Scott Elliot’s—

Loss

Norms advantage

-Winning solvency evidence on transparency, arguments aren’t responsive to how the CP actually functions, our evidence is more about SoP, they get legal norm setting and their solvency evidence is pretty good on how it would give them some solvency evidence. Evidence is sufficient to the norms, it was kind of a wash

Doubleturn

-Clarification is clear, need a better explanation in the 1AR on this argument

-Should have read conditional arguments bad

-Theory, and then strategic concession but this is a new advantage

# Round 8

## 2AC

### Terror

#### And the plan decreases signature strikes

Cohen 13

(Adam, Program assistant, Friends Committee on National Legislation, Huffington Post, “One Step Closer to Meaningful Oversight of International Targeted Killing,” March 30, 2013, <http://www.huffingtonpost.com/adam-cohen/drone-killings-hearing_b_3180495.html>) /wyo-mm

We also learned from this hearing that there is near-unanimous consent for a constructive review of these policies. From Rosa Brooks, law professor at Georgetown University, fellow at the New America Foundation and former Counselor to the Under Secretary of Defense for Policy, to Colonel Martha McSally of the U.S. Air Force, all of the witnesses highlighted their willingness to examine the legal and procedural rules surrounding targeted killing. All of them highlighted their belief that it is critical to increase oversight, to thoroughly vet those being targeted, and to reduce civilian casualties as much as possible. Even those witnesses who supported and spoke to the virtues of drones favored the codification of a better review process, a larger oversight role for Congress and a court for reviewing the legality of conducted attacks and for appropriately compensating the families of victims. While these measures would not end U.S. targeted killings abroad altogether, they could rein in some of the program's worst offenses, more accurately define and protect civilians, and reduce the total number of strikes -- particularly signature strikes based on observed behavior rather than intelligence reviews. This groundbreaking hearing could be the first step in maturing the national dialogue on drones. In recent months, members of Congress have made public statements, held hearings, introduced and sponsored legislation and written letters to the administration challenging the federal government's right to deploy drones to infringe upon the rights of U.S. citizens at home or abroad. Finally, the scrutiny is shifting to the administration's opaque counterterrorism policies across the world. Congress should use this eye-opening discussion as the starting point to further question the drones program: hold another hearing; introduce legislation; and let the administration (whose decisions to neither provide a witness at the hearing nor make public the remaining Department of Justice memos was well noted) know that it is just as concerned about the ethical and strategic implications of targeted killing. With this hearing we are one step closer to meaningful transparency and accountability. We must move quickly to take the next.

#### Signature strikes are good and don’t risk civilian casualties when intelligence is effectively used strikes can kill high value targets

Greg Miller, Washington Post, “CIA seeks new authority to expand Yemen drone campaign,” April 18, 2012.

Proponents of the plan said improvements in U.S. intelligence collection in Yemen have made it possible to expand the drone campaign — and use signature strikes — while minimizing the risk of civilian casualties. They also pointed to the CIA’s experience in Pakistan. U.S. officials said the agency killed more senior al-Qaeda operatives there with signature strikes than with those in which it had identified and located someone on its kill list. In Pakistan, the CIA “killed most of their ‘list people’ when they didn’t know they were there,” said a former senior U.S. military official familiar with drone operations. The agency has cited the Pakistan experience to administration officials in arguing, perhaps counterintuitively, that it can be more effective against al-Qaeda’s Yemen affiliate if it doesn’t have to identify its targets before an attack. Obama, however, ruled out a similar push for such authority more than a year ago. Increasing focus on Yemen The CIA, the National Security Agency and other spy services have deployed more officers and resources to Yemen over the past several years to augment counterterrorism operations that were previously handled almost exclusively by the U.S. Joint Special Operations Command. The CIA began flying armed drones over Yemen last year after opening a secret base on the Arabian Peninsula. The agency also has worked with the Saudi and Yemeni intelligence services to build networks of informants — ß Marked 19:32 ß much the way it did in Pakistan before ramping up drone strikes there. The agency’s strategy in Pakistan was centered on mounting a drone campaign so relentless that it allowed no time between attacks for al-Qaeda operatives to regroup. The use of signature strikes came to be seen as critical to achieving that pace. The approach involved assembling threads of intelligence from multiple sources to develop telltale “signatures” of al-Qaeda activity based on operatives’ vehicles, facilities, communications equipment and patterns of behavior. A former senior U.S. intelligence official said the CIA became so adept at this that it could tell what was happening inside an al-Qaeda compound — whether a leader was visiting or explosives were being assembled, for example — based on the location and number of security operatives surrounding the site.

### Prolif

#### First, Liktonomics is already dead- Li surrendered to political pressure

[Chang](http://www.forbes.com/sites/gordonchang/) 8/18

[Gordon, Forbes, “China's New 'Secret Stimulus' Program: Likonomics Is Dead,” 8.18.2013. <http://www.forbes.com/sites/gordonchang/2013/08/18/chinas-new-secret-stimulus-program-likonomics-is-dead/>//wyo-hdm]

Stimulus is now correctly considered the enemy of structural reform. The fact that Li is directing the injection of cash into the economy—on the sly, no less—is an indication that fundamental reform will be postponed yet again. ¶ When Li became China’s economic czar in March, there was general optimism that he would sponsor reform this year. Foreign analysts began raving about “Likonomics,” his three-part plan of no stimulus, deleveraging, and structural reform.¶ The China-is-reforming consensus was so strong that analysts almost uniformly said that June’s wrenching liquidity crisis—two failed government bills auctions, two spikes in short-term interest rates, and two waves of bank defaults—was due to the premier deliberately starving small institutions of funds to teach them a lesson.¶ That narrative was as wrong as it could have been. We now know that the People’s Bank of China , the central bank, secretly injected liquidity twice that month—on June 21 and 25—and at the same time surreptitiously bailed out banks, almost certainly including Industrial and Commercial Bank of China, the country’s largest lender. So Premier Li abandoned the deleverging plank of Likonomics in late June, and this month’s massive state-bank lending indicates he has also ditched the no-stimulus part of the plan. ¶ That leaves only the reform plank. Hope for fundamental economic change remains an article of faith in many quarters, especially outside China. The test, however, will be the Communist Party’s Third Plenum, which should take place this fall. Perhaps Premier Li will be able to announce important changes and implement them as well, but his resort to behind-the-curtains bailouts and covert stimulus indicates he has already surrendered to the country’s entrenched interests on reform.

