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### T - Restriction

#### “Restriction on war powers authority” must limit presidential discretion

Lobel, 8 - Professor of Law, University of Pittsburgh Law School (Jules, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War” 392 OHIO STATE LAW JOURNAL [Vol. 69:391, <http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel_.pdf>)

So  too, the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war—“limited in place, in objects, and in time.” 63 When Congress places such restrictions on the President’s authority to wage war, it limits the President’s discretion to conduct battlefield operations. For example, Congress authorized President George H. W. Bush to attack Iraq in response to Iraq’s 1990 invasion of Kuwait, but it confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions directed to force Iraqi troops to leave Kuwait. That restriction would not have permitted the President to march into Baghdad after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64

#### “Authority” is the ex-ante allocation of decision rights

Garfagnini, ITAM School of Business, 10/15/2012

(Umberto, italics emphasis in original, “The Dynamics of Authority in Innovating Organizations,” https://editorialexpress.com/cgi-bin/conference/download.cgi?db\_name=MWETFall2012&paper\_id=62)

Why do organizations change their internal allocation of authority over time? We propose a simple theory in which innovation with a new technology generates an *endogenous need for coordination* among divisions. A division manager has private information about the expected productivity of new technologies, which can be communicated strategically to headquarters. The organization has an advantage in coordinating technologies across divisions and can only commit to **an ex-ante allocation of decision rights** (**i.e.**, ***authority***). When the importance of cross-divisional externalities is small and the organization's coordination advantage is moderate, we show that an organization can optimally delegate authority to a division manager initially and then later centralize authority.

### Deference DA

#### Deference now

Bazzle, J.D., Georgetown University Law Center, ‘12

[Timothy, “SHUTTING THE COURTHOUSE DOORS:¶ INVOKING THE STATE SECRETS PRIVILEGE TO THWART¶ JUDICIAL REVIEW IN THE AGE OF TERROR”, Civil Rights Law Journal, Vol. 23, No. 1, 2012,]

The war on terror has led to an increased use of the state secrets¶ privilege by the Executive Branch—to dismiss legal challenges to¶ widely publicized and controversial government actions—ostensibly¶ aimed at protecting national security from terrorist threats.1¶ Faced¶ with complaints that allege indiscriminate and warrantless surveillance,2¶ tortious detention, and torture that flouts domestic and international law,3¶ courts have had to reconcile impassioned appeals for¶ private justice with the government’s unyielding insistence on protecting national security. Courts, almost unanimously, have cast their lot¶ with national security, granting considerable deference to government¶ assertions of the state secrets principle. This deference to state secrets¶ shows no signs of abating; indeed, the growing trend is for courts to¶ dismiss these legal challenges pre-discovery,4¶ even before the private¶ litigants have had the chance to present actual, non-secret evidence to¶ meet their burden of proof. Although many looked optimistically at¶ President Obama’s inauguration as a chance to break decisively from¶ the Bush Administration’s aggressive application of the state secrets privilege,5¶ the Obama Administration has largely disappointed on the¶ state-secrets front, asserting the privilege with just as much fervor—if¶ not as much regularity6¶ —as its predecessor.7¶ Judicial deference to such claims of state secrecy, whether the¶ claims merit privileged treatment, exacts a decisive toll on claimants,¶ permanently shutting the courthouse doors to their claims and interfering with public and private rights.8¶ Moreover, courts’ adoption of a¶ sweeping view of the state secrets privilege has raised the specter of¶ the government disingenuously invoking state secrets to conceal government misbehavior under the guise of national security.9¶ By granting greater deference to assertions of the state secrets privilege, courts¶ share responsibility for eroding judicial review as a meaningful check¶ on Executive Branch excesses. This Article argues for a return to a¶ narrowly tailored state secrets privilege—one that ensures that individuals who allege a credible claim of government wrongdoing retain¶ their due process rights.

#### A drones ruling would break deference based upon the political question doctrine

Rosen 2011

(Richard D. Rosen, Professor of Law and Director, Center for Military Law and Policy, Texas Tech University School of Law. Colonel, U.S. Army (retired), “Drones and the U.S. Courts,” <http://repository.law.ttu.edu/handle/10601/1918>)

Even if a plaintiff establishes standing to sue, the political question doctrine will almost certainly block judicial review of the nation's targeted-killing policy. The Supreme Court, in Baker v.¶ Carr,7 delineated the attributes of political questions, finding that¶ they involve at least one of the following six factors:¶ [1] a textually demonstrable constitutional commitment¶ of the issue to a coordinate political department; or [2] a¶ lack ofjudicially discoverable or manageable standards for¶ resolving it; or [3] the impossibility of deciding without an¶ initial policy determination of a kind clearly for¶ nonjudicial discretion; or [4] the impossibility of a court's¶ undertaking independent resolution without expressing¶ lack of the respect due coordinate branches of the¶ government; or [5] an unusual need for unquestioning¶ adherence to a political decision already made; or [6] the¶ potentiality of embarrassment from multifarious¶ pronouncements by various departments on one¶ 28 question.¶ The quintessential political question case is one challenging a¶ military or foreign policy decision,9 which necessarily implicates¶ virtually every Baker factor, particularly the constitutional¶ commitment of the issues to Congress and the President and the¶ lack of judicially discoverable or manageable standards for deciding¶ the issues."o Thus, federal courts have refused to review damages¶ claims arising out of cruise missile strikes against a suspected al¶ Qaeda chemical-weapons plant in the Sudan," losses suffered¶ because the United States mined a Nicaraguan harbor, injuries incurred from U.S. actions in connection with the Soviet Union's¶ shoot down of a Korean airliner, damages sustained because of¶ U.S. involvement in the Chilean coup,34 injuries caused by the U.S.-¶ 35 supported Guatemalan army, property lost from the creation of a¶ U.S. naval base on Diego Garcia, and deaths caused by equipment¶ sold to Israel under the military-sales program. Similarly, courts¶ have refused to review the legitimacy of the Government's combat¶ operations in Cambodia,3 mining of Vietnam's Haiphong¶ Harbor,3¶ " decision to go to war in Iraq,4 placement of cruise¶ 41 42 missiles in Great Britain, and testing of nuclear weapon.¶ While not all cases implicating foreign or military policies are¶ nonjusticiable, a complaint that seeks to preclude the United¶ States from engaging a particular military target or to enjoin the¶ President from employing a particular weapons system is at the¶ core of the political-question doctrine,4 especially because drones¶ are the only effective means of reaching al Qaeda and the Taliban in their Pakistani sanctuaries.

#### impact is DOD contracting

Isenberg 10 (David, Research Fellow – Independent Institute, “Contractor Legal Immunity and the ‘Political Questions’ Doctrine,” CATO Institute, 1-19, <http://www.cato.org/publications/commentary/contractor-legal-immunity-political-questions-doctrine>)

One can easily see why most defense contractors, including private military and security firms working under U.S. government contract, would like to prevent such suits from proceeding. The sheer number of injuries alone gives them reason to want to avoid possible suits. According to ProPublica as of last September 30 the number of private contractors injured in Iraq and Afghanistan totaled 37,652. Of course, not all those injuries are the result of something done wrong. But even a small fraction of them would entail considerable legal costs for a contractor so it is easy to understand why they would want to preventing such suits from being filed in the first place.

As I am not a lawyer the following is derived from Maj. Carter’s article.

Traditionally, the reason given for this is that such cases may involve “political questions” that the Judicial Branch is ill-equipped to decide. Thus defense contractor advocates claim these actions must be dismissed, else there be grim consequences for Government contingency contracting.

But according to Maj. Carter, “the recent developments in political question doctrine case law are significant to the future of Government contingency contracting. However, they are not catastrophic — although portrayed as such by some defense contractor advocates. There will not be an explosion of contracting costs passed on to the Government. There will not be a mass refusal of defense contractors to accept contingency contracts. There will not be chaos on the battlefield. Such predictions are nothing more than “bellowing bungle.”

Carter wrote:

What is the political question doctrine? According to Chief Justice John Marshall, “[q]uestions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in [the U.S. Supreme Court].” In 2004, the Court held “[s]ometimes .. . the law is that the judicial department has no business entertaining [a] claim of unlawfulness — because the question is entrusted to one of the political branches or involves no judicially enforceable rights. Such questions are said to be ‘nonjusticiable,’ or ‘political questions.’”

What this means is that traditionally courts have deferred to the political branches in matters of foreign policy and military affairs. Policy decisions regarding the employment of U.S. military forces in combat belong to the political branches, not the courts. The Supreme Court has held that, due to their “complex, subtle, and professional” nature, decisions as to the “composition, training, equipping, and control of a military force” are “subject always” to the control of the political branches.

Tort suits that challenge the internal operations of these areas of the military are likely to be dismissed as political questions. Yet, notwithstanding the foregoing prohibitions on judicial conduct, the Supreme Court has cautioned, “it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance.” As mentioned earlier, vast precedent exists for judicial involvement in foreign and military affairs. Case law establishes that military decisions are reviewable by federal courts. An assertion of military necessity, standing alone, is not a bar to judicial action. Merely because a dispute can be tied in some way to combat activities does not prevent a court from reviewing it. Although an action arises in a contingency environment, if a case is essentially “an ordinary tort suit” it is well within the competence of the courts to entertain. Courts have underscored the point: no litmus test exists that prohibits judicial action merely because an issue involves the military in some fashion.

Where plaintiffs seek only damages and not injunctive relief, such cases are “particularly judicially manageable.” When such a damages-only lawsuit concerns only a defense contractor (as opposed to the Federal Government), courts have held that such actions do not involve “overseeing the conduct of foreign policy or the use and disposition of military power.” Thus, those actions are less likely to raise political questions than suits against the Government, suits seeking injunctive relief, or both.

Given the enormous amount of money involved in Government contingency contracting and the correspondingly large number of contractors and contractor employees performing GWOT (Global War on Terror) contingency contracts, the number of plaintiffs seeking redress for tortious conduct was certain to rise — and it did. Universally, defendant defense contractors invoked the political question doctrine in order to shield themselves from liability in their performance of GWOT contracts, some with more success than others. The first significant case centered around the tragic events at the Abu Ghraib prison in Iraq.

In Ibrahim v. Titan Corp., Iraqi plaintiffs alleged they were tortured, raped, humiliated, beaten, and starved while in U.S. custody. Apparently fearing a dismissal on sovereign immunity grounds if they sued the U.S. Government, the plaintiffs instead chose to name as defendants the contractors who provided interpreters and interrogators for the prison. The defendants filed a motion to dismiss, alleging the matter involved political questions. The court held the case should not be dismissed at such an early stage on political question grounds, especially because the United States was not a party to the case. Ibrahim is significant because it was the first GWOT case to underscore the need for full factual development of a case prior to an assessment of justiciability.

One particularly interesting point in Carter’s article is this:

Judges and scholars openly speculate about the possible consequences of defense contractor tort liability on the federal procurement process. In Boyle, the Supreme Court warned that “[t]he financial burden of judgments against [] contractors would ultimately be passed through, substantially if not totally, to the United States itself, since defense contractors will predictably raise their prices to cover, or to insure against, contingent liability … .”

Since private military contracting advocates claim that their firms are more cost effective than the government one might reasonably believe that they can be so only by preventing tort suits against them. If the cost of such suits were factored in, the presumed cost effectiveness could conceivably be significantly less, or perhaps not exist at all.

Carter asks “is the situation really this dire? Are contractors at a point where, because of increased litigation risks, they will be forced to charge the Government more for their services or elect to not provide services altogether?”

The answers may not be far away. In November 2008, Joshua Eller filed suit in the U.S. District Court for the Southern District of Texas, as a result of injuries he suffered at Balad Air Base, Iraq, while deployed as a contractor employee of KBR from February to November of 2006. The complaint alleges defendants KBR and Halliburton “intentionally and negligently exposed thousands of soldiers, contract employees and other persons to unsafe water, unsafe food, and contamination due to faulty waste disposal systems … .” The complaint also includes allegations of injury from toxic smoke which emanated from an open air burn pit at Balad. The complaint alleges approximately 1,000 other individuals suffered similar injuries and it seeks to combine all of those actions into a single class action lawsuit. More significantly, this action is only one of several suits currently pending that relate to similar KBR activities in Iraq.

The political question doctrine will be a major factor in this coming storm of litigation. With the large number of potential plaintiffs compounded by the seriousness of the conduct and injuries alleged, these suits have the potential to dwarf the damages awards previously sought in earlier GWOT cases. Undoubtedly, KBR will seek to raise the political question doctrine as an absolute bar to these and any similar suits.

Defense contractor advocates warn of “deleterious effects” to the mission and the contractor-military relationship if tort suits against war zone defense contractors are allowed to proceed. They argue such tort claims “frustrate” and “conflict with” the Government’s ability to control contingency operations and would result in compromised logistical support and mission jeopardy. Furthermore, many companies, especially smaller ones, could be deterred from seeking contingency contracts. For those contractors who do elect to proceed, they will seek to insulate themselves from liability by either self-insuring or obtaining insurance coverage, if it is available. The argument continues that such costs will then be passed onto the Government in the form of higher contract prices. But, most alarmingly, some defense contractor advocates claim the impact of such suits “would be far more profound than financial” and defense contractors may, out of a fear of being sued, refuse to follow the military’s instructions altogether.

#### Key to contain Afghan instability

Schwartz 9 (Moshe, Specialist in Defense Acquisition – Congressional Research Service, “Department of Defense Contractors in Iraq and Afghanistan: Background and Analysis,” Congressional Research Service, 8-23, http://fpc.state.gov/documents/organization/128824.pdf)

The Department of Defense (DOD) increasingly relies upon contractors to support operations in Iraq and Afghanistan, which has resulted in a DOD workforce in those countries comprising approximately an equal number of contractors (200,000) as uniformed personnel (194,000). The critical role contractors play in supporting such military operations and the billions of dollars spent by DOD on these services requires operational forces to effectively manage contractors during contingency operations. Lack of sufficient contract management can delay or even prevent troops from receiving needed support and can also result in wasteful spending. Some analysts believe that poor contract management has also played a role in abuses and crimes committed by certain contractors against local nationals, which likely has undermined U.S. counterinsurgency efforts in Iraq and Afghanistan.

DOD officials have stated that the military’s experience in Iraq and Afghanistan, coupled with Congressional attention and legislation, has focused DOD’s attention on the importance of contractors to operational success. DOD has taken steps to improve how it manages and oversees contractors in Iraq and Afghanistan. These steps include tracking contracting data, implementing contracting training for uniformed personnel, increasing the size of the acquisition workforce in Iraq and Afghanistan, and updating DOD doctrine to incorporate the role of contractors. However, these efforts are still in progress and could take three years or more to effectively implement.

#### Extinction

Morgan 7 (Stephen J., Political Writer and Former Member of the British Labour Party Executive Committee, “Better another Taliban Afghanistan, than a Taliban NUCLEAR Pakistan!?”, 9-23, http://www.freearticlesarchive.com/article/\_Better\_another\_Taliban\_Afghanistan\_\_than\_a\_Taliban\_NUCLEAR\_Pakistan\_\_\_/99961/0/)

As the war intensifies, he has no guarantees that the current autonomy may yet burgeon into a separatist movement. Appetite comes with eating, as they say. Moreover, should the Taliban fail to re-conquer al of Afghanistan, as looks likely, but captures at least half of the country, then a Taliban Pashtun caliphate could be established which would act as a magnet to separatist Pashtuns in Pakistan. Then, the likely break up of Afghanistan along ethnic lines, could, indeed, lead the way to the break up of Pakistan, as well. Strong centrifugal forces have always bedevilled the stability and unity of Pakistan, and, in the context of the new world situation, the country could be faced with civil wars and popular fundamentalist uprisings, probably including a military-fundamentalist coup d’état. Fundamentalism is deeply rooted in Pakistan society. The fact that in the year following 9/11, the most popular name given to male children born that year was “Osama” (not a Pakistani name) is a small indication of the mood. Given the weakening base of the traditional, secular opposition parties, conditions would be ripe for a coup d’état by the fundamentalist wing of the Army and ISI, leaning on the radicalised masses to take power. Some form of radical, military Islamic regime, where legal powers would shift to Islamic courts and forms of shira law would be likely. Although, even then, this might not take place outside of a protracted crisis of upheaval and civil war conditions, mixing fundamentalist movements with nationalist uprisings and sectarian violence between the Sunni and minority Shia populations. The nightmare that is now Iraq would take on gothic proportions across the continent. The prophesy of **an arc of civil war** over Lebanon, Palestine and Iraq **would spread to south Asia, stretching from Pakistan to Palestine, through Afghanistan into Iraq and up to the Mediterranean** coast. Undoubtedly, this would also spill over into India both with regards to the Muslim community and Kashmir. Border clashes, terrorist attacks, sectarian pogroms and insurgency would break out. A new war, and possibly **nuclear war,** between Pakistan and India could not be ruled out. Atomic Al Qaeda Should Pakistan break down completely, a Taliban-style government with strong Al Qaeda influence is a real possibility. Such deep chaos would, of course, open a “Pandora's box” for the region and the world. With the possibility of unstable clerical and military fundamentalist elements being in control of the Pakistan nuclear arsenal, not only their use against India, but Israel becomes a possibility, as well as the acquisition of nuclear and other deadly weapons secrets by Al Qaeda. Invading Pakistan would not be an option for America. Therefore a nuclear war would now again become a real strategic possibility. This would bring a shift in the tectonic plates of global relations. It could usher in a new Cold War with **China and Russia pitted against the US**.

