo is very costly to international relations, since most nations see the prison there as a reminder of the era of waterboarding and abuses at the Abu Ghraib prison in Iraq. Surely the president should be able to salvage the U.S.’s reputation without being held hostage by Congress?¶ The answer from Congress would have several elements. First, Congress has the power to enact a law defining who can come into the U.S., and the American public doesn’t want the detainees in the country either for trial or in a new Supermax facility. Second, Congress has the power to declare war and could conceivably assert that this should include the right to tell the president how to treat prisoners. Then there’s the power of the purse: Congress could make things difficult by declining to authorize funds for a suitable new stateside detention facility.¶ Faced with a standoff between two branches, the system allows an orderly answer: turning to the third branch, the courts, to resolve the conflict. Since 2003, the Supreme Court has taken an interest in Guantanamo, deciding on the statutory and constitutional rights extended there, and vetting procedures for detainee hearings and trials. Along the way, it has shown an equal-opportunity willingness to second-guess the executive -- as when President George W. Bush denied hearings to detainees -- and Congress, which passed a law denying habeas corpus to the prisoners.¶ How could the court get involved? The first step would be for the Obama administration to show some of the legal self-confidence it did in justifying drone strikes against U.S. citizens or in ignoring the War Powers Resolution in the Libya military intervention. Likewise, it could assert a right of control over where the detainees should be held. And if the president’s lawyers are worried about Bush-style assertions of plenary executive power (which, for the record, didn’t concern them when it came to drones or Libya), there is a path they could follow that would hew closer to their favored constitutional style.¶ Geneva Conventions¶ The reasoning could look like this: The president’s war power must be exercised pursuant to the laws of war embodied in the Geneva Conventions. And though Guantanamo once conformed to those laws -- as the administration asserted in 2009 -- it no longer does. The conditions are too makeshift to manage the continuing prisoner resistance, and indefinite detention in an indefinite war with no enemy capable of surrendering is pressing on the bounds of lawful POW detention.¶ Congress doesn’t have the authority to force the president to violate the laws of war. Yet by blocking Obama from closing Guantanamo, that is just what Congress is doing. What’s more, he has the inherent authority to ensure that we are complying with our treaty obligations.¶ This argument isn’t a certain winner. And there would still be the problem of whether the president could put the detainees in an existing prison. But at least spelling this out would put the fear of God into Congress. Continued congressional resistance would also trigger a court case.¶ The president could have a tough time convincing five justices. According to the framework developed by Justice Robert Jackson in the Truman-era steel seizure case, and used today by the courts, the president’s power is at its “lowest ebb” when Congress has expressly barred him from acting. But even at ebb tide there is still an ocean, and lots of things Congress can’t stop the president from doing. Complying with his legal obligations should surely be at the top of the list.

#### The president solves modeling, signal, and international perception --- Obama weighing in on the merits of a policy outweighs the process which it is passed

* Foreign countries don’t care about the nitty-gritty of inter-agency process, they want to see Obama has taken a stand on the issue --- which the CP solves
* President obviously perceived. The CP lays the groundwork for an intl coalition

Singer 5-23-’13, Peter W. Singer, Director, Center for 21st Century Security and Intelligence, Brookings Institution, Finally, Obama Breaks His Silence on Drones, <http://www.brookings.edu/research/opinions/2013/05/23-drones-obama-singer>, jj

As this played out, the president's absence from the debate became more and more telling. Yes, there were a couple of speeches by presidential aides finally acknowledging the use of such technology, quick mentions on late-night talk shows and even presidential jokes about drone strikes. But the administration's case in the public debate remained disjointed, tentative and, as the controversy surrounding John Brennan's confirmation hearings as CIA director illustrated, far from strategic or satisfactory. The time was long overdue for the true stamp of presidential voice and authority on the topic to be heard.¶ That is what makes the president's speech Thursday at National Defense University so important, and simultaneously so challenging for him. He has to try to strike a balance between arguing that terrorism threats will remain with us for the long term, as recent events in Boston and London would illustrate, but that the structures we gradually built up in response, from the prison at Guantanamo Bay, Cuba, to the drone campaign, cannot remain with us in their ad hoc manner for the long term.¶ Beyond all the internal policy questions — such as what the CIA should control versus what the Pentagon controls — he has a broader task. He must lay out the overdue case for regularizing, so to speak, our counter-terrorism strategy itself, from the means to the ends. This will require touching on thorny issues such as how to bring more transparency to the ugly task of a targeted killings campaign, how to create more interaction with Congress — which both wants and avoids oversight — and, finally, how to find a path out of the Gitmo conundrum.¶ Beginning this kind of discussion has been described by some as just a way to change the topic in the midst of other would-be scandals dominating the news cycle. But let's be crystal clear: The president is making a big bet by speaking out on issues on which he still enjoys fairly broad public support.¶ The reason to take this bet is that the speech offers enormous advantages over the alternative of remaining silent. Though it may or may not assuage the genuine concerns at home about the drone campaign, the very act is hugely important inside government. Only the president can operate above the interagency disputes, and his vision will set the terms of internal policy development across multiple agencies (why those staff speeches and confirmation hearings never could substitute for his voice).¶ In turn, the public side of the speech matters in a manner beyond any blip in domestic poll numbers. Here again, only the president can truly stake out America's vision in a way the world notices. If well played, the speech might even be the foundation for future international norms that need to be set in the post-9/11, post-Osama bin Laden world. This is all the more important as our technologies proliferate and other nations, such as Russia, China and Iran, may seek to follow (or misuse) our precedents in drone strikes and targeted killings.¶ The issues at play are not just about which agency gets to do what and when to tell whom on Capitol Hill, but also how the United States might build a global coalition of the like-minded on the future of counter-terrorism.¶ In short, sometimes a speech is more than just a speech. By finally speaking out on some of the key issues that have grown to define his place in foreign policy history, Obama has his chance, finally, to set the terms of the debate and steer it toward more positive ends.

#### Executive standards are perceived and modeled

Economist ’13, 6-1, Killer drones, Out of the shadows, <http://www.economist.com/news/united-states/21578689-barack-obamas-rules-drones-could-shape-new-global-laws-war-out-shadows>, jj

In the long run, Mr Obama’s speech may be remembered for effects far from Washington. At its core lay (still classified) guidelines codifying standards for lethal drone strikes. In his description, America now only acts “against terrorists who pose a continuing and imminent threat to the American people, and when there are no other governments capable of effectively addressing the threat. And before any strike is taken, there must be near-certainty that no civilians will be killed or injured—the highest standard we can set.”¶ Officials added a further gloss in briefings. In a shift backed by such Obama aides as John Brennan, a former White House counter-terrorism chief recently appointed to run the CIA, the government would prefer to move away from CIA strikes (which are secret and deniable) towards drone attacks controlled by the armed forces (which would be more transparent). In addition to oversight by Congress, Mr Obama suggested new controls: perhaps a special court with powers to authorise killings, or an independent overseer within the executive branch.¶ Mr Obama left himself wriggle-room, for example over how an imminent threat should be defined. Much damage has already been done to America’s diplomatic standing worldwide and to its image among Muslims. But if, by binding America unilaterally to higher standards, Mr Obama helps set norms for other countries as they acquire drones, that would be something. Such example-setting is a slow process, says Mr Bellinger, but “this is how customary international law is made”.

### 2NC A2: Solvency deficit

#### They say restrictions block- group the Rosenberg cards

#### Framing issue --- their evidence only says Congress is key because it assumes Obama won’t act, not that he can’t act to shut down Gitmo. CP resolves that.

Ackerman 5-22-’13, SPENCER ACKERMAN, Brooklyn-raised, DC-based defense nerd. Reported from Iraq, Afghanistan and Guantanamo Bay a couple times, 05.22.13, Wired, 4 Questions Obama’s Big National Security Speech Should Answer, <http://www.wired.com/dangerroom/2013/05/obama-terror-speech/all/>, jj

As commander-in-chief, Obama has the power to empty Guantanamo Bay right now. Congress can and has stopped him from bringing Gitmo detainees into the continental United States (ironically, for a prolonged detention). What stops Obama from opening Gitmo’s doors is the fear that some detainees will proceed to take up arms against the U.S.; and the political backlash that might follow an end to indefinite detention. Until Obama is willing to face either objection squarely, Guantanamo won’t close. It’ll only move.

#### Their solvency deficits are a myth

McKeon ’13, Buck, Chairman – Armed Forces Committee, 5-24, Myth vs Fact: Obama’s Strained View Of National Security, <http://armedservices.house.gov/index.cfm/press-releases?ContentRecord_id=e85c5a6c-bc0e-4eb2-8c86-3573cb6a309f>, jj

MYTH: Congressional restrictions are the only impediment to transferring terrorist detainees to third countries. “Congress imposed restrictions to effectively prevent us from either transferring detainees to other countries, or imprisoning them in the United States.” FACT: While Congress has required the Secretary of Defense to certify that terrorists transferred to other countries will not be able to rejoin the fight against America, the Secretary has also been given broad authority to waive specific certification requirements in the interest of national security when the threat can be substantially mitigated. In the past several weeks both Sen. Carl Levin (D-MI), Chairman of the Senate Armed Services Committee and the Washington Post editorial page has urged President Obama to use this waiver to transfer detainees.

### 2NC – Politics NB – Generic

#### And the CP preserves Obama’s horse trading and compromise abilities – plan doesn’t

Sovocool and Sovocool, ‘09 - Research Fellow in the Energy Governance Program at the Centre on Asia and Globalization. He is also an Assistant Professor at the Lee Kuan Yew School of Public Policy at the National University of Singapore AND Senior Research Associate at the Lee Kuan Yew School of Public Policy at the National University of Singapore (Benjamin and Kelly, 34 Colum. J. Envtl. L. 333, “Preventing National Electricity-Water Crisis Areas in the United States,” lexis)

Executive Orders also save time in a second sense. The President does not have to expend scarce political capital trying to persuade Congress to adopt his or her proposal. Executive Orders thus save presidential attention for other topics. Executive Orders bypass congressional debate and opposition, along with all of the horse-trading and compromise such legislative activity entails. n292

#### Executive orders don’t link to politics- Prefer our evidence in context of Obama

Davies ‘09 **-** Washington correspondent; Previously been the State Political Editor and Urban Affairs editor for The Sydney Morning Herald, spent ten years covering Federal politics (Anne, The Age, “100 days in FDR's shadow”, April 25, 2009 Saturday )

Beyond his core priorities, Obama has limited himself to actions that can be achieved by executive order or require no political capital to be spent with Congress: closing Guantanamo by July, banning torture in CIA jails, restoring federal funding for embryonic stem cell research, pushing through legislation dealing with gender discrimination in the workplace, and, of course, reprioritising US efforts in Iraq and Afghanistan, which he can do as commander-in-chief. Reforms such as banning assault weapons, which would require legislation and a major political battle, have quickly been jettisoned. Instead, virtually all Obama's political capital has been invested in winning congressional support for his economic measures, which carry the seeds of his larger agenda. He won Congress support for his $US787 billion ($A1111billion) stimulus package, the biggest in US history, in 20days.

