# 1NC Round 2

### 1

#### A. Interp

#### War Powers Authority refers to capacities explicitly granted by Congress – that means the aff must restrict authority under the WPR, AUMF, or NDAA

#### War Powers” refer to Congressional abilities – Presidential CINC powers are distinct

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First, consider the constitutional issue of power imbalance. Central to the Constitution is the foundational principle of power distribution and provisions to check and balance exercises of that power. This clearly intended separation of powers across the three branches of government ensures that no single federal officeholder can wield an inordinate amount of power or influence. **The founders carefully crafted constitutional war-making authority** **with** the branch most representative of the people—**Congress**.4 The Federalist Papers No. 51, “The Structure of Government Must Furnish the Proper Checks and Balances Between the Different Departments,” serves as the wellspring for this principle. Madison insisted on the necessity to prevent any particular interest or group to trump another interest or group.5 This principle applies in practice to all decisions of considerable national importance. **Specific to** war powers authority**, the Constitution empowers the legislative branch with the authority to declare war but endows the Executive with the authority to act as Commander-in-Chief**.6 This construct designates **Congress, not the president, as the primary decisionmaking body to commit the nation to war**—a decision that ultimately requires the consent and will of the people in order to succeed. By vesting the decision to declare war with Congress, the founders underscored their intention to engage the people—those who would ultimately sacrifice their blood and treasure in the effort.

**The Constitution**, on the other hand, **vaguely delegates authority to execute foreign policy. It contains no instructions regarding the use or custody of that power, except to “preserve, protect, and defend the Constitution of the United States**.”7 Alexander Hamilton, known widely as an advocate of executive power, asserted: "The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States."8 Accordingly, the **founders never intended for the military to serve as the nation’s primary agency to interface with the rest of the world or stand as the dominant instrument of foreign policy. So the presidential authority of** Commander-in-Chief does not permit **a president to use the nation’s military simply to execute a president’s foreign policy.**9 Kenneth B. Moss, Undeclared War and the Future of U.S. Foreign Policy, (Baltimore: The Johns Hopkins University Press, 2008), 217.

#### Authority means expressly granted – assertions by the president don’t count.

Words and Phrases 04 (Volume 4a, Cumulative Supplement Pamphlet, p. 275)

U.S.N.Y. 1867. Under the federal judiciary act, giving the Supreme Court jurisdiction to review a final judgement or decree of a state court of last resort in any suit where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, it is held that the term “authority exercised under the United States” must be something more than a bare assertion of such authority, and must be an authority having a real existence derived from competent governmental power, and in this respect the word “authority” stands on the same footing with “treaty” or “statute.” Hence, where a party claimed authority under an order of a federal court which, when rightfully viewed, did not purport to confer any authority upon him, a writ of error to the Supreme Court has dismissed.—Milligar v. Hartupee, 73 U.S. 258, 6 Wall. 258, 18 L.Ed. 829

#### B. Violation – the aff doesn’t defend a plan.

#### C. Reasons to prefer

#### 1. Predictable ground

Our interpretation limits the aff to 3 definitive congressional acts that authorize presidential action: the NDAA, the AUMF, and the WPR. All negative link arguments stem from congressional retraction of authorization for the President.

#### 2. Explodes the topic – Existing executive assertions of power allow the President to ignore all laws – the aff could pass new restrictions on literally anything

Schwarz, senior counsel, and Huq, associate counsel at the Brennan Center for Justice at NYU School of Law, 2007 [Frederick A.O., Jr., partner at Cravath, Swaine & Moore, chief counsel to the Church Committee, and Aziz Z, former clerk for the U.S. Supreme Court, Unchecked and Unbalanced: Presidential Power in a Time of Terror, p. 153]

Familiar failings from the Cold War era and earlier history returned to haunt the nation in the wake of 9/11. But this time abuses were compounded by a new and dangerous idea. To justify illicit invasions of liberty and privacy, the executive branch's lawyers argued that the president has unlimited power to violate federal statutes. President Bush agreed. Specifically, he asserted under the Constitution a novel authority in the name of "national security" or "military necessity" to disregard permanently any law enacted by Congress. The Administration used this power to justify set-asides of long-standing federal statutes barring torture, indefinite detention, and warrantless spying. In the Cold War, the FBI and the CIA violated the law but hid or denied their actions. After 9/11, government overreaching claimed a legal basis through theories about "executive power." Abuse became official policy and practice of the United States. No sitting president before President Bush asserted or used power under the Constitution to set aside laws wholesale. Such power means a president can ignore statutes passed by Congress whenever he claims that "national security" or "military necessity" is at issue. This claim finds precedent in the seventeenth-century British kings' royal "prerogative" power to "suspend" or "dispense" with laws enacted by Parliament.' But that power, grounded in ideas about the "divine" right of kings, did not survive the English Civil War and the Glorious Revolution of 1688, which ended the Stuart dynasty. Certainly, it did not find its way into our founding documents, the 1776 Declaration of Independence and the Constitution of 1787.

[Can skip #3 for time]

#### 3. Makes the topic bidirectional - The War Powers Resolution proves that “restrictions” on undelegated powers are a massive increase in Presidential authority by licensing unconstitutional behavior.

Woods 06 Senior fellow in American history at the Ludwig von Mises Institute (Thomas E., Jr., "The War Powers Resolution Fraud." February 4, http://www.lewrockwell.com/2006/02/ thomas-woods/the-war-powers-resolution-fraud/

Congress did pass **the War Powers Resolution**, to be sure. But if anything, the Resolution — sympathetic mythology to the contrary notwithstanding — **actually emboldened the president and** codified executive warmaking powers **that would have astonished the framers of the Constitution.** I have explained the intentions of the framers with regard to war powers here. Suffice it to say that **the framers resolutely opposed placing offensive war powers in the hands of the president, and deliberately assigned such authority to the legislative branch.** **The War Powers Resolution does not restore the proper constitutional balance between president and Congress in matters of war**. **Consider first the resolution’s provision that the president may commit troops to offensive operations anywhere in the world he chooses and for any reason without the consent of Congress, for a period of 60 days** (though he must at least inform them of his action within 48 hours). After the initial 60 days he must secure congressional authorization for the action to continue. He then has another 30 days to withdraw the troops if such authorization is not forthcoming. Until the War Powers Resolution, no constitutional or statutory authority could be cited on behalf of such behavior on the part of the president. Now it became fixed law, despite violating the letter and the spirit of the Constitution.

#### D. Topicality is a voting issue for Fairness and Education.

### 2

#### The executive branch of the United States federal government should issue an executive order ending indefinite detention. The executive branch of the United States federal government should release Khalid Sheikh Mohammed and declare him innocent.

#### President has authority to change detention policy.

Feldman, 13 --- law prof at Harvard

(5/8/2013, Noah, “Obama has leverage to get his way on Guantanamo,” <http://articles.mcall.com/2013-05-08/opinion/mc-guantanamo-feldman-column-20130508_1_guantanamo-detainees-guantanamo-bay-obama-administration>))

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-Qaida — 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.

### 3

#### Judicial deference is high – there’s strict adherence to the political question doctrine

Bradley 9-2 (Curtis A., William Van Alstyne Professor of Law – Duke Law School, “War Powers, Syria, and Non-Judicial Precedent,” Lawfare Blog, 2013, http://www.lawfareblog.com/2013/09/war-powers-syria-and-non-judicial-precedent/)

As an initial matter, we need to bracket the issue of whether Obama’s action will weaken his own power as a political matter. This is a complicated issue: on the one hand, it may signal weakness both to Congress and to other nations; on the other hand, if he obtains congressional authorization, he may be in an ultimately stronger political position, as Jack Goldsmith has pointed out. As I understand it, the claim being made by Spiro, Rothkopf, and others is that the power of the presidency more generally is being weakened. How might this happen? Not through an influence on judicial doctrine: Although courts sometimes take account of historic governmental practices when assessing the scope of presidential authority, they have consistently invoked limitations on standing and ripeness, as well as the political question doctrine, to avoid addressing constitutional issues relating to war powers. In the absence of judicial review, what is the causal mechanism by which the “precedent” of Obama seeking congressional authorization for the action in Syria could constrain future presidential action? When judicial review is unavailable, the most obvious way in which the President is constrained is through the political process—pressure from Congress, the public, his party, etc. In an extreme case, this pressure could take the form of impeachment proceedings, but it does not take such an extreme case for the pressure to have a significant effect on presidential decisionmaking. Indeed, it is easy to think of political considerations that might have motivated Obama to go to Congress with respect to Syria.

#### Reducing court deference breaks the political question doctrine

Lederman 11 (Martin, Professor of Law – Georgetown University Law Center, “War, Terror, and the Federal Courts, Ten Years After 9/11: Conference\*: Association of American Law Schools' Section on Federal Courts Program at the 2012 AALS Annual Meeting in Washington, D.C.,” American University Law Review, June, 61 Am. U.L. Rev. 1253, Lexis)

Number two: Numerous very important, contested, hotly debated topics have arisen in the last ten years, many of them in the Bush Administration, involving for example interrogation techniques, the scope of detention authority, habeas review, military commissions, targeted killings,and the use of force more broadly. On some of these questions, the federal courts - and the Supreme Court in particular - have had quite a lot to say; and on others, not so much, at least in part because of several different federal courts doctrines that prevent the courts from speaking too much about those. You're all familiar with standing limits, political questions, state secrets, etc. We're going to focus particularly on a couple of them, which are immunity doctrines and the weakening of the Bivens n2 and state court sorts of causes of action. We will also discuss the fact that there are many people who think the federal courts have become too involved at supervising and resolving substantive questions involving the political branches, including some of Judge Kavanaugh's colleagues, who have been particularly vocal about that, engaging in what appears to be a form of resistance to the Supreme Court's Boumediene n3 decision. By contrast, many other people think the courts have not been nearly involved enough at resolving some of the unresolved questions about the scope of interrogation and detention and military commissions and the like, that might be lingering from the last administration, or occurring now in the new administration, such as with respect to use of force. So that's the second broad topic - whether the federal courts have been too timid or too aggressive in this area.

#### Setting a precedent against the PQD spills over to climate change cases---litigants are turning to the Courts now and asking them to abrogate the PQD

Tribe, the Carl M. Loeb University Professor, Harvard Law School, ‘10

[Laurence H., Joshua D. Branson, J.D., Harvard Law School and NDT Champion, Northwestern University; and Tristan L. Duncan, Partner, Shook, Hardy & Bacon L.L.P., January 2010, “TOOHOTFORCOURTSTO HANDLE: FUEL TEMPERATURES, GLOBAL WARMING, AND THE POLITICAL QUESTION DOCTRINE,” <http://www.wlf.org/Upload/legalstudies/workingpaper/012910Tribe_WP.pdf>]

Two sets of problems, one manifested at a microcosmic level and the other about as macrocosmic as imaginable, powerfully illustrate these propositions. Not coincidentally, both stem from concerns about temperature and its chemical and climactic effects, concerns playing an increasingly central role in the American policy process. As those concerns have come to the fore, courts have correspondingly warmed to the idea of judicial intervention, drawn by the siren song of making the world a better place and fueled by the incentives for lawyers to convert public concern into private profit. In both the fuel temperature and global warming cases, litigants, at times justifying their circumvention of representative democracy by pointing to the slow pace of policy reform, have turned to the courts. By donning the cloak of adjudication, they have found judges for whom the common law doctrines of unjust enrichment, consumer fraud, and nuisance appear to furnish constitutionally acceptable and pragmatically useful tools with which to manage temperature’s effects. Like the proverbial carpenter armed with a hammer to whom everything looks like a nail, those judges are wrong. For both retail gasoline and global climate, the judicial application of common law principles provides a constitutionally deficient—and structurally unsound—mechanism for remedying temperature’s unwanted effects. ¶ It has been axiomatic throughout our constitutional history that there exist some questions beyond the proper reach of the judiciary. In fact, the political question doctrine originates in no less august a case than Marbury v. Madison, where Chief Justice Marshall stated that “[q]uestions in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court.”1 Well over a century after that landmark ruling, the Supreme Court, in Baker v. Carr, famously announced six identifying characteristics of such nonjusticiable political questions, which, primarily as a “function of the separation of powers,” courts may not adjudicate.2 Of these six characteristics, the Court recently made clear that two are particularly important: (1) the presence of “a textually demonstrable constitutional commitment of the issue to a coordinate political department;” and (2) “a lack of judicially discoverable and manageable standards for resolving it.”3 ¶ The spectrum of nonjusticiable political questions in a sense spans the poles formed by these two principles. At one pole, the Constitution’s specific textual commitments shield issues expressly reserved to the political branches from judicial interference. At the other pole lie matters not necessarily reserved in so many words to one of the political branches but nonetheless institutionally incapable of coherent and principled resolution by courts acting in a truly judicial capacity; such matters are protected from judicial meddling by the requirement that “judicial action must be governed by standard, by rule” and by the correlative axiom that “law pronounced by the courts must be principled, rational, and based upon reasoned distinctions.”4¶ At a deeper level, however, the two poles collapse into one. The reason emerges if one considers issues that courts are asked to address involving novel problems the Constitution’s framers, farsighted though they were, could not have anticipated with sufficient specificity to entrust their resolution to Congress or to the Executive in haec verba. A perfect exemplar of such problems is the nest of puzzles posed by humaninduced climate change. When matters of that character are taken to court for resolution by judges, what marks them as “political” for purposes of the “political question doctrine” is not some problem-specific language but, rather, the demonstrable intractability of those matters to principled resolution through lawsuits. And one way to understand that intractability is to view it as itself marking the Constitution’s textual, albeit broadly couched, commitment of the questions presented to the processes we denominate “legislative” or “executive”—that is, to the pluralistic processes of legislation and treaty-making rather than to the principle-bound process of judicially resolving what Article III denominates “cases” and “controversies.” In other words, the judicial unmanageability of an issue serves as powerful evidence that the Constitution’s text reserves that issue, even if broadly and implicitly, to the political branches.5¶ It has become commonplace that confusion and controversy have long distinguished the doctrine that determines, as a basic matter of the Constitution’s separation of powers, which questions are “political” in the specific sense of falling outside the constitutional competence of courts and which are properly justiciable despite the “political” issues they may touch. But that the principles in play have yet to be reduced to any generally accepted and readily applied formula cannot mean that courts are simply free to toss the separation of powers to the winds and plunge ahead in blissful disregard of the profoundly important principles that the political question doctrine embodies. Unfortunately, that appears to be just what some courts have done in the two temperature-related cases—one involving hot fuels, the other a hot earth— that inspired this publication. In the first, a court allowed a claim about measuring fuels to proceed despite a constitutional provision specifically reserving the issue to Congress. In the second—a case in which the specific issue could not have been anticipated, much less expressly reserved, but in which the only imaginable solutions clearly lie beyond judicial competence—a court, rather than dismissing the case as it ought to have done, instead summarily dismissed the intractable obstacles to judicial management presented by climate change merely because it was familiar with the underlying cause of action. As this pair of bookend cases demonstrates, the political question doctrine is feeling heat from both directions.