### CSAPR DA

#### CSAPR gets upheld in the SQUO: EPA v EME Homer City

Jaffe 6/25/13

(Seth Jaffe Foley Hoag LLP – Environmental law “The Supreme Court Agrees to Review the CSAPR Decision: Might EPA Avoid Version 3 of the Transport Rule?” 6/25/2013 <http://www.jdsupra.com/legalnews/the-supreme-court-agrees-to-review-the-c-73907/>, TSW)

On June 24, 2013, the Supreme Court granted certiorari in EPA v. EME Homer City, the challenge to EPA’s Cross-State Air Pollution Rule, or CSAPR. The Court of Appeals for the District of Columbia had struck down the rule, over a fairly blistering dissent from Judge Judith Rogers.¶ Speculation over the reasons why the Supreme Court takes a case is often pointless, but I will say this: Consideration of the history of EPA’s rulemaking leads to the conclusion that the rule should be upheld.¶ The D.C. Circuit struck down EPA’s original transport rule, known as CAIR, in 2008, in North Carolina v. EPA, in large part because EPA had proposed an interstate trading program not authorized by the Clean Air Act. That trading program did not ensure that each upwind state controlled its “significant contribution” to downwind pollution. I thought – and I’m sure EPA did as well – that, in promulgating CSAPR, it had pretty much done precisely what the court in North Carolina v. EPA had told it to do.¶ Unfortunately, the District of Columbia disagreed, concluding that the CSAPR could require upwind states to reduce their emissions by more than the “significant contribution” that they made to downwind pollution. Following the decision in EME Homer City v. EPA, it was not clear to me that EPA could ever promulgate a rule that would actually satisfy the Court of Appeals. That may be an exaggeration, but it is undoubtedly true that the level of precision required by the Court Appeals seems inconsistent with traditional rules of statutory construction and deference to agency implementation.

#### Controversial decisions burn capital – justices need to pick their fights.

Grosskopf and Mondak, ‘98

[Anke (Assistant Prof of Political Science @ Long Island University) and Jeffrey (Professor of Political Science @ U of Illinois), 1998, “Do attitudes toward specific supreme court decisions matter? The impact of Webster and Texas v Johnson on Public Confidence in the Supreme Court” Political Research Quarterly, vol. 51 no 3 633-54]

The existence of a strong link between basic values and diffuse support does not necessarily preclude a role for specific decisions, particularly when we seek to understand how support comes to change over time (e.g., Caldeira and Gibson 1992: 658-61). We believe that any claim that the Supreme Court is fully immune to backlash against controversial decisions can be rejected on a prima facie level. First, consider the extreme case. Were the Supreme Court to make its occasional blockbusters-Brown v. Board of Education, Roe v. Wade, Texas v. Johnson, etc.-the norm by routinely ruling on the thorniest social questions, we see it as implausible that such actions would bring no cumulative impact on how people view the Court. Second, the Supreme Court's typical mode of operation suggests that justices themselves view institutional support as an expendable political capital (Choper 1980). That is, the Court recognizes its own political limitations, and thus justices pick their spots carefully when approaching potentially controversial cases. From this perspective, the apparent dominance of democratic values as a determinant of institutional support (e.g., Caldeira and Gibson 1992) means not that the Court is insulated from backlash, but that strategic justices tread cautiously so as to keep backlash to a minimum. Consequently, how and where we examine whether public response to Supreme Court decisions affects institutional support may shape what answer we find.

#### Massive backlash to judicial oversight for targeted killing – would harm national security.

Bazzle, J.D., Georgetown University Law Center, ‘12

[Timothy, “SHUTTING THE COURTHOUSE DOORS:¶ INVOKING THE STATE SECRETS PRIVILEGE TO THWART¶ JUDICIAL REVIEW IN THE AGE OF TERROR”, Civil Rights Law Journal, Vol. 23, No. 1, 2012,]

The war on terror has created new opportunities for the Executive to expand the reach of the state secrets privilege. Courts considering challenges to the government’s TSP wiretapping program, the¶ rendition program, and the targeted killing of Anwar al-Aulaqi have¶ all had to reconcile competing interests in protecting state secrets with¶ preserving the rule of law. A sweeping view of the scope of the state¶ secrets privilege to limit judicial review of executive actions has¶ emerged as a result. Given the diffuse boundaries of the war on terror, even if the particular subject matter at issue in any given case may¶ not be a secret, the government is not hard pressed to assert a colorable claim that the non-secret question is “so infused” with other matters that are state secrets such that any disclosure would risk¶ endangering national security. The upshot of the ever-widening reach¶ of the state secrets privilege is that it severely undermines the due¶ process rights of individuals harmed by a government program by¶ insulating the program from judicial scrutiny under the state secrets¶ privilege. To ensure that the privilege does not completely erode due¶ process guarantees, substantive reform to the use and scope of the¶ privilege is necessary

#### Homer City decision key to cooperative federalism

Hartman ‘12

(Barry M. Hartman, Ankur K. Tohan, and Christine Jochim Boote “D.C. Circuit Calls Strike Two on EPA’s

Cross-State Air Pollution Rule” August 24, 2012 http://www.klgates.com/files/Publication/aa0dbc12-0116-4e22-a5bf-4006d39f371c/Presentation/PublicationAttachment/2035d837-df7b-4953-b656-f828be89a4c4/Environmental\_Alert\_08242012.pdf, TSW)

The Homer City Dissent ¶ The dissent, however, argues that the Court did not have jurisdiction to decide the issues before it ¶ because the petitioners in this case did not timely challenge the Transport Rule or challenge it with ¶ reasonable specificity. Judge Rogers criticizes the majority opinion because it ¶ is an unsettling of the consistent precedent of this court strictly enforcing ¶ jurisdictional limits, a redesign of Congress’s vision of cooperative ¶ federalism between the States and the federal government in implementing ¶ the [CAA] based on the court’s own notions of absurdity and logic that are ¶ unsupported by a factual record, and a trampling on this court’s precedent ¶ on which the [EPA] was entitled to rely in developing the Transport Rule ¶ rather than be blindsided by arguments raised for the first time in this ¶ court.26¶ Among other concerns, Judge Rogers argues that the petitioners in this case failed to challenge EPA’s ¶ two-step approach to determining a State’s air pollution reduction obligation during the administrative ¶ rulemaking process. For example, Judge Rogers objects to the majority’s reliance on a comment in ¶ another rulemaking first cited by petitioners during rebuttal oral arguments to establish jurisdiction to ¶ challenge EPA’s statutory authority.27¶ In addition, Judge Rogers asserts that the States were required to submit their “good neighbor” SIPs, ¶ regardless of whether EPA had determined the State’s air pollution reduction obligations.28¶ Consequently, the June 2010 EPA Federal Register notice, which determined that 29 States had failed ¶ to submit adequate “good neighbor” SIPs, started the two-year deadline for EPA to promulgate FIPs ¶ for those States.29 If any of those States objected to EPA’s SIP determination or the timing for when ¶ States must submit a SIP or SIP-revision, Judge Rogers argues, then those States should have raised ¶ their objections during that rulemaking process.30 The majority “fundamentally” disagreed with Judge ¶ Roger’s reading of the record and the Court’s jurisdiction.31 Implications ¶ Given the size and scope of this opinion, and the significant dissent, the air has hardly cleared ¶ regarding whether EPA will return to the drawing board and redraft its interstate air emission rules ¶ based on the Court’s interpretation of the CAA’s “good neighbor” provisions or seek rehearing or ¶ rehearing en banc. Some considerations that may impact whether rehearing is sought and/or granted ¶ include: ¶  Five of the Circuit’s judges participated in at least one of these three cases, with Judge Rogers ¶ participating in all three. ¶  Circuit Judge Rogers’s 44-page dissent strongly disagreed with the majority’s interpretation of ¶ Michigan and North Carolina. She was on both of the panels that issued per curiam opinion in ¶ both cases. ¶  One of the key issues on which there may be some dispute within the Circuit is whether or not ¶ certain key issues were adequately raised in the record for the purpose of determining whether they ¶ were properly before the Court. The impacts of this ruling could well extend beyond CAA cases. ¶  EPA and the States will have to address the impacts of the Homer City decision on other air rules. ¶ For example, regional haze reduction rules and trading schemes for power plants – i.e., the best ¶ available retrofit technology (BART) requirements for power plants – were modified and tied to ¶ the Transport Rule in the “Better than BART” rule. The “Better than BART” rule allows States to ¶ rely on the Transport Rule to satisfy BART requirements for power plants. ¶  Finally, the Homer City decision, which focuses on the important role of “cooperative federalism” ¶ and the shared responsibilities of the federal and state governments, could well have some impact ¶ on how EPA exercises its authority under other similarly structured statutes, such as the Clean ¶ Water Act and the Resource Conservation and Recovery Act. These implications could also ¶ influence whether rehearing is sought. ¶ Conclusion ¶ There is little doubt that Homer City will have an influence on how EPA, and possibly Congress, ¶ addresses the issue of interstate air pollution. Stay tuned for Part II, which will evaluate how various ¶ aspects of the decision may influence future challenges to agency rulemakings and similar ¶ administrative proceedings.

#### Solves warming

Osofsky 11

(Hari M., Associate Professor, University of Minnesota Law School; Associate Director of Law, Geography & Environment, Consortium on Law and Values in Health, Environment & the Life Sciences and Affiliated Faculty, Geography and Conservation Biology, University of Minnesota; 2011, “Diagonal Federalism and Climate Change Implications for the Obama Administration,” 62 Ala. L. Rev. 237 - Kurr)

Cooperative federalism's greatest advantage as a basis for climate change regulation is its ability to create coordinated multiscalar action in which each actor provides its unique contribution. A number of scholars and policymakers have taken significant steps to sketch a framework for cooperative action. They are exploring the nuances of how collaboration might work among specific entities in particular policy areas. This analysis makes clear that cooperative approaches, if crafted well, incentivize action while making room for innovation. For instance, a Center for Progressive Reform study by William Andreen and others presents how localities, [\*286] states, and the federal government can work together on this problem. n222 Alice Kaswan has also published an interesting cooperative federalism proposal bringing together these three levels of government, and Holly Doremus and W. Michael Hanemann have argued that the Clean Air Act provides a cooperative federalism model that could be used in crafting effective climate change legislation. n223 Some dynamic environmental approaches combine cooperative federalism with other theories. For example, Brad Karkkainen's analysis of information-forcing environmental regulation brings together cooperative federalism and new governance approaches to consider how "properly structured, penalty default rules might be used to induce meaningful participation in locally devolved, place-based, collaborative, public-private hybrid, new governance institutions, aimed at integrated, adaptive, experimentalist management of watersheds and other institutions." n224 This particular combination of cooperative federalism and new governance approaches allows for innovative structures that encompass the multidimensionality of these problems.

#### Causes extinction

Speth 2008

[James, dean of the Yale School of Forestry and Environmental Studies at Yale University, New Haven, Connecticut. Currently he serves the school as the Carl W. Knobloch, Jr. Dean and Sara Shallenberger Brown Professor in the Practice of Environmental Policy, The Bridge @ the Edge of the World, pg. 26]

The possibility of abrupt climate change is linked to what may be the most problematic possibility of all—"positive" feedback effects where the initial warming has effects that generate more warming. Several of these feedbacks are possible. First, the land's ability to store carbon could weaken. Soils and forests can dry out or burn and release carbon; less plant growth can occur, thus reducing nature's ability to remove carbon from the air. Second, carbon sinks in the oceans could also be reduced due to ocean warming and other factors. Third, the potent greenhouse gas methane could be released from peat bogs, wetlands, and thawing permafrost, and even from the methane hydrates in the oceans, as the planet warms and changes. Finally, the earth's albedo, the reflectivity of the earth's surface, is slated to be reduced as large areas now covered by ice and snow diminish or are covered by meltwater. All these effects would tend to make warming self-reinforcing, possibly leading to a greatly amplified greenhouse effect. The real possibility of these amplifying feedbacks has alarmed some of our top scientists. James Hansen, the courageous NASA climate scientist, is becoming increasingly outspoken as his investigations lead him to more and more disturbing conclusions. He offered the following assessment in 2007: "Our home planet is now dangerously near a 'tipping point.' Human-made greenhouse gases are near a level such that important climate changes may proceed mostly under the climate system's own momentum. Impacts would include extermination of a large fraction of species on the planet, shifting of climatic zones due to an intensified hydrologic cycle with effects on freshwater availability and human health, and repeated worldwide coastal tragedies associated with storms and a continuously rising sea level. .. . "Civilization developed during the Holocene, a period of relatively tranquil climate now almost 12,000 years in duration. The planet has been warm enough to keep ice sheets off North America and Europe, but cool enough for ice sheets on Greenland and Antarctica to be stable. Now, with rapid warming of o.6°C in the past 30 years, global temperature is at its warmest level in the Holocene. "This warming has brought us to the precipice of a great 'tipping point” If we go over the edge, it will be a transition to 'a different planet,' an environment far outside the range that has been experienced by humanity. There will be no return within the lifetime of any generation that can be imagined, and the trip will exterminate a large fraction of species on the planet.

### Courts CP

#### Text: The United States Congress should instruct the federal judiciary to subject United States’ targeted killing operations to judicial ex post review by allowing a cause of action for damages arising directly out of the constitutional provision allegedly offended, on the basis that special factors do not preclude a right of action.

#### CP solves better than the court – Constitutional authority

Bellia 2002

(Patricia Bellia, Professor of Law and Notre Dame Presidential Fellow, Spring 2002, “Executive Power in Youngstown’s Shadows,” Constitutional Commentary, Lexis)

We can in fact detect the seeds of this reluctance to give content to the President's constitutional powers in Justice Jackson's concurrence. Recall Justice Jackson's observation about his second category of executive action, where Congress is silent. Congressional silence, he wrote, may "invite[] measures on independent presidential responsibility." (269) The outcome of the dispute is likely to turn more on "contemporary imponderables" than "on abstract theories of law." (270) If Justice Jackson's statement was purely predictive, he was right. Justiciability doctrines require or permit courts to avoid resolving many significant separation of powers disputes. (271) But Justice Jackson's claim that powers "fluctuate" according to Congress's will also yields two related normative conclusions. The first is a prudential point that the task of policing the Executive should fall to Congress, not the courts, because the political branches are more likely to arrive at a narrow resolution that will preserve the Government's flexibility in later, unforeseen circumstances. This view seemed to animate Justice Powell's concurrence in the Supreme Court's decision to deny review in Goldwater v. Carter, (272) a dispute over President Carter's termination of the United States' mutual defense treaty with Taiwan. Justice Powell argued that judicial intervention was inappropriate because Congress and the President had not yet reached a "constitutional impasse." (273) The Senate had considered a resolution declaring that Senate approval is necessary for termination of a treaty but had taken no final action. (274) Justice Powell suggested that "[i]t cannot be said that either the Senate or the House has rejected the President's claim. If the Congress chooses not to confront the President, it is not our task to do so." (275) In other words, so long as Congress was silent, Justice Powell saw no role for the Court in resolving questions about the appropriate division of power. (276) The second normative point that flows from Justice Jackson's claim that powers "fluctuate" is one made by some executive primacy scholars--that because the Constitution confers authority over foreign affairs and national security to the political branches, there is a "risk that judicial intervention will itself be a serious violation of separation of powers." (277) Under this theory, judicial intervention would be inappropriate where Congress is silent, and may not even be appropriate when there is a conflict between congressional and presidential will. Four of the Justices who concurred in the decision not to grant review in Goldwater took this view. Because the Justices found no constitutional provision expressly governing the termination of treaties, the dispute presented a political question that "should be left for resolution by the Executive and Legislative Branches of the Government." (278) The concurring Justices observed that a court's resolution of a political question can create "disruption among the three coequal branches of government."

### Apocalyptic Rhetoric K

#### Fiat double bind – Either the harms to the 1AC are true and they cannot solve for extinction before they control the levers of power OR their harms are constructed for the purpose of alarmism which makes them symbolic terrorists - that makes serial policy failure inevitable

Kurasawa 4 – Professor of Sociology, York University of Toronto, Fuyuki, “Cautionary Tales: The Global Culture of Prevention and the Work of Foresight”, Constellations Volume 11, No 4, <http://www.yorku.ca/kurasawa/Kurasawa%20Articles/Constellations%20Article.pdf>

Up to this point, I have tried to demonstrate that transnational socio-political relations are nurturing a thriving culture and infrastructure of prevention from below, which challenges presumptions about the inscrutability of the future (II) and a stance of indifference toward it (III). Nonetheless, unless and until it is substantively ‘filled in,’ the argument is vulnerable to misappropriation since farsightedness does not in and of itself ensure emancipatory outcomes. Therefore, this section proposes to specify normative criteria and participatory procedures through which citizens can determine the ‘reasonableness,’ legitimacy, and effectiveness of competing dystopian visions in order to arrive at a socially self-instituting future. Foremost among thepossible distortions of farsightedness is alarmism, the manufacturing ofunwarranted and unfounded doomsday scenarios. State and market institutionsmay seek to produce a culture of fear by deliberately stretching interpretations of realitybeyond the limits of the plausible so as to exaggerate the prospects of impending catastrophes, or yet again, by intentionally promoting certain prognoses over others for instrumental purposes. Accordingly, regressive dystopiascan operate as Trojan horses advancing political agendasor commercial interests that would otherwise be susceptible to public scrutiny and opposition. Instances of this kind of manipulation of the dystopian imaginary are plentiful: the invasion of Iraq in the name of fighting terrorism and an imminent threat of use of ‘weapons of mass destruction’; the severe curtailing of American civil liberties amidst fears of a collapse of ‘homeland security’; the neoliberal dismantling of the welfare state as the only remedy for an ideologically constructed fiscal crisis; the conservative expansion of policing and incarceration due to supposedly spiraling crime waves; and so forth. Alarmism constructs and codes the future in particular ways, producing or reinforcing certain crisis narratives, belief structures, and rhetorical conventions. As much as alarmist ideas beget a culture of fear, the reverse is no less true. If fear-mongering is a misappropriation of preventive foresight, resignation about the future represents a problematic outgrowth of the popular acknowledgment of global perils. Some believe that the world to come is so uncertain and dangerous that we should not attempt to modify the course of history; the future will look after itself for better or worse, regardless of what we do or wish. One version of this argument consists in a complacent optimism perceiving the future as fated to be better than either the past or the present. Frequently accompanying it is a self-deluding denial of what is plausible (‘the world will not be so bad after all’), or a naively Panglossian pragmatism (‘things will work themselves out in spite of everything, because humankind always finds ways to survive’).37 Much more common, however, isthe opposite reaction, a fatalistic pessimism reconciled to the idea that the future will be necessarily worse than what preceded it. This is sustained by a tragic chronological framework according to which humanity is doomed to decay, or a cyclical one of the endless repetition of the mistakes of the past. On top of their dubious assessments of what is to come, alarmismand resignation would, if widely accepted, undermine a viable practice of farsightedness. Indeed, both of them encourage public disengagement from deliberation about scenarios for the future, a process that appears to be dangerous, pointless, or unnecessary. The resulting ‘depublicization’ of debate leaves dominant groups and institutions(the state, the market, techno-science) in charge of sorting out the future for the rest of us, thus effectively producing a heteronomous social order. How, then, can we support a democratic process of prevention from below? The answer, I think, lies in cultivating the public capacity for critical judgment and deliberation, so that participants in global civil society subject all claims about potential catastrophes to examination, evaluation, and contestation. Two normative concepts are particularly well suited to grounding these tasks: the precautionary principle and global justice.