### A2: Rollback – Generic

***1) Fiat solves rollback – it’s justified***

***- Reciprocal – aff gets durable fiat means the neg should too***

***- Ground – ensures aff doesn’t lose on backlash and its key to neg ground***

***- Education – avoids should/would debates and focuses on the merits of the plan***

***2) Most executive orders aren’t overturned.***

**Murray 99** [Frank, “Clinton’s Executive Orders are Still Packing a Punch: Other Presidents Issued More, but His are Still Sweeping” Washington Times http://www.englishfirst.org/13166/13166wtgeneral.html]

Clearly, Mr. Clinton knew what some detractors do not: **Presidential successors of the opposite party do not lightly wipe the slate clean of every order, or even most of them. Still on the books** 54 years after his death **are 80** ex**ecutive** o**rder**s **issued by** Franklin D. R**oosevelt**. **No less than 187 of** Mr. **Truman's orders remain**, including one to end military racial segregation, which former Joint Chiefs of Staff Chairman Colin Powell praised for starting the "Second Reconstruction." "President Truman gave us the order to march with Executive Order 9981," Mr. Powell said at a July 26, 1998 ceremony marking its 50th anniversary. Mr. Truman's final order, issued one day before he left office in 1953, created a national security medal of honor ¶ for the nation's top spies, which is still highly coveted and often revealed only in the obituary of its recipient.

#### 3) Executive orders are fast and won’t be rolled back

Fisher 7 (Louis Fisher, Scholar in Residence at the Constitution Project, 2007, A review of “Executive Orders and the Modern Presidency: Legislating from the Oval Office” by Adam Warber, Political Science Quarterly Vol. 121 Issue 4, 712-713, ProQuest)

A reader may draw the erroneous conclusion that the significance of executive orders is not growing. Looking at total numbers, there has been no significant increase, but executive orders are being used more frequently for policy purposes. From the administration of Franklin Roosevelt to that of John Kennedy, the percentage of policy executive orders ranged from 22.2 percent to 38.8 percent, or an average of 25.7 percent. That percentage increased to 42.8 percent from the administration of Lyndon Johnson to that of Gerald Ford, and climbed still further, to 65.6 percent from the administration of Jimmy Carter to that of Bill Clinton (p. 39). Also, Warber makes clear that presidents are at liberty to issue executive orders with little fear of legislative or judicial checks. Without pushback from other branches, executive orders remain a potent weapon.

## Legit

### Ext #1 – Heg High

***Heg is high, sustainable, resilient and invincible – that’s Tufts Daily ’11 – US has the most technologically advanced and powerful military in the world due to high military spending, the best economy and universities, and all potential challengers are too weak or unwilling.***

***China’s internal instability, isolation and unsustainable growth check.***

***Iran, Russia and Venezuela are spoilers but not great powers. No country can match the US.***

***U.S. Hegemony is high and sustainable—balancing won’t happen***

Carla **Norrlof**, Associate Professor of Political Science at the University of Toronto, 20**10**, “America’s Global Advantage: US Hegemony and International Cooperation”, p. 2-3

In my view, **the doomsayers are mistaken**. I argue that **American hegemony is stable and sustainable**. While the United States certainly does face a number of challenges, **an analysis of the linkages between trade, money, and security shows that American power is robust.**  This book is a story about why and how **American hegemony works**, and what other states would have to do to emulate or, on other grounds, thwart, America’s power base. As I will show, the United States benefits from running persistent trade deficits as a result of its special position in the international system. I will argue that any comparably situated country would choose to pursue the same cyclical deficit policy as the one encouraged by the US government. **A series of size advantages cut across trade, money, and security: the size of the American market, the role of the dollar, and American military power interact to make a trade deficit policy rewarding and buffer the United States from the extreme consequences that a sustained deficit policy would otherwise have**. Based on new research in economics on valuation adjustments (i.e., capital and exchange rate gains), and data analysis of my own, this study draws attention to the economic advantages for the United States of having the key currency. In addition to benefits in the form of seignorage, **the United States gains substantially from valuation adjustments, reinforcing policy autonomy and the gains derived from asymmetry in the structure of borrowing and lending**. I also lean on new economic research on valuation adjustments to supplement the conventional view of why military preeminence is necessary for key currency status. Military power has been seen as important in enforcing debt repayments, but there is clearly a need to rethink the connection between reserve status and military power in the present systematic context where the reserve currency country has the world’s largest external liabilities. **We have seen erroneous predictions of American decline before. In the 1970s, the combination of high inflation, high interest rates, high unemployment, the Vietnam War, political and military challenges from China and the Soviet Union, and the economic rise of Japan led to eerily similar forecasts. Pessimists then, as today, underestimated the longevity of American power. The main reason the United States has continued to occupy a unique place in the international system is because a sufficient number of major and lesser powers have a strong interest in maintaining America at the top of the hierarchy. To bring America down would take a deliberate, coordinated strategy on the part of others and this is simply not plausible.** As much as the United States benefits from the space it has carved out for itself in the current world order, its ability to reap unequal gains will remain unless and until allies start to incur heavy losses under American dominance. **Even that, by itself, will not be sufficient to sink American hegemony. A strong alternative to American rule will have to come into view for things to fundamentally change. At present, no credible alternative is in sight. The United States is not invincible but its dominance is currently steady.**

#### Legitimacy not key – its material capabilities that matter

### EXT – Plan No Solve

#### No new restrictions

Sibley 3-30-’13, Robert Sibley is a senior writer with the Citizen, currently attached to the editorial board. MAY 30, 2013, Ottawa Citizen, Obama hasn’t changed course on drones, and he shouldn’t, [http://www.ottawacitizen.com/opinion/columnists/Obama+hasn+changed+course+drones+shouldn/8457415/story.html](http://www.ottawacitizen.com/opinion/columnists/Obama%2Bhasn%2Bchanged%2Bcourse%2Bdrones%2Bshouldn/8457415/story.html), jj

But we should be careful with Obama’s words. He is a master rhetorician, able to give the appearance of change you can believe in when, in fact, he’s largely sticking to the same path. Such is the case here. Even in rewriting the rules on drone strikes the president was careful to defend their use as effective, legal and necessary. “These strikes have saved lives,” he said. “We are at war with an organization that right now would kill as many Americans as they could if we did not stop them first.”¶ Such language suggests Obama has every intention of retaining drone strikes as a tactic in the U.S.’s evolving counter-terrorism strategy. Indeed, less than a week after his speech, a drone strike in Pakistan’s tribal region killed four suspected terrorists, including the second-in-command of the Pakistani Taliban. Obama may like to disparage former president George W. Bush’s “war on terror,” but he hasn’t hesitated to adopt and even expand on counter-terrorism tactics initiated by the Bush administration.¶ Bush reportedly authorized 48 drone strikes in Pakistan during his eight-year presidency. Obama approved about 300 between 2008 and 2012. Moreover, according to Trevor McCrisken, a professor of international studies, writing in a recent edition of the journal Survival, Obama has “direct involvement in the final selection of targets and the decisions to strike.”¶ To be sure, Obama recognizes the terrorist threat has morphed into homegrown and lone wolf attacks — the Boston bombings, for example — against which drones are of little use. But the more cogent reason for Obama to place greater restrictions on drone strikes — and make himself look better politically — is, arguably, because he’s been so successful in deploying drones to significantly decapitate al-Qaida’s leadership and degrade its terror-making capacities. He can afford to curb their use because he doesn’t need them as much as he once did. That said, you can bet that regardless of the rhetoric, Obama won’t substantially forgo this weapon in any substantive way.

#### The speech changes nothing

Greenfield 6-4-’13, Danya Greenfield is the deputy director of the Rafik Hariri Center for the Middle East at the Atlantic Council. June 4, 2013, Foreign Policy, Obama’s drone speech misses the mark, <http://mideast.foreignpolicy.com/posts/2013/06/04/obama_s_drone_speech_misses_the_mark>, jj

President Barack Obama's speech on May 23 should be commended for acknowledging that the United States must shift away from a perpetual state of war against terror, renewing his commitment to close Guantanamo, and promising to provide greater clarity regarding when and how drones can be used overseas. However, Obama did not go far enough in addressing the most worrisome aspects of the current drone campaign, nor did he assure observers that greater transparency and accountability would indeed be forthcoming. In fact, when the language is parsed carefully, his speech could pave the way for an even more expansive use of unmanned aircraft strikes in the future due to the omission of previous White House claims that drones target only the most senior al Qaeda leaders.

#### Even if decreasing – our ev says damage is permanent

#### Tons of alt causes to soft power, and plan conveys US weakness which turns the impact

Blum ’09, Stephanie Cooper Blum, attorney for the Department of Homeland Security. She received a Master's Degree in Security Studies from the Naval Postgraduate School in December 2008, Hilary Term, 2009¶ THOMAS M. COOLEY LAW REVIEW¶ 26 T.M. Cooley L. Rev. 51, SYMPOSIUM ISSUE: THE WARTIME CONSTITUTION: THE CHANGING BALANCE OF POWER AMONG THE THREE BRANCHES OF GOVERNMENT IN WARTIME: ARTICLE: THE WHY AND HOW OF PREVENTIVE DETENTION IN THE WAR ON TERROR, Lexis, jj

Furthermore, there are consequences to coercive interrogation. Al-Marri's attorneys assert that his six-and-a-half years of detention with no charges (five of them as an enemy combatant) have degraded his mental state and left him unable to participate in his defense. n143 Similarly, "Mental health experts who have examined Padilla say the coercive techniques," which allegedly included sleep and sensory deprivation as well as disorienting drugs, shackles, and stress positions, "have left him with severe [\*74] psychological damage that may be permanent." n144 Although the Administration contends that Padilla is faking his psychological condition, there is, nonetheless, a concern to the Nations reputation and credibility with respect to its interrogation methods. n145 Army Colonel Stuart Herrington, a "military intelligence specialist who conducted interrogations in Vietnam," argues that coercive interrogation "endangers our soldiers on the battlefield by encouraging reciprocity," causes "damage to our country's image" and "undermines our credibility . . . ." n146