#### That crushes global coordination necessary to solve climate change.

Tribe, the Carl M. Loeb University Professor, Harvard Law School, ‘10

[Laurence H., Joshua D. Branson, J.D., Harvard Law School and NDT Champion, Northwestern University; and Tristan L. Duncan, Partner, Shook, Hardy & Bacon L.L.P., January 2010, “TOOHOTFORCOURTSTO HANDLE: FUEL TEMPERATURES, GLOBAL WARMING, AND THE POLITICAL QUESTION DOCTRINE,” <http://www.wlf.org/Upload/legalstudies/workingpaper/012910Tribe_WP.pdf>]

But that being said, if the Second Circuit was implying that such claims are justiciable in part because they are relatively costless, it was wrong again. In the wake of the recent Copenhagen climate negotiations, America is at a crossroads regarding its energy policy. At Copenhagen, the world—for the first time including both the United States and China—took a tremulous first step towards a comprehensive and truly global solution to climate change.44 By securing a modicum of international consensus—albeit not yet with binding commitments—President Obama laid the foundation for what could eventually be a groundbreaking congressional overhaul of American energy policy, an effort that will undoubtedly be shaped by considerations as obviously political as our energy independence from hostile and unreliable foreign regimes and that will both influence and be influenced by the delicate state of international climate negotiations.45¶ Against this backdrop, courts would be wise to heed the conclusion of one report that what “makes climate change such a difficult policy problem is that decisions made today can have significant, uncertain, and difficult to reverse consequences extending many years into the future."46 This observation is even more salient given that America—and the world—stand at the precipice of major systemic climate reform, if not in the coming year then in the coming decade. It would be disastrous for climate policy if, as at least one commentator has predicted,47 courts were to “beat Congress to the punch” and begin to concoct common law “solutions” to climate change problems before the emergence of a legislative resolution. Not only does judicial action in this field require costly and irreversible technological change on the part of defendants, but the prior existence of an ad hoc mishmash of common law regimes will frustrate legislators’ attempts to design coherent and systematic marketbased solutions.48 Indeed, both emissions trading regimes and carbon taxes seek to harness the fungibility of GHG emissions by creating incentives for reductions to take place where they are most efficient. But if courts were to require reductions of randomly chosen defendants—with no regard for whether they are efficient reducers— they would inhibit the effective operation of legislatively-created, market-based regimes by prematurely and artificially constricting the size of the market. And as one analyst succinctly put it before Congress, “[a]n insufficient number of participants will doom an emissions trading market.”49¶ There is no doubt that the “Copenhagen Accord only begins the battle” against climate change, as diplomats, bureaucrats, and legislators all now begin the lengthy struggle to turn that Accord’s audacious vision into concrete reality.50 But whatever one’s position in the debate between emissions trading and carbon taxes, or even in the debate over the extent or indeed the reality of anthropogenic climate change, one thing is clear: legislators, armed with the best economic and scientific analysis, and with the capability of binding, or at least strongly incentivizing, all involved parties, are the only ones constitutionally entitled to fight that battle. ¶ CONCLUSION ¶ Some prognosticators opine that the political question doctrine has fallen into disrepute and that it no longer constitutes a viable basis upon which to combat unconstitutional judicial overreaching.51 No doubt the standing doctrine could theoretically suffice to prevent some of the most audacious judicial sallies into the political thicket, as it might in the climate change case, where plaintiffs assert only undifferentiated and generalized causal chains from their chosen defendants to their alleged injuries. But when courts lose sight of the important limitations that the political question doctrine independently imposes upon judicial power–even where standing problems are at low ebb, as with the Motor Fuel case–then constitutional governance, and in turn the protection of individual rights and preservation of legal boundaries, suffer. The specter of two leading circuit courts manifestly losing their way in the equally real thicket of political question doctrine underscores the urgency, perhaps through the intervention of the Supreme Court, of restoring the checks and balances of our constitutional system by reinforcing rather than eroding the doctrine’s bulwark against judicial meddling in disputes either expressly entrusted by the Constitution to the political branches or so plainly immune to coherent judicial management as to be implicitly entrusted to political processes. It is not only the climate of the globe that carries profound implications for our future; it is also the climate of the times and its implications for how we govern ourselves.

#### Warming is real, anthropogenic and causes extinction

Flournoy 12 -- Citing Feng Hsu, PhD NASA Scientist @ the Goddard Space Flight Center. Don Flournoy is a PhD and MA from the University of Texas, Former Dean of the University College @ Ohio University, Former Associate Dean @ State University of New York and Case Institute of Technology, Project Manager for University/Industry Experiments for the NASA ACTS Satellite, Currently Professor of Telecommunications @ Scripps College of Communications @ Ohio University (Don, "Solar Power Satellites," January, Springer Briefs in Space Development, Book, p. 10-11

In the Online Journal of Space Communication , Dr. Feng Hsu, a  NASA scientist at Goddard Space Flight Center, a research center in the forefront of science of space and Earth, writes, “The evidence of global warming is alarming,” noting the potential for a catastrophic planetary climate change is real and troubling (Hsu 2010 ) . Hsu and his NASA colleagues were engaged in monitoring and analyzing climate changes on a global scale, through which they received first-hand scientific information and data relating to global warming issues, including the dynamics of polar ice cap melting. After discussing this research with colleagues who were world experts on the subject, he wrote: I now have no doubt global temperatures are rising, and that global warming is a serious problem confronting all of humanity. No matter whether these trends are due to human interference or to the cosmic cycling of our solar system, there are two basic facts that are crystal clear: (a) there is overwhelming scientific evidence showing positive correlations between the level of CO2 concentrations in Earth’s atmosphere with respect to the historical fluctuations of global temperature changes; and (b) the overwhelming majority of the world’s scientific community is in agreement about the risks of a potential catastrophic global climate change. That is, if we humans continue to ignore this problem and do nothing, if we continue dumping huge quantities of greenhouse gases into Earth’s biosphere, humanity will be at dire risk (Hsu 2010 ) . As a technology risk assessment expert, Hsu says he can show with some confidence that the planet will face more risk doing nothing to curb its fossil-based energy addictions than it will in making a fundamental shift in its energy supply. “This,” he writes, “is because the risks of a catastrophic anthropogenic climate change can be potentially the extinction of human species, a risk that is simply too high for us to take any chances” (Hsu 2010 )

### 4

#### Conceptions of biopolitics and “the power of life to resist” are tools of capitalism – these ideas dehistoricize the social and material relations of production that are necessary conditions for power over life to be produced in the first place

Cotter 12 (Jennifer, Assistant Professor of English at William Jewell College, “Bio-politics, Transspecies Love and/as Class Commons-Sense”, Red Critique: Winter/Spring 2012, http://redcritique.org/WinterSpring2012/biopoliticstransspeciesismandclasscommonssense.htm)

Foucault’s theory of "bio-power" is not a form of materialism but a form of cultural spiritualism. When Foucault argues that "bio-politics" is at the root of capitalism, he dehistoricizes "the machinery of production" into which he claims bodies are "inserted." The existence of "the machinery of production"—or a "controlled insertion" of bodies—is itself the effect of the dialectical praxis of labor. This is because power is not an autonomous, trans-historical life force nor is it an ineffable diffuse plurality beyond historical and conceptual explanation, but an effect of definite historical and material conditions and relations. Power, in other words, rests upon material conditions of production. Whether or not the society has the "power" to end starvation or to condemn the majority of the laboring population to a lifetime of starvation, has to do with the level of development of its material conditions of production—its forces of production—and the social relations of production (the labor and property relations) that determine the social ends and interests toward which labor is put. This is another way of saying that power is the historical and material effect of labor in the form of property. In a society in which property is privately owned, power is the capacity of the ruling class to "command over the surplus-labor" of workers in production (The German Ideology 102). At the root of power relations is an antagonistic class relation: the antagonism between owners of the means of production and workers who only own their labor to sell in order to survive and are exploited. The binary of class, to be clear, is historical and material not, at root, discursive: class binaries are not the effect of nature, god, nor are they the effect of "western metaphysics," "discursive construction," "binary thinking," or conceptualization, but the effect of private ownership of the means of production. ¶ Foucault’s theory of power does the ideological work of capital by concealing and ideologically inverting the structural relations of class in capitalism. In place of the material transformation of structural relations of capitalism, Foucault advocates "resistance" within—a change in the discursive and cultural regimes and a re-valuing of "life"—as the basis of a "different economy of bodies and pleasures" (159). This amounts to the the updating of the culture of capitalism as the limit of change while the needs of the masses for material abolition of exploitation is dismissed as a reactionary nostalgia for the impossible—what Foucault dismisses as "The ‘right’ to life ... beyond all the oppressions" (145). Changing the cultural values of life and regarding this as constituting material change—i.e., as an end in itself—becomes a means to ideologically update power relations without fundamentally transforming them.¶ The spiritualism that is implicit in Foucault’s theory of "bio-power" has become more pronounced in contemporary articulations of biopolitics. In their most recent book, Commonwealth, for example, Michael Hardt and Antonio Negri put forward the concept of "biopolitics" as a supplement to Foucault’s "biopower." While "bio-power" they argue, is the power "over life," they deploy the concept of bio-politics to argue for an autonomous "power of life" to resist. In doing so, as this essay discusses at length further below, they posit an abstract and essentially spiritualist concept of a creative life force—a neo-Augustinian conception of life—outside the social and historical as the basis of a new "commonwealth" and "mass exodus" from capitalism. Giorgio Agamben, in contrast to Hardt and Negri, uses the term "bio-politics" instead to refer to the "mechanisms and calculations of State power" over life—what Foucault calls "biopower"—rather than an autonomous "power of life." For Agamben, what Hardt and Negri call the "power of life" to resist, is always already an extension of the sovereign "power over life" not a resistance to it. The "originary moment" of politics, according to Agamben, is that natural life, "the simple fact of living" or "life common to all" (what the ancient Greeks called zoē) has been subsumed, "captured" by "biopolitical regimes of power" so that precisely when natural life (zoē) is posited to be "outside" of sovereign power (bios)—banned by it, excluded from it—this is actually an extension of the inside of sovereign power. Politics, in other words, is always already the inclusion of this "excluded" life, the politicizing of natural life—the reduction of bodies to de-sacralized or "bare life." Yet, despite their different theories and different semantic uses of the term "bio-politics," Agamben’s biopolitical theory as a whole is predicated—as much as is Hardt and Negri’s theory—on restoring a spiritualist concept of life. In contrast to the life of "bios and zoē"—at the interstices of which, Agamben contends, is always already de-sacralized "bare life"—Agamben posits a "new form-of-life," a "messianic redemption" or "happy life" as a moment of transcendence (Means Without End 114-115). Finding even Foucault to be "too historical" for positing biopower as a stage in the development of history, and history itself to be always already a reduction of life to bare life, Agamben puts forward this new form of life as outside of history. For Agamben, there is no historical possibility of ending exploitative social relations and bringing about freedom through material transformation—all social, political, and historical life is always already a violent subordination of life to bio-politics. All historical and social life—regardless of the actual social and economic organization of society—is in this view always already a form of "de-sacralized" life or "bare life" (Homo Sacer 82). Rather than articulating a materialist theory of social transformation and the historical and material possibility of bringing about social relations free from exploitation, Agamben articulates a spiritual song of mourning and melancholia for a "lost" sacred life that has never been: "Redemption is not an event in which what was profane becomes sacred and what was lost is found again. Redemption is, on the contrary, the irreparable loss of the lost" (The Coming Community 102). Social transformation is reduced to a spiritual journey toward the "messianic" common life "to come" that can never fully be materialized without becoming "bare life"—a journey, in other words, in which the working class, like Ralph Ellison’s invisible man at the Battle Royal, is "kept running."