#### **Maintaining the apocalyptic logic of the 1AC results in endless war and an ever-expanding presidency**

Rana 2011 (Aziz, Assistant Professor of Law @ Cornell. “Responses to the Ten Questions.” William Mitchell Law Review, 37 Wm. Mitchell L. Rev. 5099)

The only way ultimately to produce lasting reform is to shift American political identity away from the national security frame shared by both the Bush and Obama administrations. In emphasizing the sense of permanent threat, this frame has not only generated an American polity continuously under arms, but it has also led to a global military footprint perhaps unparalleled in human history. As of 2009, some 516,273 military service members-not including Department of Defense civilian officials were deployed abroad, stationed across 716 reported overseas bases (the true number is likely over 1000), and present in approximatey 150 foreign states (nearly eighty percent of the world's countries). This worldwide military network is sustained by tremendous expenditures, which account for almost half of global defense spending-a number equal to the following twenty nations combined.48 Simply maintaining and protecting this global defense infrastructure has the inevitable consequence of strengthening executive power and promoting the further entrenchment of emergency rhetoric and rationales. Most troubling, in order to extend its footprint and international primacy, the United States finds itself engaging in practices that often actually promote, rather than inhibit, instability at the fringes of American power. The ever-present concern with national security means that policymakers view the United States as enjoying a right to act covertly or overtly in all parts of the world in order to quell presumed threats. Yet, in doing so, American actions have the tendency to produce their own backlashes, with the United States subject to local insurrections and new potential dangers. Rather than recognizing how the projection of American power itself participates in generating these crises, the talismanic logic of national security works to rationalize yet further territorial presence. This cycle of intervention, backlash, instability, and more intervention promotes a deep distortion in the actual meaning of local events-which oftentimes have little direct relation to American interests. It also serves as a continual justification for yet further constitutional flexibility and presidential prerogative, precisely because new dangers seem omnipresent. One clear consequence is that, as the local meaning of events disappears, the actual severity of foreign threats can often be greatly exaggerated. In 2009, only twenty-five United States civilians (sixteen at home and nine abroad) were killed in terrorist 49 attacks according to the State Department. While the fear of a terrorist attack is a legitimate concern, such numbers-which have been consistent in recent years-place the gravity of the threat in perspective and suggest the disconnect between the rhetoric of existential danger (one presumably comparable to Pearl Harbor) and the reality of relative security. Moreover, the persistent alteration of basic constitutional values to fit national security aims, regardless of objective consequences, for actual American physical safety, speaks to a profound imbalance in the United States's political priorities. It highlights just how entrenched Herring's old vision of security as pre-political (a lodestar around which to calibrate fundamental rights and collective interests) has become. Ultimately, the failure of the Obama administration to offer a meaningful legal correction is because at root the current administration-like its predecessor-remains committed to this vision of security and to the larger political framework produced by it. Thus, the question for Americans is whether there exists the public will to challenge the prevailing consensus, with its account of permanent threat and the need for a continuous projection of American power. Without such a will, there can be no substantive shift in our constitutional politics.

#### The PARADOX OF RISK makes this issue NOT resolvable by weighing the plan. If impact is calculated by multiplying probability and magnitude, any probability of an infinite impact irrationally registers as infinite

Kessler 2008 (Oliver Kessler, Sociology at University of Bielefeld, “From Insecurity to Uncertainty: Risk and the Paradox of Security Politics” *Alternatives*  33 (2008), 211-232)

The problem of the second method is that it is very difficult to  "calculate" politically unacceptable losses. If the risk of terrorism is  defined in traditional terms by probability and potential loss, then  the focus on dramatic terror attacks leads to the marginalization of  probabilities. The reason is that even the highest degree of improbability becomes irrelevant as the measure of loss goes to infinity.^o  The mathematical calculation of the risk of terrorism thus tends to  overestimate and to dramatize the danger. This has consequences  beyond the actual risk assessment for the formulation and execution  of "risk policies": If one factor of the risk calculation approaches  infinity (e.g., if a case of nuclear terrorism is envisaged), then there  is no balanced measure for antiterrorist efforts, and risk management as a rational endeavor breaks down. Under the historical con-  dition of bipolarity, the "ultimate" threat with nuclear weapons could  be balanced by a similar counterthreat, and new equilibria could be  achieved, albeit on higher levels of nuclear overkill. Under the new  condition of uncertainty, no such rational balancing is possible since  knowledge about actors, their motives and capabilities, is largely  absent.  The second form of security policy that emerges when the deter-  rence model collapses mirrors the "social probability" approach. It  represents a logic of catastrophe. In contrast to risk management  framed in line with logical probability theory, the logic of catastro- phe does not attempt to provide means of absorbing uncertainty.  Rather, it takes uncertainty as constitutive for the logic itself; uncertainty is a crucial precondition for catastrophies. In particular, cata-  strophes happen at once, without a warning, but with major impli-  cations for the world polity. In this category, we find the impact of  meteorites. Mars attacks, the tsunami in South East Asia, and 9/11.  To conceive of terrorism as catastrophe has consequences for the  formulation of an adequate security policy. Since catastrophes hap-  pen irrespectively of human activity or inactivity, no political action  could possibly prevent them. Of course, there are precautions that  can be taken, but the framing of terrorist attack as a catastrophe  points to spatial and temporal characteristics that are beyond "ratio-  nality." Thus, political decision makers are exempted from the  responsibility to provide security—as long as they at least try to pre-  empt an attack. Interestingly enough, 9/11 was framed as catastro-  phe in various commissions dealing with the question of who was  responsible and whether it could have been prevented.  This makes clear that under the condition of uncertainty, there  are no objective criteria that could serve as an anchor for measur-  ing dangers and assessing the quality of political responses. For ex-  ample, as much as one might object to certain measures by the US  administration, it is almost impossible to "measure" the success of  countermeasures. Of course, there might be a subjective assessment  of specific shortcomings or failures, but there is no "common" cur-  rency to evaluate them. As a consequence, the framework of the  security dilemma fails to capture the basic uncertainties.  Pushing the door open for the security paradox, the main prob-  lem of security analysis then becomes the question how to integrate  dangers in risk assessments and security policies about which simply  nothing is known. In the mid 1990s, a Rand study entitled "New  Challenges for Defense Planning" addressed this issue arguing that  "most striking is the fact that we do not even know who or what will  constitute the most serious future threat, "^i In order to cope with  this challenge it would be essential, another Rand researcher wrote,  to break free from the "tyranny" of plausible scenario planning. The  decisive step would be to create "discontinuous scenarios ... in  which there is no plausible audit trail or storyline from current  events"52 These nonstandard scenarios were later called "wild cards"  and became important in the current US strategic discourse. They  justified the transformation from a threat-based toward a capability-  based defense planning strategy.53  The problem with this kind of risk assessment is, however, that  even the most absurd scenarios can gain plausibility. By construct-  ing a chain of potentialities, improbable events are linked and brought into the realm of the possible, if not even the probable.  "Although the likelihood of the scenario dwindles with each step,  the residual impression is one of plausibility. "54 This so-called Oth-  ello effect has been effective in the dawn of the recent war in Iraq.   The connection between Saddam Hussein and Al Qaeda that the  US government tried to prove was disputed from the very begin-  ning. False evidence was again and again presented and refuted,  but this did not prevent the administration from presenting as the  main rationale for war the improbable yet possible connection  between Iraq and the terrorist network and the improbable yet  possible proliferation of an improbable yet possible nuclear  weapon into the hands of Bin Laden. As Donald Rumsfeld  famously said: "Absence of evidence is not evidence of absence."  This sentence indicates that under the condition of genuine uncer-  tainty, different evidence criteria prevail than in situations where  security problems can be assessed with relative certainty.

#### The alternative is to reject the apocalyptic frames of the 1AC

#### Even if the rational arguments in favor of the plan are logical, the representations of apocalypse colonize the debate towards pressure for fast invasion and warmongering

Goodnight 2010 (G. Thomas Goodnight is Professor and Director of Doctoral Studies at the Annenberg School for Communication, the University of Southern California in Los Angeles; "The Metapolitics of the 2002 Iraq Debate: Public Policy and the Network Imaginary", Rhetoric & Public Affairs Volume 13, Number 1, Spring 2010)

Opponents of the Democratic Party argued the risks of war, but their pragmatic policy challenges did not grab sufficient traction to slow the unreeling web of justification. Of course, there was little denial that the war would create more terrorists, generate a lower threshold for intervention, receive weak international support, and in the end leave the dangerous business of Afghanistan unfinished. But the Democrats became entangled in reflexive posturing about the effects of the debate itself—the importance of "message sending" to the United Nations and "consensus" backing for the president as negotiator-in-chief. With 9/11 not far behind, "tough" messages appeared to provide a much desired supplement to boost confidence, while pragmatism, caution, and planning took a back seat. Presidential hopefuls cut loose from this morass and took advantage of Republican-offered political cover. Republicans did appear to benefit from tough war rhetoric in the immediate election aftermath, enabling Bush to run successfully in 2004 as a wartime president. As WMD continued not to turn up, the intervention dragged on, costs mounted, political fortunes reversed—although the entanglements remained and remain. [End Page 87] The debate of 2002 found that a systematic presidential campaign—when bolstered by cherry-picked evidence—can be particularly powerful, especially when administration supporters in Congress veer shamelessly from long-held positions on policy and the leadership of the opposing party takes shelter in offered political cover. Further, the debate illustrates how the events that should prompt policy debate become colonized, in this case making common sense difficult to muster because the network imaginary laces a web of associative fears with compensatory toughness. On the whole, the debates were not the nation's finest hour. The debate of 2002 strove to convert a traumatic national event into a conservative-articulated, Republican-captured, presidentially initiated rise in power, and ended by setting the stage for congressional investigation, the rise of the Democrats, reassertion of congressional power, and a new presidency committed to public diplomacy. WMD were at the heart of the six-year-long controversy. It was hardly remembered that [WMD] weapons of mass destruction were not deployed by terrorists on September 11th. Rather, fast, anonymous, networked, modern systems of circulation were turned, through ingenuity, into first-strike weapons. Seen with fresh militancy, 9/11 suggests that the modern world remains vulnerable to mutating events that change, shock, and command attention, actions that attain expanding scope and influence by virtue of a network imaginary, where such moments self-organize and multiply in varied directions. The development of policy studies as rhetoric, then, calls attention to the disruptive events as these become situated in the restricted focus of national debate and recovered, through critique, as an unfinished metapolitics, which demands rethinking of the taken-for-granted grounds and alliances upon which post-event consensus became fabricated. In its time, the "War on Terror" was framed as a "clash of civilizations" and a new Munich. In retrospect, 9/11 should be understood as signaling a much closer, changing, entangled, future world where the complications of security spread and interlock to haunt twenty-first-century network imaginaries.

### Bivens Advantage

#### No spillover -- court categorically rejects the use of Bivens remedies in military case – especially true for sexual assault

CELENTINO 13 (Joseph, Court Rejects Suit From Military Rape Victims, COurthose News Service, 7-25, <http://www.courthousenews.com/2013/07/25/59694.htm>)

Survivors of rape in the military cannot sue the former Defense Department secretaries for contributing to "a military culture of tolerance for the sexual crimes," the 4th Circuit ruled. Kori Cioca had led 27 other service members, both men and women, in a complaint against Donald Rumsfeld and Robert Gates that detailed their sexual assaults at the hands of other military personnel and their "often unsuccessful attempts to prosecute those responsible," according to the ruling. The plaintiffs alleged violations of due process, equal protection and free speech. They sought money damages pursuant to the Supreme Court's 1971 decision in Bivens v. Six Unknown Agents of Federal Bureau of Narcotics. Their complaint, which was brought by 17 veterans in 2011, accused the former Defense secretaries of having failed "to (1) investigate rapes and sexual assaults, (2) prosecute perpetrators, (3) provide an adequate judicial system as required by the Uniform Military Justice Act, and (4) abide by Congressional deadlines to implement Congressionally-ordered institutional reforms to stop rapes and other sexual assaults." U.S. District Judge Liam O'Grady dismissed the case, however, noting that "this is precisely the forum in which the Supreme Court has counseled against the exercise of judicial authority." A three-judge panel of the 4th Circuit affirmed Tuesday. "The Supreme Court has only twice, in the more than forty years since deciding Bivens, recognized a new implied monetary remedy against federal officials, and it has never done so in the military context," Judge Steven Agee wrote for the Richmond, Va.-based panel. Bivens remedies have been made available only for violations of the Fourth Amendment by law-enforcement officers, a congressman's due-process violations, and the Eighth Amendment violations of prison officials. The Supreme Court has explicitly declined to extend Bivens to military cases, the appellate panel noted. In Chappell v. Wallace, the Supreme Court "determined that 'the unique disciplinary structure of the Military Establishment and Congress' activity in the field constitute 'special factors' which dictate that it would be inappropriate to provide enlisted military personnel a Bivens-type remedy against their superior officers,'" Appel wrote.

#### Squo solves sexual assault

McVeigh 13 (Karen, “Hagel announces new measures to try to stamp out sex assaults in the military,” Guardian, 8-15, <http://www.theguardian.com/world/2013/aug/15/chuck-hagel-memo-sexual-assault-military>)

The Pentagon has unveiled a range of initiatives to curb sexual assault in the ranks and tackle what military leaders have described as a "crisis" of confidence which prevents victims coming forward.

The new initiatives, to be implemented immediately, include greater protections of victims, including the expansion of an air force initiative to provide victims with a legal advocacy programme. Other changes include ensuring that pretrial investigations are conducted by judge advocate generals and improved tracking and follow-up of sexual assault cases.

In a memo to staff, Chuck Hagel, the defence secretary, described sexual assault as "a stain on the honor of our men and women who honorably serve our country, as well as a threat to the discipline and the cohesion of our force."

He said the measures would "improve victim support, strengthen pretrial investigations, enhance oversight, and make prevention and response efforts more consistent across the military services".

But the moves fell short of the overhaul in the system victims advocates and some lawmakers say is needed. Military critics say that to address the breakdown of trust in its handling of such cases, the responsibility for prosecuting sexual assault has to be removed from the chain of command.

Such dramatic changes to the chain of command are vehemently opposed by military leaders, who say removing investigations from commanders would adversely affect good order and discipline in the forces.

Hagel's announcement follows fierce debate among lawmakers and the military around the growing problem. The number of military personnel reporting unwanted sexual contact has grown from 19,000 cases in 2010 to 26,000 in 2012, according to a Pentagon survey.

The measures announced by the Pentagon on Thursday include provisions to allow commanders to reassign or transfer victims of sexual assault to another unit, in order to eliminate further contact. Currently, victims can request a transfer, but victims groups say they are not always successful in getting one. They also require follow-ups of investigations by "flag officers" or first general within the chain of command and requires new, standardised rules prohibiting inappropriate behaviour between recruiters and recruits.

The initiatives were given a lukewarm reception by lawmakers and victims' groups.

Senator Kirsten Gillibrand, a member of the Senate armed services committee, who has been gathering support for her bill to remove sexual assault cases from the chain of command and give them to an independent body, said Hagel's measures were a "good thing" but that they were "not the leap forward required to solve the problem."

Gillibrand said: "As we have heard over and over again from the victims, and the top military leadership themselves, there is a lack of trust in the system that has a chilling effect on reporting. Three hundred and two prosecutions out of an estimated 26,000 cases just isn't good enough under any metric.

"It is time for Congress to seize the opportunity, listen to the victims and create an independent, objective and non-biased military justice system worthy of our brave men and women's service."

Democratic congresswoman Jackie Speier said the military have missed the opportunity to make the sweeping changes needed and said she was "underwhelmed by the military baby steps on this issue".

However, senator Claire McCaskill, a former senior prosecutor on the armed services committee, whose approach to the issue opposes that of Gillibrand and victims groups, welcomed the measures.

McCaskill said: "I think it's wise for our military leaders to get on this train rather than get run over by it. The Pentagon can and should be a partner in preventing these terrible crimes, protecting and empowering survivors, and locking up perpetrators. And I welcome any steps they take with those goals in mind."

At a Pentagon press conference, where he was asked about Gillibrand's comments, army lieutenant general Curtis Scaparrotti, director of the joint staff that oversees the services, said they were also looking at legislative initiatives.

Scaparrotti said: "We're looking at every possible idea practice that's out there that might help us."

"If we believe that we can make a difference," the Pentagon will "look strongly" at other initiatives "that perhaps aren't in this group here today," he said.

Protect Our Defenders, an advocacy group for victims, welcomed the measures to roll out the air force's initiative of giving legal representation to victims throughout the legal process, but described the package of measures as "mostly small tweaks to a broken system."

Taryn Meeks, a former navy officer and the head of POD, said the Pentagon order "falls short of reform that would protect victims from the outset – by keeping the decision to prosecute within the chain of command."

"Prosecutors – and not commanders – must be given the authority to decide whether to proceed to trial," Meeks said. "This change would constitute a fundamental and necessary step toward creating an independent and impartial military justice system" and would offer a starting point "to end this national disgrace."

#### Norms on torture fail –

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

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

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

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

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

#### 2) This is especially true for torture – statistics prove

Gilligan and Nesbitt 7 (Michael J., and Nathaniel, Department of Politics New York University, “Do Norms Reduce Torture?,” <http://as.nyu.edu/docs/IO/2601/NormsvsTorture.pdf>)

One of the most important developments in international political and legal theory over the last fifteen years has been the assertion that norms affect state behavior. Scholars have claimed that states are constrained by norms of appropriate behavior and furthermore that norms actually change (“reconstitute”) states’ understandings of their interests thereby leading states to adapt their behavior in accordance with these new understandings. We test the proposition that norms alter state behavior with respect to the expanding international norm against torture from 1985 through 2003. Unfortunately we find no evidence that the spreading of the international norm against torture, measured by the percentage of countries in the world that have acceded to the UN Convention Against Torture, has lead to any reduction in torture according to a variety of measures.

