## 1NC

### 1NC DA

#### The courts are deferring on war powers now – never take action against elected government

Devins 2010 - Professor of Law and Professor of Government, College of William & Mary (February, Neal, “Symposium: Presidential Power In Historical Perspective: Reflections on Calabresi and Yoo's the Unitary Executive: Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants” 12 U. Pa. J. Const. L. 491, Lexis)

From 1952 (when the Supreme Court slapped down President Truman's war-time seizure of the steel mills) n108 until 2004 (when the Court reasserted itself in the first wave of enemy combatant cases), the judiciary largely steered clear of war powers disputes. n109 In part, the Court deferred to presidential desires and expertise. The President sees the "rights of governance in the foreign affairs and war powers areas" as core executive powers. n110 Correspondingly, the President has strong incentives to expand his war-making prerogatives. n111 For its part, the Court has limited expertise in this area, and, as such, is extremely reluctant to stake out positions that may pose significant national security risks. n112 The Court, moreover, is extremely reluctant to risk elected branch opprobrium. Lacking the powers of purse and sword, the Court cannot ignore the risks of elected branch non-acquiescence. n113 Against this backdrop, the Court's repudiation of the Bush administration's enemy combatant initiative appears a dramatic break from past practice. Academic and newspaper commentary back up this claim - with these decisions being labeled "stunning" (Harold [\*513] Koh), n114 "unprecedented" (John Yoo), n115 "breathtaking" (Charles Krauthammer), n116 "astounding" (Neal Katyal), n117 "sweeping and categorical" (New York Times), n118 and "historic" (Washington Post and Wall Street Journal). n119 Upon closer inspection, however, the Court's decisions are anything but a dramatic break from past practice. Part I detailed how Court rulings tracked larger social and political forces. In this Part, I will show how the Court risked neither the nation's security nor elected branch non-acquiescence. n120 The Court's initial rulings placed few meaningful checks on the executive; over time, the Court - reflecting increasing public disapproval of the President - imposed additional constraints but never issued a ruling that was out-of-sync with elected government preferences. Separate and apart from reflecting growing public and elected government disapproval of Bush administration policies, the Court had strong incentives to intervene in these cases. The Bush administration had challenged the Court's authority to play any role in national security matters. n121 This frontal assault on judicial power prompted the Court to stand up for its authority to "say what the law is." In Part III, I will talk about the Court's interest in protecting its turf - especially in cases implicating individual rights.

#### Intervening in presidential powers during wartime decks court legitimacy – gives a perception of siding with the enemy

Cole 2011 - Professor, Georgetown University Law Center (Winter, David, “WHERE LIBERTY LIES: CIVIL SOCIETY AND INDIVIDUAL RIGHTS AFTER 9/11,” 57 Wayne L. Rev. 1203, Lexis)

Indeed, a court concerned about conserving its own institutional power might be more likely to defer during times of crisis. One cannot be certain how the public will respond to a decision. Ruling for "the enemy" during wartime could be a risky proposition. A court primarily concerned about maintaining its institutional capital might therefore make the strategic choice to defer in times of crisis so as to avoid showdowns that could undermine its legitimacy, thereby preserving its power for ordinary [\*1252] times. n273 Accordingly, it is not obvious that the Supreme Court's own institutional interests in times of crisis push it in the direction of intervention, rather than deference or avoidance.

#### Undermining the legitimacy of court decisions collapses global rule of law

Gerhardt Con Law UNC ‘6

(SUPER PRECEDENT, 90 Minn. L. Rev. 1204)

Chief Justice Roberts was a model for avoiding pitfalls in the confirmation process. It is possible he may have been too good a model. He constantly espoused respect for precedent throughout his hearings. He may or may not have been a firebrand when he worked in the Office of the Attorney General, the White House, or in Office of the Solicitor General, but he was not a firebrand when he appeared in front of the Senate [\*1228] Judiciary Committee. He no doubt understands that President Bush would love to see him not only vote as Chief Justice Rehnquist did but also move the Court further to the right. Yet, John Roberts the nominee accepted some judicial decisions inconsistent with that political agenda, including those recognizing a marital right of privacy, 98 the framework for analyzing separation of powers conflicts, 99 the constitutionality of the 1965 Voting Rights Act, 100 and heightened scrutiny for gender classifications. 101 Roberts even acknowledged Roe as "settled law," and recognized that overruling a precedent would be "a jolt to the legal system." 102 One has to assume that some overrulings would produce more of a "jolt" to the system than others, and some might fatally electrocute the system. While Chief Justice Roberts suggested it was not unthinkable for the Supreme Court to overrule settled law, he made abundantly clear that his philosophy of judicial modesty is grounded, at least in part, on respect for what came before. Roberts acknowledged that predictability, stability, consistency, and reliance are values to be taken into account in constitutional adjudication, and it would seem to follow that these values ought to count in most cases. 103 It further follows that there may be at least some instances in which the values promoted by fidelity to precedent become compelling. A Court that overrules too many precedents not only sets a bad example for the Courts that follow (because it provides no incentive to respect the work of its predecessors), but also signals permission for other branches to view its decisions with the same lack of respect with which it views them. A healthy respect for precedent means learning to live with decisions with which you disagree. When Roberts went further to describe himself as a "bottom-up" kind of judge, 104 he signaled that his inclination is to decide cases incrementally and to infer principles from the records of the cases below. A bottom-up judge is willing to learn from experience, which necessarily means that a good deal of our experience has to be left in tact.