#### The dematerialization of ideology naturalizes the false conciousness of capitalism

Zavarzadeh 3 (Mas’ud, “The Pedagogy of Totality” p.41-43, in “JAC: A Journal of Rhetoric, Culture, and Politics”, Volume 23.1, http://www.jaconlinejournal.com/archives/vol23.1.html)

Human "freedom actually begins," as Marx argues, "only where labour which is determined by necessity . . . ceases. . . . Beyond it begins that development of human energy which is an end in itself, the real of true freedom ..." (Capita/III, 958-59). Only with the abolition ofwage-labor will education supersede the subordination of humans to the social

division oflabor ("training") and return humans to themselves as social beings. By using the alibi of the priority of culture over the economic (Hall, "Centrality") or by erasing the very concept ofemancipation from the social scene (Laclau, Emancipation[sj), contemporary pedagogy has opportunistically become a fence-sitter-a "pedagogy without guar- antees." Pedagogical fence-sitting in the class struggle for human emancipation is itself "servility" to the existing practicalities (Lenin, Materialism 357 ).To become a means for human freedom, pedagogy needs to be resituated in class analysis by means of a materialist critique, which, among other things, means that pedagogy must bring back to its practices the concept of"ideology." With the institutional influence of contemporary theory (poststructuralism, postcolonialism, New Historicism, feminism, globalization theory, cultural studies), ideology, like class, has been banned from pedagogy. The displacement ofideology in pedagogi- cal memory ("'Ideology' has gone a little out offashion ... since the mid-1990s": Turner 166) takes many forms, but the most common is the exclusion of ideology from pedagogical analytics by appealing to the authority of the Foucauldian notion of "discourse," which substitutes "power" for class and outlaws analysis of the relations of exploiter and exploited because such a materialist analysis leads to a "binary" (History 92-102 ). Once again, epistemology is deployed to protect and legitimate capital. In less obvious acts o f conceptual cleansing and in the name o f a democratic and "politically ambivalent" pedagogy, ideology is reduced to a thematics (a system of false/correct beliefs); a semiotics (representation); or a rhetorical detour in persuasion (by which "hegemony" is obtained). Critiquing the dematerialization of ideology in contemporary theory, Teresa Ebert argues, from a classical Marxist standpoint, that ideology, before everything else, is a "false consciousness" about the relation of capital to labor. Ideology is a false consciousness in which the exchange of the labor power of the worker for his or her wages is accepted as an equal exchange ("Interview" 58-60). Ideology, in other words, is not an epistemological matter, nor is it a "discourse," a "representation," or an instance of"textuality" (even though it has implications for all ofthese); rather, it is an economic issue. It legitimates the ruling social relations of production that naturalizes the transfer of wealth from the direct produc- ers to the owners. Marginalizing this materialist understanding of ideol- ogy, Althusser repeats the bourgeois gesture of epistemologizing ideol- ogy and concludes that since a Marxist reading ofideology is, according to him, "positivist" (the epistemological shield protecting bourgeois theory from materialist critique) in Marx's and Engels' writings, "Ideol- ogy is conceived as a pure illusion, a pure dream, i.e. as nothingness" (159). However, in Marxism-Leninism ideology is a material practice, an active economic agent in class antagonism; it is the historical other of class consciousness-not a negative but a negation. Class critique is an unpacking of this negation and its material consequences in the natural-ization of wage labor; it is thus a contribution to producing a materialist grasping of the world. Without such a materialist understanding of the world and the place of people in it, all pedagogy is an apologetics for capitalism. It is an apparatus for preparing the "servants needed by the capitalists" (Lenin, "Tasks").

#### The logic of capitalism results in extinction through the creation of ecological catastrophe and violent imperialist wars that will turn nuclear

Foster 5 [John Bellamy, Monthly Review, September, Vol. 57, Issue 4, “Naked Imperialism”, <http://www.monthlyreview.org/0905jbf.htm>]

From the longer view offered by a historical-materialist critique of capitalism, the direction that would be taken by U.S. imperialism following the fall of the Soviet Union was never in doubt. Capitalism by its very logic is a globally expansive system. The contradiction between its transnational economic aspirations and the fact that politically it remains rooted in particular nation states is insurmountable for the system. Yet, ill-fated attempts by individual states to overcome this contradiction are just as much a part of its fundamental logic. In present world circumstances, when one capitalist state has a virtual monopoly of the means of destruction, the temptation for that state to attempt to seize full-spectrum dominance and to transform itself into the de facto global state governing the world economy is irresistible. As the noted Marxian philosopher István Mészáros observed in Socialism or Barbarism? (2001)—written, significantly, before George W. Bush became president: “[W]hat is at stake today is not the control of a particular part of the planet—no matter how large—putting at a disadvantage but still tolerating the independent actions of some rivals, but the control of its totality by one hegemonic economic and military superpower, with all means—even the most extreme authoritarian and, if needed, violent military ones—at its disposal.” The unprecedented dangers of this new global disorder are revealed in the twin cataclysms to which the world is heading at present: nuclear proliferation and hence increased chances of the outbreak of nuclear war, and planetary ecological destruction. These are symbolized by the Bush administration’s refusal to sign the Comprehensive Test Ban Treaty to limit nuclear weapons development and by its failure to sign the Kyoto Protocol as a first step in controlling global warming. As former U.S. Secretary of Defense (in the Kennedy and Johnson administrations) Robert McNamara stated in an article entitled “Apocalypse Soon” in the May–June 2005 issue of Foreign Policy: “The United States has never endorsed the policy of ‘no first use,’ not during my seven years as secretary or since. We have been and remain prepared to initiate the use of nuclear weapons—by the decision of one person, the president—against either a nuclear or nonnuclear enemy whenever we believe it is in our interest to do so.” The nation with the greatest conventional military force and the willingness to use it unilaterally to enlarge its global power is also the nation with the greatest nuclear force and the readiness to use it whenever it sees fit—setting the whole world on edge. The nation that contributes more to carbon dioxide emissions leading to global warming than any other (representing approximately a quarter of the world’s total) has become the greatest obstacle to addressing global warming and the world’s growing environmental problems—raising the possibility of the collapse of civilization itself if present trends continue. The United States is seeking to exercise sovereign authority over the planet during a time of widening global crisis: economic stagnation, increasing polarization between the global rich and the global poor, weakening U.S. economic hegemony, growing nuclear threats, and deepening ecological decline. The result is a heightening of international instability. Other potential forces are emerging in the world, such as the European Community and China,that could eventually challenge U.S. power, regionally and even globally. Third world revolutions, far from ceasing, are beginning to gain momentum again, symbolized by Venezuela’s Bolivarian Revolution under Hugo Chávez. U.S. attempts to tighten its imperial grip on the Middle East and its oil have had to cope with a fierce, seemingly unstoppable, Iraqi resistance, generating conditions of imperial overstretch. With the United States brandishing its nuclear arsenal and refusing to support international agreements on the control of such weapons, nuclear proliferation is continuing. New nations, such as North Korea, are entering or can be expected soon to enter the “nuclear club.” Terrorist blowback from imperialist wars in the third world is now a well-recognized reality, generating rising fear of further terrorist attacks in New York, London, and elsewhere. Such vast and overlapping historical contradictions, rooted in the combined and uneven development of the global capitalist economy along with the U.S. drive for planetary domination, foreshadow what is potentially the most dangerous period in the history of imperialism. The course on which U.S and world capitalism is now headed points to global barbarism—or worse. Yet it is important to remember that nothing in the development of human history is inevitable. There still remains an alternative path—the global struggle for a humane, egalitarian, democratic, and sustainable society. The classic name for such a society is “socialism.” Such a renewed struggle for a world of substantive human equality must begin by addressing the system’s weakest link and at the same time the world’s most pressing needs—by organizing a global resistance movement against the new naked imperialism.

#### Vote negative to adopt the historical material criticism of the 1NC - historical analysis of the material conditions of capital is the only way to break free from is contradictions and social inequalities it causes

Tumino 1 (Steven, teaches at the City University of New York, Spring, What is Orthodox Marxism and Why it Matters Now More Than Ever Before)

Any effective political theory will have to do at least two things: it will have to offer an integrated understanding of social practices and, based on such an interrelated knowledge, offer a guideline for praxis. My main argument here is that among all contesting social theories now, only Orthodox Marxism has been able to produce an integrated knowledge of the existing social totality and provide lines of praxis that will lead to building a society free from necessity. But first I must clarify what I mean by Orthodox Marxism. Like all other modes and forms of political theory, the very theoretical identity of Orthodox Marxism is itself contested—not just from non-and anti-Marxists who question the very "real" (by which they mean the "practical" as under free-market criteria) existence of any kind of Marxism now but, perhaps more tellingly, from within the Marxist tradition itself. I will, therefore, first say what I regard to be the distinguishing marks of Orthodox Marxism and then outline a short polemical map of contestation over Orthodox Marxism within the Marxist theories now. I will end by arguing for its effectivity in bringing about a new society based not on human rights but on freedom from necessity. I will argue that to know contemporary society—and to be able to act on such knowledge—one has to first of all know what makes the existing social totality. I will argue that the dominant social totality is based on inequality—not just inequality of power but inequality of economic access (which then determines access to health care, education, housing, diet, transportation, . . . ). This systematic inequality cannot be explained by gender, race, sexuality, disability, ethnicity, or nationality. These are all secondary contradictions and are all determined by the fundamental contradiction of capitalism which is inscribed in the relation of capital and labor. All modes of Marxism now explain social inequalities primarily on the basis of these secondary contradictions and in doing so—and this is my main argument—legitimate capitalism. Why? Because such arguments authorize capitalism without gender, race, discrimination and thus accept economic inequality as an integral part of human societies. They accept a sunny capitalism—a capitalism beyond capitalism. Such a society, based on cultural equality but economic inequality, has always been the not-so-hidden agenda of the bourgeois left—whether it has been called "new left," "postmarxism," or "radical democracy." This is, by the way, the main reason for its popularity in the culture industry—from the academy (Jameson, Harvey, Haraway, Butler,. . . ) to daily politics (Michael Harrington, Ralph Nader, Jesse Jackson,. . . ) to. . . . For all, capitalism is here to stay and the best that can be done is to make its cruelties more tolerable, more humane. This humanization (not eradication) of capitalism is the sole goal of ALL contemporary lefts (marxism, feminism, anti-racism, queeries, . . . ). Such an understanding of social inequality is based on the fundamental understanding that the source of wealth is human knowledge and not human labor. That is, wealth is produced by the human mind and is thus free from the actual objective conditions that shape the historical relations of labor and capital. Only Orthodox Marxism recognizes the historicity of labor and its primacy as the source of all human wealth. In this paper I argue that any emancipatory theory has to be founded on recognition of the priority of Marx's labor theory of value and not repeat the technological determinism of corporate theory ("knowledge work") that masquerades as social theory.

#### Class divisions are the root of all other oppressions

Kovel 2 (Alger Hiss Professor of Social Studies at Bard College, awarded Fellowship at the John Guggenheim Foundation, Joel, The Enemy of Nature, pages 123-124)

If, however, we ask the question of efficacy, that is, which split sets the others into motion, then priority would have to be given to class, for the plain reason that class relations entail the state as an instrument of enforce­ment and control, and it is the state that shapes and organizes the splits that appear in human ecosystems. Thus class is both logically and historically distinct from other forms of exclusion (hence we should not talk of 'classism' to go along with 'sexism' and 'racism,' and `species-ism'). This is, first of all, because class is an essentially man-made category, without root in even a mystified biology. We cannot imagine a human world without gender dis­tinctions – although we can imagine a world without domination by gender. But a world without class is eminently imaginable – indeed, such was the human world for the great majority of our species' time on earth, during all of which considerable fuss was made over gender. Historically, the difference arises because 'class' signifies one side of a larger figure that includes a state apparatus whose conquests and regulations create races and shape gender relations. Thus there will be no true resolution of racism so long as class society stands, inasmuch as a racially oppressed society implies the activities of a class-defending state.'° Nor can gender inequality be enacted away so long as class society, with its state, demands the super-exploitation of woman's labour. Class society continually generates gender, racial, ethnic oppressions and the like, which take on a life of their own, as well as profoundly affecting the concrete relations of class itself. It follows that class politics must be fought out in terms of all the active forms of social splitting. It is the management of these divisions that keeps state society functional. Thus though each person in a class society is reduced from what s/he can become, the varied reductions can be combined into the great stratified regimes of history — this one becoming a fierce warrior, that one a routine-loving clerk, another a submissive seamstress, and so on, until we reach today's personi­fications of capital and captains of industry. Yet no matter how functional a class society, the profundity of its ecological violence ensures a basic antagonism which drives history onward. History is the history of class society — because no matter how modified, so powerful a schism is bound to work itself through to the surface, provoke resistance (`class struggle'), and lead to the succession of powers. The relation of class can be mystified without end — only consider the extent to which religion exists for just this purpose, or watch a show glorifying the police on television — yet so long as we have any respect for human nature, we must recognize that so funda­mental an antagonism as would steal the vital force of one person for the enrichment of another cannot be conjured away.

#### Historical materialism must come first - it predetermines consciousness and the very possibilities of reflective thinking

**Marx 1859** (Karl, a pretty important dude. “A Contribution to the Critique of Political Economy: Preface” http://www.marxists.org/archive/marx/works/1859/critique-pol-economy/preface.htm) JM

>edited for gendered language<

In the social production of their existence, [people] inevitably enter into definite relations, which are independent of their will, namely relations of production appropriate to a given stage in the development of their material forces of production. The totality of these relations of production constitutes the economic structure of society, the real foundation, on which arises a legal and political superstructure and to which correspond definite forms of social consciousness. The mode of production of material life conditions the general process of social, political and intellectual life. It is not the consciousness of [people] that determines their existence, but their social existence that determines their consciousness. At a certain stage of development, the material productive forces of society come into conflict with the existing relations of production or – this merely expresses the same thing in legal terms – with the property relations within the framework of which they have operated hitherto. From forms of development of the productive forces these relations turn into their fetters. Then begins an era of social revolution. The changes in the economic foundation lead sooner or later to the transformation of the whole immense superstructure. In studying such transformations it is always necessary to distinguish between the material transformation of the economic conditions of production, which can be determined with the precision of natural science, and the legal, political, religious, artistic or philosophic – in short, ideological forms in which [people] become conscious of this conflict and fight it out. Just as one does not judge an individual by what he thinks about himself, so one cannot judge such a period of transformation by its consciousness, but, on the contrary, this consciousness must be explained from the contradictions of material life, from the conflict existing between the social forces of production and the relations of production. No social order is ever destroyed before all the productive forces for which it is sufficient have been developed, and new superior relations of production never replace older ones before the material conditions for their existence have matured within the framework of the old society.