#### Second, Chinese officials pushing cap on carbon emissions- causes political battles that trade off with economic reform

GWPF ‘13

[Global Warming Policy Foundation, “China Gives Greens False Hope on Climate Treaty,” 3.28.2013. <http://blogs.the-american-interest.com/wrm/2013/05/28/china-gives-greens-false-hope-on-climate-treaty/>//wyo-hdm]

Beijing’s leadership is getting tough on environmental issues. Last week, President Xi Jinping vowed to hold officials who harm the environment “accountable for a lifetime.” And top officials have proposed a cap on carbon emissions for China’s next five-year plan, starting in 2016. That news has greens in a tizzy, and has boosted their hopes for a global climate treaty.¶ But greens would do well to put their celebrations on hold: This move has nothing to do with emissions, and everything to do with political savvy and China’s economic future. It has been clear for a long time that China is going to have to take on air pollution, among many other environmental issues. It’s also clear that China wants to reduce the energy intensity of its economy—the need to import more and more energy as the economy expands is a huge expense and a strategic vulnerability. Moreover, the commoditization of manufacturing, and the prospect that the terms of trade for manufacturers will continue to worsen, have long had smart Chinese planners looking for a way to shift the country’s economy up from the metal-bashing, stuff-making economy into something more high-tech and high value-added.¶ What all this means is that the scary “boogeyman” charts that greens draw up, projecting China’s energy growth out to infinity, have consistently overstated future CO2 projections. China must change its behavior for reasons that have zero—repeat, zero—to do with any threat of global warming.¶ However, given that these changes are coming, China is not averse to winning some PR points by spinning these impending policy changes as a noble effort to stop the scourge of global warming. China’s masses are becoming more and more restive over the country’s environmental woes; these changes could put Beijing’s leadership on firmer footing with an ever more demanding populace.¶ China isn’t giving specific numbers at this point because the prospect of changes to energy and environmental policy sets off huge political battles, in which coal-belching state industries in relatively backward provinces vie with the more advanced southern coastal provinces where people are rich enough to worry more about pollution than about GDP.¶

#### Fourth No CCP collapse—the government represses instability

Pei 9

(Minxin, Senior Associate in the China Program at the Carnegie Endowment for International Peace, 3/12. “Will the Chinese Communist Party Survive the Crisis?” Foreign Affairs. http://www.foreignaffairs.com/articles/64862/minxin-pei/will-the-chinese-communist-party-survive-the-crisis)

It might seem reasonable to expect that challenges from the disaffected urban middle class, frustrated college graduates, and unemployed migrants will constitute the principal threat to the party's rule. If those groups were in fact to band together in a powerful coalition, then the world's longest-ruling party would indeed be in deep trouble. But that is not going to happen. Such a revolutionary scenario overlooks two critical forces blocking political change in China and similar authoritarian political systems: the regime's capacity for repression and the unity among the elite. Economic crisis and social unrest may make it tougher for the CCP to govern, but they will not loosen the party's hold on power. A glance at countries such as Zimbabwe, North Korea, Cuba, and Burma shows that a relatively unified elite in control of the military and police can cling to power through brutal force, even in the face of abysmal economic failure. Disunity within the ruling elite, on the other hand, weakens the regime's repressive capacity and usually spells the rulers' doom. The CCP has already demonstrated its remarkable ability to contain and suppress chronic social protest and small-scale dissident movements. The regime maintains the People's Armed Police, a well-trained and well-equipped anti-riot force of 250,000. In addition, China's secret police are among the most capable in the world and are augmented by a vast network of informers. And although the Internet may have made control of information more difficult, Chinese censors can still react quickly and thoroughly to end the dissemination of dangerous news. Since the Tiananmen crackdown, the Chinese government has greatly refined its repressive capabilities. Responding to tens of thousands of riots each year has made Chinese law enforcement the most experienced in the world at crowd control and dispersion. Chinese state security services have applied the tactic of "political decapitation" to great effect, quickly arresting protest leaders and leaving their followers disorganized, demoralized, and impotent. If worsening economic conditions lead to a potentially explosive political.

### Exec CP

#### 3rd, Perm do both—Shields the Link to politics—Congress purposefully doesn’t act on legislation or waits for executive action so that they can blame the president

Buchanan 2013

[Neil Buchanan, Law Professor, February 21, 2013, Spending Priorities, the Separation of Powers, and the Rule of Law, http://www.dorfonlaw.org/2013/02/spending-priorities-separation-of.html, uwyo//amp]

The debt ceiling is keeping us busy, here at Dorf on Law. Later today, both Professor Dorf and I will be speaking at Columbia Law School, at the invitation of the Law Review editors who worked on our two articles in 2012. Over the weekend, we also finalized a new article, which Professor Dorf briefly described here yesterday. In it, we extend our ongoing analysis of the constitutional issues surrounding the debt ceiling. The short-hand versions of the two main sections of the article are: (1) Yes, there really is a trilemma, and (2) No, the debt ceiling is still not binding, even if everyone knows that they are creating a trilemma when they pass the spending and taxing laws. The latter point is important because already-existing trilemmas (such as the one that Congress and the President faced last month, before the Republicans capitulated by passing their "Debt Ceiling Amnesia Act") do not exist when there are no appropriated funds for the President to spend. (Strictly speaking, there would be a trilemma if even the minimal level of emergency spending required by law during a government shutdown could only be financed by borrowing in excess of the debt ceiling. But given that most of the tax code is enacted on a continuing basis -- that is, unlike spending, tax provisions generally do not expire on a particular date -- there will generally be enough money coming in to finance emergency operations without having to borrow.) Every spending/taxing agreement, therefore, potentially necessitates issuing enough net new debt to require an increase in the debt ceiling. When that happens, one could invoke something like the "last in time" rule, but we conclude that the problem should not be resolved by relying upon a legal canon that is generally used for rationalizing inconsistent laws. Rather, the more fundamental question is how to preserve the separation of powers. As we point out, Congress might actually want to give away its legislative powers, thus putting the political blame on the President for unpopular cuts (a point that Professor Scott Bauries at the University of Kentucky College of Law calls "learned legislative helplessness") -- but their desire to pass the buck is actually all the more reason not to let them do so. With great power comes great responsibility.