By contrast, Vermuele and Posner argue that coercive interrogation will only have a marginal negative-effect on the reputation of the U.S. because the U.S. is "already heavily criticized for policies that will not change anytime soon-capital punishment, ungenerous social welfare policies, aggressive use of its military, [and] reluctance to cooperate in international organizations." n147 They also argue that liberal democracies that "collapse into chaos . . . or that are bullied by authoritarian regimes or terrorist organizations are not attractive role models." n148 Yoo concluded that information obtained from coercive interrogation has saved thousands of U.S. citizens and was worth the costs to the Nation's reputation. n149 As he explained, "Al Qaeda clearly sought weapons of mass destruction" and pondered: "What President would put America's image in the United Nations above the protection of thousands of innocent civilian lives?" n150 Yoo also noted that Israel, Great Britain, and France have employed coercive interrogation in certain circumstances without allowing the practice to infect "garden-variety" crimes. n151

## Terror

### 2NC – Resentment Inev

#### Detention isn’t key to terrorist recruitment or resentment --- extend Krauthammer --- their list of grievances is endless and self-replenishing --- capitulation solves nothing --- they will find other recruitment tactics even if detention ends

#### Detention restrictions won’t solve terrorism --- only a risk they cause it

McCarthy ’09, Andrew C. McCarthy III is a former Assistant United States Attorney for the Southern District of New York, he is most notable for leading the 1995 terrorism prosecution against Sheik Omar Abdel Rahman and eleven others, New York Times best-selling author, 12-7-09, National Review, Gitmo Does Not Cause Terrorism, <http://www.nationalreview.com/articles/228819/gitmo-does-not-cause-terrorism/andrew-c-mccarthy>, jj

So we’re going to shut down the detention center at the U.S. naval base on Guantanamo Bay and move the 200-plus terrorists detained there to a seldom-used civilian correctional center in Thomson, Ill. And we’re doing it, the Obama administration and Sen. Dick Durbin assure us, not because they want to use federal money to indemnify their home state for a white-elephant prison Illinois taxpayers should never have built, but because Guantanamo Bay simply must be closed. Gitmo, they say, causes terrorism.¶ It’s worth remembering that the “Blind Sheikh,” Omar Abdel Rahman, perhaps the world’s most influential jihadist, was never held in Gitmo. Instead, he and eleven of his followers got the gold-plated due-process plan: a nine-month 1995 trial in the criminal justice system for waging war against the American people. (That’s not rhetoric; that was the charge: conspiracy to levy war against the United States — Section 2384 of the federal penal code.)¶ The red-carpet treatment didn’t begin or end with the trial. There were Miranda warnings upon arrest (no one cooperated). Counsel was appointed, with the defendants choosing their lawyers — and, for some, Uncle Sam paid for two or more attorneys. Mountains of evidence were culled from intelligence files and duly shared with overseas terrorist organizations. The defense enjoyed a couple of years to make motions to get more discovery, to suppress evidence, and to dismiss the indictment. When things finally went to trial, there was a two-month defense case (that’s much longer than most criminal trials), which allowed them to put the government on trial for its investigative tactics. There was a post-trial hearing on their motion to vacate their convictions and dismiss the case on the ground of “outrageous government misconduct.” There was elaborate litigation before severe sentences were imposed: The Blind Sheikh got life imprisonment, and the other sentences ranged from 25 years to life. That was followed by a three-year appeals process, during which the court appointed new lawyers to argue that their clients had been railroaded through the incompetence of the old lawyers, while the old lawyers continued arguing that their clients had been railroaded by the malevolence of the government. Finally, when the appeals were done and the convictions upheld, the defendants began filing habeas corpus petitions — a practice that continues to this day — claiming that this or that constitutional right was infringed, or that this or that prison condition was inhumane.¶ So the Islamic world and its sundry terrorist bands were all very impressed with this ostentatious display of our humanity, our benign intentions, and “our values” — right? Wrong. The usual Islamist organizations claimed that America had put Islam on trial — the original slander that was refitted after 9/11 into the equally spurious charge that America is at war with Islam. In early 1997, about a year after sentencing, Sheikh Abdel Rahman’s Egyptian terrorist organization, al-Gama’at al-Islamia (the Islamic Group), issued a statement declaring “all American interests legitimate targets” for “legitimate jihad” until the release of all those convicted terrorists, beginning with their beloved leader.¶ A few months later, Abdel Rahman’s always-helpful American lawyers (one of whom has since been convicted of helping him run Gama’at from his U.S. prison cell) issued a statement pressuring U.S. officials to release him. “It sounds,” they wrote, “like the Sheikh’s condition is deteriorating and obviously could be life-threatening.” On cue, Gama’at publicly warned that if any harm were to come to the sheikh, the group would “target . . . all of those Americans who participated in subjecting his life to danger.” The terrorists elaborated that they considered every American official, from Pres. Bill Clinton down to “the despicable jailer,” to be “partners endangering the Sheikh’s life.” The organization promised to do everything in its power to free Abdel Rahman.¶ On Nov. 17, 1997, they made good on the promise. As 58 foreign tourists visited an archeological site in Luxor, Egypt, they were set upon by six Gama’at murderers. The jihadists brutally shot and stabbed them to death – also killing several Egyptian police. The torso of one victim was slit so the terrorists could insert in it a leaflet demanding the release of the Blind Sheikh. Similar leaflets were scattered about the carnage.¶ Luxor was not the last of these atrocities, but it is the most savage so far, and it is the scene that should leap to mind every time some useful idiot like Senator Durbin makes the absurd claim that Guantanamo Bay must be shut down because it causes terrorism and spurs terrorist recruitment. That this claim is mindlessly repeated by high-ranking military officers and intelligence officials doesn’t make it any less absurd.¶ We are talking about people who live in sharia states where they still stone women for adultery, apostates for daring to abandon Islam, and homosexuals for breathing. We are talking about people who riot and murder over cartoons — people who use mosques to hide weapons and Korans to transmit terrorist messages and then murder non-Muslims for purportedly defaming their religion. It makes no difference to these people that we detain Muslim terrorists in military brigs under the laws of war rather than detaining them in civilian prisons after trial in our criminal justice system.¶ After 17 years of attacks, we should have learned the difference between causes of terrorism and pretexts for terrorism. Terrorism is caused, and terrorist recruitment is driven, by Islamist ideology and by American weakness in the face of terror attacks. In that sense, Senator Durbin causes more terrorism than Gitmo ever will. Terrorist organizations are encouraged when they come to believe they can win — when they come to believe they can outlast America because we lack resolve.¶ The Blind Sheikh, echoed by Osama bin Laden, has promised for years that if “battalions of Islam” keep reprising Hezbollah’s 1983 bombing of the Marine barracks in Beirut, and al-Qaeda’s orchestration of the 1993 “Black Hawk Down” incident in Somalia, then the Americans will pack up and go home. The terrorists tell their recruits we’re soft and won’t defend ourselves if it gets ugly. When a U.S. senator takes to the floor of the chamber and compares heroic American troops to Hitler, Stalin, and Pol Pot, he confirms Abdel Rahman and bin Laden’s views. When he suggests that terrorism is somehow caused by locking up terrorists in a secure, offshore military facility, where they can no longer threaten Americans or anyone else, the Islamic world’s fence-sitters start thinking, “The jihadists are right: America doesn’t have the stomach to tough it out. If we just make it bloody enough, we can win.”¶ The only part of Gitmo that causes terrorism is its front gates, when we allow terrorists to walk out of them so they can go back to the battle. Gitmo is a pretext for terrorism. Terrorists use it because, unlike us, they know it’s irresponsible not to study and understand the enemy. They know the Left exercises outsize influence on the media and that the Left’s key characteristic is projection.

#### Terrorists will hate us inevitably

Meese ’12, Edwin Meese III is the Ronald Reagan Distinguished Fellow in Public Policy and chairman of the Center for Legal & Judicial Studies at the Heritage Foundation. He served as the 75th attorney general of the United States under President Reagan. 1-11-12, Heritage Foundation, Guantanamo Bay Prison is Necessary, <http://www.heritage.org/research/commentary/2012/01/guantanamo-bay-prison-is-necessary>, jj

It has been said that the mere existence of Guantanamo is a recruiting tool for the enemy. However, recall that there was no Guantanamo detention facility when al Qaeda bombed the World Trade Center in the 1990s or blew up the U.S. embassies in East Africa in 1998 or attacked the USS Cole in 2000. And I suspect that if the Bush administration had brought the Guantanamo detainees not to Cuba but to a detention facility in the United States, that facility would have been the object of their scorn and derision.¶ All things considered, the detention facility at Guantanamo Bay has played an invaluable role in the war against terrorists by keeping them off the battlefield and allowing for lawful interrogations.

### Uq

#### US detention policies are effective and reducing terrorism now --- plan reverses

Thiessen & Pompeo 7-9-’13, MODERATOR:¶ MARC A. THIESSEN, AEI¶ SPEAKER:¶ MIKE POMPEO, U.S. HOUSE ¶ OF REPRESENTATIVES (R-KS)¶ AMERICAN ENTERPRISE INSTITUTE, CLOSING GITMO? ¶ A CONVERSATION WITH REP. MIKE POMPEO, <http://www.aei.org/files/2013/07/15/-closing-gitmo-transcript_140008739936.pdf>, jj

Either you stare at the analysis and say, look, after 9/11, we engaged in a set of ¶ conduct as American national security team that’s been effective. And as a result of that ¶ effectiveness, we’ve had less risk here. Still had attacks and we’ll probably continue to ¶ have some attacks, but we’ve been pretty effective. Do you look at that set of facts on the ¶ ground and say, yeah, and it’s time to declare victory and pull back from that set of ¶ activities? Or do you say, no, those were effective actions, we ought to continue those ¶ until the enemy puts down their arms?¶ And that seems to me to be the central conceit of this administration, which is that ¶ they have this vision that if we back off, if we take the pressure off, al Qaeda and its ¶ affiliates, and all the terrorists, if we take that pressure off, they’ll come to love America.¶ They’ll come to not present a threat to this nation that is the one that took 3,000 lives.¶ I was in New York City just yesterday. I spoke with Commissioner Kelly about ¶ the threats that are existing today in New York City. They’re real and they’re continuous.¶ And so our activities to engage them and keep pressure on these bad folks must continue ¶ apace as well. And so I hope the president will reconsider the zero option. It has ¶ implications that are very broad and enormously important to everyone in this room. And ¶ their security and their safety.