### Case

#### Court rulings about the legality of executive discretion prevent citizen contests of presidential power

Kleinerman, Ph.D. in Political Science from Michigan State University, 2009 [Benjamin, The Discretionary President: The Promise and Peril of Executive Power, p. 231-232]

This dispute in Brown between two of our constitutional luminaries illustrates well the difficulties of adjudication in the realm of executive discretion. Because of its freedom from the laws, executive discretion is not and should not be amenable to the considerations involved in the courts' decisions on issues. In its considerations, the Supreme Court is rightfully influenced both by precedents and by the requirements of the law; executive discretion should not be considered in light of precedents, and must be judged, at least in part, by something other than what the law requires. Executive discretion must be judged politically; the courts cannot possibly make political judgments and still remain courts. In Brown, Marshall avoids constructing executive discretion so as to include, as a legal matter, the power to seize enemy property domestically. But, in so doing, he empowers Congress to do so and creates a precedent used by the Civil War Congress to seize property in an arbitrary manner beyond the Constitution. Story would have chosen to do the opposite. But one might suggest that Story's construction would have created a legal precedent whereby presidents could legally take significant action outside the laws—in suggesting this, it should be noted again, however, that Story rested much of his reasoning on the existence of a formal declaration of war. The Supreme Court's adjudications inevitably create the very sorts of precedents that impair the people's ability to engage in political contestation over the exercise of power by either Congress or the president. I have argued elsewhere that it is precisely this difficulty that causes Locke to leave the judiciary out of his conception of the separation of powers. Including an independent judicial power would turn the political contestation over the authority to exercise power into a legal dispute over that authority.35

#### The aff rationalizes departures from the law such that abuses of presidential war powers are normalized.

Kleinerman, Ph.D. in Political Science from Michigan State University, 2009 [Benjamin, The Discretionary President: The Promise and Peril of Executive Power, p. 243]

As it is ordinarily understood, the internment of Japanese Americans would violate the Due Process Clause. Justice Jackson writes, "A judicial construction of the Due Process Clause that will sustain this order is a far more subtle blow to liberty than the promulgation of the order itself." Although the military order "is not apt to last longer than the military emergency," a judicial opinion that "rationalizes such an order to show that it conforms to the Constitution, or rather rationalizes the Constitution to show that the Constitution sanctions such an order" is more long-lasting. In this case, "the Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon, ready for the hand of any authority that can bring forward a plausible claim of an urgent need. Every repetition imbeds that principle more deeply in our law and thinking and expands it to new purposes."77 It is better, Jackson suggests, to leave the exception outside the Constitution to be judged for what it is than to interpret the Constitution so as to accommodate the exception. The necessity of the exception is dangerous insofar as exceptional powers are exercised; the judicial rationalization of the exception is more dangerous in its normalizing of those exceptional powers. Contrary to Jackson, I would insist that there is no reason citizens of a constitutional polity, as guided by the kinds of constitutional standards articulated by Lincoln, cannot judge the exceptional exercise of power as constitutional. In agreement with Jackson, however, 'I would say that there are very good reasons for judges, who can only judge the law, not to attempt to rationalize these departures from the law.

#### Trying to restrict presidential war powers authority only recreates presidential discretion over exceptions to those restrictions.

Kleinerman, Ph.D. in Political Science from Michigan State University, 2009 [Benjamin, The Discretionary President: The Promise and Peril of Executive Power, p. 238-239]

Only Justice Potter Stewart concurs in the judgment on grounds that finally departed from the Debs precedent and restore the proper conception of the separation of powers. Unlike Douglas and Black, he notes, "It is elementary that the successful conduct of international diplomacy and the maintenance of an effective national defense require both confidentiality and secrecy." He contrasts this necessity, however, with the need for "restraint upon executive policy and power" that can only come from an "enlightened citizenry"; an "enlightened people'¶ comes only from an "informed and free press." He continues, "I think there can be but one answer to this dilemma, if dilemma it be. 'File responsibility must be where the power is." It is the "constitutional duty of the executive—as a matter of sovereign prerogative, and not as a matter of law as the courts know law—to protect the confidentiality necessary to carry out its responsibilities in the fields of international relations and national defense." The executive's responsibilities are outside the law and the courts can only "know" what is inside the law. Likewise, "Congress has the power to enact specific and appropriate criminal laws to protect government property and preserve governmental secrets," If it is the constitutional duty of the executive to keep the country safe, it is the constitutional duty of the legislature to create the laws by which people can be prosecuted who wantonly endanger the country. The problem, Stewart concludes, with the New York Times case is, "We are asked . . . to perform a function that the Constitution gave to the Executive, not the Judiciary."6I The government is restrained in our system of separation of powers because there are multiple perspectives represented in the government. If executives choose to restrain such papers on their own as a matter of national security, then Congress and the Supreme Court could call for them to defend those actions. They would do so only if they do not place the same priority on concerns for national security as the president. Following Debs, however, the government's concern for national security trumps the concerns of the other two branches. Stewart calls for a restoration of functional distinctions between the branches.¶ Of course, this separation is only possible if the courts are not in sole control of what the Constitution means and of what all governmental actors must do given that control.62 Functional differentiation based on different constitutional duties is only possible in a system of coordinate construction. Each branch must be capable of coming to different conclusions regarding what the Constitution requires else the Supreme Court will be forced to figure out what the executive would think the Constitution requires, thus inviting into the construction of the Constitution standards that might be quite dangerous. And given the nature of executive discretion, the most dangerous thing about this would be that executives' constitutional function might direct them outside of or even against the Constitution. The rationalization of these departures by the Court will allow the executive to avoid having to defend the departures politically. Instead, if an unconstitutional or illegal action by the executive comes before the Court, it would be better for the Court simply to decide the case as it thinks the Constitution requires and thereby force the executive to defend himself or herself politically and constitutionally. This will only be possible, however, if the Court is willing to contemplate the possibility that it will not have the last word. In some ways, then, the problem of executive discretion shows why the constitutional order requires that the Court not have the final word on the constitutionality of all governmental actions. The necessity of the departure of the executive from the Constitution for the survival of the same Constitution should not be constitutionalized by a legal principle that allows it.

#### The Court’s ability to interpret the meaning of the constitution is the essence of the state of exception – it places the Courts outside the law and able to suspend it.

Arias 11 [Gonzalo, Dept of Philosophy, “The Autoimmunitarian Effects of Preventative States of Exception,” http://stockholm.sgir.eu/ uploads/ Gonzalo%20Velasco\_The%20autoimmunitarian%20effects%20or%20preventive%20states%20of%20exception.pdf]

In the legal tradition of the United States, it is the Supreme Court that, in the last instance, passes judgment on civil rights, through its interpretation of the text of the Constitution. Therefore, in practice, it is impossible to distinguish between a law and its interpretation: the law is its interpretation. We cannot analyze it in detail, but when this juridical context is accompanied by a regime in which the discourse of fear, safety, and precaution prevails, the interpretation of the limits of those due process rights that the 14th Amendment leaves unspecified may jeopardize the formal guarantee of those rights. The problem with this system is that the objective reference, the text of the Constitution, is what has to be interpreted. The role of the precedent, another one of the sources of law in common law systems, plays a small role in this logic (Posner, 2006, 28). And this is so not because the constitution was drafted under the security and risk conditions of the 18 th century (mainly violations of territorial borders and internal rebellions), but because the terrorist attacks constitute an absolutely new threat that invalidates the categories that had prevailed until this moment. Guaranteeing basic due process rights to a criminal is one of the pillars of political liberalism. Nevertheless, according to this point of view, a terrorist attack does not conform to the ordinary stipulations for ordinary crimes or war crimes. The mere reasoning by analogy with the precedent cannot give meaning to a radically unprecedented situation. In this specific moment, faced with the ambiguity of the constitutional provisions, the Supreme Court Justices will proceed pragmatically by comparing the effects of their rulings. The guarantee of individual freedoms and national security shall have to be weighed in the balance 4

**He Continues…**

To sum up, it has been demonstrated that this exception can be neither commissarial or constitutional, but it cannot be constituent either since it does not establish a new order. Like that defined in Political Theology I, this sovereignty we have before us, which is neither subject to constituted power nor a vehicle for constituent power, does not establish or preserve, it merely suspends (Schmitt 2005). It is therefore a sovereignty that is neither subject to the law nor outside the law. Nor is it merely a question of the abovementioned dysfunction of the system, according to which the law would require an action outside the law in order to protect itself. Rather, the law would be totally subordinated to this sovereignty beyond the law. Therefore, there would be no normative limitation to preventive reaction: from the standpoint of beyond the law, any state is a state of emergency, every contingency a necessity that requires decisions for which the law does not count. Thus, we have gone from the prudently preventive mechanisms for the accommodation of exception in the texts of constitutions to the absolute reign of precaution as a paradigm for government. In this point, due to the lack of time, I must refer to the excelent work of Claudia Aradau, Rens van Munster Louise Amoore and Marieke de Goede concerning precaution and risk as dispositives, more precisely, as the type of discourse regimes that establishes the conditions for this permanent state of necessity and for the appearance of this type of sovereignty as a reaction (Amoore, de Goede 2008). Likewise, I cannot attempt to deploy the connection between American exceptionalism and its universalization as a paradigm for government in the field of international relations. To that goal I would also like to refer either to the research of Miguel de Larrinaga (De Larrinaga 2008: 528) in which this logic of exception is translated to the international field through the “human security” dispositive and, as a consequence, the justification of international interventions that suspend the international law 8

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#### Our interp makes the NDAA, AUMF, and WPR fair game for the aff.

Posner 2013 [Eric, President Obama Can Shut Guantanamo Whenever He Wants

Congress isn’t actually stopping him, Slate.com, http://www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/05/president\_obama\_can\_shut\_guantanamo\_whenever\_he\_wants\_to.html]

In his press conference Tuesday, President Obama repeated that he wanted to shut Guantanamo Bay but blamed Congress for stopping him. “They would not let us close it,” he said. But that’s wrong. President Obama can lawfully release the detainees if he wants to. Congress has made it difficult, but not impossible. Whatever he’s saying, the president does not want to close the detention center—at least not yet.¶ The relevant law is the National Defense Authorization Act of 2012 (NDAA). This statute confirms the president’s power to wage war against al-Qaida and its associates, which was initially given to him in the Authorization for Use of Military Force (AUMF) passed shortly after 9/11. The NDAA also authorizes the president to detain enemy combatants, and bans him from transferring Guantanamo detainees to American soil.¶ The NDAA does not, however, ban the president from releasing detainees. Section 1028 authorizes him to release them to foreign countries that will accept them—the problem is that most countries won’t, and others, like Yemen, where about 90 of the 166 detainees are from, can’t guarantee that they will maintain control over detainees, as required by the law.¶ Advertisement¶ Click here for more information!¶ There is another section of the NDAA, however, which has been overlooked. In section 1021(a), Congress “affirms” the authority of the U.S. armed forces under the AUMF to detain members of al-Qaida and affiliated groups “pending disposition under the law of war.” Section 1021(c)(1) further provides that “disposition under the law of war” includes “Detention under the law of war without trial until the end of the hostilities authorized by” the AUMF. Thus, when hostilities end, the detainees may be released.¶ The president has the power to end the hostilities with al-Qaida—simply by declaring their end. This is not a controversial sort of power. Numerous presidents have ended hostilities without any legislative action from Congress—this happened with the Vietnam War, the Korean War, World War II, and World War I. The Supreme Court has confirmed that the president has this authority.¶ Nor is there any reason why President Obama couldn’t declare the war with al-Qaida at an end. The group’s original core is essentially gone. A Department of Defense official recently hinted that the end of the conflict with al-Qaida is approaching, while the troop drawdown in Afghanistan will be completed next year. Associates and fellow travelers continue to exist, but the president is free to end hostilities even so; this, too, has happened many times before, like in Korea and Vietnam.¶ It’s true that section 1027, the provision of the NDAA that flatly prohibits the use of funds to transfer Guantanamo detainees to U.S. soil, appears to make it impossible to transfer them to prisons inside the U.S. But if that’s the case, and detainees can’t be transferred to foreign countries under section 1028 either, then section 1027 essentially orders the president to detain non-combatants indefinitely, and such an order is of dubious constitutionality at best. When the Supreme Court approved indefinite detention of members of al-Qaida and the Taliban in Hamdi v. Rumsfeld in 2004, the premise was the president’s military authority under the AUMF and the “active combat operations against Taliban fighters” in Afghanistan. When active combat operations cease, this pillar of the Supreme Court’s opinion falls. And while courts have been reluctant to grant rights to detainees that constrain the president’s power, they are likely to take the opposite view if he advances those rights while declaring that hostilities have ended.¶ The better interpretation of section 1027, one that avoids constitutional difficulties, bans transfers from Guantanamo to the U.S. only as long as hostilities continue. Courts have recognized repeatedly that the president can act on reasonable interpretations of statutes when they are ambiguous or contain internal contradictions; that statutes should be read to avoid constitutional problems like the one mentioned above; and that the president is entitled to special deference when laws touch on his foreign affairs and military powers. Yet another rule discourages interpretations of statutes that violate international law—which requires enemy combatants to be released at the end of hostilities unless they are convicted of crimes. For all these reasons, if President Obama were to declare an end of hostilities with al-Qaida and release detainees, he would be on reasonable legal ground. And it’s not as though Obama has been shy about asserting executive power when Congress blocks an objective he cares about. His military intervention in Libya in defiance of the War Powers Act (and legal advice from some of his own lawyers) is one example.

#### Thus, the judiciary should find Khalid Sheikh Mohammed not guilty.

#### Decreasing authority requires reducing the permission to act, not the ability to act.

Taylor 96 Attorney at Gambrell & Stolz, LLP, Atlanta (Ellen, 21 Del. J. Corp. L. 870 (1996), Hein Online)

The term authority is commonly thought of in the context of the law of agency, and the Restatement (Second) of Agency defines both power and authority.'89 Power refers to an agent's ability or capacity to produce a change in a legal relation (whether or not the principal approves of the change), and authority refers to the power given (permission granted) to the agent by the principal to affect the legal relations of the principal; the distinction is between what the agent can do and what the agent may do.