#### 5th, counterplan links to politics

Schier 9

[Steven, Professor of Poliitcal Science at Carleton,"Understanding the Obama Presidency," The Forum: Vol. 7: Iss. 1, Berkely Electronic Press, http://www.bepress.com/forum/vol7/iss1/art10]

In additional to formal powers, a president’s informal power is situationally derived and highly variable. Informal power is a function of the “political capital” presidents amass and deplete as they operate in office. Paul Light defines several components of political capital: party support of the president in Congress, public approval of the presidential conduct of his job, the President’s electoral margin and patronage appointments (Light 1983, 15). Richard Neustadt’s concept of a president’s “professional reputation” likewise figures into his political capital. Neustadt defines this as the “impressions in the Washington community about the skill and will with which he puts [his formal powers] to use” (Neustadt 1990, 185). In the wake of 9/11, George W. Bush’s political capital surged, and both the public and Washington elites granted him a broad ability to prosecute the war on terror. By the later stages of Bush’s troubled second term, beset by a lengthy and unpopular occupation of Iraq and an aggressive Democratic Congress, he found that his political capital had shrunk. Obama’s informal powers will prove variable, not stable, as is always the case for presidents. Nevertheless, he entered office with a formidable store of political capital. His solid electoral victory means he initially will receive high public support and strong backing from fellow Congressional partisans, a combination that will allow him much leeway in his presidential appointments and with his policy agenda. Obama probably enjoys the prospect of a happier honeymoon during his first year than did George W. Bush, who entered office amidst continuing controversy over the 2000 election outcome. Presidents usually employ power to disrupt the political order they inherit in order to reshape it according to their own agendas. Stephen Skowronek argues that “presidents disrupt systems, reshape political landscapes, and pass to successors leadership challenges that are different from the ones just faced” (Skowronek 1997, 6). Given their limited time in office and the hostile political alignments often present in Washington policymaking networks and among the electorate, presidents must force political change if they are to enact their agendas. In recent decades, Washington power structures have become more entrenched and elaborate (Drucker 1995) while presidential powers – through increased use of executive orders and legislative delegation (Howell 2003) –have also grown. The presidency has more powers in the early 21st century but also faces more entrenched coalitions of interests, lawmakers, and bureaucrats whose agendas often differ from that of the president. This is an invitation for an energetic president – and that seems to describe Barack Obama – to engage in major ongoing battles to impose his preferences.

#### 6th, Transparency without reform doesn’t solve precedent---investigating wrongful deaths is key

Naureen Shah 13, August 17th, 2013, "Obama has not delivered on May's promise of transparency on drones," The Guardian, www.theguardian.com/commentisfree/2013/aug/17/obama-promise-transparency-drone-killing

Even more damning is that, in the absence of any commitment to investigating credible allegations of unlawful deaths, the United States appears indifferent to the question of who is actually dying in drone strikes. President Obama admitted in May that four US citizens had been killed, three of whom – including 16-year-old Abdulrahman Aal-Awlaki – he admitted were not intended targets. But the president did not define the identities of the more than 4,000 other people killed, or specifically address reports that a significant number of the dead – in assessments varying between 400 and nearly 1,000, according to the Bureau of Investigative Journalism – were civilians.¶ When the president acknowledges four deaths of US citizens, but not 4,000 deaths of non-Americans, he signals to the world a callous and discriminatory disregard for human life. Perhaps only a fraction of these 4,000 deaths were unlawful. But acknowledging and investigating these deaths is a matter of dignity and justice – for the survivors of strikes, their communities and their countrymen.¶ When deaths are found to be unlawful, victims' families and survivors have a right to reparation. Refusing to investigate deaths is a matter of disrespect both for international law and for the public's right to know the full truth.¶ Many critics, before President Obama's May address, feared that foreign governments would follow the US to lead and conduct secret drone strikes without regard for international law. They should still be concerned about the precedent the US government is setting: refusing to investigate or be held accountable for wrongful deaths.¶ The risk now is not just that the late May reforms on drone strikes were half-measures, but that they were calibrated to merely reassure the public, defuse criticism, and avert longer, harder scrutiny of whether the government's actions are lawful and right. A token dose of transparency may remove the sting of government secrecy, but it does not cure the disease.

#### Drone Courts key – Congress should establish Judicial Review, it is the best check on the president, all other mechanisms insufficient

Bazzle 12

(Timothy, George Mason University Civil Rights Law Journal, “Shutting the courthouse doors: invoking the state secrets privilege to thwart judicial review in the age of terror,” 2012, Hein Library Online) /wyo-mm

By design, courts serve as a bulwark against the excesses of the political branches. The challenge courts face when confronted with a claim of state secrets is reconciling their Article III duties with the Executive’s potentially competing Article II duties.212 While the temptation for the Executive to concentrate its power is understandable, a robust state secrets privilege insulates an overreaching Executive from meaningful oversight. To the extent courts are able to fashion judicial devices for determining when and how the states privilege applies, they may represent the most important method of controlling Executive Branch activity.213 Given the inability of Congress to enact legislation to constrain the application of the privilege,214 courts are perhaps also the best equipped to block the Executive Branch from self-interestedly invoking the privilege to protect itself from embarrassment and potential civil and criminal liability.215 Academic arguments claiming that courts should automatically defer to the Executive’s expertise in national security and foreign affairs matters216 ignore the potentially more serious—and structural—conflict of interest problem that occurs when an Executive, accused of wrongdoing, can self-servingly invoke the state secretes privilege to conceal its action from public view.217 Reinforcing judicial review of state secrets claim represents an important check on the potential for Executive Branch abuse of the privilege.