#### The risk of terrorism is low, but latent --- recent successes are reversible if the U.S. lowers its guard

McLaughlin 13 (John McLaughlin was a CIA officer for 32 years and served as deputy director and acting director from 2000-2004. He currently teaches at the Johns Hopkins University's School of Advanced International Studies and is a Non-Resident Senior Fellow at the Brookings Institution, ¶ 06:00 AM ET¶ Terrorism at a moment of transition7/12, http://security.blogs.cnn.com/2013/07/12/terrorism-at-a-moment-of-transition/)

A third major trend has to do with the debate underway among terrorists over tactics, targets, and ways to correct past errors.¶ On targets, jihadists are now pulled in many directions. Many experts contend they are less capable of a major attack on the U.S. homeland. But given the steady stream of surprises they’ve sprung – ranging from the 2009 “underwear bomber” to the more recent idea of a surgically implanted explosive – it is hard to believe they’ve given up trying to surprise us with innovations designed to penetrate our defenses.¶ We especially should remain alert that some of the smaller groups could surprise us by pointing an attacker toward the United States, as Pakistan’s Tehrik e Taliban did in preparing Faizal Shazad for his attempted bombing of Times Square in 2010.¶ At the same time, many of the groups are becoming intrigued by the possibility of scoring gains against regional governments that are now struggling to gain or keep their balance – opportunities that did not exist at the time of the 9/11 attacks.¶ Equally important, jihadists are now learning from their mistakes, especially the reasons for their past rejection by populations where they temporarily gained sway.¶ Documents from al Qaeda in the Islamic Maghreb, discovered after French forces chased them from Mali, reveal awareness that they were too harsh on local inhabitants, especially women. They also recognized that they need to move more gradually and provide tangible services to populations – a practice that has contributed to the success of Hezbollah in Lebanon.¶ We are now seeing a similar awareness among jihadists in Syria, Tunisia, Libya, and Yemen. If these “lessons learned” take hold and spread, it will become harder to separate terrorists from populations and root them out.¶ Taken together, these three trends are a cautionary tale for those seeking to gauge the future of the terrorist threat.¶ Al Qaeda today may be weakened, but its wounds are far from fatal. It is at a moment of transition, immersed in circumstances that could sow confusion and division in the movement or, more likely, extend its life and impart new momentum.¶ So if we are ever tempted to lower our guard in debating whether and when this war might end, we should take heed of these trends and of the wisdom J. R. R. Tolkien has Eowyn speak in “Lord of the Rings”: "It needs but one foe to breed a war, not two ..."

### \*Civilian Trials Bad – Foreign Co-Op / Leaks DA

#### Civilian prosecution will destroy foreign cooperation in the war on terror

McCarthy and Velshi 9 August, 20 Andrew C. McCarthy is Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies. From 1985 through 2003, he was a federal prosecutor at the U.S. Attorney’s Office for the Southern District of New York, and was the lead prosecutor in the seditious conspiracy trial against Sheikh Omar Abdel Rahman and eleven others, described subsequently. Alykhan Velshi is a staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force. “We Need a National Security” Court<http://www.defenddemocracy.org/stuff/uploads/documents/national_security_court.pdf>

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

# 1NR

### 2NC Impact Overview

#### Disad outweighs

#### a. Faster – failure to raise the debt ceiling causes quick unraveling of the U.S. and global economy – collapse before November

Sahadi 9/10

Jeanne, “Debt ceiling 'X date' could hit Oct. 18”, <http://money.cnn.com/2013/09/10/news/economy/debt-ceiling-bills-coming-due/index.html>, MCR

A new analysis by a think tank shows that **Washington's drop-dead deadline for the debt ceiling could hit as soon as Oct. 18**.¶ Estimating exactly when the Treasury Department will be unable to pay all the bills coming due if Congress fails to raise the nation's legal borrowing limit is notoriously difficult.¶ That's why, in an analysis released Tuesday, the Bipartisan Policy Center put the "X date" between Oct. 18 and Nov. 5.¶ Treasury Secretary Jack Lew has warned that **by mid-October the agency will have only $50 billion in cash on top of incoming revenue.**¶That may sound like a lot. But, as the Bipartisan Policy Center details, **it won't last very long**.¶ If the "X" date turns out to be Oct. 18, Treasury would run about $106 billion short of the money it owes between then and Nov.15. That means it wouldn't be able to pay the equivalent of a third of all the bills due during that period.¶ Here's why: Treasury handles about 80 million payments a month. Those payments are not evenly spaced out so on some days more is owed than on others. And the revenue flowing into federal coffers is unpredictable and varies from day to day.¶ Payments include IRS refunds, Social Security and veterans benefits, Medicare reimbursements for doctors and hospitals, bond interest owed investors, payments to contractors and paychecks for federal workers and military personnel.¶ If Congress fails to act in time, Treasury will have to make difficult -- and legally questionable -- decisions about who should get paid and who should be stiffed. It may decide to pay some bills in full and on time and not others.¶ Or it may decide to delay all payments due on a given day until it has sufficient revenue on hand to pay in full. in a Treasury Inspector General's report that this might be the most plausible and least harmful approach.¶ But under that scenario, **delays would grow over time from a day or two to several weeks**. For example, the payments due to seniors, veterans and active duty military personnel on Nov. 1 wouldn't go out until Nov. 13.¶ In any case, the expectation is that the agency will try to prioritize payments to bond investors over everyone else, lest the financial markets go haywire. Politically, of course, that carries risk, said Steve Bell, the senior director of the Bipartisan Policy Center's economic policy project.¶ "There's a political danger you'll be accused of paying bondholders over Social Security recipients," Bell said.¶ On both Oct. 23 and Nov. 14, $12 billion in Social Security benefits come due, while another $25 billion comes due on Nov. 1, according to the analysis.¶ Meanwhile, on Oct. 24, Treasury will have to roll over $57 billion in outstanding debt and another $115 billion on Oct. 31. Normally that's not a problem, because U.S. Treasury auctions attract a lot of buyers willing to purchase bonds at low rates.¶ But if those rollover dates come after the "X" date, and **the perception is that the United States is defaulting on some of its obligations, Treasury could have trouble finding enough buyers or investors could demand higher interest rates**.¶ The debt ceiling is currently set at $16.7 trillion. That ceiling was reached on May 19, and ever since Treasury has been using a host of special measures to keep the country's borrowing at or below that ceiling. But those measures will be exhausted by mid-October, according to Treasury.¶ If lawmakers want to raise the ceiling enough to get past the 2014 midterm elections in November, the Bipartisan Policy Center estimates they will have to raise it by $1.1 trillion to $17.8 trillion. To top of page

#### b.) SCOPE – US economic decline triggers military withdrawal across the globe—causes a power vacuum and nuclear war—hegemony deters hostile powers and controls the escalation of all conflict—solves the impact to the aff—that’s our 1NC Impact

#### c.) TURNS CASE – debt default means the plan would be delayed or under-funded – fiat only means the plan passes

#### They say legitimacy is a better internal link --- obv not true --- you need a strong economic foundation in order to do things like spend money on the military – that’s khalizhad

#### Econ decline results in Extinction

**Kemp 10**

Geoffrey Kemp, Director of Regional Strategic Programs at The Nixon Center, served in the White House under Ronald Reagan, special assistant to the president for national security affairs and senior director for Near East and South Asian affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace, 2010, The East Moves West: India, China, and Asia’s Growing Presence in the Middle East, p. 233-4

The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. **The world economic situation weakens rather than strengthens**, and **India, China, and Japan suffer a major reduction in their growth rates**, further **weakening the global economy**. As a result, **energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That** in turn **leads to political unrest: and nurtures** different **radical groups**, **including**, but not limited to, **Islamic extremists**. The **internal stability** **of** some **countries is challenged**, and **there are more “failed states**.” Most serious is **the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly**. **Iran**, always worried about an extremist Pakistan, expands and **weaponizes its nuclear program. That** further **enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states.** Under these circumstances, **the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population**.

### Impact – Turns Heg

#### Turns their heg args

Friedberg and Schoenfeld 8

Aaron, Prof. Politics. And IR @ Princeton’s Woodrow Wilson School and Visiting Scholar @ Witherspoon Institute, and Gabriel, Senior Editor of Commentary and Wall Street Journal, “The Dangers of a Diminished America” <http://online.wsj.com/article/SB122455074012352571.html>

Then there are the dolorous consequences of a potential collapse of the world's financial architecture. For decades now, Americans have enjoyed the advantages of being at the center of that system. The worldwide use of the dollar, and the stability of our economy, among other things, made it easier for us to run huge budget deficits, as we counted on foreigners to pick up the tab by buying dollar-denominated assets as a safe haven. Will this be possible in the future? Meanwhile, traditional foreign-policy challenges are multiplying. The threat from al Qaeda and Islamic terrorist affiliates has not been extinguished. Iran and North Korea are continuing on their bellicose paths, while Pakistan and Afghanistan are progressing smartly down the road to chaos. Russia's new militancy and China's seemingly relentless rise also give cause for concern. If America now tries to pull back from the world stage, it will leave a dangerous power vacuum. The stabilizing effects of our presence in Asia, our continuing commitment to Europe, and our position as defender of last resort for Middle East energy sources and supply lines could all be placed at risk. In such a scenario there are shades of the 1930s, when global trade and finance ground nearly to a halt, the peaceful democracies failed to cooperate, and aggressive powers led by the remorseless fanatics who rose up on the crest of economic disaster exploited their divisions. Today we run the risk that rogue states may choose to become ever more reckless with their nuclear toys, just at our moment of maximum vulnerability. The aftershocks of the financial crisis will almost certainly rock our principal strategic competitors even harder than they will rock us. The dramatic free fall of the Russian stock market has demonstrated the fragility of a state whose economic performance hinges on high oil prices, now driven down by the global slowdown. China is perhaps even more fragile, its economic growth depending heavily on foreign investment and access to foreign markets. Both will now be constricted, inflicting economic pain and perhaps even sparking unrest in a country where political legitimacy rests on progress in the long march to prosperity. None of this is good news if the authoritarian leaders of these countries seek to divert attention from internal travails with external adventures.