#### China’s regime is resilient – history proves

Ford ‘9

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Of course, it is important to note that China’s “bureaucratic fissures” do not present insurmountable obstacles, nor do they suggest that the People’s Republic of China (PRC) is in imminent danger of collapse. If anything, the past 30 years of reform demonstrate that the Chinese system has proven remarkably resilient and capable of adaptation. In spite of a system that requires arduous consensus-building across muddled bureaucratic hierarchies, the establishment of these bureaucracies has provided greater input into China’s policy making processes. In turn, this has provided the highly personalistic Maoist system of governance with much greater institutionalization and regularization. Additionally, while intraparty factionalism is a challenge for the CCP leadership, there is also a norm in Chinese politics toward consensus building (also known as “democratic centralism” or “party discipline”) that suggests these factions can find ways to accommodate each other.

#### No collapse

Dickson ‘5

Bruce, Professor of Political Science @ GW, Populist Authoritarianism: The Future of the Chinese Communist Party, Carnegie Endowment for Int’l Peace, <http://www.carnegieendowment.org/files/Dickson.pdf>

Despite this conventional wisdom, the CCP has been more adaptable and more resilient than it often gets credit for. Most observers look at China’s political reform primarily in terms of whether it is becoming more democratic, but democratization is not the only metric for measuring political development. If we recognize that greater democracy is not the immediate goal of China’s leaders, we may also find that the domestic environment is not so desperate or fragile after all. The CCP is pursuing a variety of political reforms that are intended to enhance the capacity of the state to govern effectively, if not democratically. It has used a mix of measures to shore up popular support, resolve local protests, and incorporate the beneficiaries of economic reform into the political system. In turn, it also forcefully represses efforts to challenge its authority and monopoly on political power and organization. As a result, public opinion is surprisingly complacent: while many are unhappy with their current situation, they remain optimistic about the future. This is not a recipe for imminent revolution. China’s leaders face a series of serious problems, but they are more chronic than acute, and absent a sudden and unexpected flare-up do not pose an imminent threat to the incumbent regime.

### CMR Advantage

#### Alt Cause - Hagel

Owens 13

Mackubin Owens, Senior Fellow at the Foreign Policy Research Institute Program on National Security, “Obama Dumps a Smart, Independently Minded General,” 1/22/13, <http://m.weeklystandard.com/blogs/obama-dumps-smart-independently-minded-general_697440.html?page=1> SJE

**We should all be worried**. The combination of President **Obama’s nomination of Chuck Hagel to be secretary of defense**—to be his hatchet man **to slash the defense budget without regard to geopolitical realities**—and the early retirement of a general renowned for his powerful blend of strategic sense and candor, **bodes ill for the security of the U**nited **S**tates. **With a yes man as secretary of defense and a signal to the uniformed military that the frank and forceful presentation of the military’s view throughout the strategy-making and implementation process is not welcome runs counter to the principles of sound civil-military relations**. Of course, a president has every right to choose the generals he wants, but it is also the case that he usually gets the generals he deserves. By pushing Mattis overboard, the administration is sending a message that it doesn’t want **smart,** independent**ly minded** generals who speak candidly to **their** civilian leaders**.** The message that generals and admirals may receive that they should go along to get along**,** which is a bad message for the health of U.S. c**ivil-**m**ilitary** r**elations.**

#### Alt Cause - Unconstrained cyber war, DOD growth, Al-Qaeda

Shulman 12

Mark Shulman, Assistant Dean for Graduate Programs and International Affairs and an Adjunct Professor at Pace Law School, *Strategic Studies Institute,* “Lead Me, Follow Me, Or Get Out Of My Way: Rethinking And Refining The Civil-Military Relationship,” September 2012, <http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?pubID=1124> SJE

First, **since the end of the Cold War released state and nonstate actors from the constraints of the superpower rivalry, conflict has proliferated**. As a result, the United States has experienced a militarization of foreign relations. The **increased resources invested in diplomacy, public diplomacy, and nonmilitary foreign aid pale in comparison to the proliferation of DoD relations** with foreign governments, the influence of Regional Combatant Commands, **and the impact of military assistance programs**.136 Even without wartime supplemental financing, **the DoD budget is over 30 times greater than that of the State Department**.137 The DoD consists of approximately 1,400,000 service members on Active Duty, 860,000 Reserve and National Guard, and 790,000 civilians on installations in the United States and around the world.138 The Department of State has approximately 29,000 employees.139 With far greater resources than the State Department dispersed over far-flung locations, **the DoD plays ever-more-diverse roles in U.S. foreign relations. Many of** the changes blur the lines between the roles **and missions** traditionally deemed military and those viewed as diplomatic or political. **Second, the Information Revolution is constantly blurring the lines between civil and military capacities, issues, and campaigns. Cyberthreats and cyberwarfare can be conducted by military or civilian authorities and against states, nonstate entities, or individuals**. Likewise, unmanned aerial vehicles are being operated by military and nonmilitary organizations, often with operationally indistinguishable missions. **Global information systems** and highly flexible drones **erase many of the distinctions between the military and civilian spheres. These new technologies irrevocably smudge the lines between war and peace. The war against al Qaeda has rapidly accelerated the breakdown between civil and military spheres because the United States has been fighting a “war” with a nonstate actor.** The National Command Authority is constantly deciding whether to employ military or civilian assets in combating al Qaeda. For example, the U.S. President now possesses dramatically expanded powers to order the killing of an individual outside a traditional war zone. The law has been hard pressed to keep up with these developments. **The nature of the enemy** (nonstate, transnational), **the tools available** (weapons, cyber media, diplomacy, public affairs), **and the laws and norms applicable** (humanitarian, human rights, domestic, privacy, and secrecy laws) **all shape the landscape in ways that inevitably alter c**ivil-**m**ilitary **r**elations. If this is emblematic of an epoch in which sovereignty itself is in decline, then it will not be repaired with the demise of al Qaeda.

#### The military strongly supports Obama’s use of targeted killings; they oppose the plan

Johnson 12

[Carrie, Feb 22, <http://www.npr.org/blogs/thetwo-way/2012/02/22/147264637/in-speech-top-pentagon-lawyer-defends-targeted-killing-program>, mg]

**The top lawyer at the Pentagon offered a strong defense of** the **Obama** administration**'s targeted killing program** Wednesday, **arguing** the use of **lethal force against the enemy is a "long-standing and long-legal practice.**"¶ In a speech at Yale University's Law School, Jeh Johnson said there's no real difference between high tech strikes against members of al-Qaida today and the U.S. military decision to target an airplane carrying the commander of the Japanese Navy in 1943.¶ "Should we take a dimmer view of the legality of lethal force directed against individual members of the enemy, because modern technology makes our weapons more precise?" Johnson said, according to a copy of his prepared remarks.¶ Nowhere in the talk did Johnson explicitly mention the U.S. drone program, used to kill radical cleric Anwar Al-Awlaki, al-Qaida propagandist Samir Kahn, and at least one other U.S. citizen over the past year.¶ The Obama administration's legal basis for those strikes remains secret, despite ongoing lawsuits filed by the American Civil Liberties Union and The New York Times that seek more information about how the federal government decides to target its own citizens.

#### Military just gained full operational control over ‘targeted killings’--- they would resist the plan

Klaidman 13

[Daniel, March 19, <http://www.thedailybeast.com/articles/2013/03/19/exclusive-no-more-drones-for-cia.html>, mg]

At a time when controversy over the Obama administration’s drone program seems to be cresting, the CIA is close to taking a major step toward getting out of the targeted killing business. Three senior U.S. officials tell The Daily Beast that the White House is poised to sign off on a plan to shift the CIA’s lethal targeting program to the Defense Department.¶ The move could potentially toughen the criteria for drone strikes, strengthen the program’s accountability, and increase transparency. Currently, the government maintains parallel drone programs, one housed in the CIA and the other run by the Department of Defense. The proposed plan would unify the command and control structure of targeted killings and create a uniform set of rules and procedures. The CIA would maintain a role, but the military would have operational control over targeting. Lethal missions would take place under Title 10 of the U.S. Code, which governs military operations, rather than Title 50, which sets out the legal authorities for intelligence activities and covert operations. “This is a big deal,” says one senior administration official who has been briefed on the plan. “It would be a pretty strong statement.”¶ ¶ Officials anticipate a phased-in transition in which the CIA’s drone operations would be gradually shifted over to the military, a process that could take as little as a year. Others say it might take longer but would occur during President Obama’s second term. “You can’t just flip a switch, but it’s on a reasonably fast track,” says one U.S. official.

#### Civil-military fights are inevitable and CMR theory is bunk

Chuter 09

(David Chuter, has a BA and a Ph.D from London University and a civil servant for the UK Ministry of Defense for thirty-odd years. Published November 2009 in the Journal of Security Center Management. Accessed 7-14-2010. <http://www.ssronline.org/jofssm/issues/jofssm\_0702\_chuter.pdf?CFID=2431641&CFTOKEN=66039426>)

But of course **civil-military relations extend to the whole set of interactions between the state and the military. So what about the struggle for power in “the corridors of government, far removed from the usual ambit of scholars” Here the daily zero-sum game between the military and civilians for power and influence apparently takes place. It is not like that in practice of course. Two things are being confused here. In all governments** and large bureaucracies – for that matter in University Politics Departments – **there will be disagreements and struggles** over all sorts of large and small issues. **This is unavoidable. In a democracy, the basic rule is that elected politicians have the last word, because they are elected and because they take responsibility if things go wrong.** Controversial **issues in defence may therefore** well **involve disputes between civilians and the military.** The military may want a force embarking on a peace mission to be more heavily armed than civilians think is politically acceptable. The Air Force may want to buy a plane from abroad but be overruled and forced to support local industry. These **issues are seldom clear-cut, and there may be fundamental and powerful disagreements. But the military do not necessarily form a united bloc** – military tribalism is legendary – **and civilians in the Defence Ministry may well agree with their military colleagues rather than their opposite numbers in the Ministry of Finance.** However**, because** these sorts of **bureaucratic battles** do indeed **take place away from the eyes of** enquiring **researchers, it is hard to understand them** correctly, **and there is a tendency to extrapolate from what is** known, or **assumed, about particular cases.** Typically, **extrapolation is from the workings of the vast, cumbersome and fragmented US system,** where political appointees bitterly contest control of key issues. **But in fact the US system is highly atypical, and most other systems work very differently. Who “wins” in this sort of conflict depends** very much **on the** particular **circumstances**, and indeed what the sides are. **But what is clear is that size and budget have little to do with political influence**. The Japanese Self Defence Forces are around half the size of their Korean counterparts, although they are all professional. They have a budget which is more than twice as large. But their influence in decision-making within government is a pale shadow of their Korean counterparts, for understandable historical reasons. Similarly, the French military, although smaller than its German counterpart, wields massively more influence in the making of policy. Examples could be multiplied, but the point is clear enough: **the problem as posed by CMR theorists does not really exist.** The second issue is much more fundamental, and it is the involvement of the military in the normal political process itself; This is not as rare as it may sound to Anglo-Saxons, nor is it always seen as a bad thing. Much, as always, depends on history and culture. In the Former Yugoslavia, the armed forces were known informally as the “ninth republic” because of their political influence. This in turn derived from the partisan heritage and the fact that many early leaders of the country were veterans of the war. Far from resenting this military intervention, the Communist Party welcomed and fostered it, partly because the armed forces were a genuinely multi-ethnic organisation. Similar traditions are found in parts of Africa where the indigenous population fought wars of independence. By definition, this kind of civil-military relationship can only exist in a one-party state, where the Army is the military wing of the ruling party. The transition to a multi-party system can therefore be disastrous, as in the Yugoslav case. A variant is where the military supports not a political party but a socio-economic group (as with the Burundian Tutsi) or is heavily associated with a dominant clan or ethnic group, as was often the case elsewhere in Africa. In any event, **historical tradition may give the military a large political role.** Part of the Latin American problem was the inheritance, from Imperial Spain, of the idea of the Army as the ultimate guardian of the national interest. As a result, the very idea of military subordination to the elected government "is false for the civic culture that is predominant", and most ordinary people accept that the military should play a major role in politics.33 By contrast, the very concept of civil-military relations is redundant in traditional cultures (such as many in Africa) where every adult male was a warrior. What you think the problem of civil-military relations is depends very much on where you start from. In conclusion, **perhaps the easiest way to understand all this** intellectual confusion **is to see it as a failure to discriminate between two quite different**, but superficially linked **phenomena. One issue involves a series of incidents in modern times when military officers have become involved in violent or unconstitutional changes of government.** They may have acted on their own, as part of a group, or different officers may have joined in on different sides**. These events** are certainly worthy of study, although they **are so various and have such disparate origins that it is not possible to draw any useful general conclusions from them. A**n entirely **separate issue is the relationship of the military, and the security forces in general, to the civil power, in a democracy.** Unlike the first question, which is largely about the acts of individuals, this question is about the relationship of groups to the civil power. In principle, the situation is straightforward. A legitimate government has the right to demand that all of those who serve the state support it and implement its policies, in line with laws and the Constitution. This means that **the military do not make defence policy any more than teachers make education policy,** and in this limited fashion, one can talk about “control” in the sense in which one controls a car, for example. **The situation is slightly more complicated than normal in the security sector,** and especially with the military, in the light of the kind of historical and cultural factors reviewed above. **But it is not fundamentally different**. The failure to understand this, and **the assumption that these two phenomena are linked,** or that the first is an extreme example of resistance to the second; has provoked much confusion. It **has led to a great deal of wasted energy, seeking to describe and resolve a problem that does not really exist.**

#### No Latin America prolif

Trinkunas 9-1-2011 [Harold A. Trinkunas - Associate Professor and Deputy Director for Academic Affairs @ Naval Post-Graduate School; “Latin America: Nuclear Capabilities, Intentions and Threat Perceptions”; http://digitalcommons.fiu.edu/cgi/viewcontent.cgi?article=1040&context=whemsac] RahulNambiar

The developing security community in the Southern Cone, taking the form of UNASUR in its latest evolution, means that any territorial defense or deterrence rationales for nuclear weapons acquisition have faded. The resolution of all territorial disputes between the major regional powers (Argentina, Brazil, Chile), and ongoing mutual confidence- building measures, limit the possibility that new conflict dynamics will lead States in the region to seek nuclear weapons. Of the two powers with indigenous nuclear technology industries, Brazil‟s constitution bans the development of nuclear weapons, and both Argentina and Brazil are committed to sophisticated nuclear safeguards through the ABACC. 4

#### Latin America prolif would take decades

Donald Schulz, Chairman of the Political Science Department at Cleveland State University, March 2000, The United States and Latin America: Shaping an Elusive Future, online: http://stinet.dtic.mil/cgi-bin/GetTRDoc?AD=ADA375197&Location=U2&doc=GetTRDoc.pdf, accessed February 20, 2007

While we are in a speculative mode, it may be useful to raise the issue of whether, two or three decades from now, the United States might have to deal with a regional hegemon or peer competitor. The most obvious candidate for such a role would be Brazil, which already accounts for almost half of Latin America’s economic production and has by far the largest armed forces in the region (313,250 active troops).53 That country could very well assume a more commanding political and military role in the decades ahead.

### Heg Advantage

#### No impact to legitimacy

#### Empirics

Fettweis 8

[Christopher, professor of political science at Tulane, Credibility and the War on Terror, Winter 2008, Political Science Quarterly, Ingenta.]

There is actually scant evidence that other states ever learn the right lessons. ColdWar history contains little reason to believe that the credibility of the superpowers had very much effect on their ability to influence others. Over the last decade, a series of major scholarly studies have cast further doubt upon the fundamental assumption of interdependence across foreign policy actions. Employing methods borrowed from social psychology rather than the economics-based models commonly employed by deterrence theorists, Jonathan Mercer argued that threats are far more independent than is commonly believed and, therefore, that reputations are not likely to be formed on the basis of individual actions. While policymakers may feel that their decisions send messages about their basic dispositions to others, most of the evidence from social psychology suggests otherwise. Groups tend to interpret the actions of their rivals as situational, dependent upon the constraints of place and time. Therefore, they are not likely to form lasting impressions of irresolution from single, independent events. Mercer argued that the interdependence assumption had been accepted on faith, and rarely put to a coherent test; when it was, it almost inevitably failed.

#### Data proves it’s not the root cause

MacDonald and Parent 11

[\*Assistant Professor of Political Science at Williams College, \*\*Assistant Professor of Political Science at the University of Miami (Paul and Joseph, International Security, 35.4, "Graceful decline? The surprising success of great power retrenchment", http://belfercenter.ksg.harvard.edu/files/ISEC\_a\_00034-MacDonald\_proof2.pdf, WEA]

These arguments have a number of limitations. First, opponents of retrenchment exaggerate the importance of credibility in the defense of commitments. Just because a state has signaled a willingness to retreat from one commitment does not mean it will retreat from others. Studies of reputation, for example, have demonstrated a tenuous link between past behavior and current reputation.22 The capacity to defend a commitment is as important as credibility in determining the strength of a commitment. Quantitative studies have likewise found a mixed link between previous concessions and deterrence failure.23 The balance of power between the challenger and the defender, in contrast, is often decisive. For instance, after a series of crises over Berlin and Cuba, British Prime Minister Harold Macmillan observed to his cabinet, “The fact that the Soviet Government had agreed to withdraw their missiles and their aircraft from Cuba was not evidence of weakness but of realism. . . . But Berlin was an entirely different question; not only was it of vital importance to the Soviet Government but the Russians had overwhelming conventional superiority in the area.”24 This finding supports the basic insight of retrenchment: by con- centrating scarce resources, a policy of retrenchment exchanges a diffuse repu- tation for toughness for a concentrated capability at key points of challenge. Second, pessimists overstate the extent to which a policy of retrenchment can damage a great power’s capabilities or prestige. Gilpin, in particular, assumes that a great power’s commitments are on equal footing and interde- pendent. In practice, however, great powers make commitments of varying de- grees that are functionally independent of one another. Concession in one area need not be seen as influencing a commitment in another area.25 Far from being perceived as interdependent, great power commitments are often seen as being rivalries, so that abandoning commitments in one area may actually bolster the strength of a commitment in another area. During the Korean War, for instance, President Harry Truman’s administration explicitly backed away from total victory on the peninsula to strengthen deterrence in Europe.26 Re- treat in an area of lesser importance freed up resources and signaled a strong commitment to an area of greater significance. Third, critics do not just oversell the hazards of retrenchment; they down- play the dangers of preventive war.27 Both Gilpin and Copeland praise the ability of preventive war to arrest great power decline by defusing the threat posed to a hegemonic power by an isolated challenger. Such reasoning disre- gards the warning of Otto von Bismarck and others that preventive war is “suicide from fear of death.”28 In practice, great powers operate in a much more constrained and complex security environment in which they face multi- ple threats on several fronts. Powers pursuing preventive war are shouldering grave risks: preventive war may require resources that are unavailable or allies that are difficult to recruit, and defeat in preventive war opens floodgates to exploitation on multiple fronts. Even a successful war, if sufficiently costly, can weaken a great power to the point of vulnerability.29 For most great powers, the potential loss of security in the future as a result of relative decline rarely justifies inviting the hazards of war in the present.