#### Judicial review is essential to judicial independence

Gerber, 2007

[Scott D. Gerber is an associate professor at Ohio Northern University College of Law and a senior research scholar in law and politics at the Social Philosophy and Policy Center, The Political Theory of an Independent Judiciary, 116 YALE L.J. POCKET PART 223 (2007), http://thepocketpart.org/2007/01/09/gerber.html] /Wyo-MB

Judicial review fits into the political theory of an independent judiciary in at least two ways. First, judicial review is a core component of the Constitution’s system of checks and balances, a system in which each branch of the federal government is endowed with, in the words of The Federalist No. 48, “a constitutional control over the others.” The President has, among other checks, a veto over congressional bills and the power to nominate federal judges. Congress has, among other checks, the power to override presidential vetoes and to control the size and jurisdiction of the federal courts, as well as the power to impeach all federal officials. Without the power of judicial review, what check—what “constitutional control”—would the federal judiciary have on the President or Congress? The answer is none. As a consequence, judicial review is an inevitable component of the Constitution’s commitment to checks and balances.¶ Judicial review also fits into the political theory of an independent judiciary in another, equally straightforward, fashion: judicial review is the ultimate expression of judicial independence, because without judicial independence no court could safely void an act of a coordinate political branch. Bluntly stated, the risk to a judge who exercises judicial review when he or she is not independent of the executive and the legislature is either removal from the bench or a reduction in salary. John Adams knew this, and so did the Framers who met in Philadelphia during the summer of 1787 when they wrote Adams’s theory of judicial independence into Article III of the Constitution.

#### Judicial independence is critical to democratic consolidation

Herron and Randazzo, 2003

[Erik, University of Kansas and Kirk, University of Kentucky, The Relationship Between Independence and Judicial Review in Post-Communist Courts, THE JOURNAL OF POLITICS, Vol. 65, No. 2, May 2003, Pp. 422–438, http://people.cas.sc.edu/randazzo/herron\_randazzo\_2003\_jop.pdf] /Wyo-MB

Although independent judiciaries are important actors in democratic consolidation, how expressions of judicial independence evolve in transitional societies¶ remains unclear. Ideally, courts review legislation and government decisions¶ under the rubric of constitutionality. That is, the judiciary is able to declare laws¶ and actions unconstitutional and serve as a check against excesses by other¶ branches of government. A strong judiciary in newly independent countries helps¶ the state break with its authoritarian past and develop a constitutional culture that¶ teaches state actors that the legal system cannot be transgressed for political gain¶ (Brewer-Carias 1989; Larkins 1996). However, the development of an independent judiciary can be constrained by a weak institutional legacy, limited training¶ and support for judges, and the strength of other political actors. If the judiciary¶ does not have the authority to make independent decisions, democratic progress may falter, potentially returning the country to “the darkness and chaos of a totalitarian and dictatorial regime” (Mohan 1982, 110).1

#### Solves global wars,

Epstien et al, 2007

[Susan B. Epstein, Nina M. Serafino, and Francis T. Miko Specialists in Foreign Policy Foreign Affairs, Defense, and Trade Division Congressional research service, Democracy Promotion: Cornerstone of U.S. Foreign Policy?, 12-26-7, http://www.au.af.mil/au/awc/awcgate/crs/rl34296.pdf] /Wyo-MB

A common rationale offered by proponents of democracy promotion, including¶ former Secretary of State Madeleine Albright and current Secretary of State¶ Condoleezza Rice, is that democracies do not go to war with one another. This is¶ sometimes referred to as the democratic peace theory. Experts point to European¶ countries, the United States, Canada, and Mexico as present-day examples.¶ According to President Clinton’s National Security Strategy of Engagement and¶ Enlargement: “Democracies create free markets that offer economic opportunity,¶ make for more reliable trading partners, and are far less likely to wage war on one¶ another.”22¶ Some have refined this democracy peace theory by distinguishing between¶ mature democracies and those in transition, suggesting that mature democracies do¶ not fight wars with each other, but that countries transitioning toward democracy are¶ more prone to being attacked (because of weak governmental institutions) or being¶ aggressive toward others. States that made transitions from an autocracy toward¶ early stages of democracy and were involved in hostilities soon after include France¶ in the mid-1800s under Napoleon III, Prussia/Germany under Bismarck (1870-1890),¶ Chile shortly before the War of the Pacific in 1879, Serbia’s multiparty constitutional¶ monarchy before the Balkan Wars of the late 20th Century, and Pakistan’s military guided pseudo-democracy before its wars with India in 1965 and 1971.23¶ The George W. Bush Administration asserts that democracy promotion is a¶ long-term antidote to terrorism. The Administration’s Strategy for Winning the War¶ on Terror asserts that inequality in political participation and access to wealth¶ resources in a country, lack of freedom of speech, and poor education all breed¶ volatility. By promoting basic human rights, freedoms of speech, religion, assembly,¶ association and press, and by maintaining order within their borders and providing¶ an independent justice system, effective democracies can defeat terrorism in the long¶ run, according to the Bush White House.24¶ Another reason given to encourage democracies (although debated by some¶ experts) is the belief that democracies promote economic prosperity. From this¶ perspective, as the rule of law leads to a more stable society and as equal economic¶ opportunity for all helps to spur economic activity, economic growth, particularly of¶ per capita income, is likely to follow. In addition, a democracy under this scenario¶ may be more likely to be viewed by other countries as a good trading partner and by¶ outside investors as a more stable environment for investment, according to some¶ experts. Moreover, countries that have developed as stable democracies are viewed¶ as being more likely to honor treaties, according to some experts.25

### DA

#### 2nd, Review processes inevitable- plan is key to give military necessary credibility

Issacharof and Pildes 13

(Samuel and Richard H., NYU School of Law, NELLCO Legal Scholarship Repository, “Drones and the Dilemma of Modern Warfare,” June 1, 2013, <http://lsr.nellco.org/cgi/viewcontent.cgi?article=1408&context=nyu_plltwp>) /wyo-mm