### Impact – Turns Terrorism

#### Economic collapse causes terrorism – increase recruitment too

Kevin J. Fandl 04, Adjunct Law Professor - Washington College of Law, ‘4 (19 Am. U. Int'l L. Rev. 587)

In his final speech in the United Kingdom as President of the United States, Bill Clinton stressed: "we have seen how abject poverty accelerates conflict, how it creates recruits for terrorists and those who incite ethnic and religious hatred, [and] how it fuels a violent rejection of the economic and social order on which our future depends." 50 His words carried more significance than he could have known at that moment. 51 The terrorist networks that have come about in recent history are a significant threat to world security not only because of the suicidal methods they employ, but also because of the status of the countries [\*598] where these networks recruit new members, engage in training exercises and where the leadership seeks refuge. These countries are not equipped politically or economically to design proactive plans to uproot such organizations in their own countries, despite their expressed efforts to do so. 52 They are developing countries with weak, or no, democratic political structure with which to coordinate such efforts. They do not have the resources that European countries, for instance, have in place to take preventative measures in order to sustain peace. 53 The George W. Bush Administration indicated that it "is aware of the link between desperate economic circumstances and terrorism." 54 Yet, rather than working to develop sustainable economies capable of both directly (through increased political pressure and rule of law programs) and indirectly (through increased employment opportunities and social stability) eradicating terrorism, President Bush has chosen to dedicate significant resources to a military conquest against the elusive concept of terrorism itself. 55 Many Americans and, to a much lesser extent, other Western citizens, support the view that terrorism can be fought with tanks and [\*599] bombs. 56 They obstinately believe that military technology is capable of uncovering each potentially threatening terrorist cell and keeping the West safe. 57 This conventional method of warfare, while effective in pinpointing targets in complete darkness, will be useless in eliminating the ideology that fuels terrorism. Terrorists are non-conventional actors using non-conventional means through amorphous concepts that cannot be identified, contained, or labeled. These are actors whose most potent weapon is the communication of ideas among masses of people awaiting an opportunity for a better life. Many of us watch in excited anticipation for Osama bin Laden's capture and/or death. However, we should rest assured that whether he is still alive will have no bearing on the control that his ideas, and the ideas of those like him, have on the impoverished and desperate in the Middle East, South Asia, and perhaps beyond. No military technology will be able to destroy the prevalence and furtherance of those ideas. 58

### Obama has PC

#### Obama’s PC still high relative to Congress

Koring, 9/16/13 (Paul, “Obama faces fall showdown with Congress,” http://www.theglobeandmail.com/news/world/obama-faces-fall-showdown-with-congress/article14329090/, bgm)

But even as Mr. Obama’s approval ratings have dropped sharply, they still remain well above the abysmal levels recorded by Congress. Karlyn Bowman, a senior fellow at the American Enterprise Institute, said Mr. Obama added to the public disaffection with Washington with his handling of Syria. “Nobody in Washington,” she added, “looks very good these days.”

#### Yes PC – multiple reasons

Kornblum 9/11

John, Former U.S. ambassador to Germany, Judy Asks: Is Obama a Lame-Duck President?, 9/11/13, http://carnegieeurope.eu/strategiceurope/?fa=52932&lang=en

U.S. President Barack Obama is far from a lame-duck president.¶ Such charges often arise when a politician is facing difficulties, and it is true that Obama has not been as adroit as he might have been on issues such as Syria. But if Syrian stocks of poison gas are put under international control, as was proposed this week, he will in fact gain in both influence and reputation.¶ And the reality is that the U.S. economy is improving, the nation’s overseas military involvements are being cut back, and the Republicans continue to self-destruct.¶ There is rough sledding ahead, but the president has more than enough political capital to deal with the problems he faces.

#### Obama has capital

Lanenkamp 7/13/13 (Andy, Global political analyst at ECR Research and Interest & Currency Consultants, Huffington Post, http://www.huffingtonpost.com/andy-langenkamp/obama-to-take-over-baton-\_b\_3571885.html)

The U.S. president still has some political capital at his disposal. His approval rating (50 percent) may not be spectacular but it exceeds the dismal endorsement of Congress (15 percent). Many voters still give him the benefit of the doubt; just 26 percent of Americans are satisfied with the direction the U.S. is taking, but Obama's ratings indicate many do not believe he is to blame for their disappointment. In any case, the presidential "approval premium" has not been this high since Reagan. Perhaps this will give Mr. Obama the courage to get down to business in Q4 and take decisive steps towards restoring the fiscal health of America.

#### Fiscal policies have united Dems behind Obama and he’s using the bully pulpit to attack the GOP – GOP divided and failing now --- this answers their summer warrant too

JONATHAN ALLEN, 9/19/13,GOP battles boost President Obama, Politico, <http://www.politico.com/story/2013/09/republicans-budget-obama-97093.html?hp=r8>, KEL

There’s a simple reason President Barack Obama is using his bully pulpit to focus the nation’s attention on the battle over the budget: In this fight, he’s watching Republicans take swings at each other. And that GOP fight is a lifeline for an administration that had been scrambling to gain control its message after battling congressional Democrats on the potential use of military force in Syria and the possible nomination of Larry Summers to run the Federal Reserve. If House Republicans and Obama can’t cut even a short-term deal for a continuing resolution, the government’s authority to spend money will run out on Oct. 1. Within weeks, the nation will default on its debt if an agreement isn’t reached to raise the federal debt limit. For some Republicans, those deadlines represent a leverage point that can be used to force Obama to slash his health care law. For others, they’re a zero hour at which the party will implode if it doesn’t cut a deal. Meanwhile, “on the looming fiscal issues, Democrats — both liberal and conservative, executive and congressional — are virtually 100 percent united,” said Sen. Charles Schumer (D-N.Y.). Just a few days ago, all that Obama and his aides could talk about were Syria and Summers. Now, they’re bringing their party together and shining a white hot light on Republican disunity over whether to shut down the government and plunge the nation into default in a vain effort to stop Obamacare from going into effect. The squabbling among Republicans has gotten so vicious that a Twitter hashtag — #GOPvsGOPugliness — has become a thick virtual data file for tracking the intraparty insults. Moderates, and even some conservatives, are slamming Texas Sen. Ted Cruz, a tea party favorite, for ramping up grassroots expectations that the GOP will shut down the government if it can’t win concessions from the president to “defund” his signature health care law.

### Obama spending cap on debt ceiling

#### Obama is using his recent speeches to spend cap now on debt ceiling

Kathleen Hennessey, 9-20-13, “Obama fires up case for raising the debt limit,” LA Times, [http://www.latimes.com/nation/politics/politicsnow/la-pn-obama-raising-debt-limit-20130920,0,5336961.story](http://www.latimes.com/nation/politics/politicsnow/la-pn-obama-raising-debt-limit-20130920%2C0%2C5336961.story), KEL

After weeks of dealing with hairy foreign policy issues and grave conflicts overseas, President Obama appeared ready to get back to more familiar political territory – a fiscal fight with House Republicans. Obama, looking feisty and loose for the first time in weeks, served up some new lines and a harsh assessment of his Republican opposition on Capitol Hill on Friday at a Ford plant in Liberty, Mo. “They're not focused on you. They're focused on politics. They're focused on trying to mess with me,” the president said from the plant near Kansas City. The speech was billed as another installment of Obama’s push to ensure the long-term stability of the middle class. But the remarks served a more immediate purpose. The White House is beginning to ramp up its rhetoric as it tries to pound Republicans into keeping the government open, raising the debt ceiling and leaving funding for his healthcare law intact.

### A2: Winners Win

#### I don’t think their ev makes a winners win warrant --- but I’ll answer the tag -- Winners don’t win

Eberly 13 - assistant professor in the Department of Political Science at St. Mary's College of Maryland

Todd, “The presidential power trap,” Baltimore Sun, 1/21/13, Lexis

Only by solving the problem of political capital is a president likely to avoid a power trap. Presidents in recent years from have been unable to prevent their political capital eroding. When it did, their power assertions often got them into further political trouble. Through leveraging public support, presidents have at times been able to overcome contemporary leadership challenges by adopting as their own issues that the public already supports. Bill Clinton's centrist "triangulation" and George W. Bush's careful issue selection early in his presidency allowed them to secure important policy changes — in Mr. Clinton's case, welfare reform and budget balance, in Mr. Bush's tax cuts and education reform — that at the time received popular approval.¶ However, short-term legislative strategies may win policy success for a president but do not serve as an antidote to declining political capital over time, as the difficult final years of both the Bill Clinton and George W. Bush presidencies demonstrate. None of Barack Obama's recent predecessors solved the political capital problem or avoided the power trap. It is the central political challenge confronted by modern presidents and one that will likely weigh heavily on the current president's mind today as he takes his second oath of office.

### Uniqueness Wall 2NC

#### NO UQ ev in 2ac --- I’m not reading another card – extend the 1nc ev --- block strat is based on the 2ac --- don’t give them another bite at the apple

#### Debt ceiling is at the top of the agenda

Moran, 9/18/13 (Andrew, “Dollar collapse inevitable as CBO warns of unsustainable debt levels,” http://economiccollapsenews.com/2013/09/18/dollar-collapse-inevitable-as-cbo-warns-of-unsustainable-debt-levels/, bgm)

The United States national debt has taken a backseat over the past couple of months due to the potential war with Syria. Over the next few weeks, though, it is expected that the federal debt and budget deficit will capture headlines again because of the looming debt ceiling fight between President Obama and Republican lawmakers. At the present time, the U.S. faces a $17 trillion national debt and a near $1 trillion budget deficit. The Congressional Budget Office (CBO) published a report Tuesday that warned the U.S. public debt could account for more than 100 percent of the country’s economic output within the next 25 years unless action is taken.

#### Debt ceiling at the top of the agenda

Button 9/10 [Adam, writer for ForeX Live, “Debt Ceiling Back on the Agenda, ‘X Date’ could only be 5 weeks away,” ForeXLive, September 10, 2013, <http://www.forexlive.com/blog/2013/09/10/debt-ceiling-back-on-the-agenda-x-date-could-be-only-5-weeks-away/>] CPO

The moment Congress flips the switch and puts the Syria debate on the backburner, the focus will shift to the debt ceiling debate.¶ The latest analysis shows the date when the US runs out of money and has no accounting options to artificially spend more is between Oct 18 and Nov 5. They call this the X date and the Washington Post looks at the mechanics of how bills will be paid as the funds run out.¶ For markets, the main issue is bondholders. If government workers or contractors aren’t paid for a few weeks it will have some cooling effect on the economy but a technical default could get very ugly. I assume, the government could find a way to prioritize payments to bondholders but they aren’t convinced.

### 2nc court links

#### Empirically – Court detention cases caused a Congressional backlash

Abramowitz and Weisman 6 – Washington Post Staff Writers (6/1/06, Michael and Jonathan, The Washington Post, “GOP Seeks Advantage In Ruling On Trials”, <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/30/AR2006063001737.html>)

**Republicans** yesterday **looked to wrest a political victory from a legal defeat in the Supreme Court, serving notice to Democrats that they must back President Bush on how to try suspects at Guantanamo Bay or risk being branded as weak on terrorism.**

**In striking down the military commissions** Bush sought for trials of suspected members of al-Qaeda and other terrorist groups, **the high court Thursday invited Congress to establish new rules and put the issue prominently before the public** four months before the midterm elections. As the White House and lawmakers weighed next steps, **House GOP leaders signaled they are ready to use this week's turn of events as a political weapon**.

House Majority Leader John A. **Boehner** (R-Ohio) **criticized** House Minority Leader Nancy **Pelosi's comment Thursday that the court decision "affirms the American ideal that all are entitled to the basic guarantees of our justice system**." Th**at statement, Boehner said, amounted to** Pelosi's **advocating "special privileges for terrorists**."