#### Cred failure is not through lack of upholding promises but the disparity in military capability- Aff can’t resolve major reason for interstate intransience

Monteiro 12-29

[Nuno, assistant professor of political science at Yale University, 12-29-2011, “Why we (keep) fighting,” Foreign Policy, <http://walt.foreignpolicy.com/posts/2011/12/29/why_we_keep_fighting>]

Both these views are wrong. The war in Afghanistan does not prevent the United States from badly damaging any non-nuclear state that defies it while suffering relatively little itself. And the U.S.'s new enemies are no less rational than its old ones. If U.S. threats were able to deter shoe-slamming "we will bury you" Khrushchev and his hundreds of intercontinental nuclear missiles, why is the United States unable to stop North Korea and its handful of rudimentary warheads -- not to mention Iran, which has none? Because threats are not the problem. Backed by the mightiest military in history, U.S. threats are eminently credible. In fact, the absence of another great power capable of deterring Washington gives the U.S. a free hand abroad. As Saddam's foreign minister Tariq Aziz lamented after Iraq's humiliating defeat in the Gulf War, "We don't have a patron anymore. If we still had the Soviets as our patron,none of this would have happened." The problem lies elsewhere. During the Cold War, mutually assured destruction kept the peace. The prospect of an unprovoked U.S. attack, which would ultimately lead to the U.S.'s own destruction, was unthinkable. But now that the Soviet Union is gone, America's enemies feel vulnerable even if they comply with Washington's demands. They know that the United States has the wherewithal to take them down if it so decides, so they are unlikely to accept any U.S. demands (to abandon a nuclear program, for example) that would leave them in a position of even greater weakness. This is what explains U.S. involvement in so many "hot" wars since the Cold War ended. As the world's sole superpower, the United States is often seen as an aggressive behemoth. To make its threats effective, we are told, it must restrain itself through a less aggressive military posture, a commitment to multilateral action, or even a pledge to eschew regime change. But even if it does all this, as long as U.S. power remains unmatched, Washington will continue to face difficulties having its way without resorting to war. This should come as no surprise. It follows from the unparalleled power of the United States.

#### 1. Hegemony unsustainable—3 reasons

Christopher Layne is a Research Fellow with the Center on Peace and Liberty at The Independent Institute and Mary Julia and George R. Jordan Professorship of International Affairs at the George Bush School of Government and Public Service at Texas A&M University, July 26th 2011, http://www.tandfonline.com/doi/pdf/10.1080/09557571.2011.55849, “The unipolar exit: beyond the Pax American”; hhs-ab

In this article I challenge Brooks and Wohlforth. I show that the unipolar era already is visibly drawing to a close. Three main drivers explain the impending end of the Pax Americana. First, the rise of new great powers—especially China—is transforming the international system from unipolarity to multipolarity. Second, the United States is becoming the poster child for strategic over-extension, or as Paul Kennedy (1987) dubbed it, imperial overstretch. Third, the United States’ relative economic power is declining. In particular, mounting US ﬁscal problems and the dollar’s increasingly problematic role as the international ﬁnancial system’s reserve currency are undermining US hegemony. To comprehend why the Pax Americana is ending we need to understand the linkages among these trends, and how each has feedback effects on the others. After examining how these trends undermine the Brooks and Wohlforth argument for unipolar stability and the durability of US hegemony, I conclude by arguing that over the next two decades the Pax Americana’s end presages dramatic changes in international politics—the outlines of which already are visible.

#### 2. Heg doesn’t solve war

Benjamin H. Friedman, Research Fellow in Defense and Homeland Security Studies @ Cato Institute, July 20, 2010, http://www.cato.org/testimony/ct-bf-07202010.html, “Military Restraint and Defense Savings”

Another argument for high military spending is that U.S. military hegemony underlies global stability. Our forces and alliance commitments dampen conflict between potential rivals like China and Japan, we are told, preventing them from fighting wars that would disrupt trade and cost us more than the military spending that would have prevented war. The theoretical and empirical foundation for this claim is weak. It overestimates both the American military's contribution to international stability and the danger that instability abroad poses to Americans. In Western Europe, U.S. forces now contribute little to peace, at best making the tiny odds of war among states there slightly more so.7 Even in Asia, where there is more tension, the history of international relations suggests that without U.S. military deployments potential rivals, especially those separated by sea like Japan and China, will generally achieve a stable balance of power rather than fight. In other cases, as with our bases in Saudi Arabia between the Iraq wars, U.S. forces probably create more unrestthan they prevent. Our force deployments can also generate instability by prompting states to develop nuclear weapons

#### No transition wars

MacDonald and Parent 11 – Asst Prof. of PoliSci @ Williams College and Parent, Asst Prof. PoliSci @ U of Miami, Paul and Joseph, “Graceful Decline?” International Security, 35.4, Project MUSE

Implications for Sino-U.S. Relations Our findings are directly relevant to what appears to be an impending great power transition between China and the United States. Estimates of economic performance vary, but most observers expect Chinese GDP to surpass U.S. GDP sometime in the next decade or two.91 This prospect has generated considerable concern. Many scholars foresee major conflict during a Sino-U.S. ordinal transition. Echoing Gilpin and Copeland, John Mearsheimer sees the crux of the issue as irreconcilable goals: China wants to be America's superior and the United States wants no peer competitors. In his words, "[N]o amount [End Page 40] of goodwill can ameliorate the intense security competition that sets in when an aspiring hegemon appears in Eurasia."92 Contrary to these predictions, our analysis suggests some grounds for optimism. Based on the historical track record of great powers facing acute relative decline, the United States should be able to retrench in the coming decades. In the next few years, the United States is ripe to overhaul its military, shift burdens to its allies, and work to decrease costly international commitments. It is likely to initiate and become embroiled in fewer militarized disputes than the average great power and to settle these disputes more amicably. Some might view this prospect with apprehension, fearing the steady erosion of U.S. credibility. Yet our analysis suggests that retrenchment need not signal weakness. Holding on to exposed and expensive commitments simply for the sake of one's reputation is a greater geopolitical gamble than withdrawing to cheaper, more defensible frontiers. Some observers might dispute our conclusions, arguing that hegemonic transitions are more conflict prone than other moments of acute relative decline. We counter that there are deductive and empirical reasons to doubt this argument. Theoretically, hegemonic powers should actually find it easier to manage acute relative decline. Fallen hegemons still have formidable capability, which threatens grave harm to any state that tries to cross them. Further, they are no longer the top target for balancing coalitions, and recovering hegemons may be influential because they can play a pivotal role in alliance formation. In addition, hegemonic powers, almost by definition, possess more extensive overseas commitments; they should be able to more readily identify and eliminate extraneous burdens without exposing vulnerabilities or exciting domestic populations. We believe the empirical record supports these conclusions. In particular, periods of hegemonic transition do not appear more conflict prone than those of acute decline. The last reversal at the pinnacle of power was the Anglo-American transition, which took place around 1872 and was resolved without armed confrontation. The tenor of that transition may have been influenced by a number of factors: both states were democratic maritime empires, the United States was slowly emerging from the Civil War, and Great Britain could likely coast on a large lead in domestic capital stock. Although China and the United States differ in regime type, similar factors may work to cushion the impending Sino-American transition. Both are large, relatively secure continental great powers, a fact that mitigates potential geopolitical competition.93 China faces a variety of domestic political challenges, including strains among rival regions, which may complicate its ability to sustain its economic performance or engage in foreign policy adventurism.94 Most important, the United States is not in free fall. Extrapolating the data into the future, we anticipate the United States will experience a "moderate" decline, losing from 2 to 4 percent of its share of great power GDP in the five years after being surpassed by China sometime in the next decade or two.95 Given the relatively gradual rate of U.S. decline relative to China, the incentives for either side to run risks by courting conflict are minimal. The United States would still possess upwards of a third of the share of great power GDP, and would have little to gain from provoking a crisis over a peripheral issue. Conversely, China has few incentives to exploit U.S. weakness.96 Given the importance of the U.S. market to the Chinese economy, in addition to the critical role played by the dollar as a global reserve currency, it is unclear how Beijing could hope to consolidate or expand its increasingly advantageous position through direct confrontation. In short, the United States should be able to reduce its foreign policy commitments in East Asia in the coming decades without inviting Chinese expansionism. Indeed, there is evidence that a policy of retrenchment could reap potential benefits. The drawdown and repositioning of U.S. troops in South Korea, for example, rather than fostering instability, has resulted in an improvement in the occasionally strained relationship between Washington and Seoul.97 U.S. moderation on Taiwan, rather than encouraging hard-liners in [End Page 42] Beijing, resulted in an improvement in cross-strait relations and reassured U.S. allies that Washington would not inadvertently drag them into a Sino-U.S. conflict.98 Moreover, Washington's support for the development of multilateral security institutions, rather than harming bilateral alliances, could work to enhance U.S. prestige while embedding China within a more transparent regional order.99 A policy of gradual retrenchment need not undermine the credibility of U.S. alliance commitments or unleash destabilizing regional security dilemmas. Indeed, even if Beijing harbored revisionist intent, it is unclear that China will have the force projection capabilities necessary to take and hold additional territory.100 By incrementally shifting burdens to regional allies and multilateral institutions, the United States can strengthen the credibility of its core commitments while accommodating the interests of a rising China. Not least among the benefits of retrenchment is that it helps alleviate an unsustainable financial position. Immense forward deployments will only exacerbate U.S. grand strategic problems and risk unnecessary clashes.101 Conclusion This article has advanced three main arguments. First, retrenchment pessimists are incorrect when they suggest that retrenchment is an uncommon policy response to great power decline. States often curtail their commitments and mellow their ambitions as they fall in the ranks of great powers. Second and related, declining great powers react in a prompt and proportionate manner to their dwindling fortunes. They do this for the same reason that they tend to seize opportunities to expand: international incentives are strong inducements. [End Page 43] In the high-stakes world of great power politics, states can seldom afford to fool themselves or pamper parochial interests when relative power is perilously slipping away. Third, the rate of relative decline explains not only the extent of retrenchment but also the form. The faster the rate of decline, the more likely states are to reform their militaries, increase reliance on allies, and refrain from using force in international disputes. Taken together, these findings suggest that retrenchment is an attractive strategy for dealing with great power decline. Although we make no claim that the rate of relative decline explains everything, we suggest that our study represents a solid first cut and that domestic political factors loom too large in discussions of power transitions and hegemonic change.

# 2NC

### kritik

#### **The modern liberal state utilizes the threat of nuclear weapons to justify invasion in the interim to prevent catastrophe. Their representations are more likely to lead to preemption than passivity.**

Massumi 07 (Brian, Communication Department of the Université de Montréal , “Potential Politics and the Primacy of Preemption”)

Fear is always a good reason to go politically conditional. Fear is the palpable action in the present of a threatening future cause. It acts just as palpably whether the threat is determinate or not. It weakens your resolve, creates stress, lowers consumer confidence, and may ultimately lead to individual and/or economic paralysis. To avoid the paralysis, which would make yourself even more of a target and carry the fear to even higher level, you must simply act. In Bush administration parlance, you "go kinetic."6 You leap into action on a level with the potential that frightens you. You do that, once again, by inciting the potential to take an actual shape you can respond to. You trigger a production of what you fear. You turn the objectively indeterminate cause into an actual effect so you can actually deal with it in some way. Any time you feel the need to act, then all you have to do is actuate a fear. The production of the effect follows as smoothly as a reflex. This affective dynamic is still very much in place, independent of Rumsfeld's individual fate. It will remain in place as long as fear and remains politically actuatable. The logic of preemption operates on this affective plane, in this proliferative or ontogenetic way: in a way that contributes to the reflex production of the specific being of the threat. You're afraid Iraq is a breeding ground for terrorists? It could have been. If it could have been, it would have been. So go ahead, make it one. "Bring 'em on," the President said, following Hollywood-trained reflex. He knew it in his "guts." He couldn't have gone wrong. His reflex was right. Because "now we can all agree" that Iraq is in actual fact a breeding ground for "terrrorists". That just goes to prove that the potential was always there. Before, there was doubt in some quarters that Saddam had to be removed from power. Some agreed he had to go, some didn't. Now we can all agree. It was right to remove him because doing so made Iraq become what it always could have been. And that's the truth. Truth, in this new world order, is by nature retroactive. Fact grows conditionally in the affective soil of an indeterminately present futurity. It becomes objective as that present reflexively plays out, as a effect of the preemptive action taken. The reality-based community wastes time studying empirical reality, the Bushites said: "we create it." And because of that, "we" the preemptors will always be right. We always will have been right to preempt, because we have objectively produced a recursive truth-effect for your judicious study. And while you are looking back studying the truth of it, we will have acted with reflex speed again, effecting a new reality. 7 We will always have had no choice but to prosecute the "war on terror," ever more vigilantly and ever more intensely on every potential front. We, preemptors, are the producers of your world. Get used to it. The War in Iraq is a success to the extent that it made the productivity of the preemptive "war on terror" a self-perpetuating movement. Even if the US were to withdraw from Iraq tomorrow, the war would have to continue on other fronts no matter who controls Congress or who is in the White House. It would have to continue in Afghanistan, for example, where the assymetrical tactics perfected in Iraq are now being applied to renew the conflict there. Or in Iran, which also always could have/would have been a terrorist breeding ground. Or it could morph and move to the Mexican-US border, itself morphed into a distributed frontline proliferating throughout the territory in the moving form of "illegal immigration". On the indefinite Homeland Security front of a protieform war, who knows what threats may be spinelessly incubating where, abetted by those who lack the "backbone" to go kinetic. Preemption is like deterrence in that it combines a proprietary epistemology with a unique ontology in such a way as to make present a future cause that sets a self-perpetuating movement into operation. Its differences from deterrence hinge on its taking objectively indeterminate or potential threat as its self-constitutive cause rather than fully formed and specified threat. It situates itself on the ground of ontogenetic potential. There, rather than deterring the feared effect, it actualizes the potential in a shape to which it hopes it can respond. It assumes a proliferation of potential threats, and mirrors that capacity in its own operation. It becomes proliferative. It assumes the objective imbalance of a far-from-equilibrium state as a permanent condition. Rather than trying to right the imbalance, it seizes it as an opportunity for itself. Preemption also sets a race in motion. But this is a race run on the edge of chaos. It is a race of movement-flushing, detection, perception, and affective actuation, run in irreparably chaotic or quasi-chaotic conditions. The race of preemption has any number of laps, each ending in the actual effecting of a threat. Each actualization of a threat triggers the next lap, as a continuation of the first in the same direction, or in another way in a different field. Deterrence revolved around an objective cause. Preemption revolves around a proliferative effect. Both are operative logics. The operative logic of deterrence, however, remained causal even as it displaced its cause's effect. Preemption is an effective operative logic rather than a causal operative logic. Since its ground is potential, there is no actual cause for it to organize itself around. It compensates for the absence of an actual cause by producing an actual effect in its place. This it makes the motor of its movement: it converts an absent or virtual cause really, directly into a taking-actual-effect. It does this affectively. It uses affect to effectively trigger a virtual causality.8 Preemption is when the futurity of unspecified threat is affectively held in the present in a perpetual state of potential emergence(y) so that a movement of actualization may be triggered that is not only self-propelling but also effectively, indefinitely, ontologically productive, because it works from a virtual cause whose potential no single actualization exhausts. Preemption's operational parameters mean that is never univocal. It operates in the element of vagueness and objective uncertainty. Due to its proliferative nature, it cannot be monolithic. Its logic cannot close in around its self-causing as the logic deterrence does. It includes an essential openness in its productive logic.9 It incites its adversary to take emergent form. It then strives to become as proteiform as its ever-emergent adversary can be. It is as shape-shifting as it is self-driving. It infiltrates across boundaries, sweeping up existing formations in its own transversal movement. Faced with gravity-bound formations too inertial for it to sweep up and carry off with its own operative logic, it contents itself with opening windows of opportunity to pass through. This is the case with the domestic legal and juridical structure in the US. It can't sweep that away. But it can build into that structure escape holes for itself. These take the form of formal provisions vastly expanding the power of the executive, in the person of the president in his role as commander-in-chief, to declare states of exception which suspend the normal legal course in order to enable a continued flow of preemptive action.10 Preemption stands for conflict unlimited: the potential for peace amended to become a perpetual state of undeclared war. This is the "permanent state of emergency" so presciently described by Walter Benjamin. In current Bush administration parlance, it has come to be called "Long War" replacing the Cold War: a preemptive war with an in-built tendency to be never-ending. Deterrence produced asymmetrical conflict as a by-product. The MADly balanced East-West bipolarity spun off a North-South sub-polarity. This was less a polarity than an axis of imbalance. The "South" was neither a second Western First nor another Eastern Second. It was an anomalous Third. In this chaotic " Third World ," local conflicts prefiguring the present "imbalance of terror" proliferated. The phrase "the war on terror" was in fact first popularized by Richard Nixon in 1972 in response to the attack at the Munich Olympics when the Israeli-Palestinian conflict spectacularly overspilled northward. Asymmetrical conflicts, however, were perceivable by the reigning logic of deterrence only as a reflection of itself. The dynamic of deterrence were overlaid upon them. Their heterogeneity was overcoded by the familiar US-Soviet duality. Globally such conflicts figured only as opportunities to reproduce the worldwide balance of terror on a reduced scale. The strategy of "containment" adopted toward them was for the two sides in the dominant dyad to operate in each local theater through proxies in such a way that their influence, on the whole, balanced out. "I decided," Nixon said after Munich , "that we must maintain a balance."11 He did not, as Bush did after 9-11, decide to skew things by going unilaterally "kinetic." The rhetoric of the "war on terror" fell into abeyance during the remainder of the 1970s, as Southern asymmetries tended to be overcoded as global rebalancings, and going kinetic was "contained" to the status of local anomaly.