The ramifications of this emerging imperative to individuate enemy responsibility are wide-ranging. Military forces will inevitably have to develop analogues appropriate to the military context for the procedural protections (hearings, evidence-based assessments, and the like) designed to ensure accuracy of adjudicative-like judgments of individual responsibility when coercive state power is deployed domestically. The United States military in its evolving post 9/11 self-understanding has been doing that, and these kind of procedural protections will have to be credible if military force will be sustainable over the long run in these contexts. Similarly, it is probably also inevitable that courts will step in to play a somewhat more significant role to assess the use of at least certain exercises of military force (perhaps more in the context of detention than military operations themselves) than they have in the past; as the justification for force becomes more closely tied to ascriptions of individualized responsibility, the courts will instinctively experience certain of these issue as closer to the kinds of questions with which courts deal traditionally. Once we recognize that we are moving toward a regime of individuating enemy responsibility, at least to some extent, it is also perhaps inevitable that pressure will arise from some quarters to insist that only the most traditional model for how to assign those judgments – the criminal justice system – is fit for this task.

#### 3rd, Judicial oversight key to solve counterterror efforts

O’Neil 11

(Robert, Houston Law Review, “The Price of Purity: Weakening the Executive Model of the United States’ Counter-Terror Legal System,” Winter 2011, Lexis//wyo-mm)

While providing for judicial review may not make sense in every anti-terror context, absent limitation, the executive may offend the Constitution in any number of ways, leaving those affected no recourse. n152 Further, the lack of judicial review compromises counter-terror activities by not requiring the President to provide plausible reasons for and explanations of his actions; n153 for example, "by failing to provide even perfunctory individualized hearings [to detainees at Guantanamo Bay], ... the U.S. government ... misspent our scarce interrogation capacities on individuals of minimal or no intelligence value." n154 Had the President's orders been subject to [\*1445] judicial oversight, he would have had to explain how the unilaterally implemented deprivations of due process were narrowly tailored to effect an important purpose, prompting a more thorough analysis of what was to be gained by the President's detention policies. n155

#### 6th, Judicial review on targeted killing doesn’t spillover to other restrictions on military force

Brooks, prof of Law @ Georgetown, 13 (Rosa, Senior Fellow at the New America Foundation, “The Constitutional and Counterterrorism Implications of Targeted Killing”, Testimony Before the Senate, April 23, 2013, http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf)

It is also worth noting that the practical concerns militating against justiciability in the context of traditional wartime situations do not exist to the same degree here. On traditional battlefields, imposing due process or judicial review requirements on targeting decisions would be unduly burdensome, as many targeting decisions must be made in situations of extreme urgency. In the context of targeted killings outside traditional battlefields, this is rarely the case. While the window of opportunity in which to strike a given target may be brief and urgent, decisions about whether an individual may lawfully be targeted are generally made well in advance.

#### 8th, We solve the Impact- specialized courts are fast- wouldn’t compromise operations

Somin, 13 [April 23rd, HEARING ON “DRONE WARS: THE CONSTITUTIONAL AND COUNTERTERRORISM IMPLICATIONS OF TARGETED KILLING” TESTIMONY BEFORE THE UNITED STATES SENATE JUDICIARY SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND HUMAN RIGHTS April 23, 2013, Illya, Professor of Law]

BOne partial solution to the problem of target selection would be to require officials to get advance authorization for targeting a United States citizen from a specialized court, similar to the FISA Court, which authorizes intelligence surveillance warrants for spying on suspected foreign agents in the United States. The specialized court could act faster than ordinary courts do and without warning the potential target, yet still serve as a check on unilateral executive power. In the present conflict, there are relatively few terrorist leaders who are American citizens. Given that reality, we might even be able to have more extensive judicial process than exists under FISA. Professor Amos Guiora of the University of Utah, a leading expert on legal regulation of counterterrorism operations with extensive experience in the Israeli military, has developed a proposal for a FISA-like oversight court that deserves serious consideration by this subcommittee, and Congress more generally.22 The idea of a drone strike oversight court has also been endorsed by former Secretary of Defense Robert Gates, who served in that position in both the Obama and George W. Bush administrations. Gates emphasizes that “some check 7 on the president’s ability to do this has merit as we look to the long-term future,” so that the president would not have the unilateral power of “being able to execute” an American citizen.23 We might even consider developing a system of judicial approval for targeted strikes aimed at non-citizens. The latter process might have to be more streamlined than that for citizens, given the larger number of targets it would have to consider. But it is possible that it could act quickly enough to avoid compromising operations, while simultaneously acting as a check on abusive or reckless targeting. However, the issue of judicial review for strikes against non-citizens is necessarily more difficult than a court that only covers relatively rare cases directed at Americans. Alternatively, one can envision some kind of more extensive due process within the executive branch itself, as advocated by Neal Katyal of the Georgetown University Law Center.24 But any internal executive process has the flaw that it could always be overriden by the president, and possibly other high-ranking executive branch officials. Moreover, lower-level executive officials might be reluctant to veto drone strikes supported by their superiors, either out of careerist concerns, or because administration officials are naturally likely to share the ideological and policy priorities of the president. An external check on targeting reduces such risks. External review might also enhance the credibility of the target-selection process with informed opinion both in the United States and abroad. Whether targeting decisions are made with or without judicial oversight, there is also an important question of burdens of proof. How much evidence is enough to justify classifying you or me as a senior Al Qaeda leader? The administration memo does not address that crucial question either. Obviously, it is unrealistic to hold military operations to the standards of proof normally required in civilian criminal prosecutions. But at the same time, we should be wary of giving the president unfettered power to order the killing of citizens simply based on his assertion that they pose a threat. Amos Guiora suggests that an oversight court should evaluate proposed strikes under a “strict scrutiny standard” that ensures that strikes are only ordered based on intelligence that is “reliable, material and probative.”25 It is difficult for me to say whether this standard of proof is the best available option. But the issue is a crucial one that deserves further consideration. Ideally, we need a standard of proof rigorous enough to minimize reckless or abusive use of targeted killing, but not so high as to preclude its legitimate use