#### Goes global

Kersch Politics Princeton ‘4

(THE GLOBALIZED JUDICIARY, THE GOOD SOCEITY, VOLUM 13 NO 3)

Scholars of the emerging globalized judiciary have described a process that looks very much like that of bureaucratic formation at work amongst judges around the world. In charting the development of transnational judicial networks and support structures, Anne-Marie Slaughter, Andrew S. Tulumello, and Stepan Wood have suggested that "a wide range of possibilities exist for strengthening formal and informal links between international and domestic institutions in ways that blur the distinction between international and domestic law ...."7 As this process develops, she and her co-authors add, "it is possible that domestic institutions will become more interested in and receptive to their counterpart international institutions as they begin to perform the same functions horizontally rather then vertically." And, indeed, this is precisely what they observe happening amongst judges. "Domestic judges, at least in the United States," they add, "are beginning to articulate their responsibility to 'help the world's legal systems work together, in harmony, rather than at cross purposes.' Such cooperation includes not only procedural mechanisms of deference and collaboration, but also substantive evaluation of the degree of convergence between domestic and foreign law."8 This cooperation has been made possible by "a deep sense of participation in a common global enterprise of judging." "It [involves]," Slaughter asserts, "a vision of a global community of law, established not by the World Court in the Hague, but by national courts working together around the world."9 "Constitutional cross-fertilization," as Slaughter calls its, is a crucial part of this trend.

#### Extinction

Rhyne Fmr. President Bar Association ‘58

(LAW DAY SPEECH, VOICE OF AMERICA, <http://www.abanet.org/publiced/lawday/rhyne58.html>)

The rule of law has been the bulwark of our democracy. It has afforded protection to the weak, the oppressed, the minorities, the unpopular; it has made it possible to achieve responsiveness of the government to the will of people. It stands as the very antithesis of Communism and dictatorship. When we talk about “justice” under our rule of law, the absence of such justice behind the Iron Curtain is apparent to all. When we talk about “freedom” for the individual, Hungary is recalled to the minds of all men. And when we talk about peace under law—peace without the bloodbath of war—we are appealing to the foremost desire of all peoples everywhere. The tremendous yearning of all peoples for peace can only be answered by the use of law to replace weapons in resolving international disputes. We in our country sincerely believe that mankind’s best hope for preventing the tragic consequences of nuclear-satellite-missile warfare is to persuade the nations of the entire world to submit all disputes to tribunals of justice for all adjudication under the rule of law. We lawyers of America would like to join lawyers from every nation in the world in fashioning an international code of law so appealing that sentiment will compel its general acceptance.

### **1NC T**

#### **Exclusion orders and detention orders are explicitly distinguished in the Korematsu ruling – they only ruled on exclusion.**

Justice Black 44 (Justice Hugo Black, Chief Justice of the Supreme Court, opinion of the court in Korematsu v. United States, 323 U.S. 214, 12/18/1944, http://www.law.cornell.edu/supct/html/historics/USSC\_CR\_0323\_0214\_ZO.html)