#### The PARADOX OF RISK makes this issue NOT resolvable by weighing the plan. If impact is calculated by multiplying probability and magnitude, any probability of an infinite impact irrationally registers as infinite

Kessler 2008 (Oliver Kessler, Sociology at University of Bielefeld, “From Insecurity to Uncertainty: Risk and the Paradox of Security Politics” *Alternatives*  33 (2008), 211-232)

The problem of the second method is that it is very difficult to  "calculate" politically unacceptable losses. If the risk of terrorism is  defined in traditional terms by probability and potential loss, then  the focus on dramatic terror attacks leads to the marginalization of  probabilities. The reason is that even the highest degree of improbability becomes irrelevant as the measure of loss goes to infinity.^o  The mathematical calculation of the risk of terrorism thus tends to  overestimate and to dramatize the danger. This has consequences  beyond the actual risk assessment for the formulation and execution  of "risk policies": If one factor of the risk calculation approaches  infinity (e.g., if a case of nuclear terrorism is envisaged), then there  is no balanced measure for antiterrorist efforts, and risk management as a rational endeavor breaks down. Under the historical con-  dition of bipolarity, the "ultimate" threat with nuclear weapons could  be balanced by a similar counterthreat, and new equilibria could be  achieved, albeit on higher levels of nuclear overkill. Under the new  condition of uncertainty, no such rational balancing is possible since  knowledge about actors, their motives and capabilities, is largely  absent.  The second form of security policy that emerges when the deter-  rence model collapses mirrors the "social probability" approach. It  represents a logic of catastrophe. In contrast to risk management  framed in line with logical probability theory, the logic of catastro- phe does not attempt to provide means of absorbing uncertainty.  Rather, it takes uncertainty as constitutive for the logic itself; uncertainty is a crucial precondition for catastrophies. In particular, cata-  strophes happen at once, without a warning, but with major impli-  cations for the world polity. In this category, we find the impact of  meteorites. Mars attacks, the tsunami in South East Asia, and 9/11.  To conceive of terrorism as catastrophe has consequences for the  formulation of an adequate security policy. Since catastrophes hap-  pen irrespectively of human activity or inactivity, no political action  could possibly prevent them. Of course, there are precautions that  can be taken, but the framing of terrorist attack as a catastrophe  points to spatial and temporal characteristics that are beyond "ratio-  nality." Thus, political decision makers are exempted from the  responsibility to provide security—as long as they at least try to pre-  empt an attack. Interestingly enough, 9/11 was framed as catastro-  phe in various commissions dealing with the question of who was  responsible and whether it could have been prevented.  This makes clear that under the condition of uncertainty, there  are no objective criteria that could serve as an anchor for measur-  ing dangers and assessing the quality of political responses. For ex-  ample, as much as one might object to certain measures by the US  administration, it is almost impossible to "measure" the success of  countermeasures. Of course, there might be a subjective assessment  of specific shortcomings or failures, but there is no "common" cur-  rency to evaluate them. As a consequence, the framework of the  security dilemma fails to capture the basic uncertainties.  Pushing the door open for the security paradox, the main prob-  lem of security analysis then becomes the question how to integrate  dangers in risk assessments and security policies about which simply  nothing is known. In the mid 1990s, a Rand study entitled "New  Challenges for Defense Planning" addressed this issue arguing that  "most striking is the fact that we do not even know who or what will  constitute the most serious future threat, "^i In order to cope with  this challenge it would be essential, another Rand researcher wrote,  to break free from the "tyranny" of plausible scenario planning. The  decisive step would be to create "discontinuous scenarios ... in  which there is no plausible audit trail or storyline from current  events"52 These nonstandard scenarios were later called "wild cards"  and became important in the current US strategic discourse. They  justified the transformation from a threat-based toward a capability-  based defense planning strategy.53  The problem with this kind of risk assessment is, however, that  even the most absurd scenarios can gain plausibility. By construct-  ing a chain of potentialities, improbable events are linked and brought into the realm of the possible, if not even the probable.  "Although the likelihood of the scenario dwindles with each step,  the residual impression is one of plausibility. "54 This so-called Oth-  ello effect has been effective in the dawn of the recent war in Iraq.   The connection between Saddam Hussein and Al Qaeda that the  US government tried to prove was disputed from the very begin-  ning. False evidence was again and again presented and refuted,  but this did not prevent the administration from presenting as the  main rationale for war the improbable yet possible connection  between Iraq and the terrorist network and the improbable yet  possible proliferation of an improbable yet possible nuclear  weapon into the hands of Bin Laden. As Donald Rumsfeld  famously said: "Absence of evidence is not evidence of absence."  This sentence indicates that under the condition of genuine uncer-  tainty, different evidence criteria prevail than in situations where  security problems can be assessed with relative certainty.

#### **This paves over clashes of context and assumptions, transforming 1AC research into vacuous mush.**

Berube 2000 (David M, Associate Professor of Speech Communication and Director of Debate at the University of South Carolina. Contemporary Argumentation and Debate 21: 53-73 http://www.cedadebate.org/CAD/index.php/CAD/article/viewFile/248/232)

The dead ends checked the authenticity of the extended claims by debunking especially fanciful hypotheses. Text retrieval services may have changed that. While text retrieval services include some refereed published materials, they also incorporate transcripts and wire releases that are less vigilantly checked for accuracy. The World Wide Web allows virtually anyone to set up a site and post anything at that site regardless of its veracity. Sophisticated super search engines, such as Savvy Search® help contest debaters track down particular words and phrases. Searches on text retrieval services such as Lexis-Nexis Universe® and Congressional Universe® locate words and word strings within n words of each other. Search results are collated and loomed into an extended argument. Often, evidence collected in this manner is linked together to reach a conclusion of nearly infinite impact, such as the ever-present specter of global thermonuclear war. Furthermore, too much evidence from online text retrieval services is unqualified or under-qualified. Since anyone can post a web page and since transcripts and releases are seldom checked as factual, pseudo-experts abound and are at the core of the most egregious claims in extended arguments using mini-max reasoning. In nearly every episode of fear mongering . . . people with fancy titles appeared. . . . [F]or some species of scares . . . secondary scholars are standard fixtures. . . . Statements of alarm by newscasters and glorification of wannabe experts are two telltales tricks of the fear mongers' trade. . . : the use of poignant anecdotes in place of scientific evidence, the christening of isolated incidents as trends, depictions of entire categories of people as innately dangerous. . . . (Glassner 206, 208) Hence, any warrant by authority of this ilk further complicates probability estimates in extended arguments using mini-max reasoning. Often the link and internal link story is the machination of the debater making the claim rather than the sources cited in the linkage. The links in the chain may be claims with different, if not inconsistent, warrants. As a result, contextual considerations can be mostly moot. Not only the information but also the way it is collated is suspect. All these engines use Boolean connectors (and, or, and not) and Boolean connectors are dubious by nature. Boolean logic uses terms only to show relationships - of inclusion or exclusion -among the terms. It shows whether or not one drawer fits into another and ignores the question whether there is anything in the drawers. . . . The Boolean search shows the characteristic way that we put questions to the world of information. When we pose a question to the Boolean world, we use keywords, buzzwords, and thought bits to scan the vast store of knowledge. Keeping an abstract, cybernetic distance from the source of knowledge, we set up tiny funnels. . . . But even if we build our tunnels carefully, we still remain essentially tunnel dwellers. . . . Thinking itself happens only when we suspend the inner musings of the mind long enough to favor a momentary precision, and even then thinking belongs to musing as a subset of our creative mind. . . . The Boolean reader, on the contrary, knows in advance where the exits are, the on-ramps, and the well-marked rest stops. . . . The pathways of thought, not to mention the logic of thoughts, disappear under a Boolean arrangement of freeways." (Heim 18,22-25) Heim worries that the Boolean search may encourage readers to link together nearly empty drawers of information, stifling imaginative, creative thinking and substituting empty ideas for good reasons. The problems worsen when researchers select word strings without reading its full context, a nearly universal practice among contest debaters. Using these computerized research services, debaters are easily able to build extended mini-max arguments ending in Armageddon. Outsiders to contest debating have remarked simply that too many policy debate arguments end in all-out nuclear war. consequently, they categorize the activity as foolish. How many times have educators had contest debaters in a classroom discussion who strung out an extended mini-max argument to the jeers and guffaws of their classmates? They cannot all be wrong. Frighteningly enough, most of us agree. We should not ignore Charles Richet's adage: "The stupid man is not the one who does not understand something - but the man who understands it well enough yet acts as if he didn't" (Tabori 6). Regrettably, mini-max arguments are not the exclusive domain of contest debating. "Policies driven by the consideration of low risk probabilities will, on the whole, lead to low investment strategies to prevent a hazard from being realized or to mitigate the hazard's consequences. By comparison, policies driven by the consideration of high consequences, despite low probabilities, will lead to high levels of public investment" (Nehnevajsa 521). Regardless of their persuasiveness, Bashor and others have discovered that mini-max claims are not useful in resolving complex issues. For example, in his assessment of low-probability, potentially high-consequence events such as terrorist use of weapons of mass destruction, Bashor found simple estimates of potential losses added little to contingency planning. While adding little to policy analysis, extended arguments using mini-max reasoning remain powerful determinants of resource allocation. As such, they need to be debunked. Experts agree. For example, Slovic advocates a better understanding of all risk analysis since it drives much of our public policy. "Whoever controls the definition of risk controls the rational solution to the problem at hand. If risk is defined one way, then one option will rise to the top as the most cost-effective or the safest or the best. If it is defined another way, perhaps incorporating qualitative characteristics or other contextual factors, one will likely get a different ordering of action solutions. Defining risk is thus an exercise in power" (699). When probability assessments are eliminated from risk calculi, as is the case in mini-max risk arguments, it is a political act, and all political acts need to be scrutinized with a critical lens.

#### **The method of evidence selection used by the 1AC makes effective debate impossible**

Stevens 2007 (Alex Stevens, Senior Researcher-European Institute of Social Services, School of Social Policy, Sociology and Social Research, Keynes College, University of Kent, “Survival of the Ideas that Fit: An Evolutionary Analogy for the Use of Evidence in Policy” Social Policy and Society 6:1, 25–35)

The proposed evolutionary analogy goes beyond the political/tactical model by also helping to explain how evidence can be used selectively to further the interests of powerful social groups, without relying solely on the deliberate connivance of policymakers. It sees social structure, in addition to political tactics, as important in supporting selection in the use of evidence. It uses an evolutionary approach to explain the pattern of selection. It starts from the assumption that a variety of ideas come from evidence and compete for attention in policy, as genes arise and compete for survival. The ideas may be facts, findings or recommendations that have been produced by academics, journalists, think tanks, pressure groups or others. Some of these ideas fit the interests of powerful groups and some do not. Ideas that do fit will find powerful supporters. Others will not. Those ideas that fit will therefore have groups and individuals that can carry them into policy, as would a gene be reproduced if it finds a place in organisms that survive. The ideas that do not fit will tend not to be picked up by people who have the power to translate them into policy. This evolutionary advantage leads to the survival of the ideas that fit. The major advantage of this analogy is that it illuminates the biased use of evidence without relying on policy makers to be irrational, or the ability of powerful social groups to coordinate a campaign to ignore unhelpful research. Mechanisms of selection In contrast to the reproduction of genes, it is not the idea that gives its carrier the increased potential to survive. And it is not, as Dawkins suggested for memes, that the idea is ‘advantageous to itself’ (Dawkins, 1976: 200). Rather, it is the power of the carriers, and the choices they make on which bits of evidence to pick up, that confer advantage to ideas that suit the interests of powerful groups. A similarity to biological evolution is that the process of selection is complicated, messy and sometimes brutal. Powerful social groups are not monolithic. They have diverse memberships and divergent interests. They struggle over what policies will be proclaimed and implemented, and use various mechanisms to attempt to ensure that the evidence that suits their purpose comes to be recognised as legitimate. Policy makers, businesses, political parties and pressure groups may ‘trawl’: fishing for evidence, hauling in the bits that suit their needs, and throwing back those that do not. They may also ‘farm’ evidence, by, for example, commissioning research, but only publishing and using those parts of it that meet the criteria that they set for the look and flavour of the evidence produced. Repetition is a useful tool in ensuring that attention is given to useful evidence. Groups that have a voice in the policy process can repeatedly refer to bits of evidence, which may be ripped out of context and based on methodologically suspect research. Through repetition, such evidence can become part of the accepted body of knowledge in a policy area. Powerful groups can also use ‘flak’ (Chomsky and Herman, 1988) to attack, silence or discredit evidence that comes into the public arena, but is not helpful to their interests. And they may be able to impose ‘strain’ (Chambliss, 1976) on people and organisations that produce and advocate unhelpful evidence, who may find that doing so is not conducive to a successful career or to organisational survival. There are limits to the research questions that can be asked that reinforce selection. These include limits that are set by legal, professional and ideological boundaries. Different groups will also have different narratives of how social problems arise and how they should be solved. These narratives provide a frame into which evidence must fit if it is to enter policy. The extent to which social groups can impose their own narratives and frames on a debate depends on their relative legal, professional, financial and ideological power (Green, 2000; Hajer, 1993). Limits are also set by the decisions of those people who pay for research on what they are interested in buying. Those groups with the most power in society will be most able to implement these mechanisms, and so bring attention to research that suits them, and encourage the ignorance of research that does not. This does not mean that their power dominates the use of evidence entirely. Weaker social groups, including trade unions, environmental pressure groups, other campaigning bodies and self-organisations of the poor and socially marginalised may also attempt to make these mechanisms work for them. However, they have less access to the sources of research and its dissemination; they are less able to impose their interpretations of research evidence on a wider public. They have less opportunity to trawl or farm research, to create flak, to repeat favourable evidence or to impose strain on those who produce or disseminate unhelpful research. And they have less of a role in framing policy. Selection in action So far, this evolutionary analogy has not been rigorously tested against actual uses of evidence in practice. It is presented here in order to invite discussion of how it may apply to various areas of social policy. However, it is quite easy to find illustrative examples of the selective use of evidence in policy making; especially, it seems, in crime, immigration and health policies. The British Drug Treatment and Testing Orders (DTTO, a sentence for drug dependent offenders introduced in the Crime and Disorder Act 1998, since replaced by the Drug Rehabilitation Requirement) were inspired by the expansion of drug courts in the USA. A report by one of the instigators of the DTTO policy (Russell, 1994) trawls in references to evaluations of drug courts, all of which are positive, without mentioning any of the negative evaluations, or mentioning that the positive evaluations offer good examples of selection bias; basing their results solely on the proportion of people who completed the programmes, and often comparing them to those who dropped out early, in defiance of accepted methodological standards (Stevens et al., 2005). Before the DTTO was rolled-out across England and Wales, a study of three pilot areas was commissioned which concluded ‘we could hardly portray the pilot programmes as unequivocally successful’ (Turnbull et al., 2000: 87). The response in terms of policy was typical of the ‘farming’ mechanism. The negative findings were not publicised and the roll-out went ahead. A second example of selection is the use of research on the impact of asylum policies in Europe on the number of asylum seekers. This research found that direct pre-entry measures (e.g. visas, sanctions on airlines) have had the greatest impact on the number of asylum claimants. But ‘measures such as reception facilities, detention and the withdrawal of welfare benefits appear to have had much more limited impact’ (Zetter et al., 2003: xiii). Restrictive policies also have counter-effects, including increased illegal immigration and displacement of asylum flows to other countries. The official response provided examples of ‘farming’ and of ‘strain’. Publication of the research was delayed for two years, findings on the lack of effect of indirect controls and on their counter-effects were ignored and such controls continued to be tightened (e.g. in the Nationality, Immigration and Asylum Act 2002 and the Asylum and Immigration Act 2004). One of the authors of this research wrote in a letter to The Guardian that this was ‘part of a general and worrying trend that academic research is being used to buttress government policies in a way that is illegitimate and which depends upon an extremely partial reading of research results’ (Griffiths, 2003). So far, these examples show only that politicians and policy makers are capable of making selective use of the research that they commission. They could fit with the political/tactical view of policy-makers making irrational uses of evidence for their own purposes. However, they should be viewed within the context of argumentation over policy that occurs around as well as within the state. The people whose interests are most directly harmed by these selective uses of evidence, being drug-using offenders and would-be immigrants and asylum seekers, are among the least powerful in these arguments. On the other hand, powerful interest groups have an interest in the use of evidence to bolster such policies. Powerful social groups have, for example, long benefited from the use of migrant workers, both as cheap labour to boost profits and as scapegoats for social problems that result from inequality (Winder, 2005). As the 2005 UK general election showed, the government faces a great deal of external pressure to be seen to be tough on immigration. Opposition parties and right-wing newspapers can target a great deal of flak at politicians and researchers who make the case for immigration. A rational debate over the pros and cons of asylum policy is unlikely to occur in such a context. The reasons for this are not merely tactical, but also structural, as it is social structure which explains the relative power that groups can bring to these arguments and processes of evidence selection. External influences on the use of evidence are clearer in some examples from the field of health and food policy. In 2003, the World Health Organisation sought to create international guidelines that stated that daily intake of sugar should not exceed 10 grammes per person, based on the evidence of the damage done by excessive consumption to human health. This lead to the imposition of heavy ‘strain’ on the WHO, which faced criticism, including calls for the resignation of its Director from US officials, who were themselves pressured by the sugar corporations who are major donors to the political parties of the USA (Boseley, 2003). After these pressures had been imposed, the 10g recommended daily limit on sugar intake was not included in the final document (World Health Organization, 2003). In the UK, there is the example of the government's alcohol harm reduction strategy. The government initially commissioned a group of 17 independent experts to provide the evidence on which to base this strategy. Their considered view was that reducing alcohol-related harm should involve limiting its availability and increasing its price. This conclusion would obviously not be popular, either with many voters, or with the alcohol industry. One of the ways the alcohol industry seeks to maximise its profits is by funding the Portman Group. This was the only ‘alcohol misuse’ organisation mentioned in the government's strategy, which adopted the ideas and language of the alcohol industry. Alcohol Concern, the Medical Council on Alcohol and the National Addiction Centre were not referred to (McNeill, 2004). Eventually, the government published a strategy that bore so little relation to the evidence-based recommendations of the experts that several of them were moved to publish their own report, which contradicted the government's strategy (Academy of Medical Sciences, 2004). It seems that this is a clear example where external pressure on government by a powerful group has influenced the use of evidence in policy. Internationally, the issues of genetically modified (GM) organisms and climate change also provide examples of the use of trawling, farming, flak, strain, repetition and selective framing by actors outside the state. Much of the research on GM food is funded by the corporations who hope to profit from its application. Several researchers have found that raising questions over the safety and efficacy of GM food is not conducive to security of tenure in Universities that are funded by these corporations. For example, Dr Arpad Pusztai's research suggesting that GM potatoes may be poisonous to rats (Ewen and Pusztai, 1999) led to him losing his job, and to threats that the editor of The Lancet, which published some of this research, would also lose his. Dr Ignacia Chapela was also targeted for flak and strain when he published an article in Nature reporting contamination of native corn in Mexico by a GM variety (Quist and Chapela, 2001). He was subsequently refused tenure at the University of California, where a number of colleagues criticised his work and benefited from a multi-million dollar deal with the biotechnology company Novartis.3 Corporations that control the production of raw materials are also extremely powerful in the field of energy policy, which has the greatest effect on climate change. The material interests of these corporations are damaged by international policies such as the Kyoto protocol. Given the potential damage of Kyoto to oil company profits, it is not surprising that the tiny minority of scientists who deny the role of human activity in climate change have found ready supporters in the oil industry. More worrying is that the most powerful government on Earth has pressured its own scientists to misrepresent their own findings in order to support the oil companies’ position (Union of Concerned Scientists, 2004) and continues to dilute international efforts to combat climate change (Townsend, 2005). It should be noted that in none of these cases is the interest of any one group able fully to determine the use of evidence. Nor is it the case that evidence does not influence the terms in which these controversies are played out. Debate over DTTOs, immigration policy, GM food and global warming is alive and well. Research evidence is not absent, but crucial to the development of these debates. However, its use is not often directly linear, ideally enlightened or purely tactical. These are selected examples, but they are by no means isolated. In several fields, it is evident that structural, as well as tactical interests of powerful social groups often shape the use that is made of evidence in ways that pervert the promise of evidence-based policy making. Avoiding bias While scientific evidence may not be accepted unquestioningly as a clear, objective source, there is a body of scientific evidence. The process of scientific production makes this available for discovery and analysis through various forms of synthesis. Through open debate over the results of such reviews, some positions can be found to be false, in that they offer inadequate accounts of the phenomena they attempt to explain (Layder, 1998). Examples of propositions that the balance of scientific evidence has found to be untrue are that Saddam Hussein was storing weapons of mass destruction in Iraq in 2003 (Powell, 2003), that ‘nothing works’ in preventing criminal recidivism (Martinson, 1979), that smoking tobacco does not increase risks of cancer (Tobacco Institute Research Committee, 1954) and that human activity is not contributing to global warming (see van den Hove, le Menestrel, and de Bettignies, 2002). The existence of proponents of alternative views shows that it is possible to question the mainstream and to insert dissident positions into the debate. But acting as if these propositions are true has been and will be disastrous. If we are to have any prospect of improving the human condition, then we need to continue to develop knowledge (of which research evidence is one element) that can inform action; knowledge that we can use until superior explanations and possibilities arise. The idea of evidence-based policy is that this will happen. It often fails in practice, not only because research evidence is contested, but because its use is affected by processes of selection that make it less likely that superior explanations and solutions will be put into practice.