### Politics

**TPA wont pass now—Obama isn’t spending PC and Reid killed and it wont even come to the House floor**

**WSJ 2-7**

(“How Politics May Sink Trade Deals” 2-7-14 http://online.wsj.com/news/articles/SB10001424052702303496804579367084197445494?mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052702303496804579367084197445494.html//wyoccd)

Picture a little boat, christened the USS T.R., trawling out to fair seas, in search of the biggest trade deals the U.S. has seen in decades. Picture its busy deckhands, netting bonanza pacts with Pacific Rim nations and with Europe to create the world's largest free-trade zones and provide a huge stimulus to the U.S. economy. Then picture the craft, as it happily motors home, getting swamped by a perfect anti-trade storm.¶ Hitting from the north is the polar vortex known as Barack Obama. **The grown-ups keep telling this leader of the free world that trade is what responsible presidents do, and so Mr. Obama does his impression of responsible**.¶ He sent out Michael Froman, the United States Trade Representative, to do the deals**. He sent out Jay Carney to say this is a "priority." He sent himself out to call for TPA**—trade promotion authority—**which would allow Congress to fast-track the Europe and trans-Pacific pacts.**¶ **Yet the iron rule of Washington is that TPA votes only succeed via ferocious and sustained White House lobbying**. President George W. **Bush spent** two years speechifying, mobilizing, horse-trading, and **unleashing his assembled business and administrative host on Congress to get TPA**. "You couldn't walk down the hall to the bathroom without bumping into a Bush cabinet member or staffer demanding to talk about trade," reminisces one current GOP staffer. "And if you didn't, they'd follow you in." With all this, the House vote in 2002 was 215-212¶ **Hurricane Obama has ambitions but not about trade. He is aiming to win the midterm election, and that means keeping the left flank happy.** Union heavyweights have vowed a grass-roots assault on the trade deals, with enviros in tow. **Mr. Obama only wants a trade victory if he doesn't have to commit political capital and upset his base. Since he'd have to do both to win TPA, he's doing little**. Congressional pro-traders report no real trade push from the White House. They say Mr. Obama has so far limited himself to working this, ahem, behind the scenes. **Not to worry, he keeps telling them. He's making a few calls**.¶ **One call that apparently hasn't gone out is to Typhoon Harry Reid, who has already announced that Mr. Obama's call for TPA is dead**. The Senate Majority leader has a priority that far outranks job-creating trade deals, and it is called staying Majority Leader. He spends 99.999989% of his time protecting his vulnerable members from tough situations, and the thought of TPA makes his few nerve endings go numb.¶ A TPA vote would put the responsibility spotlight on Senate Democrats, who would have to vote with their president and infuriate their grass roots and unions, or vote against their president and infuriate business leaders and trading partners. And that's on top of ObamaCare. Mr. **Reid will not be moved to change his mind on TPA**, unless absolutely forced by the White House**, or pressured by some alternative source of leadership in the Democratic Senate**.¶ Which brings us to the Rogue Wave Ron Wyden, the liberal senator from Oregon. The White House and GOP trade proponents had been banking on some forceful trade support from Senate Finance Chairman Max Baucus, who only last month co-wrote TPA legislation with Republican Orrin Hatch. Yet Mr. Baucus was confirmed on Thursday as ambassador to China, and his expected replacement on the Finance Committee is Mr. Wyden. Since it is Mr. Reid who makes the "expected" real, he's already been dictating to Mr. Wyden a list of Finance Committee priorities. They do include Mr. Reid's desire for a juicy bill renewing tax breaks. The list does not include TPA.¶ Not that Mr. Wyden would be inclined to follow in Mr. Baucus's footsteps. Oregon is a big export state, but Mr. Wyden covets the Finance Committee for his own priorities—Medicare reform, maybe tax overhaul—and is loath to spend initial capital on a controversial trade bill. He spent this week complaining about "secrecy" in trade deals, debuting the first of the many excuses he'll have for keeping TPA on ice.¶ The House Republicans who Mr. Obama says never want to work with him are meantime aching to work with him. House Ways and Means Chairman Dave Camp has been slowly building support for TPA within his conference. But Speaker John **Boehner won't force a vote unless** Mr. **Obama can guarantee the Senate**. And should Mr. Obama agree to lard up trade deals with union and green protections to win his liberals he'll lose GOP votes.

**Reids rejection kills TPA push—guarantees republicans aren’t on board**

**Feehery 2-3**

(Feehery is president of Quinn Gillespie Communications and spent 15 years working in the House Republican leadership. “John Feehery: Reid tips balance on trade” 2-3-14 http://thehill.com/opinion/john-feehery/197305-john-feehery-reid-tips-balance-on-trade//wyoccd)