Similar views ricocheted around conservative talk radio -- Rush Limbaugh called Pelosi's comments "deranged" on his show Thursday -- and **Republican strategists said they believed that the decision presented Bush a chance to put Democrats on the spot while uniting a Republican coalition** that lately has been splintered on immigration, spending and other issues.

"**It would be good politics to have a debate about this if Democrats are going to argue for additional rights for terrorists,"** said Terry Nelson, a prominent GOP political strategist who was political director for Bush's reelection campaign in 2004.

#### Shielding arguments don’t apply—1nc Parsons and Moore are on point

#### Reducing war powers will end Obama’s credibility with Congress – it causes stronger GOP pushback on the debt ceiling – and the fight alone will wreck markets

Seeking Alpha, 9/10/13(“Syria Could Upend Debt Ceiling Fight”, <http://seekingalpha.com/article/1684082-syria-could-upend-debt-ceiling-fight>)

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

I reach this probability by looking within the whip count. I assume the 164 declared "no" votes will stay in the "no" column. To get to 218, Obama needs to win over 193 of the 244 undecided, a gargantuan task. Within the "no" column, there are 137 Republicans. Under a best case scenario, Boehner could corral 50 "yes" votes, which would require Obama to pick up 168 of the 200 Democrats, 84%. Many of these Democrats rode to power because of their opposition to Iraq, which makes it difficult for them to support military conflict. The only way to generate near unanimity among the undecided Democrats is if they choose to support the President (recognizing the political ramifications of a defeat) despite personal misgivings. The idea that all undecided Democrats can be convinced of this argument is relatively slim, especially as there are few votes to lose. In the best case scenario, the House could reach 223-225 votes, barely enough to get it through. Under the worst case, there are only 150 votes. Given the lopsided nature of the breakdown, the chance of House passage is about one in four.

While a failure in the House would put action against Syria in limbo, I have felt that the market has overstated the impact of a strike there, which would be limited in nature. Rather, investors should focus on the profound ripple through the power structure in Washington, which would greatly impact impending battles over spending and the debt ceiling.

Currently, the government loses spending authority on September 30 while it hits the debt ceiling by the middle of October. Markets have generally felt that Washington will once again strike a last-minute deal and avert total catastrophe. Failure in the Syrian vote could change this. For the Republicans to beat Obama on a President's strength (foreign military action), they will likely be emboldened that they can beat him on domestic spending issues.

Until now, consensus has been that the two sides would compromise to fund the government at sequester levels while passing a $1 trillion stand-alone debt ceiling increase. However, the right wing of Boehner's caucus has been pushing for more, including another $1 trillion in spending cuts, defunding of Obamacare, and a one year delay of the individual mandate. Already, Conservative PACs have begun airing advertisements, urging a debt ceiling fight over Obamacare. With the President rendered hapless on Syria, they will become even more vocal about their hardline resolution, setting us up for a showdown that will rival 2011's debt ceiling fight.

I currently believe the two sides will pass a short-term continuing resolution to keep the government open, and then the GOP will wage a massive fight over the debt ceiling. While Obama will be weakened, he will be unwilling to undermine his major achievement, his healthcare law. In all likelihood, both sides will dig in their respective trenches, unwilling to strike a deal, essentially in a game of chicken. If the House blocks Syrian action, it will take America as close to a default as it did in 2011. Based on the market action then, we can expect massive volatility in the final days of the showdown with the Dow falling 500 points in one session in 2011.

As markets panicked over the potential for a U.S. default, we saw a massive risk-off trade, moving from equities into Treasuries. I think there is a significant chance we see something similar this late September into October. The Syrian vote has major implications on the power of Obama and the far-right when it comes to their willingness to fight over the debt ceiling. If the Syrian resolution fails, the debt ceiling fight will be even worse, which will send equities lower by upwards of 10%. Investors must be prepared for this "black swan" event.

Looking back to August 2011, stocks that performed the best were dividend paying, less-cyclical companies like Verizon (VZ), Wal-Mart (WMT), Coca-Cola (KO) and McDonald's (MCD) while high beta names like Netflix (NFLX) and Boeing (BA) were crushed. Investors also flocked into treasuries despite default risk while dumping lower quality bonds as spreads widened. The flight to safety helped treasuries despite U.S. government issues. I think we are likely to see a similar move this time.

Assuming there is a Syrian "no" vote, I would begin to roll back my long exposure in the stock market and reallocate funds into treasuries as I believe yields could drop back towards 2.50%. Within the stock market, I think the less-cyclical names should outperform, making utilities and consumer staples more attractive. For more tactical traders, I would consider buying puts against the S&P 500 and look toward shorting higher-beta and defense stocks like Boeing and Lockheed Martin (LMT). I also think lower quality bonds would suffer as spreads widen, making funds like JNK vulnerable. Conversely, gold (GLD) should benefit from the fear trade.

I would also like to address the potential that Congress does not vote down the Syrian resolution. First, news has broken that Russia has proposed Syria turn over its chemical stockpile. If Syria were to agree (Syria said it was willing to consider), the U.S. would not have to strike, canceling the congressional vote. The proposal can be found here. I strongly believe this is a delaying tactic rather than a serious effort. In 2005, Libya began to turn over chemical weapons; it has yet to complete the hand-off. Removing and destroying chemical weapons is an exceptionally challenging and dangerous task that would take years, not weeks, making this deal seem unrealistic, especially because a cease-fire would be required around all chemical facilities. The idea that a cease-fire could be maintained for months, essentially allowing Assad to stay in office, is hard to take seriously. I believe this is a delaying tactic, and Congress will have to vote within the next two weeks.

The final possibility is that Democrats back their President and barely ram the Syria resolution through. I think the extreme risk of a full-blown debt stand-off to dissipate. However, Boehner has promised a strong fight over the debt limit that the market has largely ignored. I do believe the fight would still be worse than the market anticipates but not outright disastrous. As such, I would not initiate short positions, but I would trim some longs and move into less cyclical stocks as the risk would still be the debt ceiling fight leading to some drama not no drama.

Remember, in politics everything is connected. Syria is not a stand-alone issue. Its resolution will impact the power structure in Washington. A failed vote in Congress is likely to make the debt ceiling fight even worse, spooking markets, and threatening default on U.S. obligations unless another last minute deal can be struck.

**A2: Not Announced Till June**

***--Kills ground – it makes the aff a moving target and removes uniqueness considerations from DA evaluation.***

***“Should” is immediate and mandatory.***

**SUMMER ‘94** (Justice, Oklahoma City Supreme Court, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CIteID= 20287#marker3fn14)