#### Without a brightline, judicial restrictions makes the topic bidirectional – Truman proves

Lobel 2001 [Jules, Bessie McKee Wathour Endowed Chair at the University of Pittsburgh School of Law, The War on Terrorism and Civil Liberties, <http://chapters.rlpgbooks.com/07/425/0742535983ch2.pdf>, p. 29-30]

The National Emergency that President Truman declared on December 16,¶ 1950, in response to the developing Korean conflict remained in effect for almost¶ twenty-five years.29 That emergency proclamation triggered extraordinary¶ presidential power to seize property and commodities, organize and control¶ the means of production, call to active duty 2.5 million reservists, assign¶ military forces abroad, seize and control all means of transportation and communication,¶ restrict travel, and institute martial law, and, in many other ways,¶ manage every aspect of the lives of all American citizens.30

Faced with this deeply held sense of indefinite crisis, Congress enacted hundreds of statutes providing the executive branch with broad emergency power. By the 1970s, some 470 such statutes existed, delegating power to the¶ executive over virtually every facet of American life.31 Some of the legislation¶ contained positively draconian provisions. For example, the Internal Security¶ Act of 1950 authorized the President to detain all persons whom the¶ government had a “reasonable ground” to believe “probably” would commit¶ or conspire to commit acts of espionage or sabotage.32 While the detained¶ person was entitled to an administrative hearing and appeal, the Act did not¶ provide for trial before an Article III court, nor for the confrontation and¶ cross- examination of adverse witnesses. Moreover, in most of the emergency legislation, vague terms33 triggered executive power for unspecified lengths of time.

The judiciary was extremely deferential. The Curtiss-Wright court’s dicta¶ about the President’s “plenary and exclusive power” over matters connected¶ with foreign affairs34 lent legitimacy to the doctrine of inherent and unilateral¶ executive power to conduct foreign affairs. Furthermore, the court’s wartime¶ detention rulings adopted an extremely deferential “reasonableness” standard¶ of review, concluding merely that the court could not “reject as unfounded”¶ the military’s claim of necessity.35 Many lower federal courts simply refused¶ to review the validity of actions taken during a national security emergency.36¶ To the extent that the courts reviewed the exercise of emergency powers, they¶ read Congress’ delegations broadly and upheld executive authority.37

Even the bright spot in judicial restriction of executive emergency power—¶ Youngstown Sheet and Tube Co. v. Sawyer—had the effect of muddying the line between emergency and non-emergency power. Although advocates of¶ congressional authority look to Youngstown’s invalidation of the President’s¶ seizure of the steel mills as the basis for imposing limits on executive authority,¶ 39 the decision contains the seeds for an expansion of the President’s¶ emergency power. The legal realist perspective of the concurrences of Justice¶ Jackson and Justice Frankfurter, rather than the formalism of Justice Black’s¶ majority opinion, now dominates the national security establishment’s view¶ of the Constitution.40 By emphasizing fluid constitutional arrangements between Congress and the President instead of the fixed liberal dichotomies¶ bounding executive power, the legal realist approach to the Constitution and¶ foreign affairs has effectively supported the extension of executive emergency authority.41 The Burger and Rehnquist courts have subsequently utilized¶ Youngstown to uphold broad assertions of executive power.42¶ Not until the 1970s, after the disaster in Vietnam and the Watergate scandal,¶ did Congress move to terminate the ongoing national emergency that had¶ existed since 1950 and to control executive emergency powers. The Church¶ Committee and a host of other congressional committees detailed the innumerable¶ abuses that had been committed under the guise of emergency or war¶ authority.43 These committees criticized the ongoing, virtually permanent¶ emergency, which like Old Man River in the musical Showboat, kept on¶ rolling along.44 Congress enacted a number of reform statutes—the War Powers¶ Resolution in 1973,45 the National Emergencies Act in 1976, which terminated¶ all emergency authority based on the past presidential declarations of¶ emergency, 46 and the International Emergency Economic Powers Act.47 Post¶ Watergate presidents have unfortunately sought to evade the structures of¶ these statutes limiting executive authority, and neither Congress nor the¶ courts have vigorously enforced them.

**CP**

#### Seen as the decisive voice of America, even if Congress hasn’t signed on

Zbigniew Brzezinski, national security advisor under U.S. President Jimmy Carter, 12/3/12, Obama's Moment, www.foreignpolicy.com/articles/2012/12/03/obamas\_moment

In foreign affairs, the central challenge now facing President Barack Obama is how to regain some of the ground lost in recent years in shaping U.S. national security policy. Historically and politically, in America's system of separation of powers, it is the president who has the greatest leeway for decisive action in foreign affairs. He is viewed by the country as responsible for Americans' safety in an increasingly turbulent world. He is seen as the ultimate definer of the goals that the United States should pursue through its diplomacy, economic leverage, and, if need be, military compulsion. And the world at large sees him -- for better or for worse -- as the authentic voice of America. To be sure, he is not a dictator. Congress has a voice. So does the public. And so do vested interests and foreign-policy lobbies. The congressional role in declaring war is especially important not when the United States is the victim of an attack, but when the United States is planning to wage war abroad. Because America is a democracy, public support for presidential foreign-policy decisions is essential. But no one in the government or outside it can match the president's authoritative voice when he speaks and then decisively acts for America. This is true even in the face of determined opposition. Even when some lobbies succeed in gaining congressional support for their particular foreign clients in defiance of the president, for instance, many congressional signatories still quietly convey to the White House their readiness to support the president if he stands firm for "the national interest." And a president who is willing to do so publicly, while skillfully cultivating friends and allies on Capitol Hill, can then establish such intimidating credibility that it is politically unwise to confront him. This is exactly what Obama needs to do now.

#### The president’s word is enough of a signal.

Kalb, 13– Marvin, Edward R. Murrow Professor of Practice (Emeritus), Kennedy School of Government, Harvard University (*The Road To War,* Brookings Institution Press, pp. 6-7 //Red)

**Words have consequence. Spoken by a president, they can often become American policy, with or without congressional approval.** **When a president** "**commits**" **the U**nited **S**tates **to a controversial course of action, he may be setting the nation on the road to war or on a road to reconciliation.** **In matters of national security, his powers have become awesome-his word decisive.** Who decides when we go to war? The president decides. As former national security adviser Zbigniew Brzezinski told me, it "all depends" on the president. "It's his call.” Likewise, it is his decision when and whether, and under what conditions, to support a friendly nation.

#### Comparative evidence proves that it sets a precedent.

Atkinson 2013 – JD NYU, National Security Division, Department of Justice (L. Rush, Vanderbilt Law Review, forthcoming issue, “The Fourth Amendment’s National Security Exception”, http://ssrn.com/abstract=2226404)

When identifying constitutional parameters for the executive, it is particularly instructive to look at historical moments when the executive is restrained. When congressional prohibition draws executive power to its “ebb,” for example, one can identify the executive’s core inextinguishable powers.47 Constitutional boundaries are similarly discernible in some cases where the executive branch **limits its own** conduct. Specifically, the executive’s self-restraint is precedential when it stems from a sense of constitutional obligation.48 Such fealty towards the Constitution might be **unprompted by judicial command or legislative action**, and there may be no record as obvious as a judicial opinion or legislative bill. Nevertheless, where a discernible opinio juris has shaped executive action, such legal opinion should be considered both for its persuasive power and a historical understanding about what protections the Constitution establishes.49

#### Executive orders key to executive power – executive orders are key to presidential flexibility, control of their agenda, and shaping the political context

**Mayer 2001** (Kenneth R., Professor of political science at University of Wisconsin-Madison, With the Stroke of a Pen, p.28-29)

This theoretical perspective offered by the new institutional economics literature provides a way of making sense of the wide range of executive orders issued over the years, and is the centerpiece of my approach. The common theme I find in significant executive orders is control: executive orders are an instrument of executive power that presidents have used to control policy, establish and maintain institutions, shape agendas, manage constituent relationships, and keep control of their political fate generally. 128 Within the boundaries set by statute or the Constitution, presidents have consistently used their executive power—often manifested in executive orders—to shape the institutional and political context in which they sit. There are, to be sure, limits on what presidents can do relying solely on executive orders and executive power, and presidents who push too far will find that Congress and the courts will push back. Yet the president retains significant legal, institutional, and political advantages that make executive authority a more powerful tool than scholars have thus far recognized. This emphasis on control allows for a longer-term view than that generally taken by informal approaches to presidential leadership. I conclude that presidents have used executive orders to alter the institutional and political contexts in which they operate. The effects of any one effort in this regard may not be immediately apparent, and in many cases presidents succeed only after following up on what their predecessors have done. In this respect I view presidential leadership as both strategic and dynamic, a perspective that brings into sharper relief the utility of executive power to the presidency. I also differ with Neustadt on this score, as he looks at how presidents can be tactically effective within a particular structure context over which they have no control.

#### Only a strong president is capable of rallying resources necessary to solve poverty

**Deans 2K** [Bob, “Will Global Tech Trends Make Presidents Less Important” Cox News Service Jan 23, Lexis]

As President Clinton prepares to deliver the State of the Union address Thursday, officially slipping into the twilight of his time in office, many believe the presidency itself might be on the wane. The White House, some say, perhaps even government itself, is losing its steam as an engine of influence, hopelessly outpaced by the thundering convergence of technology, borderless information flows and the rise of the global marketplace. Yet the U.S. presidency, long regarded as the most powerful institution in the world, arguably has assumed more authority and reach than at any time in its history. While no one can doubt the growing impact of the Internet, Silicon Valley and Wall Street on the daily lives of all Americans, only the president can rally truly global resources around American ideals to further the quest for equality and to combat the timeless ills of poverty and war. It is that unique ability to build and harness a worldwide consensus that is widening the circle of presidential power. ''The presidency will remain as important as it is or will become more important,'' predicted presidential scholar Michael Nelson, professor of political science at Rhodes College in Memphis, Tenn. The voice of all Americans The taproot of presidential power is the Constitution, which designates the chief executive, the only official elected in a national vote, as the sole representative of all the American people. That conferred authority reflects the state of the nation, and it would be hard to argue that any country in history has possessed the military, economic and political preeminence that this country now holds. And yet, the nation's greatest strength as a global power lies in its ability to build an international consensus around values and interests important to most Americans. On Clinton's watch, that ability has been almost constantly on display as he has patched together multinational responses to war in the Balkans, despotism in Haiti, economic crises in Mexico, Russia, Indonesia and South Korea, and natural disasters in Turkey and Venezuela. The institutions for putting together coalition-type action --- the United Nations, the North Atlantic Treaty Organization, the International Monetary Fund, the World Bank and the World Trade Organization among them --- are hardly tools of American policy. But the United States commands a dominant, in some cases decisive, position in each of those institutions. And it is the president, far more than Congress, who determines how the United States wants those institutions to be structured and to perform. ''Congress is a clunky institution of 535 people that can't negotiate as a unit with global corporations or entities,'' said Alan Ehrenhalt, editor of Governing magazine. ''It's the president who is capable of making deals with global institutions.'' It is the president, indeed, who appoints envoys to those institutions, negotiates the treaties that bind them and delivers the public and private counsel that helps guide them, leaving the indelible imprint of American priorities on every major initiative they undertake. ''That means, for example, that we can advance our interests in resolving ethnic conflicts, in helping address the problems of AIDS in Africa, of contributing to the world's economic development, of promoting human rights, '' said Emory University's Robert Pastor, editor of a new book, ''A Century's Journey,'' that elaborates on the theme.

#### Poverty is a form of structural violence that outweighs global nuclear war.

James **Gilligan,** Department of Psychiatry at Harvard Medical School**, 2000** edition, Violence: Reflections on Our Deadliest Epidemic, p. 195-196

The 14 to 18 million deaths a year caused by structural violence compare with about 100,000 deaths per year from armed conflict. Comparing this frequency of deaths from structural violence to the frequency of those caused by major military and political violence, such as World War II (an estimated 49 million military and civilian deaths, including those caused by genocide--or about eight million per year, 1935-1945), the Indonesian massacre of 1965-1966 (perhaps 575,000 deaths), the Vietnam war (possibly two million, 1954-1973), and even a hypothetical nuclear exchange between the U.S. and the U.S.S.R (232 million), it was clear that even war cannot begin to compare with structural violence, which continues year after year. In other word, every fifteen years, on the average, as many people die because of relative poverty as would be killed in a nuclear war that caused 232 million deaths; and every single year, two to three times as many people die from poverty throughout the world as were killed by the Nazi genocide of the Jews over a six-year period. This is, in effect, the equivalent of an ongoing, unending, in fact accelerating, thermonuclear war, or genocide, perpetrated on the weak and poor every year of every decade, throughout the world.

# 1NR Round 2

### PQD

### Overview

#### Disad outweighs the aff – violating the political question doctrine collapses status quo climate negotiations which is key to prevent us from going over the tipping point – outweighs on TF.

#### **Extinction outweighs – it’s irreversible.**

Anissimov 4

[Michael Anissimov, science and technology writer focusing specializing in futurism, founding director of the Immortality Institute—a non-profit organization focused on the abolition of nonconsensual death, member of the World Transhumanist Association, associate of the Institute for Accelerating Change, member of the Center for Responsible Nanotechnology's Global Task Force, 2004, “Immortalist Utilitarianism,” *Accelerating Future*, May, Available Online at http://www.acceleratingfuture.com/michael/works/immethics.htm, Accessed 09-09-2011]

They fear social ostracization if they focus on "Doomsday scenarios" rather than traditional extension.¶ Those are my guesses. Immortalists with objections are free to send in their arguments, and I will post them here if they are especially strong. As far as I can tell however, the predicted utility of lowering the likelihood of existential risk outclasses any life extension effort I can imagine.¶ I cannot emphasize this enough. If a existential disaster occurs, not only will the possibilities of extreme life extension, sophisticated nanotechnology, intelligence enhancement, and space expansion never bear fruit, but everyone will be dead, never to come back. Because the we have so much to lose, existential risk is worth worrying about even if our estimated probability of occurrence is extremely low.¶ It is not the funding of life extension research projects that immortalists should be focusing on. It should be projects that decrease the risk of existential risk. By default, once the probability of existential risk is minimized, life extension technologies can be developed and applied. There are powerful economic and social imperatives in that direction, but few towards risk management. Existential risk creates a "loafer problem" — we always expect someone else to take care of it. I assert that this is a dangerous strategy and should be discarded in favor of making prevention of such risks a central focus.