It was typical Harry Reid: blunt, to the point and unambiguous. ¶ “Everyone knows how I feel about this. ... The White House knows. **Everyone would be well-advised to not push this right now.”**¶The “**this” is t**rade **p**romotion **a**uthority. ¶ And **with that unadorned statement, the Democratic Senate majority leader killed the president’s most important job-creating initiative**. ¶ Earlier in the year, the Commerce Department announced that the United States exported a record $194.9 billion in goods and services in November 2013.¶ The New York Times reported last week that “exports also surged while imports increased only slightly, making trade the second biggest contributor to growth after consumer spending.”¶ This is what the president said about trade in his State of the Union address last week: “When 98 percent of our exporters are small businesses, new trade partnerships with Europe and the Asia-Pacific will help them create even more jobs. We need to work together on tools like bipartisan trade promotion authority to protect our workers, protect our environment and open new markets to new goods stamped ‘Made in the USA.’ ”¶ Last year, Gallup reported, “Americans now hold a much more positive view of foreign trade than they have in recent years. Fifty-seven percent view trade as ‘an opportunity for economic growth through increased U.S. exports,’ while 35% see it as ‘a threat to the economy from foreign imports.’ During the prior two years, Americans were evenly divided in their opinions about trade.”¶ **Despite this switch in public sentiment, and despite the clear benefits to economic growth and to job creation, the Senate majority leader has decided to not give President Obama the benefit of the doubt on negotiating trade agreements on behalf of the American people.**¶ Trade promotion authority (TPA) is a legislative device that gives the executive branch permission to negotiate trade agreement with foreign governments without too much congressional interference. ¶ Foreign governments will not enter into negotiations with the United States, unless the Congress gives the president this permission because it is impossible to negotiate with 535 different entities. ¶ TPA basically fast-tracks whatever agreement is reached between the Obama administration and these foreign governments to an up-or-down vote in the House and Senate, assuring negotiators on both sides a speedy resolution. ¶ The administration has tentatively eyed negotiations with Europe and with 12 Pacific Rim countries as the next step in lowering trade barriers to American products worldwide. ¶ Most, if not all, of these countries have higher barriers to our products than we have to theirs. Most of these countries make it more difficult for our businesses to do business in their country than it is for their businesses to do business here. ¶ Trade agreements are specifically good for our farmers, our big manufacturers (specifically of planes, trains and automobiles), our consumer products makers and for energy producers (we are now a net energy exporter). ¶ In all fairness to Reid, he has never liked free trade and has usually voted against free-trade agreements. ¶ But if we are going to deal with long-term unemployment in this country, if we are going to put more people to work, if we are going to give America a raise (as the president is fond of saying), we are going to have to increase trade with other countries. We are going to have to sell more of our stuff, made here, in other places. ¶ We can’t rely solely on American consumers to keep our economy growing. We have to tap into the unfulfilled market that exists elsewhere. ¶ The bottom line is that Reid, the Senate majority leader and the man who first picked Barack Obama to be his candidate for president and who helped him to attain the highest office in the land, doesn’t trust him to look out for the best interests of the American people in trade negotiations. ¶ **How can you expect Republicans to trust this president if his No. 1 ally in the Senate won’t?**

#### 3rd, no political battle means plan won’t derail Obama’s agenda- plan is popular in congress

Jakes 13

(Laura Jakes, writer for the Associate Press. “Congress Considers Putting Limits on Drone Strikes” 2-6-13 http://www.military.com/daily-news/2013/02/06/congress-considers-putting-limits-on-drone-strikes.html//wyoccd)

WASHINGTON -- Uncomfortable with the Obama administration's use of deadly drones, a growing number in Congress is looking to limit America's authority to kill suspected terrorists, even U.S. citizens. The Democratic-led outcry was emboldened by the revelation in a newly surfaced Justice Department memo that shows drones can strike against a wider range of threats, with less evidence, than previously believed.¶ The drone program, which has been used from Pakistan across the Middle East and into North Africa to find and kill an unknown number of suspected terrorists, is expected to be a top topic of debate when the Senate Intelligence Committee grills John Brennan, the White House's pick for CIA chief, at a hearing Thursday.¶ The White House on Tuesday defended its lethal drone program by citing the very laws that some in Congress once believed were appropriate in the years immediately after the Sept. 11 attacks but now think may be too broad.¶ "It has to be in the agenda of this Congress to reconsider the scope of action of drones and use of deadly force by the United States around the world because the original authorization of use of force, I think, is being strained to its limits," Sen. Chris Coons, D-Del., said in a recent interview.¶ Rep. Steny Hoyer of Maryland, the No. 2 Democrat in the House, said Tuesday that "it deserves a serious look at how we make the decisions in government to take out, kill, eliminate, whatever word you want to use, not just American citizens but other citizens as well."¶ Hoyer added: "We ought to carefully review our policies as a country."¶ The Senate Foreign Relations Committee likely will hold hearings on U.S. drone policy, an aide said Tuesday, and Chairman Robert Menendez, D-N.J., and the panel's top Republican, Sen. Bob Corker of Tennessee, both have quietly expressed concerns about the deadly operations. And earlier this week, a group of 11 Democratic and Republican senators urged President Barack Obama to release a classified Justice Department legal opinion justifying when U.S. counterterror missions, including drone strikes, can be used to kill American citizens abroad.¶ Without those documents, it's impossible for Congress and the public to decide "whether this authority has been properly defined, and whether the president's power to deliberately kill Americans is subject to appropriate limitations and safeguards," the senators wrote.

#### 4th, Political capital theory not true—and if the plan causes a fight it means Obama will get to pass more legislation—winning wins

Hirsh, 2013

[Michael, national journal chief correspondent, There’s No Such Thing as Political Capital, 3-30-13, http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207] /Wyo-MB

But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “Winning wins.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote.¶ Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a bandwagon effect.”

#### Trade doesn’t solve war

Martin 6—prof pol sci, U France. Chair in Economics at the Paris School of Economics. Former economist at the Federal Reserve Bank of New York. Former assistant professor at the Graduate Institute of International Studies. Visiting researcher at Princeton. PhD from Georgetown. (Phillipe, “Make Trade not War?,” 12 April 2006, http://www.ecore.be/Papers/1177063947.pdf)

Does globalization pacify international relations? The “liberal” view in political science argues that increasing trade flows, and the spread of free markets and democracy should limit the incentive to use military force in interstate relations. This vision, which can partly be traced back to Kant’s Essay on Perpetual Peace (1795), has been very influential: the main objective of the European trade integration process was to prevent the killing and destruction of the two World Wars from ever happening again1. Figure 1 suggests 2 however that on the 1870-2001 period, the correlation between trade openness and military conflicts is not a clear cut one. The first era of globalization, at the end of the XIXth century, was a period of rising trade openness and of multiple military conflicts, culminating with World War I. Then, the interwar period was characterized by a simultaneous collapse of world trade and conflicts. After World War II, world trade increased rapidly while the number of conflicts decreased (although the risk of a global conflict was obviously high). There is no clear evidence that the 1990s, during which trade flows increased dramatically, was a period of lower prevalence of military conflicts even taking into account the increase in the number of sovereign states.