#### **This critical praxis is a prerequisite to effective policy solutions**

Bruce 96 (Robert, Associate Professor in Social Science – Curtin University and Graeme Cheeseman, Senior Lecturer – University of New South Wales, Discourses of Danger and Dread Frontiers, p. 5-9)

This goal is pursued in ways which are still unconventional in the intellectual milieu of international relations in Australia, even though they are gaining influence worldwide as traditional modes of theory and practice are rendered inadequate by global trends that defy comprehension, let alone policy. The inability to give meaning to global changes reflects partly the enclosed, elitist world of professional security analysts and bureaucratic experts, where entry is gained by learning and accepting to speak a particular, exclusionary language. The contributors to this book are familiar with the discourse, but accord no privileged place to its ‘knowledge form as reality’ in debates on defence and security. Indeed, they believe that debate will be furthered only through a long overdue critical re-evaluation of elite perspectives. Pluralistic, democratically-oriented perspectives on Australia’s identity are both required and essential if Australia’s thinking on defence and security is to be invigorated. This is not a conventional policy book; nor should it be, in the sense of offering policy-makers and their academic counterparts sets of neat alternative solutions, in familiar language and format, to problems they pose. This expectation is in itself a considerable part of the problem to be analysed. It is, however, a book about policy, one that questions how problems are framed by policy-makers. It challenges the proposition that irreducible bodies of real knowledge on defence and security exist independently of their ‘context in the world’, and it demonstrates how security policy is articulated authoritatively by the elite keepers of that knowledge, experts trained to recognize enduring, universal wisdom. All others, from this perspective, must accept such wisdom or remain outside the expert domain, tainted by their inability to comply with the ‘rightness’ of the official line. But it is precisely the official line, or at least its image of the world, that needs to be problematised. If the critic responds directly to the demand for policy alternatives, without addressing this image, he or she is tacitly endorsing it. Before engaging in the policy debate the critics need to reframe the basic terms of reference. This book, then, reflects and underlines the importance of Antonio Gramsci and Edward Said’s ‘critical intellectuals’.15 The demand, tacit or otherwise, that the policy-maker’s frame of reference be accepted as the only basis for discussion and analysis ignores a three thousand year old tradition commonly associated with Socrates and purportedly integral to the Western tradition of democratic dialogue. More immediately, it ignores post-seventeenth century democratic traditions which insist that a good society must have within it some way of critically assessing its knowledge and the decisions based upon that knowledge which impact upon citizens of such a society. This is a tradition with a slightly different connotation in contemporary liberal democracies which, during the Cold War, were proclaimed different and superior to the totalitarian enemy precisely because there were institutional checks and balances upon power. In short, one of the major differences between ‘open societies’ and their (closed) counterparts behind the Iron Curtain was that the former encouraged the critical testing of the knowledge and decisions of the powerful and assessing them against liberal democratic principles. The latter tolerated criticism only on rare and limited occasions. For some, this represented the triumph of rational-scientific methods of inquiry and techniques of falsification. For others, especially since positivism and rationalism have lost much of their allure, it meant that for society to become open and liberal, sectors of the population must be independent of the state and free to question its knowledge and power. Though we do not expect this position to be accepted by every reader, contributors to this book believe that critical dialogue is long overdue in Australia and needs to be listened to. For all its liberal democratic trappings, Australia’s security community continues to invoke closed monological narratives on defence and security. This book also questions the distinctions between policy practice and academic theory that inform conventional accounts of Australian security. One of its major concerns, particularly in chapters 1 and 2, is to illustrate how theory is integral to the practice of security analysis and policy prescription. The book also calls on policy-makers, academics and students of defence and security to think critically about what they are reading, writing and saying; to begin to ask, of their work and study, difficult and searching questions raised in other disciplines; to recognise, no matter how uncomfortable it feels, that what is involved in theory and practice is not the ability to identify a replacement for failed models, but a realisation that terms and concepts – state sovereignty, balance of power, security, and so on – are contested and problematic, and that the world is indeterminate, always becoming what is written about it. Critical analysis which shows how particular kinds of theoretical presumptions can effectively exclude vital areas of political life from analysis has direct practical implications for policy-makers, academics and citizens who face the daunting task of steering Australia through some potentially choppy international waters over the next few years. There is also much of interest in the chapters for those struggling to give meaning to a world where so much that has long been taken for granted now demands imaginative, incisive reappraisal. The contributors, too, have struggled to find meaning, often despairing at the terrible human costs of international violence. This is why readers will find no single, fully formed panacea for the world’s ills in general, or Australia’s security in particular. There are none. Every chapter, however, in its own way, offers something more than is found in orthodox literature, often by exposing ritualistic Cold War defence and security mind-sets that are dressed up as new thinking. Chapters 7 and 9, for example, present alternative ways of engaging in security and defence practice. Others (chapters 3, 4, 5, 6 and 8) seek to alert policy-makers, academics and students to alternative theoretical possibilities which might better serve an Australian community pursuing security and prosperity in an uncertain world. All chapters confront the policy community and its counterparts in the academy with a deep awareness of the intellectual and material constraints imposed by dominant traditions of realism, but they avoid dismissive and exclusionary terms which often in the past characterized exchanges between policy-makers and their critics. This is because, as noted earlier, attention needs to be paid to the words and the thought processes of those being criticized. A close reading of this kind draws attention to underlying assumptions, showing they need to be recognized and questioned. A sense of doubt (in place of confident certainty) is a necessary prelude to a genuine search for alternative policies. First comes an awareness of the need for new perspectives, then specific policies may follow. As Jim George argues in the following chapter, we need to look not so much at contending policies as they are made for us but at challenging ‘the discursive process which gives [favoured interpretations of “reality”] their meaning and which direct [Australia’s] policy/analytical/military responses’. This process is not restricted to the small, official defence and security establishment huddled around the US-Australian War Memorial in Canberra. It also encompasses much of Australia’s academic defence and security community located primarily though not exclusively within the Australian National University and the University College of the University of New South Wales. These discursive processes are examined in detail in subsequent chapters as authors attempt to make sense of a politics of exclusion and closure which exercises disciplinary power over Australia’s security community. They also question the discourse of ‘regional security’, ‘security cooperation’, ‘peacekeeping’ and ‘alliance politics’ that are central to Australia’s official and academic security agenda in the 1990s. This is seen as an important task especially when, as is revealed, the disciplines of International Relations and Strategic Studies are under challenge from critical and theoretical debates ranging across the social sciences and humanities; debates that are nowhere to be found in Australian defence and security studies. The chapters graphically illustrate how Australia’s public policies on defence and security are informed, underpinned and legitimised by a narrowly-based intellectual enterprise which draws strength from contested concepts of realism and liberalism, which in turn seek legitimacy through policy-making processes. Contributors ask whether Australia’s policy-makers and their academic advisors are unaware of broader intellectual debates, or resistant to them, or choose not to understand them, and why?

#### Ontology comes first – the state of pure war is an internalized dread which manifests itself in populations conditioned by the dramatization of catastrophic events. This invisible, psychic, violence comes first because it occurs at the individual level and makes material war and violence possible.

Borg 2003 (Mark; PhD in psychoanalysis, practicing psychoanalyst and community/organizational consultant working in New York City. He is a graduate of the William Alanson White Institute's psychoanalytic certification program and continues his candidacy in their organizational dynamics program. He is co-founder and executive director of the Community Consulting Group, "Psychoanalytic Pure War: Interactions with the Post-Apocalyptic Unconscious": JPCS: Journal for the Psychoanalysis of Culture & Society, Volume 8, Number 1, Spring 2003, MUSE)

Paul Virilio and Sylvere Lotringer’s concept of “pure war” refers to the potential of a culture to destroy itself completely (12).2We as psychoanalysts can—and increasingly must—explore the impact of this concept on our practice, and on the growing number of patients who live with the inability to repress or dissociate their experience and awareness of the pure war condition. The realization of a patient’s worst fears in actual catastrophic events has always been a profound enough psychotherapeutic challenge. These days, however, catastrophic events not only threaten friends, family, and neighbors; they also become the stuff of endless repetitions and dramatizations on radio, television, and Internet.3 Such continual reminders of death and destruction affect us all. What is the role of the analyst treating patients who live with an ever-threatening sense of the pure war lying just below the surface of our cultural veneer? At the end of the First World War, the first “total war,” Walter Benjamin observed that “nothing [after the war] remained unchanged but the clouds, and beneath these clouds, in a field of force of destructive torrents and explosions, was the tiny, fragile human body”(84). Julia Kristeva makes a similar note about our contemporary situation, “The recourse to atomic weapons seems to prove that horror...can rage absolutely” (232). And, as if he too were acknowledging this same fragility and uncontainability, the French politician Georges Clemenceau commented in the context of World War I that “war is too serious to be confined to the military” (qtd. in Virilio and Lotringer 15). Virilio and Lotringer gave the name “pure war” to the psychological condition that results when people know that they live in a world where the possibility for absolute destruction (e.g., nuclear holocaust) exists. As Virilio and Lotringer see it, it is not the technological capacity for destruction (that is, for example, the existence of nuclear armaments) that imposes the dread characteristic of a pure war psychology but the belief systems that this capacity sets up. Psychological survival requires that a way be found (at least unconsciously) to escape inevitable destruction—it requires a way out—but this enforces an irresolvable paradox, because the definition of pure war culture is that there is no escape. Once people believe in the external possibility— at least those people whose defenses cannot handle the weight of the dread that pure war imposes— pure war becomes an internal condition, a perpetual state of preparation for absolute destruction and for personal, social, and cultural death.

#### This worst case storytelling causes social paralysis and serial policy failure.

Furedi 10 – Professor of sociology at the University of Kent, Frank, “This shutdown is about more than volcanic ash”, Spiked, 4/19, http://www.spiked-online.com/index.php/site/article/8607/

Whatever the risks posed by the eruption of a volcano in Iceland, it seems clear that the shutting down of much of Europe’s air space is not just about the threat posed by clouds of ash to flying passengers. We live in an era where problems of uncertainty andrisk are continually amplified, and where our fearful imaginations can make these problems seem like existential threats. Consequently, unexpected natural events are rarely treated simply as unexpected natural events – instead they are swiftly dramatised and transformed into ‘threats to human survival’. This becomes most clear in the tendency to dramatise the forecasting of the weather. Once upon a time, weather forecasts were those boring moments on the radio or TV when most of us got up to make a snack. However, with the invention of concepts such as ‘extreme weather’, routine events like storms, smog or unexpected snowfall have become compellingly entertaining. Ours is a world where a relatively ordinary technical problem like the so-called Millennium Bug can be interpreted as a threat of apocalyptic proportions – and where a flu epidemic is turned by officials into a kind of plot line from a Hollywood disaster flick. When the World Health Organisation can warn that the entire human species is threatened by swine flu, it’s pretty clear that cultural prejudice rather than sober risk assessment influences much of official thinking today. I am not a natural scientist, and I claim no authority to say anything of value about the risks posed by volcanic ash clouds to flying aircraft. However, as a sociologist interested in the process of decision-making, it is evident to me that the reluctance to lift the ban on air traffic in Europe is motivated by worst-case thinking rather than rigorous risk assessment. Risk assessment is based on an attempt to calculatethe probability of different outcomes. Worst-case thinking –these days known as ‘precautionary thinking’ – is based on an act of imagination. It imagines the worst-case scenario and then takes action on that basis. In the case of the Icelandic volcano, fears that particles in the ash cloud could cause aeroplane engines to shut down automatically mutated into a conclusion that this wouldhappen. So it seems to me to be the fantasy of the worst-case scenario rather than risk assessment that underpins the current official ban on air traffic. Many individuals associated with the air-travel industry are perturbed by what they perceive to be a one-dimensional overreaction. Ulrich Schulte-Strathaus, secretary-general of the Association of European Airlines, observed that ‘verification flights undertaken by several of our airlines have revealed no irregularities at all’. He believes that ‘this confirms our requirement that other options should be deployed to determine genuine risk’. Giovanni Bisignani, director-general of the International Air Transport Association, describes the ban as a ‘European embarrassment’ and a ‘European mess’. Also, individuals associated with Europe’s air-control authorities have conceded that they have been interpreting international guidelines ‘more rigorously’ than, say, their American counterparts. British forecasters claimed the volcanic ash cloud could hit the eastern Canadian coast. Whatever the risks of flying in the wake of the volcano, it seems clear that it is not evidence but speculation that is fuelling the current flight ban. The reluctance actually to weigh up the evidence and act on the basis of probabilities is motivated by fear of making a wrong decision. Of course when lives are at stake it is essential to weigh up the evidence carefully – but at the end of the day, our leaders have a responsibility to make decisions and live with the consequences. The slowness with which EU ministers responded to this crisis indicates that worst-case thinking discourages responsible decision-making. Yet as Giovanni Bisignani said, the decision to close airspace ‘has to be based on facts and supported by risk assessment’, not on the politics of decision-avoidance. Tragically, this failure of nerve in relation to the volcanic ash is the inevitable outcome of the institutionalisation of worst-case policymaking. This approach, based on the unprecedented sensitivity of contemporary Western society to uncertainty and unknown dangers, has led to a radically new way of perceiving and managing risks. As a result, the traditional association of risk with probabilities is now under fire from a growing body of opinion, which claims that humanity lacks the knowledge to calculate risks in any meaningful way. Sadly, critics of traditional probabilistic risk-assessments have more faith in speculative computer models than they do in science’s capacity to use knowledge to transform uncertainties into calculable risks. The emergence of a speculative approach towards risk is paralleled by the growing influence of ‘possibilistic thinking’ rather than probabilistic thinking, which actively invites speculation about what could possibly go wrong. In today’s culture of fear, frequently ‘what could possiblygo wrong’ is confused with ‘what is likely to happen’.Numerous critics of old forms of probabilistic thinking call for a radical break with past practices on the grounds that we simply lack the information to calculate probabilities. This rejection of probabilities is motivated by a belief that the dangers we face are just too overwhelming and catastrophic – the Millennium Bug, international terrorism, swine flu, climate change, etc – and we simply cannot wait until we have all the information before we calculate their possible destructive effects. ‘Shut it down!’ is the default response. In any case, it is argued, since so many of the threats are ‘unknown’ there is little information on which a realistic calculation of probabilities can be made. One of the many regrettable consequences of this outlook is that policies designed to deal with threats are increasingly based on feelings and intuition rather than on evidence or facts. Worst-case thinking encourages society to adopt fear asof one of the key principles around which the public, the government andvarious institutions should organisetheir lives. It institutionalises insecurity and fosters a mood of confusion and powerlessness. Through popularising the belief that worst cases are normal, it also encourages people to feel defenceless and vulnerable to a wide range of future threats. In all but name, it is an invitation to social paralysis. The eruption of a volcano in Iceland poses technical problems, for which responsible decision-makers should swiftly come up with sensible solutions. But instead, Europe has decided to turn a problem into a drama. In 50 years’ time, historians will be writing about our society’s reluctanceto act when practical problems arose**.** It is no doubt difficult to face up to a natural disaster – but in this case it isthe all-too-apparent manmade disaster brought on by indecision and a reluctance to engage with uncertainty that represents the real threat to our future.