#### Solves the aff - Taking action against warming represents an opportunity to reform status quo politics for a more just society.

Smith ‘10 (Brendan, co-founder of Labor Network for Sustainability, 11-23, “Fighting Doom: The New Politics of Climate Change,” Common Dreams, <http://www.commondreams.org/view/2010/11/23-1>)

I admit I have arrived late to the party. Only recently have I begun to realize what others have known for decades: The climate crisis is not, at its core, an environmental issue. In fact it is not an "issue" at all; it is an existential threat to every human and community on the planet. It threatens every job, every economy in the world. It threatens the health of our children. It threatens our food and water supply. Climate change will continue to alter the world our species has known for the past three thousand years. As an oyster farmer and longtime political activist, the effects of climate change on my life will be neither distant nor impersonal. Rising greenhouse gases and ocean temperatures may well force me to abandon my 60-acre farm within the next forty years. From France to Washington state, oystermen are already seeing massive die-offs of seed oysters and the thinning shells science has long predicted. I can see the storm clouds and they are foretelling doom. But my political alter ego is oddly less pessimistic. Rather than triggering gloom, the climate crisis has surprisingly stirred up more hope than I have felt in twenty years as a progressive activist. After decades of progressive retreat it is a strange feeling. But I am haunted by the suspicion that this coming crisis may be the first opportunity we have had in generations to radically re-shape the political landscape and build a more just and sustainable society. The Power of Doom The modern progressive movement in the U.S. has traditionally grounded its organizing in the politics of identity and altruism. Organize an affected group -- minorities, gays, janitors or women -- and then ask the public at large to support the cause -- prison reform, gay marriage, labor rights, or abortion -- based on some cocktail of good will, liberal guilt, and moral persuasion. This strategy has been effective at times. But we have failed to bring these mini-movements together into a force powerful enough to enact broad-based social reform. It takes a lot of people to change society and our current strategy has left us small in numbers and weak in power. The highlights of my political life -- as opposed to oystering -- have been marked by winning narrow, often temporary, battles, but perennially losing the larger war. I see the results in every direction I look: growing poverty and unemployment, two wars, the rise of the right, declining unionization, the failure of the Senate's climate legislation and of Copenhagen, the wholesale domination of corporate interests. The list goes on and on. We have lost; it's time to admit our strategy has been too tepid and begin charting anew. This time can be different. What is so promising about the climate crisis is that because it is not an "issue" experienced by one disenfranchised segment of the population, it opens the opportunity for a new organizing calculus for progressives. Except for nuclear annihilation, humanity has never faced so universal a threat where all our futures are bound inextricably together. This universality provides the mortar of common interest required for movement building. We could literally knock on every door on the planet and find someone -- whether they know it or not -- who has a vital self-interest in averting the climate crisis by joining a movement for sustainability. With all of humanity facing doom, we can finally gather under one banner and count our future members not in the thousands but in the millions, even billions. But as former White House "Green Jobs Czar" Van Jones told the New Yorker in 2009, "The challenge is making this an everybody movement, so your main icons are Joe Six-Pack, Joe the Plumber, becoming Joe the Solar Guy, or that kid on the street corner putting down his handgun, picking up a caulk gun." The climate crisis is carrying us into uncharted waters and our political strategy needs to be directed toward making the climate movement an "everybody movement." Let me use a personal example. As an oysterman on Long Island Sound my way of life is threatened by rising greenhouse gases and ocean temperatures. If the climate crisis is not averted my oysters will die and my farm will be shuttered. Saving my livelihood requires that I politically engage at some level. Normally I would gather together my fellow oyster farmers to lobby state and federal officials and hold a protest or two. Maybe I would find a few coalitions to join. But we would remain small in number, wield little power, and our complaints about job loss would fall on largely unsympathetic ears in the face of so many suffering in so many ways. And what would we even petition our government to do about the problem? Buyouts and unemployment benefits? Re-training classes? Our oysters will still die and we will still lose our farms. To save our lives and livelihood we need to burrow down to the root of the problem: halting greenhouse gas emissions. And halting emissions requires joining a movement with the requisite power to dismantle the fossil fuel economy while building a green economy. To tackle such a large target requires my support for every nook and cranny effort to halt greenhouse gases and transition to a green economy. I need to gather up my fellow oyster farmers and link arms with students blocking new coal-fired power plants while fighting for just transition for coal workers; I need to join forces with other green workers around the country to demand government funding for green energy jobs, not more bank and corporate bailouts; I need to support labor movement efforts in China and elsewhere to climb out of poverty by going "green not dirty." I have a stake in these disparate battles not out of political altruism, but because my livelihood and community depend on stopping greenhouse gases and climate change. In other words, the hidden jewel of the climate crisis is that I need others and others need me. We are bound together by the same story of crisis and struggle. Some in the sustainability movement have been taking advantage of the "power of doom" by weaving together novel narratives and alliances around climate change. Groups in Kentucky are complementing their anti-mountain top removal efforts by organizing members of rural electrical co-ops into "New Power" campaigns to force a transition from fossil fuels to renewable power -- and create jobs in the process. Police unions in Canada, recognizing their members will be first responders as climate disasters hit, have reached out to unions in New Orleans to ensure the tragedies that followed Katrina are not repeated. Artists, chefs, farmers, bike mechanics, designers, and others are coalescing into a "green artisan movement" focused on building vibrant sustainable communities. Immigrant organizers, worried about the very real possibility of ever-worsening racial tensions triggered by millions of environmental refugees flooding in from neighboring countries, are educating their membership about why the climate crisis matters. My hope is that over the coming years we will be able to catalog increasing numbers of these tributaries of the climate crisis. Our power will not stem from a long list of issue concerns or sponsors at events -- we have tried that as recently as the October 2nd Washington D.C. "One Nation Working Together" march with little impact. Nor, with the rise of do-it-yourself organizing, will our power spring from top-down political parties of decades past. Instead oystermen like me, driven by the need to save our lives and livelihood, will storm the barricades with others facing the effects of the climate crisis. We will merge our mini-movements under a banner of common crisis, common vision and common struggle. We will be in this fight together and emerge as force not to be trifled with. This Time We Have an Alternative I am also guardedly optimistic because this time we have an alternative. My generation came of age after the fall of communism, and as a result, we have been raised in the midst of one-sided debate. We recognize that neoliberalism has ravaged society, but besides nostalgic calls for socialism, what has been the alternative? As globalization swept the globe, we demanded livable wages and better housing for the poorest in our communities; we fought sweatshops in China; we lobbied for new campaign finance and corporate governance laws. But these are mere patchwork reforms that fail to add up to a full-blown alternative to our current anti-government, free-market system. Never being able to fully picture the progressive alternative left me not fully trusting that progressive answers were viable solutions. But when I hear the proposed solutions to the climate crisis, the fog lifts. I can track the logic and envision the machinery of our alternative. And it sounds surprisingly like a common sense rebuttal to the current free-market mayhem: We face a global emergency of catastrophic proportions. Market fundamentalism will worsen rather than solve the crisis. Instead we need to re-direct our institutions and economic resources toward solving the crisis by replacing our carbon-based economy with a green sustainable economy. And by definition, for an economy to be sustainable it must addresses the longstanding suffering ordinary people face in their lives, ranging from unemployment and poverty to housing and healthcare. For years I have tossed from campaign to campaign, but the framework of our new progressive answer to the climate crisis now provides a roadmap for my political strategy. It helps chart my opponents -- coal companies and their political minions, for example -- as well as my diverse range of allies. It lays out my policy agenda, ranging from creating millions of new green jobs to building affordable green housing in low-income communities. I finally feel confident enough in my bearings to set sail. The Era of Crisis Politics While building a new green economy makes sense on paper, it is hard to imagine our entrenched political system yielding even modest progressive reform, let alone the wholesale re-formatting of the carbon economy. But I suspect this will change in the coming years, with our future governed by cascading political crises, rather than political stasis. We are likely entering an era of crisis politics whereby each escalating environmental disaster -- ranging from water shortages and hurricanes to wildfires and disease outbreaks -- will expose the impotence of our existing political institutions and economic system. In the next 40 years alone, scientists predict a state of permanent drought throughout the Southwest US and climate-linked disease deaths to double. As Danny Thompson, secretary-treasurer of the Nevada AFL-CIO, told the Las Vegas Review Journal, the ever-worsening water crisis could be "the end of the world" that could "turn us upside down, and I don't know how you recover from that." As if that is not enough, these crises will be played out in the context of a global economy spiraling out of control. Each hurricane, drought or recession will send opinion polls and politicians lurching from right to left and vice versa. Think of how quickly, however momentarily, the political debate pivoted in the wake of Katrina, the BP disaster, and the financial crisis. As White House chief of staff Rahm Emanuel famously said "Never let a serious crisis go to waste...It's an opportunity to do things you couldn't do before." While addressing the climate crisis requires radical solutions that cannot be broached in today's political climate, each disaster opens an opportunity to advance alternative agendas -- both for the left and right. While politicians debate modest technical fixes, ordinary people left desperate by floods, fires, droughts and other disasters will increasingly -- and angrily -- demand more fundamental reforms. While our current policy choices appear limited by polls and election results, in an era of crisis politics what appears unrealistic and radical before a storm may well appear as common sense reform in its wake. My generation has been raised in the politics of eternal dusk. Except for a passing ray of hope during the Obama campaign, our years have been marked by the failure of every political force in society -- whether it be political elites or social movement leaders -- to address the problems we face as a nation and world. They have left us spinning towards disaster. We can forge a better future. Climate-generated disasters will bring our doomed future into focus. The failure of political elites to adequately respond to these cascading crises will transform our political landscape and seed the ground for social movements. And if we prepare for the chaos and long battle ahead, our alternative vision will become a necessity rather than an impossibility. As a friend recently said to me, "God help us, I hope you're right."

### Link

#### The president won’t comply with the plan.

Druck 2012 (Judah A. Druck, B.A., Brandeis University, 2010; J.D. Candidate, Cornell Law School, 2013, “DRONING ON: THE WAR POWERS RESOLUTION AND THE NUMBING EFFECT OF TECHNOLOGY-DRIVEN WARFARE,” Cornell Law Review, Vol. 98:209, http://www.lawschool.cornell.edu/research/cornell-law-review/upload/Druck-final.pdf)

By now, the general pattern concerning presidential treatment of¶ the WPR should be clear: when faced with a situation in which the¶ WPR should, by its own terms, come into play, presidents circumvent¶ its application by proffering questionable legal analyses. Yet, as was¶ frequently the case following the aforementioned presidential actions,¶ those looking to the courts for support were disappointed to learn¶ that the judiciary would be of little help. Indeed, congressional and¶ private litigants have similarly been unsuccessful in their efforts to¶ check potentially illegal presidential action.52¶ The suits arising out of possible WPR violations are well-documented53 and therefore only require a brief review. Generally, when¶ faced with a question concerning the legality of presidential military¶ action, courts have punted the issue using a number of procedural¶ tools to avoid ruling on the merits. For example, when twenty-nine¶ representatives filed suit after President Reagan’s possible WPR violation in El Salvador, the U.S. District Court for the District of Columbia¶ dismissed the suit on political question grounds.54 Similar suits were¶ dismissed for issues involving standing,55 mootness,56 ripeness,57 or¶ nonjusticiability because Congress could better handle fact-finding.58¶ Despite the varying grounds for dismissing WPR suits, a general theme¶ has emerged: absent action taken by Congress itself, the judiciary cannot be counted on to step in to check the President.¶ To be sure, the judiciary’s unwillingness to review cases arising¶ from WPR disputes arguably carries some merit. Two examples illus- trate this point. First, although a serviceperson ordered into combat¶ might have standing to sue, congressional standing is less clear.59 Indeed, debates rage throughout war powers literature concerning¶ whether congressional suits should even be heard on their merits.60¶ And though some courts have held that a member of Congress can¶ have standing when a President acts unilaterally, holding that such¶ unauthorized actions amount to “disenfranchisement,”61 subsequent¶ decisions and commentators have thrown the entire realm of legislative standing into doubt.62 Though the merits of this debate are beyond the scope of this Note, it is sufficient to emphasize that a¶ member of Congress arguably suffers an injury when a President violates the WPR because the presidential action prevents the congressperson from being able to vote (namely, on whether to authorize¶ hostilities),63 thereby amounting to disenfranchisement by¶ “preclu[ding] . . . a specific vote . . . by a presidential violation of¶ law . . . .”64 As such, under the right circumstances, perhaps the standing doctrine should not be as problematic as history seems to indicate¶ when a congressperson attempting to have a say on military action¶ brings a WPR suit.¶ Secondly, and perhaps more importantly, it is arguably unclear¶ what, if any, remedy is available to potential litigants. Unlike a private¶ lawsuit, where a court can impose a simple fine or jail sentence, suits¶ against the executive branch carry a myriad of practical issues. For¶ example, if the remedy is an injunction, issues concerning enforcement arise: Who enforces it and how?65 Or, if a court makes a declaratory judgment stating that the President has acted illegally, it might¶ invite open defiance, thereby creating unprecedented strife among¶ branches. Yet, a number of possible remedies are indeed available.¶ For one, courts could simply start the WPR clock, requiring a Presi- dent to either seek congressional approval or cease all actions within¶ the time remaining (depending on whether the court starts the clock¶ from the beginning or applies it retroactively).66 In doing so, a court¶ would trigger the WPR in the same way that Congress would have had¶ it acted alone. On a similar note, a court could declare the relevant¶ military conflict illegal under the WPR, thereby inviting Congress to¶ begin impeachment proceedings.67 Although both cases require¶ some level of congressional involvement, a court could at least begin¶ the process of providing a suitable remedy. Thus, the more questionable issues of standing and remedies should not (under the right circumstances) prevent a WPR suit from moving forward.