**The legal question to be resolved by the court is whether the word “should”** 13 in the May 18 order **connotes futurity or may be deemed a ruling in praesenti.**14 The answer to this query is not to be divined from rules of grammar;15 it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, “and the same hereby is”,(1) makes it an in futuro ruling – i.e., an expression of what the judge will or would do at a later stage – or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge’s intent must be garnered from the four corners of the entire record.16 Nisi prius orders should be so construed as to give effect to every words and ever part of the text, with a view to carrying out the evident intent of the judge’s direction. 17 The order’s language ought not to be considered abstractly. The actual meaning intended by the document’s signatory should be derived from the context in which the phrase to be interpreted is used. 18 When applied to the May 18 memorial, these told **canons impel my conclusion that the judge doubtless intended his ruling as an in praesenti resolution** of Dollarsaver’s quest for judgment n.o.v. Approval of all counsel plainly appears on the face of the critical May 18 entry which is [885 P.2d 1358] signed by the judge. 19 True minutes20 of a court neither call for nor bear the approval of the parties’ counsel nor the judge’s signature. To reject out of hand the view that in this context “should” is impliedly followed by the customary, “and the same hereby is”, makes the court once again revert to medieval notions of ritualistic formalism now so thoroughly condemned in national jurisprudence and long abandoned by the statutory policy of this State. IV Conclusion Nisi prius judgments and orders should be construed in the manner which gives effect and meaning to the complete substance of the memorial. When a judge-signed direction is capable of two interpretations, one of which would make it a valid part of the record proper and the other would render it a meaningless exercise in futility, the adoption of the former interpretation is this court’s due. A rule – that on direct appeal views as fatal to the order’s efficacy the mere omission from the journal entry of a long and customarily implied phrase, i.e., “and the same hereby is” – is soon likely to drift into the body of principles which govern the facial validity of judgments. This development would make judicial acts acutely vulnerable to collateral attack for the most trivial reasons and tend to undermine the stability of titles or other adjudicated rights. It is obvious the trial judge intended his May 18 memorial to be an in praesenti order overruling Dollarsaver’s motion for judgment n.o.v. It is hence that memorial, and not the later June 2 entry, which triggered appeal time in this case. Because the petition in errir was not filed within 20 days of May 18, the appeal it untimely. I would hence sustain the appellee’s motion to dismiss.21 Footnotes: 1 The pertinent terms of the memorial of May 18, 1993 are: IN THE DISTRICT COURT OF BRYAN COUNTRY, STATE OF OKLAHOMA COURT MINUTE /18/93 No. C-91-223 After having heard and considered arguments of counsel in support of and in opposition to the motions of the Defendant for judgement N.O.V. and a new trial, the Court finds that the motions should be overruled. Approved as to form: /s/ Ken Rainbolt /s/ Austin R. Deaton, Jr. /s/ Don Michael Haggerty /s/ Rocky L. Powers Judge 2 The turgid phrase – “should be and the same hereby is” – is a tautological absurdity. This is so because **“should” is synonymous with ought or must and is in itself sufficient to effect an inpraesenti ruling** – one that is couched in “a present indicative synonymous with ought.” See infra note 15.3 Carter v. Carter, Okl., 783 P.2d 969, 970 (1989); Horizons, Inc. v. Keo Leasing Co., Okl., 681 P.2d 757, 759 (1984); Amarex, Inc. v. Baker, Okl., 655 P.2d 1040, 1043 (1983); Knell v. Burnes, Okl., 645 P.2d 471, 473 (1982); Prock v. District Court of Pittsburgh County, Okl., 630 P.2d 772, 775 (1981); Harry v. Hertzler, 185 Okl., 151, P.2d 656, 659 (1939); Ginn v. Knight, 106 Okl. 4, 232 P. 936, 937 (1925). 4 “Recordable” means that by force of 12 O.S. 1991 24 an instrument meeting that section’s criteria must be entered on or “recorded” in the court’s journal. The clerk may “enter” only that which in “on file.” The pertinent terms of 12 O.S. 1991 24 are: “Upon the journal record required to be kept by the clerk of the district court in civil cases…shall be termed copies of the following instruments on file” 1. All items of process by which the court acquired jurisdiction of the person of each defendant in the case; and 2. All instruments filed in the case that bear the signature of the end judge and specify clearly the relief granted or order made.” [Emphasis added.] 5 See 12 O.S. 1991 1116 which states in pertinent part: “Every direction of a court of judge made or entered in writing, and not included in a judgment is an order.” [Emphasis added.] 6 The pertinent terms of 12 O.S. 1993 696 3, effective October 1, 1993, are: “A. Judgments, decrees and appealable orders that are filed with the clerk of the court shall contain: 1. A caption setting forth the name of the court, the names and designation of the parties, the file number of the case and the title of the instrument; 2. A statement of the disposition of the action, proceeding, or motion, including a statement of the relief awarded to a party or parties and the liabilities and obligations imposed on the other party or parties; 3. The signature and title of the court;…”7 The court holds that the May 18 memorial’s recital that “the Court finds that the motions should be overruled” is a “finding” and not a ruling. In its pure form, a finding is generally not effective as an order or judgment. See, e.g., Tillman v. Tillman, 199 Okl. 130, 184 P.2d 784 (1947), cited in the court’s opinion. 8 When ruling upon a motion for judgment n.o.v. the court must take into account all the evidence favorable to the party against whom the motion is directed and disregard all conflicting evidence favorable to the movant. If the court should concluded that the motion is sustainable, it must hold, as a matter of law, that there is an entire absence of proof tending to show a right to recover. See Austin v. Wilkerson, Inc., Okl., 519 P.2d 899, 903 (1974). 9 See Bullard v. Grisham Const. Co., Okl., 660 P.2d 1045, 1047 (1983), where this court reviewed a trial judge’s “findings of fact”, perceived as a basis for his ruling on a motion for judgment in n.o.v. (in the face of a defendant’s reliance on plaintiff’s contributory negligence). These judicial findings were held impermissible as an invasion of the providence of the jury proscribed by OKLA. CONST. ART, 23 6 Id. At 1048. 10 Everyday courthouse parlance does not always distinguish between a judge’s “finding”, which denotes nisi prius resolution of face issues, and “ruling” or “conclusion of law”. The latter resolves disputed issues of law. In practice usage members of the bench and bar often confuse what the judge “finds” with what the official “concludes”, i.e., resolves as a legal matter. 11 See Fowler v. Thomsen, 68 Neb. 578, 94 N.W. 810, 811-12 (1903), where the court determined a ruling that “[1] find from the bill of particulars that there is due the plantiff the sum of…” was a judgment and not a finding. In reaching its conclusion the court reasoned that “[e]ffect must be given to the entire in the docket according to the manifest intention of the justice in making them.” Id., 94 N.W. at 811. 12 When the language of a judgment is susceptible of two interpretations, that which makes it correct and valid is preferred to one that would render it erroneous. Hale v. Independent Powder Co., 46 Okl. 135, 148 P. 715, 716 (1915); Sharp v. McColm, 79 Kan. 772, 101 P. 659, 662 (1909); Clay v. Hildebrand, 34 Kan. 694, 9 P. 466, 470 (1886); see also 1 A.C. FREEMAN LAW OF JUDGMENTS 76 (5th ed. 1925). 13 “Should” not only is used as a “present indicative” synonymous with ought but also is the past tense of “shall” with various shades of meaning not always to analyze. See 57 C.J. Shall 9, Judgments 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143,144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain **contexts mandate a construction of the term “should” as more than merely indicating preference or desirability.** Brown, supra at 1080-1081 (jury instructions stating that jurors **“should”** reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff **was held to imply an obligation and to be more than advisory**; Carrrigan v. California Horse Racing Board, 60 Wash. App. 79, 802 P.2d 813 (1990) (one of the Rules of Appellate Procedure requiring that a party “should devote a section of the brief to the request for the fee and expenses” was interpreted to mean that a party under an obligation to included the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) (“should” would mean the same as “shall” or “must” when used in an instruction to the jury which tells the triers they “should disregard false testimony”). 14 **In praesenti means literally “at the present time.”** BLACK’S LAW DICTIONARY 792 (6th Ed. 1990). **In legal parlance the phrase denotes that which in law is presently or immediately effective, as opposed to something that will or would become effective in the future** [in futurol]. See Van Wyck v. Knevals, 106 U.S. 360, 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

***Substantial requires that the increase be definite and immediate***

**Words and Phrases 64**, (40 W&P 759)

The words “outward, open, actual, visible, **substantial**, and exclusive,” in connection with a change of possession, mean substantially the same thing. They mean not concealed, not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in full existence; denoting that which no merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; **certain; absolute**; real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including, admiring, or pertaining to any others; undivided; sole; opposed to inclusive.

***Totally leaks***

James Q. **Wilson**, **and** John J. **Dilulio**, **UCLA and Princeton political science professors** (respectively),19**98**

[American Government: Institutions and Policies, p. 291]

American government is the leakiest in the world. The bureaucracy, members of Congress, and the White House staff regularly leak stories favorable to their interests. Of late the leaks have become geysers, gushing forth torrents of insider stories. Many people in and out of government find it depressing that our government seems unable to keep anything secret for long. Others think that the public has a right to know even more and that there are still too many secrets. However you view leaks, you should understand why we have so many. The answeris found in the Constitution. Because we have separate institutions that must share power, **each branch** of government competes with the others to get power. One way to compete is to try to use the press **to advance your pet projects** **and** to make the side look bad. There are far fewer leaks in other democratic nations in party because power is centralized in the hands of a prime minister, who does not need to leak in order to get the upper hand over the legislature, and because the legislature has too little information to be a good source of leaks. In addition, we have no Official Secrets Act Of the kind that exists in England; except for a few matters, it is not against the law for the press to receive and print government secrets.

***They’re factually wrong --- Court decisions are frequently released before June --- if we win it’s POSSIBLE for Courts to announce before June you should err neg and force them to defend immediacy to preserve neg ground***

June is a deadline for court decisions --- they can and often are released earlier. There is no rule saying it must be June

**US Courts.gov, no date** – U.S. SUPREME COURT PROCEDURES, <http://www.uscourts.gov/EducationalResources/ConstitutionResources/SeparationOfPowers/USSupremeCourtProcedures.aspx>, jj

All **opinions of the Court are, typically, handed down by the last day of the Court's term** (the day in late **June**/early July when the Court recesses for the summer). With the exception of this deadline, ***there are no rules concerning when decisions must be released***. **Typically, decisions** that are unanimous **are released sooner** than those that have concurring and dissenting opinions. While ***some*** unanimous ***decisions are handed down as early as December***, some controversial opinions, even if heard in October, may not be handed down until the last day of the term.

### 2NC / 1NR A2: Comparmentalized

***Issues aren’t compartmentalized – political capital is key to overcome opposition***

Marissa **Silber**, Political Science Ph.D Student at UF, “What Makes a President Quack? Understanding Lame Duck Status Through The Eyes of the Media and Politicians, September 2nd 20**07**, http://74.125.155.132/scholar?q=cache:bbkJmVQ3SJMJ:scholar.google.com/+%22political+capital%22+%22finite%22+resources+president&hl=en&as\_sdt=80000000

Political capital, based on external resources “determines whether the President will have the opportunity to offer a detailed domestic program, whether he will be restricted to a series of limited initiatives and vetoes” according to Light (34). A President’s political capital determines the size and parameters of his agenda. Capital is based on external sources such as party support in Congress, public approval and electoral margin, and reputation. Capital reflects a President’s strength; low levels of political capital make it difficult for a President to get anything done. A lame duck President is plagued by past policy failures, while not benefiting as much from policy successes (Dunn 2006). George Bush has been plagued by his lack of response to Hurricane Katrina and first term foreign policies after 9/11 to deal with the War on Terrorism (Dunn 2006). Past Presidents have also been plagued by both domestic and foreign policy failures, affecting both party and public support. Party support is the chief ingredient in Presidential capital; even if public approval ratings go down, a President can still succeed if he has party support. Although congressional support does not guarantee victories on crucial votes, it helps more than public support (Light 27). The following example seems to suggest the importance of political capital and congressional support needed for a second-term President. Sundquist (1973) explores the loss of Presidential control over congress occurring when a President is a lame duck. Using the example of Dwight D. Eisenhower, he describes the “jockeying” that occurs among parties in congress. In the case of a lame duck, the President’s power to impose discipline recedes while factions and individuals within Congress are less willing to cooperate (281). Conciliation is unlikely except for “matters where public pressure is overwhelming, or where some other circumstance makes legislative action imperative” since the President and his party want to maintain control and the opposing party tries to take advantage of a weak President (281). In the case of Eisenhower, Democrats showed limitless disdain for the President’s domestic proposals. Rather than holding hearings about the President’s proposals, they focused on advancing their own measures and forced Eisenhower to veto many bills. Democrats forced Eisenhower to use his veto, hoping to emphasize to the public the differences among parties. While Eisenhower welcomed the opportunity to veto in attempts to “castigate the opposition as a party of reckless spendthrifts and depict his own party as safe, sane, and prudent,” the 1960 election showed that the Democrats’ strategy was successful (281). Public approval and electoral margin are not solely independent factors for political capital, but they also help gain congressional support. Margins of victory often translate into gains for the congressional party, making them influential. Public approval can be seen as a threshold effect. As explained by Light, although “public approval cannot create vast gains in Congress, the absence of public approval eventually undercuts potentials for success” (28). As long as the President remains at a specific level of approval or better, public support may have negligible effects on congressional success. However, if the President drops below the threshold, “public opinion begins to have substantial impact in eroding legislative support” (Light 29). Reputation’s effect on a President’s political capital is unclear. Neustadt argues it is really important, using Eisenhower has an example to show this. According to Neustadt: Everything [the President] personally says and does (or fails to say, omits to do), becomes significant in everyone’s appraisals regardless of the claims of his officialdom. For his words, his own actions, provide clues not only to his personal proclivities but to the forecasts and asserted influence of those around him (Neustadt 68). While Neustadt argues that reputation is important, Carter and Nixon staff assistants suggest that while mistakes may matter short-term, they usually have little effect in the long-term (Light 29). Even if the impact of reputation is disputed, it is accepted that reputation is likely to have a greater impact on capital toward the end of the first term and into the second term (Light 30). No postwar second-term President has escaped being damaged in some way by political scandal (Dunn 2006). Scandal during the President’s term is not prevalent solely because he and his staff are more likely to commit crimes and misdemeanors, but rather “the timing is attributable to the speed of the investigative process” (Dunn 2006). Important to the discussion of political capital is whether or not it can be replenished over a term. If a President expends political capital on his agenda, can it be replaced? Light suggests that “capital declines over time – public approval consistently falls: midterm losses occur” (31). Capital can be rebuilt, but only to a limited extent. The decline of capital makes it difficult to access information, recruit more expertise and maintain energy.