#### **A Pure War culture leaves us forever tied to the atrocities of the past, preventing psychic wholeness**

Borg 2003 (Mark; PhD in psychoanalysis, practicing psychoanalyst and community/organizational consultant working in New York City. He is a graduate of the William Alanson White Institute's psychoanalytic certification program and continues his candidacy in their organizational dynamics program. He is co-founder and executive director of the Community Consulting Group, "Psychoanalytic Pure War: Interactions with the Post-Apocalyptic Unconscious": JPCS: Journal for the Psychoanalysis of Culture & Society, Volume 8, Number 1, Spring 2003, MUSE)

A precursor to the notion of pure war can be seen in a comment made by Freud in the aftermath of the First World War: The primitive fear of death is still strong within us and always ready to come to the surface on any provocation. Most likely, our fear still implies the old belief that the dead man becomes the enemy of his survivor and seeks to carry him off to share his new life with him. (242) That is, through the constant preparation for war demanded by the pure war condition and the enactments that such preparation entails, we “share” our lives with the dead. Winnicott’s description of “fear of breakdown” is a related vision, addressing fear of a previous, rather than a future, event (103). In his view, haunting of the living by the dead relates to past, current, and ongoing conditions of internalized pure war, rather than to actual or certain future events: It must be asked here: why does the patient go on being worried by this that belongs to the past? The answer must be that the original experience of primitive agony cannot get into the past tense unless the ego can first gather it into its own present and into omnipotent control now. (105) In pure war, omnipotence is shattered. Winnicott speaks to a timelessness in the unconscious, and indeed pure war represents the ultimate end point of the ego’s once seemingly infinite timeline. As in Winnicott’s notion of fear of breakdown, we cannot ward off pure war without anticipating it, and we cannot anticipate it without its being already there, forming our horizon.

#### **The rhetoric of the 1AC turns the case – ensures overstretch, blowback, and rollback of the plan**

Rana 2011 (Aziz, Assistant Professor of Law @ Cornell. “Responses to the Ten Questions.” William Mitchell Law Review, 37 Wm. Mitchell L. Rev. 5099)

Many of today's defenders of this national security constitution-imagined by Herring and given institutional and legal form in the 1940s and 1950s-often present these changes as simple responses to unavoidable conditions of objective threat. Just as Pearl Harbor presented a physical attack on the homeland justifying a new framework, the American position in the world since has been one of continuous insecurity in the face of new, equally objective dangers. According to this view, the reason for continuity between Obama and Bush is the straightforward consequence of the persistence of these externally generated crises. Yet, from its inception, supporters of the national security framework also have noted the link between the idea of insecurity and American's post-World War II role of global primacy, one that has only expanded following the Cold War. In 1961, none other than Senator James William Fulbright declared that the imperatives of national security meant that "our basic constitutional machinery, admirably suited to the needs of a remote agrarian republic in the 18th century," was no longer "adequate" for the "20th-century nation."3 For Fulbright, at the heart of this national security vision was the importance of sustaining the country's "preeminence in political and military power."5 Moreover, Fulbright held that greater executive action and war-making powers were necessary precisely because the United States found itself "burdened with all the enormous responsibilities that accompany such power." Fulbright felt that the United States had both a right and a duty to suppress those forms of chaos and disorder, which existed at the edges of American authority. Thus, rather than being purely objective, the American condition of permanent external threat was itself deeply tied to political calculations about national identity and the value of global primacy. What generated the condition of continual danger was not only technological change, but also the belief that the United States' own sense of national security rested on the successful projection of power into the internal affairs of foreign states.

#### **Their strategy of maintaining hegemony exaggerates threats and mandates continuous intervention. Means no risk of the case impacts, alt solves hegemonic conflict and the kritik turns the case**

Layne 97 (Christopher Layne is Visiting Associate Professor at Naval Postgraduate school, “From Preponderance to Offshore Balancing: America's Future Grand Strategy”, International Security, Vol.22 Issue. 1 Summer 1997)

The security/interdependence nexus results in the exaggeration of threats to American strategic interests because it requires the United States to defend its core interests by intervening in the peripheries. There are three reasons for this. First, as Johnson points out, order-maintenance strategies are biased inherently toward threat exaggeration. Threats to order generate an anxiety “that has at its center the fear of the unknown. It is not just security, but the pattern of order upon which the sense of security depends that is threatened.” Second, because the strategy of preponderance requires U.S. intervention in places that concededly have no intrinsic strategic value, U.S. policymakers are compelled to overstate the dangers to American interests to mobilize domestic support for their policies. Third, the tendency to exaggerate threats is tightly linked to the strategy of preponderance’s concern with maintaining U.S. credibility.

#### **Existential threats to hegemony and the theory of power vacuums are constructed rhetorical tools used to justify US power abroad.**

Lind 2009 ( JD and guest lecturer @ Harvard Sr. Fellow @ the New America Foundation, The End of the Pax Americana?, New American Foundation, 9-29, <http://newamerica.net/publications/articles/2009/the_end_of_the_pax_americana_13515>)

The Pax Americana strategy requires its supporters to exaggerate the power and malevolence of the designated enemies of the Pax Americana: Russia, China and Iran. The exaggeration of threats is accomplished in two ways. First, defensive military measures that these nations undertake to deter U.S. attack -- Russia's attempt to intimidate Georgia, China's development of "anti-access" capabilities to reduce the ability of the U.S. to defeat it in a war over Taiwan, and Iran's not-so-disguised attempt to obtain nuclear weapons to deter conventional U.S. or Israeli attacks -- are portrayed by American policymakers and pundits as aggressive. According to this Orwellian double standard, U.S./NATO encirclement of post-Soviet Russia on its borders is alleged to be "defensive," while feeble protest gestures like Russian military flights to Cuba or the bullying of Ukraine are defined as "aggressive" actions that threaten a new Cold War. The knight with the best sword naturally wants to ban the use of shields and armor. In addition to defining the defensive reactions of Russia, China and Iran to U.S. provocations in their own neighborhoods as diabolical schemes for regional or global conquest, some champions of the Pax Americana have pretended to identify a new global ideological struggle against an "axis of autocracy" or "authoritarian capitalism." In reality, of course, three countries could hardly be less similar to one another than Russia, China and Iran, which seek to benefit from the existing world system on their own terms rather than overthrow it. In my experience, most members of the U.S. foreign policy elite sincerely believe that the alternative to perpetual U.S. world domination is chaos and war. The benefit to members of the elite is not so much economic as psychic -- it's nice to be a top dog in the top-dog pack. But even though our leaders tend to be persuaded that American hegemony averts the twin spirals of great-power conflict and trade war, they find it challenging to explain the strategy to the public. Consider the following imaginary dialogue about U.S. national security: Citizen: "Why did our young men and women have to die in Iraq?" Statesman: "Saddam's Iraq was not a threat to the U.S. itself, but it threatened U.S. hegemony in the Persian Gulf, which makes possible the American provision of energy security to Japan and Germany, which absent that American security guarantee might rearm and trigger regional and global arms races that could lead to World War III." Citizen: "Huh?" Consider, as well, this imaginary dialogue about U.S. trade policy: Citizen: "When other countries try to wipe out our industries by cheating, why can't we retaliate?" Statesman: "U.S. retaliation against foreign mercantilism, even if it were justified on the merits, might lead the cheating countries to cheat even more, thereby triggering a spiral of economic warfare that might cause a new Depression, which in turn might lead to World War III." Citizen: "Huh?" As the hypothetical citizen's response suggests, an honest explanation of the real rationale for U.S. grand strategy -- sacrificing American soldiers and American industries in order to persuade Germany, Japan and now China to specialize as non-threatening civilian powers -- would be met with incredulity and anger by many if not most Americans. Our bipartisan foreign policy establishment therefore finds it necessary to come up with false answers to the questions of the American people. Citizen: "Why did our young men and women have to die in Iraq?" Statesman: "To prevent a mad dictator from bombing you and your family at home, either by giving bombs to terrorists or sending them on missiles across the oceans." Citizen: "When other countries try to wipe out our industries by cheating, why can't we retaliate?" Statesman: "Because all economists agree that free trade always benefits both sides and that protectionism would lead to unemployment and poverty for you and your family. If you question those assertions, you are an ignorant Neanderthal." Even supporters of the hegemony strategy admit that it can't be described candidly to the public, for fear of a public backlash. In his book "The Case for Goliath," Michael Mandelbaum concedes that Americans "have never been asked to ratify their country's status as the principal supplier of international public goods, and if they were asked explicitly to do so, they would undoubtedly ask in turn whether the United States ought to contribute as much to providing them, and other countries as little, as was the case in the first decade of the 21st century." Mandelbaum concludes with the condescending statement that "the American role in the world may depend in part on Americans not scrutinizing it too closely." It is too early to tell whether there is a real chance in Washington for an alternative to the Cold War Plus strategy of perpetually containing Russia and Germany, China and Japan, and Iran and Iraq that Democrats and Republicans alike have pursued since the Berlin Wall fell. But there are some encouraging signs.

### Counterplan

#### Congress key – courts can’t rule on targeted killing effectively

Hutchinson ‘12

(Chester H.L. Hutchinson J.D., Saint Louis University School of Law, May 2011; B.A., Covenant College, May 2003. “AL-BIHANI v. OBAMA & CONGRESSIONAL TESTIMONY ON TARGETED KILLINGS: EVALUATING CUSTOM AS A SOURCE OF LAW IN THE WAR ON TERROR” 2012¶ Saint Louis University Public Law Review¶ 31 St. Louis U. Pub. L. Rev. 579¶ Lexis, TSW)

Congress Should Not Silently Acquiesce in the War on Terror¶ ¶ In Al-Bihani I, Judge Brown herself questioned whether the "court-driven process is best suited to protecting both the rights of petitioners and the safety of our nation," because the "common law process depends on incrementalism and eventual correction, and it is most effective where there are a significant number of cases brought before a large set of courts, which in turn enjoy the luxury of time to work the doctrine supple" - factors that Judge Brown does not think exist in the context of Guantanamo habeas' detentions. n230 Judge Brown maintained though that Congress should legislate in this area:¶ But the circumstances that frustrate the judicial process are the same ones that make this situation particularly ripe for Congress to intervene pursuant to its policy expertise, democratic legitimacy, and oath to uphold and defend the Constitution. These cases present hard questions and hard choices, ones best faced directly. Judicial review, however, is just that: re-view, an indirect and necessarily backward looking process. And looking backward may not be enough in this new war. n231¶ ¶ William Banks also asked Congress to legislate concerning the war against terrorism. n232 In his testimony before Congress, he contended that "contemporary laws have not kept up with changes in the dynamics of military conflicts," and nowhere is this "more glaring than in its treatment of targeted killing." n233 "The United States now finds itself engaged in military conflicts with non-state groups, and such conflicts were not the subject of the extensive international framework for warfare negotiated after the World Wars," and "these new battlefields require adaptation of old laws, domestic and international." n234 Thus, "Congress would do all of us an important favor [\*614] by devoting attention to articulating policy and legal criteria for the use of force against non-state terrorists." n235¶ In Al-Bihani II, Judge Kavanaugh set up a framework which looked to executive practices during previous wartimes when interpreting the AUMF. n236 In testimony before Congress, it was asserted that the AUMF and the 1947 National Security Act provided support for the executive practice of targeted killing. n237 Thus, using custom as a source of law, both the court in Al-Bihani II and Banks argue that Congress has impliedly authorized executive practices through its silent acquiescence. In response to such arguments, Congress could either remain silent and acquiesce, or it could legislate to alter or stop executive practices currently carried out under the alleged authority of the AUMF and the National Security Act of 1947. If Congress takes the first option, they might find themselves reacting to court decisions that invoke custom as a source of law in later years. Under the second option, Congress could proactively implement legislation that governs detention and targeted killings adapted to the terrorist networks operating in the world today. n238 Such congressional action would preclude any arguments that Congress has acquiesced in the executive practices of detention and targeted killings. One hopes Congress will not remain silent.

#### Congress is key – Courts can’t be effective because of lack of legislation

Banks and Hansen, 2003

[William C. Banks (Laura J. and L. Douglas Meredith Professor of Law, Syracuse University of Law) and Peter Raven-Hansen (Glen Earl Weston Professor of Law, George Washington Law School) “Targeted Killing and Assassination: The US Legal Framework,” University of Richmond Law Review, <https://www.law.upenn.edu/institutes/cerl/conferences/targetedkilling/papers/BanksRavenHansenLegalFramework.pdf>]

Our conclusion so far, then, is that the Constitution does not¶ prohibit the targeted killing abroad of foreign nationals who lack¶ a substantial connection with the United States, at least in an-¶ ticipatory self-defense when other more peaceful means of de-fense have been exhausted. But if it does not prohibit it, does it¶ follow that the President alone may order it? Or that he can do so¶ in the face of a statutory prohibition? Courts have recognized the¶ President's authority both to ﬁght a de facto war“ and to inter-¶ pose force abroad to protect Americans and their property with-¶ out prior legislative authority.“ Necessity gives rise to the consti-¶ tutional authority in both cases, and also justifies the President¶ in exercising it without awaiting legislation. It does not follow¶ that he could defy inconsistent legislation. Although judges have¶ alluded to the President’s inherent constitutional authority to¶ command military troops at war,“ that authority is less clearly¶ implicated in targeted killing than in his authority to defend¶ Americans and their property from attack.” Yet the courts which¶ have recognized the latter in the absence of legislation have never¶ held that Congress could not restrict that authority, or at least¶ regulate it under the Necessary and Proper Clause.“ To quote¶ Justice Jackson, cases have “intimated that the President might¶ act in external affairs without congressional authority, but not¶ that he might act contrary to an Act of Congress.“ The Presi-¶ dent’s authority to do so, like the constitutional authority for self-¶ defense itself, may well depend on the necessity for action and the¶ gravity of the risk, but depending on those factors would leave¶ room for Congress to ban or regulate targeted killings except in¶ the extreme case of an otherwise unavoidable catastrophic at-¶ tack.

#### Congressional passage of implementing legislation will substantially boost compliance with international law

**Strossen, 92**—professor of law at New York Law School (Nadine, “UNITED STATES RATIFICATION OF THE INTERNATIONAL BILL OF RIGHTS: A FITTING CELEBRATION OF THE BICENTENNIAL OF THE U.S. BILL OF RIGHTS”, 24 U. Tol. L. Rev. 203, lexis)

Of overriding importance, the U.S. ratification was subject to a declaration that the ICCPR provisions are not "self-executing," which [\*204] means that they are not legally enforceable against federal or state governments in the U.S. in any American courts; they will be binding in domestic courts only if Congress passes implementing legislation. [n5](http://www.lexisnexis.com.proxy.library.emory.edu/us/lnacademic/frame.do?reloadEntirePage=true&rand=1260159734883&returnToKey=20_T8086610640&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.388558.16817797825" \l "n5) Moreover, the U.S. ratification makes exceptions for all ICCPR provisions that set more protective human rights standards than those currently recognized under U.S. law. Therefore, even assuming that the U.S. has satisfied the international standards for ratification of the ICCPR in a technical sense, that ratification is not meaningful in terms of extending the human rights of people in the U.S.¶ In order to bridge the gap between the exception-ridden ratification of the U.S. and the human rights standards in the ICCPR, Congress should pass corrective legislation. For example, the proposed International Human Rights Conformity Act of 1992, although not correcting every respect in which U.S. law fails to conform with international human rights standards, would achieve substantial U.S. compliance with the ICCPR. [n6](http://www.lexisnexis.com.proxy.library.emory.edu/us/lnacademic/frame.do?reloadEntirePage=true&rand=1260159734883&returnToKey=20_T8086610640&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.388558.16817797825" \l "n6)¶ The central point of this article is that meaningful U.S. ratification [n7](http://www.lexisnexis.com.proxy.library.emory.edu/us/lnacademic/frame.do?reloadEntirePage=true&rand=1260159734883&returnToKey=20_T8086610640&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.388558.16817797825" \l "n7) of the rights-enhancing provisions of the covenants would be a significant step in fostering human rights in the U.S. That conclusion follows from the fact that, in certain important respects, international human rights norms are more rights-protective than the corresponding domestic law standards. As the Rehnquist Court continues to construe domestic human rights norms in an increasingly narrow fashion, the situations in which international standards afford more protection will increase. Therefore, it behooves U.S. human rights activists to seek the incorporation of international human rights norms into domestic law. Even if the U.S. does not ratify the covenants, U.S. human rights lawyers should urge U.S. courts to rely on more rights-protective international human rights standards through the doctrine of unwritten or "customary" international law. To the extent that international standards are less protective of human rights than their domestic counterparts, the U.S. should not incorporate them into U.S. law; international human rights precepts should be invoked only to expand, and not to curtail, Americans' human rights. [n8](http://www.lexisnexis.com.proxy.library.emory.edu/us/lnacademic/frame.do?reloadEntirePage=true&rand=1260159734883&returnToKey=20_T8086610640&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.388558.16817797825" \l "n8)

#### Judicial deference to congress on military issues key to democracy and constitutionality

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(Kenji, a professor at N.Y.U. School of Law, The Military in the Constitution, June 28, <http://www.nytimes.com/roomfordebate/2010/10/13/the-future-of-dont-ask-dont-tell/the-military-in-the-constitution>)

I have a general and a specific reason for favoring legislative action over judicial action here. The general reason is that any time over 70 percent of the nation opposes a policy, as is the case with "don't ask, don't tell," that opposition is presumptively best expressed through our elected representatives. Such action gives more legitimacy to the ultimate decision because it more clearly hews to the democratic process.¶ The specific reason for preferring a legislative repeal of the policy is that the Constitution explicitly gives the legislative and executive branches control over the military. Article I of our Constitution grants Congress the power to regulate the military, while Article II makes the president the commander in chief of the armed forces.¶ Historically, these grants of authority have led the courts to accord extreme deference to the elected branches of government with respect to military issues. In the 1981 case of Rostker v. Goldberg, the Supreme Court rejected a sex-discrimination challenge to the male-only draft by observing that "judicial deference . . . is at its apogee when legislative action under the congressional authority to raise and support armies and make rules and regulations for their governance is challenged."