### UQ

#### Deference is high now – courts trust the other branches more.

Virelli, 13

(LJ, Associate Professor of Law, Stetson University College of Law, March 26, "Judicial Deference to Congress and the Separation of Powers", [www.uiowa.edu/~ilr/bulletin/ILRB\_98\_Virelli.pdf](http://www.uiowa.edu/~ilr/bulletin/ILRB_98_Virelli.pdf))

In his article Deference Determinations and Stealth Constitutional Decision ¶ Making, Professor Eric Berger offers a characteristically rigorous and ¶ thought-provoking look at federal courts’ “deference determinations”—¶ decisions whether to defer to the judgment of the political branches—in ¶ constitutional cases.1¶ He describes these deference determinations as a form ¶ of “stealth” decision making that “rivals that of substantive black-letter ¶ doctrine”2¶ in deciding the outcome of constitutional questions, yet “in ¶ important ways lack[s] the predictability, transparency, and rigor generally ¶ associated with law.”3¶ More specifically, Professor Berger outlines four situations in which ¶ courts claim to defer to the political branches for institutional reasons—factfinding, exercises of epistemic authority, exercises of political authority, and ¶ special governmental institutions and contexts—and identifies significant ¶ questions regarding the justifications for deference in each case.4¶ He ¶ ultimately concludes, at least in part, that a “deference determination[] ¶ should be more closely tied to the political branches’ actual behavior”5¶ rather than to “pithy platitudes” about relative institutional competencies.6¶ He encourages courts to pay greater attention in their deference determinations to the “care and rigor” of the procedures employed by the ¶ political branches in the case at hand.7

#### Court deference is at an all-time high --- most recent cases prove

George D. Brown 11, Interim Dean and Robert F. Drinan, S.l., Professor of Law, Boston College Law School, 1/7/11, “Accountability, Liability, and the War on Terror -- Constitutional Tort Suits as Truth and Reconciliation Vehicles,” Florida Law Review, <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1337&context=lsfp>

Still, the notion of national security deference is deeply ingrained in our constitutional tradition. Its institutional foundations make sense, as ably demonstrated by Professor Pushaw.415 The question that arises is whether things have changed with the Court's decisions in a series of "enemy combatant" cases since the onset ofthe war on terror.416 These cases have arisen in the context of petitions for habeas corpus. The Court, as Professor Pushaw puts it, "interpreted the habeas corpus statute generously,'.417 even to the point of distortion.418 On the other hand, the substantive results represented a mixed bag of defects and victories for the President. "[T]hese three cases did not necessarily signal a major shift in the Court's jurisprudence in which individual liberties will be upheld vigorously against executive claims of national security.'.419 Professor Pushaw wrote these words before Boumediene v. Bush,420 in which the Court took on both political branches. Boumediene, far more than its immediate predecessors, might be seen as the case that broke the back of national security deference.421 The majority opinion emphasized the judiciary's Marburybased role as the branch that says "what the law is,' 22 echoing its earlier statement in Hamdi v. Rumsfeld that the Constitution "most assuredly envisions a role for all three branches when individual liberties are at stake. ,.424 ¶ On the other hand, it is possible to see Boumediene as resting primarily on the key role of habeas corpus. The Court proclaimed the writ's "centrality," noting that "protection for the privilege of habeas corpus was one of the few safeguards of liberty specified in a Constitution that, at the outset, had no Bill of Rights. ,.425 I have raised elsewhere the argument that one should not extrapolate too far from the habeas cases, even if they are viewed as an assertion of the judicial role.426 Habeas raises the fundamental question of the lawfulness of executive detention and often presents the judiciary with familiar issues of the validity of procedures. Reverse war on terror suits would take the courts much further. ¶ Certainly, the Court's two most recent war on terror decisions show a reluctance to go further and may even constitute a retrenchment. The importance of Ashcroft v. I{lbar27 has already been noted. Holder v. Humanitarian Law Project's points in the same direction. Holder upheld a criminal statute that is a crucial component of the war on terror.429 It did so in the face of a vigorous First Amendment challenge, supported by three Justices.43o Both cases show deference toward the government and appreciation of the difficulties of waging the war on terror. Iqbal noted that "the Nation's top law enforcement officers [were acting] in the aftermath of a devastating terrorist attack .... ,.431 Holder's language is even stronger. The Court stated explicitly that deference was appropriate because "[t]his litigation implicates sensitive and weighty interests of national security and foreign affairs.'.432 Indeed, the opinion went further endorsing the preventive approach to counterterrorism and recognizing the government's need to often act "based on informed judgment rather than concrete evidence.'.433 In perhaps the ultimate demonstration of the importance of rhetoric, the Court's opinion closed with a citation of the Preamble to the Constitution and its recognition of the need to provide '''for the common defence [sic].".434 Iqbal and Holder stand in stark contrast to the habeas decisions of a few years earlier.

#### The President has complete discretion --- Courts have struck down injunctions on ID. Proves rollback.

Thomas Eddlem 7/19/13, writer for The New American, “ NDAA Indefinite Detention Without Trial Approved by Appeals Court,” http://www.thenewamerican.com/usnews/constitution/item/16026-ndaa-indefinite-detention-without-trial-approved-by-appeals-court

The U.S. Court of Appeals for the Second District struck down an injunction against indefinite detention of U.S. citizens by the president under the National Defense Authorization Act of 2012 in a July 17 ruling that is a blow to civil liberties protected by the U.S. Constitution. The appellate court ruled:¶ Plaintiffs lack standing to seek preenforcement review of Section 1021 and vacate the permanent injunction. The American citizen plaintiffs lack standing because Section 1021 says nothing at all about the President’s authority to detain American citizens.¶ The Section 1021 of the NDAA allows “detention under the law of war without trial until the end of the hostilities” for “a person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.” The court is technically correct in stating that the law does not specifically mention U.S. citizens when it uses the term “person,” but like the vaguely worded “supported such hostilities in aid of such enemy forces,” it appears to be all-encompassing and subject solely to the president's discretionary whims.

### Consequences

#### Have to judge based on consequences.

**Gvosdev 5** – Rhodes scholar, PhD from St. Antony’s College, executive editor of The National Interest (Nikolas, The Value(s) of Realism, SAIS Review 25.1, pmuse,)

As the name implies, realists focus on promoting policies that are achievable and sustainable. In turn, **the morality of a** foreign **policy** action **is judged by its results, not** by the **intentions** of its framers. **A** foreign **policymaker must weigh the consequences of any** course of **action and assess the resources at hand** to carry out the proposed task. As Lippmann warned, Without the controlling principle that the nation must maintain its objectives and its power in equilibrium, its purposes within its means and its means equal to its purposes, its commitments related to its resources and its resources adequate to its commitments, it is impossible to think at all about foreign affairs.8 Commenting on this maxim, Owen Harries, founding editor of The National Interest, noted, "This is a truth of which Americans—more apt to focus on ends rather than means when it comes to dealing with the rest of the world—need always to be reminded."9 In fact, Morgenthau noted that "there can be no political morality without prudence."10 This virtue of prudence—which Morgenthau identified as the cornerstone of realism—should not be confused with expediency. Rather, it takes as its starting point that **it is more moral** to fulfill one's commitments than to make "empty" promises, and **to seek solutions that minimize harm and produce sustainable results**. Morgenthau concluded: [End Page 18] Political realism does not require, nor does it condone, indifference to political ideals and moral principles, but it requires indeed a sharp distinction between the desirable and the possible, between what is desirable everywhere and at all times and what is possible **under the** concrete circumstances of time and place.11 This is why, prior to the outbreak of fighting in the former Yugoslavia, U.S. and European realists urged that Bosnia be decentralized and partitioned into ethnically based cantons as a way to head off a destructive civil war. Realists felt this would be the best course of action, especially after the country's first free and fair elections had brought nationalist candidates to power at the expense of those calling for inter-ethnic cooperation. They had concluded—correctly, as it turned out—that the United States and Western Europe would be unwilling to invest the blood and treasure that would be required to craft a unitary Bosnian state and give it the wherewithal to function. Indeed, at a diplomatic conference in Lisbon in March 1992, the various factions in Bosnia had, reluctantly, endorsed the broad outlines of such a settlement. For the purveyors of moralpolitik, this was unacceptable. After all, for this plan to work, populations on the "wrong side" of the line would have to be transferred and resettled. Such a plan struck directly at the heart of the concept of multi-ethnicity—that different ethnic and religious groups could find a common political identity and work in common institutions. When the United States signaled it would not accept such a settlement, the fragile consensus collapsed. The United States, of course, cannot be held responsible for the war; this lies squarely on the shoulders of Bosnia's political leaders. Yet Washington fell victim to what Jonathan Clarke called "faux Wilsonianism," **the belief that** "high-flown **words matter more than rational calculation" in formulating** effective **policy**, which **led U.S**. policymakers **to dispense with** the equation of "**balancing commitments and resources**."12 Indeed, as he notes, the **Clinton** administration had **criticized peace plans calling for** decentralized **partition in Bosnia "with lofty rhetoric without proposing a practical alternative." The subsequent war led to the deaths of** tens of **thousands** and left more than a million people homeless. After three years of war, the Dayton Accords—hailed as a triumph of American diplomacy—created a complicated arrangement by which the federal union of two ethnic units, the Muslim-Croat Federation, was itself federated to a Bosnian Serb republic. Today, Bosnia requires thousands of foreign troops to patrol its internal borders and billions of dollars in foreign aid to keep its government and economy functioning. Was the aim of U.S. policymakers, academics and journalists—creating a multi-ethnic democracy in Bosnia—not worth pursuing? No, not at all, and this is not what the argument suggests. But aspirations were not matched with capabilities. **As a result of holding out for the "most moral" outcome** and encouraging the Muslim-led government in Sarajevo to pursue maximalist aims **rather than finding a workable compromise that could have avoided bloodshed** and produced more stable conditions, the peoples of **Bosnia suffered greatly**. In the end, the final settlement was very close [End Page 19] to the one that realists had initially proposed—and the one that had also been roundly condemned on moral grounds**.**

### Too Late

#### Not too late - we must act quickly with long term technological innovation to avoid the irreversible climate change triggered by 2°C.

Peters, et al. 12(Glen (Center for International Climate and Environmental Research – Oslo); Robbie Andrew (Center for International Climate and Environmental Research – Oslo); Tom Boden (Carbon Dioxide Information Analysis Center (CDIAC), Oak Ridge National Laboratory); Josep Canadell (Global Carbon Project, CSIRO Marine and Atmospheric Research, Canberra, Australia); Philippe Ciais (Laboratoire des Sciences du Climat et de l’Environnement, Gif sur Yvette, France); Corinne Le Quéré (Tyndall Centre for Climate Change Research, University of East Anglia, Norwich, UK); Gregg Marland (Research Institute for Environment, Energy, and Economics, Appalachian State University); Michael R. Raupach (Global Carbon Project, CSIRO Marine and Atmospheric Research, Canberra, Australia); and Charlie Wilson (Tyndall Centre for Climate Change Research, University of East Anglia, Norwich, UK), “The challenge to keep global warming below 2 °C”, Nature Climate Change, 12-2-12, RSR)