***Capital determines agenda above all else***

**Light 99** – Senior Fellow at the Center for Public Service (Paul, the President’s Agenda, p. 34)

In chapter 2, I will consider just how capital affects the basic parameters of the domestic agenda. Though the internal resources are important contributors to timing and size, capital remains the cirtical factor. That conclusion will become essential in understanding the domestic agenda. Whatever the President’s personal expertise, character, or skills, capital is the most important resource. In the past, presidential scholars have focused on individual factors in discussing White House decisions, personality being the dominant factor. Yet, given low levels in presidential capital, even the most positive and most active executive could make little impact. A president can be skilled, charming, charismatic, a veritable legislative wizard, but if he does not have the basic congressional strength, his domestic agenda will be severely restricted – capital affects both the number and the content of the President’s priorities. Thus, it is capital that determines whether the President will have the opportunity to offer a detailed domestic program, whether he will be restricted to a series of limited initiatives and vetoes. Capital sets the basic parameters of the agenda, determining the size of the agenda and guiding the criteria for choice. Regardless of the President’s personality, capital is the central force behind the domestic agenda.

### Impact d

#### Yes – economic decline causes war --- Studies prove

**Royal, '10** (Jedediah, Director of Cooperative Threat Reduction Program -- DOD, Economics of War & Peace: Legal and Political Perspectives, ed. Goldsmith & Brauer, p. 213-15)

Less intuitive is how **periods of economic decline may increase the likelihood of external conflict**. Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defence behaviour of interdependent states. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level, Pollins (2008) advances Modelski and Thompson's (1996) work on leadership cycle theory, finding that **rhythms in the global economy are associated with the rise and fall of a pre-eminent power and the often-bloody transition from one pre-eminent leader to the next**. As such, **exogenous shocks such as economic crises could usher in a redistribution or relative power** (see also Gilpin. 1981) **that leads to uncertainty about power balances, increasing the risk of miscalculation** (Fearon. 1995). Alternatively, even a relatively certain redistribution of power could lead to a permissive environment for conflict as **a rising power may seek to challenge a declining power** (Werner, 1999). Separately, Pollins ( L 996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown. Second, on a dyadic level, Copeland's (1996. 2000) theory of trade expectations suggests that future expectation of trade' is a significant variable in understanding economic conditions and security behaviour of states. He argues that interdependent states arc likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, **if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases, as states will be inclined to use force to gain access to those resource**s**. Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states**. Third, others have considered the link between economic decline and external armed conflict at a national level. **Blomberg and Hess** (2002) **find a strong correlation between internal conflict and external conflict, particularly during periods of economic downturn**. They write, “**The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favour.** Moreover, **the presence of a recession tends lo amplify the extent to which international and external conflict self-reinforce each other**. (Blomberg & Hess 2002. p. 89) **Economic decline has also been linked with an increase in the likelihood of terrorism** (Blomberg. Hess. & Weerapana, 2004), which has the capacity to spill across borders and lead to external tensions. Furthermore, **crises generally reduce the popularity of a sitting government**. 'Diversionary theory’ suggests that when facing unpopularity arising from economic decline, sitting governments have increased incentives to fabricate external military conflicts to create a rally around the flag effect. Wang (1996), DeRouen ( 1995), and Blomberg. Hess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999), and Kisangani and Pickering (2009) suggest that the tendency towards diversionary tactics arc greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States and thus weak Presidential popularity arc statistically linked to an increase in the use of force. In summary, recent economic scholarship positively correlates economic integration with an increase in the frequency or economic crises, whereas political science scholarship links economic decline with external conflict at systemic, dyadic and national levels. This implied connection between integration, crises and armed conflict has not featured prominently in the economic-security debate and deserves more attention.

# 2NR

***PC’s real, observable, and quantifiable---scholarly work proves---and you should reject quibbles like Hirsh***

Kimberly L. **Casey 8**, Visiting Assistant **Prof**essor **of Poli**tical **Sci**ence at William Jewel College, 2008, “Defining Political Capital: A Reconsideration of Bourdieu’s Interconvertibility Theory,” http://lilt.ilstu.edu/critique/spring%202008/casey.pdf

Abstract: This article examines the concept “political capital” (PC) and its context in American politics. Political capital is ill-defined, little understood, yet an ***important concept for understanding political exchange*** and relationships in the political arena. I establish a definition based upon Pierre Bourdieu’s interconvertibility theory, which indicates that capital types, such as economic, social, and symbolic forms, interact and can be exchanged for one another. Since the material and non-material components of capital variations are transposable, it can be argued that no capital form is essentially “pure”—every type of capital contains elements of other varieties. Political capital, therefore, is an ***amalgamation of capital types*** combined in various ways for specific political markets. It is market demand that shapes capital formation. Capital elements from other capital types inherent in the candidacy market are identified as an example. ***An index for measuring this variant of political capital is created***, demonstrating its ***conceptual viability***. ¶ Introduction: After the 2004 U.S. presidential election, George W. Bush publicized his intent to utilize “political capital” for future projects garnered as a result of his victory. But what exactly is political capital? However much the term is bandied about by politicians or the press, ***p***olitical ***c***apital has no established definition in political science literature. Although it remains ill-defined and unmeasured, ***it is an important concept for understanding political exchange*** and relationships in the political arena ***despite the reservations some political scientists have expressed about its applicability*** because of its complex material and nonmaterial associations. An analysis of sociologist Pierre Bourdieu’s interconvertibility theory allows for conceptualization of material and non-material of interactions among capital forms making it possible to define political capital and design an index to measure it based upon previous capital literature.¶ To develop an empirical basis for political capital, this article first examines the associations it connotes in the popular press today. In contrast, a definition of political capital based upon capitalization literature and Bourdieu’s interconvertibility theory is presented. Then, a theory of political capital functions and markets are suggested. Theorizing leads to proposals for ***objective means of identification and measurement***. To illustrate the market association between capital and politics, an index associated with the resources associated with the candidacy market is offered. The paper concludes with directions that studying the concept of political capital may take towards theory-building and framework creation.¶ Defining Political Capital ¶ It is erroneous to refer a “body” of PC literature when seeking a definition. Most writers and concerned actors who invoke the term political capital assume that its meaning is understood. It is inferred to be an entity which political actors possess, build up and spend. 1 However, a definition of “political capital” is typically never stated—the reader or observer is left to determine their own definition based upon the politician’s or journalist’s usage of the term (Suellentrop 2004; Kennicott 2004; “A Year of Setbacks” 2005; and Froomkin 2004). The subjectivity is ***not reflective of what political capital conceptually means*** in and to the political arena. Without a sound definition that accurately portrays the elements of political capital as it works within a political marketplaces, such as the electoral arena, and among office holders (executive, legislative, and judicial), bureaucracy, and in society in general, the concept is meaningless. ¶ Defining and utilizing PC as a viable political variable can evolve from the proliferation of capital theories in various fields of study. Political capital can and should be associated with a wide variety of previous “capital” interpretations. The key to explicating political capital is within capital literatures and how they address materialism, non-materialism, and combining the two elements.2¶ The theory of capital is traditionally associated with economics. There is no clear consensus in defining capital as an ideological function applicable beyond material exchange as expounded in economic capital theory, however. Yet nonmaterial forms of capital are ***well established in scholarly literature***. Most of the “capital type” definitions hover around the meaning and terminology of economic capital. Certain theorists believe that all capital forms, regardless of their composition or purpose, connect in some way with economic capital. 3 Pierre Bourdieu’s work is invaluable in understanding capital as conceptually distinguishable from its individual aberrations as a material phenomenon. Bourdieu extends the ideas and metaphor of economic interest (material or physical pursuits) to include non-economic goods and services (symbolic or nonmaterial pursuits). Within this conceptualization, Bourdieu constructs a science of practices that “analyzed all human functions as ‘oriented towards the maximization of material or symbolic profit.’” 4 His theory of capital has limitations, however. He relies on ideal types and lacks the empirical research needed to support much theory. It is impossible to refer to capital-types and not acknowledge Bourdieu’s contributions to multiple capital species (Bourdieu1986; Kane 2001; Putnam 2001; Becker 1993); Fitz-Enz 2000; Davenport 1999; Marr 2005).

***Hirsh agrees with the thesis of the politics DA even if he disagrees with the term “political capital”***

Michael **Hirsh**, National Journal, **2/7**/13, There’s No Such Thing as Political Capital, www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207

Presidents are limited in what they can do by time and attention span, of course, just as much as they are by electoral balances in the House and Senate. But this, too, has nothing to do with political capital. Another well-worn meme of recent years was that Obama used up too much ***p***olitical ***c***apital passing the health care law in his first term. But ***the real problem was that the plan was unpopular***, the economy was bad, and the president didn’t realize that the national mood (yes, again, the national mood) was at a tipping point against big-government intervention, with the tea-party revolt about to burst on the scene. For Americans in 2009 and 2010—haunted by too many rounds of layoffs, appalled by the Wall Street bailout, aghast at the amount of federal spending that never seemed to find its way into their pockets—government-imposed health care coverage was simply an intervention too far. So was the idea of another economic stimulus. Cue the tea party and what ensued: two ***titanic fights*** over the debt ceiling. Obama, like Bush, had settled on pushing an issue that was out of sync with the country’s mood.¶ Unlike Bush, Obama did ultimately get his idea passed. But the bigger political problem with health care reform was that it distracted the government’s attention from other issues that people cared about more urgently, such as the need to jump-start the economy and financial reform. Various congressional staffers told me at the time that their bosses didn’t really have the time to understand how the Wall Street lobby was riddling the Dodd-Frank financial-reform legislation with loopholes. Health care was ***sucking all the oxygen out of the room***, the aides said.

#### Future presidents will follow the CP --- even if it’s not legally binding, ignoring it would incur massive political costs

* Informal binding effective --- even if they win no institution enforces it

Posner & Vermeule ’11, Eric Posner is Kirkland & Ellis Distinguished Service Professor of Law and Aaron Director Research Scholar at the University of Chicago. Adrian Vermeule - John H. Watson, Jr. Professor of Law – Harvard Law School, The Executive Unbound [electronic resource] : After the Madisonian Republic, Oxford University Press, USA, 2011. 01/01/2011 1 online resource (256 p.) Language: English, pg 138, jj

More schematically, we may speak of formal and informal means of self-binding:¶ 1. The president use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so.¶ 2. The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding.61 However, there may be political costs to repealing the order. This effect does not depend on the courts’ willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a no-dessert diet in order to raise the reputational costs of backsliding and thus commit himself, so too the repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it.