#### Economic decline doesn’t cause war

Daniel W. Drezner 12, Professor, The Fletcher School of Law and Diplomacy, Tufts University, October 2012, “The Irony of Global Economic Governance: The System Worked,” http://www.globaleconomicgovernance.org/wp-content/uploads/IR-Colloquium-MT12-Week-5\_The-Irony-of-Global-Economic-Governance.pdf

The final outcome addresses a dog that hasn’t barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.37 Whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict, there were genuine concerns that the global economic downturn would lead to an increase in conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fuel impressions of surge in global public disorder. ¶ The aggregate data suggests otherwise, however. The Institute for Economics and Peace has constructed a “Global Peace Index” annually since 2007. A key conclusion they draw from the 2012 report is that “The average level of peacefulness in 2012 is approximately the same as it was in 2007.”38 Interstate violence in particular has declined since the start of the financial crisis – as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict; the secular decline in violence that started with the end of the Cold War has not been reversed.39 Rogers Brubaker concludes, “the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected.”40¶ None of these data suggest that the global economy is operating swimmingly. Growth remains unbalanced and fragile, and has clearly slowed in 2012. Transnational capital flows remain depressed compared to pre-crisis levels, primarily due to a drying up of cross-border interbank lending in Europe. Currency volatility remains an ongoing concern. Compared to the aftermath of other postwar recessions, growth in output, investment, and employment in the developed world have all lagged behind. But the Great Recession is not like other postwar recessions in either scope or kind; expecting a standard “V”-shaped recovery was unreasonable. One financial analyst characterized the post-2008 global economy as in a state of “contained depression.”41 The key word is “contained,” however. Given the severity, reach and depth of the 2008 financial crisis, the proper comparison is with Great Depression. And by that standard, the outcome variables look impressive. As Carmen Reinhart and Kenneth Rogoff concluded in This Time is Different: “that its macroeconomic outcome has been only the most severe global recession since World War II – and not even worse – must be regarded as fortunate.”42

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#### Won’t fully disclose---proven by last memo

Ron Fournier 13, editorial director of the National Journal, February 21st, 2013, "The Credibility Gap: Shading the Truth Has Consequences," National Journal, www.nationaljournal.com/politics/the-credibility-gap-shading-the-truth-has-consequences-20130221

Drone warfare: After the leak of an unclassified Justice Department white paper justifying “targeted killings” of terrorist suspects, including U.S. citizens, Obama promised to share classified details with Congress. That pledge helped quiet critics of drone warfare and White House secrecy.¶ But lawmakers on the Intelligence committees were granted only brief access to the documents. Their lawyers and staff weren’t allowed to see the memos at all — a condition the White House knew would limit Congress’s oversight abilities.¶ “I recognize that in our democracy, no one should just take my word that we’re doing this the right way,” Obama said in his Feb. 12 State of the Union address. “So, in the months ahead, I will continue to engage with Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and the system of checks and balances, but that our efforts are even more transparent to the American people and the world.”¶ And yet, The New York Times reported Thursday that the White House is still refusing to share the legal opinions fully with Congress. Rather than keep his word, Obama’s team is negotiating with Republicans to provide more information on the deadly assault last year on the U.S. diplomatic compound in Benghazi, Libya, The Times reported.¶ The apparent White House goal: Use Republicans’ obsession with Benghazi to keep drone warfare tactics under wraps. Obama’s team doesn’t want John Brennan’s confirmation as CIA director to be tied up in the fight over drone documents. It’s a cynical strategy that might work with the acquiescence of the same Democratic senators who publicly denounced Obama for his secrecy over drone warfare.

#### Other countries won’t believe us---external verification key

Philip Alston 11, John Norton Pomeroy Professor of Law at the NYU School of Law, former UN Special Rapporteur on extrajudicial, summary or arbitrary executions, “The CIA and Targeted Killings Beyond Borders,” 2011, 2 Harv. Nat'l Sec. J. 283, lexis

Before moving to consider the Obama administration's approach to these issues, it is important to underscore the fact that we are talking about two different levels of accountability. The first is that national procedures must meet certain standards of transparency and accountability in order to meet existing international obligations. The second is that the national procedures must themselves be sufficiently transparent to international bodies as to permit the latter to make their own assessment of the extent to which the state concerned is in compliance with its obligations. In other words, even in situations in which states argue that they put in place highly impartial and reliable accountability mechanisms, the international community cannot be expected to take such assurances on the basis of faith rather than of convincing information. Assurances offered by other states accused of transgressing international standards would not be accepted by the United States in the absence of sufficient information upon the basis of which some form of verification is feasible. Since the 1980s, the phrase "trust but verify" n104 has been something of a mantra in the arms control field, but it is equally applicable in relation to IHL and IHRL. The United States has consistently demanded of other states that they demonstrate to the international community the extent of their compliance with international standards. A great many examples could be cited, not only from the annual State Department reports on the human rights practices of other states, but also from a range of statements by the President and the Secretary of State in relation

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#### Review inevitable – now is better for flexibility

Wittes 8 (Benjamin Wittes is a Senior Fellow in Governance Studies at the Brookings Institution, where he is the Research Director in Public Law, “The Necessity and Impossibility of Judicial Review,” https://webspace.utexas.edu/rmc2289/National%20Security%20and%20the%20Courts/Law%20and%20the%20Long%20War%20%20Chapter%204.pdf)

WE COME, then, to the question of what judicial review ought to look like in the war on terror if one accepts that it should exist more robustly than the administration prefers but should not be of an unbridled or general nature, as human rights advocates wish to see. The answer is conceptually simple, though devilishly complicated in operation: Judicial review should be designed for the relatively narrow purpose of holding the executive to clearly articulated legislative rules, not to the often vague standards of international legal instruments that have not been implemented through American law. Judges should have an expanded role in the powers of presidential preemption in the antiterrorism arena, for the judiciary is essential to legitimizing the use of those powers. Without them, the powers themselves come under a barrage of criticism which they cannot easily withstand. And eventually the effort to shield them from judicial review fails, and the review that results from the effort is more intrusive, more suspicious, and less accommodating of the executive's legitimate need for operational flexibility. Judges, in other words, should be a part of the larger rules the legislature will need to write to govern the global fight against terrorism. Their role within these legal regimes will vary-from virtually no involvement in cases of covert actions and overseas surveillance to extensive involvement in cases of long-term detentions. The key is that the place of judges within those systems is not itself a matter for the judges to decide. The judiciary must not serve as the designer of the rules.