It is important to regularly re-assess the relevance of emissions scenarios in light of changing global circumstances3,8. In the past, decadal trends in CO2 emissions have responded slowly to changes in the underlying emission drivers because of inertia and path dependence in technical, social and political systems9. Inertia and path dependence are unlikely to be affected by short-term fluctuations2,3,9 — such as financial crises10 — and it is probable that emissions will continue to rise for a period even after global mitigation has started11. Thermal inertia and vertical mixing in the ocean, also delay the temperature response to CO2 emissions12. Because of inertia, path dependence and changing global circumstances, there is value in comparing observed decadal emission trends with emission scenarios to help inform the prospect of different futures being realized, explore the feasibility of desired changes in the current emission trajectory and help to identify whether new scenarios may be needed. Global CO2 emissions have increased from 6.1±0.3 Pg C in 1990 to 9.5±0.5 Pg C in 2011 (3% over 2010), with average annual growth rates of 1.9% per year in the 1980s, 1.0% per year in the 1990s, and 3.1% per year since 2000. We estimate that emissions in 2012 will be 9.7±0.5 Pg C or 2.6% above 2011 (range of 1.9–3.5%) and 58% greater than 1990 (Supplementary Information and ref. 13). The observed growth rates are at the top end of all four generations of emissions scenarios (Figs 1 and 2). Of the previous illustrative IPCC scenarios, only IS92-E, IS92-F and SRES A1B exceed the observed emissions (Fig. 1) or their rates of growth (Fig. 2), with RCP8.5 lower but within uncertainty bounds of observed emissions. Observed emission trends are in line with SA90-A, IS92-E and IS92-F, SRES A1FI, A1B and A2, and RCP8.5 (Fig. 2). The SRES scenarios A1FI and A2 and RCP8.5 lead to the highest temperature projections among the scenarios, with a mean temperature increase of 4.2–5.0 °C in 2100 (range of 3.5–6.2 °C)14, whereas the SRES A1B scenario has decreasing emissions after 2050 leading to a lower temperature increase of 3.5 °C (range 2.9–4.4°C)14. Earlier research has noted that observed emissions have tracked the upper SRES scenarios15,16 and Fig. 1 confirms this for all four scenario generations. This indicates that the space of possible pathways could be extended above the top-end scenarios to accommodate the possibility of even higher emission rates in the future. The new RCPs are particularly relevant because, in contrast to the earlier scenarios, mitigation efforts consistent with longterm policy objectives are included among the pathways2,. RCP3-PD (peak and decline in concentration) leads to a mean temperature increase of 1.5 °C in 2100 (range of 1.3–1.9 °C)14. RCP3–PD requires net negative emissions (for example, bioenergy with carbon capture and storage) from 2070, but some scenarios suggest it is possible to stay below 2 °C without negative emissions17–19. RCP4.5 and RCP6 — which lie between RCP3–PD and RCP8.5 in the longer term — lead to a mean temperature increase of 2.4 °C (range of 1.0–3.0 °C) and 3.0 °C (range of 2.6–3.7 °C) in 2100, respectively14. For RCP4.5, RCP6 and RCP8.5, temperatures will continue to increase after 2100 due to on-going emissions14 and inertia in the climate system12. Current emissions are tracking slightly above RCP8.5, and given the growing gap between the other RCPs (Fig. 1), significant emission reductions are needed by 2020 to keep 2 °C as a feasible goal18–20. To follow an emission trend that can keep the temperature increase below 2 °C (RCP3-PD) requires sustained global CO2 mitigation rates of around 3% per year, if global emissions peak before 202011,19. A delay in starting mitigation activities will lead to higher mitigation rates11, higher costs21,22, and the target of remaining below 2 °C may become unfeasible18,20. If participation is low, then higher rates of mitigation are needed in individual countries, and this may even increase mitigation costs for all countries22. Many of these rates assume that negative emissions will be possible and affordable later this century11,17,18,20. Reliance on negative emissions has high risks because of potential delays or failure in the development and large-scale deployment of emerging technologies such as carbon capture and storage, particularly those connected to bioenergy17,18. Although current emissions are tracking the higher scenarios, it is still possible to transition towards pathways consistent with keeping temperatures below 2 °C (refs 17,19,20). The historical record shows that some countries have reduced CO2 emissions over 10-year periods, through a combination of (non-climate) policy intervention and economic adjustments to changing resource availability. The oil crisis of 1973 led to new policies on energy supply and energy savings, which produced a decrease in the share of fossil fuels (oil shifted to nuclear) in the energy supply of Belgium, France and Sweden, with emission reductions of 4–5% per year sustained over 10 or more years (Supplementary Figs S17–19). A continuous shift to natural gas — partially substituting coal and oil — led to sustained mitigation rates of 1–2% per year in the UK in the 1970s and again in the 2000s, 2% per year in Denmark in the 1990–2000s, and 1.4% per year since 2005 in the USA (Supplementary Figs S10–12). These examples highlight the practical feasibility of emission reductions through fuel substitution and efficiency improvements, but additional factors such as carbon leakage23 need to be considered. These types of emission reduction can help initiate a transition towards trajectories consistent with keeping temperatures below 2 °C, but further mitigation measures are needed to complete and sustain the reductions. Similar energy transitions could be encouraged and co-ordinated across countries in the next 10 years using available technologies19, but well-targeted technological innovations24 are required to sustain the mitigation rates for longer periods17. To move below the RCP8.5 scenario — avoiding the worst climate impacts — requires early action17,18,21 and sustained mitigation from the largest emitters22 such as China, the United States, the European Union and India. These four regions together account for over half of global CO2 emissions, and have strong and centralized governing bodies capable of co-ordinating such actions. If similar energy transitions are repeated over many decades in a broader range of developed and emerging economies, the current emission trend could be pulled down to make RCP3‑PD, RCP4.5 and RCP6 all feasible futures. A shift to a pathway with the highest likelihood to remain below 2 °C above preindustrial levels (for example, RCP3-PD), requires high levels of technological, social and political innovations, and an increasing need to rely on net negative emissions in the future11,17,18. The timing of mitigation efforts needs to account for delayed responses in both CO2 emissions9 (because of inertia in technical, social and political systems) and also in global temperature12 (because of inertia in the climate system). Unless large and concerted global mitigation efforts are initiated soon, the goal of remaining below 2 °C will very soon become unachievable.

#### Every bit of emissions we cut can help us avoid passing 2C.

Nuccitelli, ‘12

[Dana, environmental scientist at a private environmental consulting firm, Bachelor's Degree in astrophysics from the University of California at Berkeley, and a Master's Degree in physics from the University of California at Davis, “Realistically What Might the Future Climate Look Like?,” http://www.skepticalscience.com/realistically-what-might-future-climate-look-like.html]

We're not yet committed to surpassing 2°C global warming, but as Watson noted, we are quickly running out of time to realistically give ourselves a chance to stay below that 'danger limit'. However, 2°C is not a do-or-die threshold. Every bit of CO2 emissions we can reduce means that much avoided future warming, which means that much avoided climate change impacts. As Lonnie Thompson noted, the more global warming we manage to mitigate, the less adaption and suffering we will be forced to cope with in the future. Realistically, based on the current political climate (which we will explore in another post next week), limiting global warming to 2°C is probably the best we can do. However, there is a big difference between 2°C and 3°C, between 3°C and 4°C, and anything greater than 4°C can probably accurately be described as catastrophic, since various tipping points are expected to be triggered at this level. Right now, we are on track for the catastrophic consequences (widespread coral mortality, mass extinctions, hundreds of millions of people adversely impacted by droughts, floods, heat waves, etc.). But we're not stuck on that track just yet, and we need to move ourselves as far off of it as possible by reducing our greenhouse gas emissions as soon and as much as possible.

### No Impact

#### Despite CO2 fertilization, massive rise of temperature due to warming causes food shortages —the result is extinction.

Strom 7 (Robert, Professor Emeritus of planetary sciences in the Department of Planetary Sciences at the University of Arizona, studied climate change for 15 years, the former Director of the Space Imagery Center, a NASA Regional Planetary Image Facility, “Hot House”, SpringerLink, p. 211-216)

 THE future consequences of global warming are the least known aspect of the problem. They are based on highly complex computer models that rely on inputs that are sometimes not well known or factors that may be completely unforeseen. Most models assume certain scenarios concerning the rise in greenhouse gases. Some assume that we continue to release them at the current rate of increase while others assume that we curtail greenhouse gas release to one degree or another. Furthermore, we are in completely unknown territory. The current greenhouse gas content of the atmosphere has not been as high in at least the past 650,000 years, and the rise in temperature has not been as rapid since civilization began some 10,000 years ago. What lies ahead for us is not completely understood, but it certainly will not be good, and it could be catastrophic. We know that relatively minor climatic events have had strong adverse effects on humanity, and some of these were mentioned in previous chapters. A recent example is the strong El Nin~o event of 1997-1998 that caused weather damage around the world totaling $100 billion: major flooding events in China, massive fires in Borneo and the Amazon jungle, and extreme drought in Mexico and Central America. That event was nothing compared to what lies in store for us in the future if we do nothing to curb global warming. We currently face the greatest threat to humanity since civilization began. This is the crucial, central question, but it is very difficult to answer (Mastrandea and Schneider, 2004). An even more important question is: "At what temperature and environmental conditions is a threshold crossed that leads to an abrupt and catastrophic climate change?'' It is not possible to answer that question now, but we must be aware that in our ignorance it could happen in the not too distant future. At least the question of a critical temperature is possible to estimate from studies in the current science literature. This has been done by the Potsdam Institute for Climate Impact Research, Germany's leading climate change research institute (Hare, 2005). According to this study, global warming impacts multiply and accelerate rapidly as the average global temperature rises. We are certainly beginning to see that now. According to the study, as the average global temperature anomaly rises to 1 °C within the next 25 years (it is already 0.6'C in the Northern Hemisphere), some specialized ecosystems become very stressed, and in some developing countries food production will begin a serious decline, water shortage problems will worsen, and there will be net losses in the gross domestic product (GDP). At least one study finds that because of the time lags between changes in radiative forcing we are in for a 1 °C increase before equilibrating even if the radiative forcing is fixed at today's level (Wetherald et al., 2001). It is apparently when the temperature anomaly reaches 2 °C that serious effects will start to come rapidly and with brute force (International Climate Change Taskforce, 2005). At the current rate of increase this is expected to happen sometime in the middle of this century. At that point there is nothing to do but try to adapt to the changes. Besides the loss of animal and plant species and the rapid exacerbation of our present problems, there are likely to be large numbers of hungry, diseased and starving people, and at least 1.5 billion people facing severe water shortages. GDP losses will be significant and the spread of diseases will be widespread (see below). We are only about 30 years away from the 440 ppm CO2 level where the eventual 2'C global average temperature is probable. When the temperature reaches 3 'C above today's level, the effects appear to become absolutely critical. At the current rate of greenhouse gas emission, that point is expected to be reached in the second half of the century. For example, it is expected that the Amazon rainforest will become irreversibly damaged leading to its collapse, and that the complete destruction of coral reefs will be widespread. As these things are already happening, this picture may be optimistic. As for humans, there will be widespread hunger and starvation with up to 5.5 billion people living in regions with large crop losses and another 3 billion people with serious water shortages. If the Amazon rainforest collapses due to severe drought it would result in decreased uptake of CO2 from the soil and vegetation of about 270 billion tons, resulting in an enormous increase in the atmospheric level of CO2. This, of course, would lead to even hotter temperatures with catastrophic results for civilization. A Regional Climate Change Index has been established that estimates the impact of global warming on various regions of the world (Giorgi, 2006). The index is based on four variables that include changes in surface temperature and precipitation in 2080-2099 compared to the period 1960-1979. All regions of the world are affected significantly, but some regions are much more vulnerable than others. The biggest impacts occur in the Mediterranean and northeastern European regions, followed by high-latitude Northern Hemisphere regions and Central America. Central America is the most affected tropical region followed by southern equatorial Africa and southeast Asia. Other prominent mid-latitude regions very vulnerable to global warming are eastern North America and central Asia. It is entirely obvious that we must start curtailing greenhouse gas emissions now, not 5 or 10 or 20 years from now. Keeping the global average temperature anomaly under 2'C will not be easy according to a recent report (Scientific Expert Group Report on Climate Change, 2007). It will require a rapid worldwide reduction in methane, and global CO2 emissions must level off to a concentration not much greater than the present amount by about 2020. Emissions would then have to decline to about a third of that level by 2100. Delaying action will only insure a grim future for our children and grandchildren. If the current generation does not drastically reduce its greenhouse gas emission, then, unfortunately, our grandchildren will get what we deserve. There are three consequences that have not been discussed in previous chapters but could have devastating impacts on humans: food production, health, and the economy. In a sense, all of these topics are interrelated, because they affect each other. Food Production Agriculture is critical to the survival of civilization. Crops feed not only us but also the domestic animals we use for food. Any disruption in food production means a disruption of the economy, government, and health. The increase in CO2 will result in some growth of crops, and rising temperatures will open new areas to crop production at higher latitudes and over longer growing seasons; however, the overall result will be decreased crop production in most parts of the world. A 1993 study of the effects of a doubling of CO2 (550 ppm) above pre-industrial levels shows that there will be substantial decreases in the world food supply (Rosenzweig et al., 1993). In their research they studied the effects of global warming on four crops (wheat, rice, protein feed, and coarse grain) using four scenarios involving various adaptations of crops to temperature change and CO2 abundance. They found that the amount of world food reduction ranged from 1 to 27%. However, the optimistic value of 1% is almost certainly much too low, because it assumed that the amount of degradation would be offset by more growth from "CO2 fertilization." We now know that this is not the case, as explained below and in Chapter 7. The most probable value is a worldwide food reduction between 16 and 27%. These scenarios are based on temperature and CO2 rises that may be too low, as discussed in Chapter 7. However, even a decrease in world food production of 16% would lead to large-scale starvation in many regions of the world. Large-scale experiments called Free-Air Concentration Enrichment have shown that the effects of higher CO2 levels on crop growth is about 50% less than experiments in enclosure studies (Long et al., 2006). This shows that the projections that conclude that rising CO2 will fully offset the losses due to higher temperatures are wrong. The downside of climate change will far outweigh the benefits of increased CO2 and longer growing seasons. One researcher (Prof. Long) from the University of Illinois put it this way: Growing crops much closer to real conditions has shown that increased levels of carbon dioxide in the atmosphere will have roughly half the beneficial effects previously hoped for in the event of climate change. In addition, ground-level ozone, which is also predicted to rise but has not been extensively studied before, has been shown to result in a loss of photosynthesis and 20 per cent reduction in crop yield. Both these results show that we need to seriously re-examine our predictions for future global food production, as they are likely to be far lower than previously estimated. Also, studies in Britain and Denmark show that only a few days of hot temperatures can severely reduce the yield of major food crops such as wheat, soy beans, rice, and groundnuts if they coincide with the flowering of these crops. This suggests that there are certain thresholds above which crops become very vulnerable to climate change. The European heat wave in the summer of 2003 provided a large-scale experiment on the behavior of crops to increased temperatures. Scientists from several European research institutes and universities found that the growth of plants during the heat wave was reduced by nearly a third (Ciais et al., 2005). In Italy, the growth of corn dropped by about 36% while oak and pine had a growth reduction of 30%. In the affected areas of the mid- west and California the summer heat wave of 2006 resulted in a 35% loss of crops, and in California a 15% decline in dairy production due to the heat-caused death of dairy cattle. It has been projected that a 2 °C rise in local temperature will result in a $92 million loss to agriculture in the Yakima Valley of Washington due to the reduction of the snow pack. A 4'C increase will result in a loss of about $163 million. For the first time, the world's grain harvests have fallen below the consumption level for the past four years according to the Earth Policy Institute (Brown, 2003). Furthermore, the shortfall in grain production increased each year, from 16 million tons in 2000 to 93 million tons in 2003. These studies were done in industrialized nations where agricultural practices are the best in the world. In developing nations the impact will be much more severe. It is here that the impact of global warming on crops and domestic animals will be most felt. In general, the world's most crucial staple food crops could fall by as much as one-third because of resistance to flowering and setting of seeds due to rising temperatures. Crop ecologists believe that many crops grown in the tropics are near, or at, their thermal limits. Already research in the Philippines has linked higher night-time temperatures to a reduction in rice yield. It is estimated that for rice, wheat, and corn, the grain yields are likely to decline by 10% for every local 1 °C increase in temperature. With a decreasing availability of food, malnutrition will become more frequent accompanied by damage to the immune system. This will result in a greater susceptibility to spreading diseases. For an extreme rise in global temperature (> 6 'C), it is likely that worldwide crop failures will lead to mass starvation, and political and economic chaos with all their ramifications for civilization.