Like curfew, exclusion of those of Japanese origin was deemed necessary because of the presence of an unascertained number of disloyal members of the group, most of [p219] whom we have no doubt were loyal to this country. It was because we could not reject the finding of the military authorities that it was impossible to bring about an immediate segregation of the disloyal from the loyal that we sustained the validity of the curfew order as applying to the whole group. In the instant case, temporary exclusion of the entire group was rested by the military on the same ground. The judgment that exclusion of the whole group was, for the same reason, a military imperative answers the contention that the exclusion was in the nature of group punishment based on antagonism to those of Japanese origin. That there were members of the group who retained loyalties to Japan has been confirmed by investigations made subsequent to the exclusion. Approximately five thousand American citizens of Japanese ancestry refused to swear unqualified allegiance to the United States and to renounce allegiance to the Japanese Emperor, and several thousand evacuees requested repatriation to Japan. [n2]¶ We uphold the exclusion order as of the time it was made and when the petitioner violated it. Cf. Chastleton Corporation v. Sinclair, 264 U.S. 543, 547; Block v. Hirsh, 256 U.S. 135, 155. In doing so, we are not unmindful of the hardships imposed by it upon a large group of American citizens. Cf. Ex parte Kawato, 317 U.S. 69, 73. But hardships are part of war, and war is an aggregation of hardships. All citizens alike, both in and out of uniform, feel the impact of war in greater or lesser measure. Citizenship has its responsibilities, as well as its privileges, and, in time of war, the burden is always heavier. Compulsory [p220] exclusion of large groups of citizens from their homes, except under circumstances of direst emergency and peril, is inconsistent with our basic governmental institutions. But when, under conditions of modern warfare, our shores are threatened by hostile forces, the power to protect must be commensurate with the threatened danger.¶ It is argued that, on May 30, 1942, the date the petitioner was charged with remaining in the prohibited area, there were conflicting orders outstanding, forbidding him both to leave the area and to remain there. Of course, a person cannot be convicted for doing the very thing which it is a crime to fail to do. But the outstanding orders here contained no such contradictory commands.¶ There was an order issued March 27, 1942, which prohibited petitioner and others of Japanese ancestry from leaving the area, but its effect was specifically limited in time "until and to the extent that a future proclamation or order should so permit or direct." 7 Fed.Reg. 2601. That "future order," the one for violation of which petitioner was convicted, was issued May 3, 1942, and it did "direct" exclusion from the area of all persons of Japanese ancestry before 12 o'clock noon, May 9; furthermore, it contained a warning that all such persons found in the prohibited area would be liable to punishment under the March 21, 1942, Act of Congress. Consequently, the only order in effect touching the petitioner's being in the area on May 30, 1942, the date specified in the information against him, was the May 3 order which prohibited his remaining there, and it was that same order which he stipulated in his trial that he had violated, knowing of its existence. There is therefore no basis for the argument that, on May 30, 1942, he was subject to punishment, under the March 27 and May 3 orders, whether he remained in or left the area.¶ It does appear, however, that, on May 9, the effective date of the exclusion order, the military authorities had [p221] already determined that the evacuation should be effected by assembling together and placing under guard all those of Japanese ancestry at central points, designated as "assembly centers," in order¶ to insure the orderly evacuation and resettlement of Japanese voluntarily migrating from Military Area No. 1, to restrict and regulate such migration.¶ Public Proclamation No. 4, 7 Fed.Reg. 2601. And on May 19, 1942, eleven days before the time petitioner was charged with unlawfully remaining in the area, Civilian Restrictive Order No. 1, 8 Fed.Reg. 982, provided for detention of those of Japanese ancestry in assembly or relocation centers. It is now argued that the validity of the exclusion order cannot be considered apart from the orders requiring him, after departure from the area, to report and to remain in an assembly or relocation center. The contention is that we must treat these separate orders as one and inseparable; that, for this reason, if detention in the assembly or relocation center would have illegally deprived the petitioner of his liberty, the exclusion order and his conviction under it cannot stand.¶ We are thus being asked to pass at this time upon the whole subsequent detention program in both assembly and relocation centers, although the only issues framed at the trial related to petitioner's remaining in the prohibited area in violation of the exclusion order. Had petitioner here left the prohibited area and gone to an assembly center, we cannot say, either as a matter of fact or law, that his presence in that center would have resulted in his detention in a relocation center. Some who did report to the assembly center were not sent to relocation centers, but were released upon condition that they remain outside the prohibited zone until the military orders were modified or lifted. This illustrates that they pose different problems, and may be governed by different principles. The lawfulness of one does not necessarily determine the lawfulness of the others. This is made clear [p222] when we analyze the requirements of the separate provisions of the separate orders. These separate requirements were that those of Japanese ancestry (1) depart from the area; (2) report to and temporarily remain in an assembly center; (3) go under military control to a relocation center, there to remain for an indeterminate period until released conditionally or unconditionally by the military authorities. Each of these requirements, it will be noted, imposed distinct duties in connection with the separate steps in a complete evacuation program. Had Congress directly incorporated into one Act the language of these separate orders, and provided sanctions for their violations, disobedience of any one would have constituted a separate offense. Cf. Blockburger v. United States, 284 U.S. 299, 304. There is no reason why violations of these orders, insofar as they were promulgated pursuant to Congressional enactment, should not be treated as separate offenses.¶ The Endo case, post, p. 283, graphically illustrates the difference between the validity of an order to exclude and the validity of a detention order after exclusion has been effected.

#### **Violation – the aff rules on exclusion orders, not any of the four topic areas**

#### **Vote neg –**

1. Predictable limits – the topic defines specific areas of war powers to avoid an impossibly broad neg research burden – the aff collapses this and expands the topic to any executive war power – the neg can never predict this and makes new affs a silver bullet, destroying fairness.
2. Ground – forces the neg to either cut specific links to literally every war power the president has, or read only broad generics – kills in-depth education on each topic area and negative flexibility.
3. Extra T – even if they win Korematsu includes a detention ruling, they overturn all parts of the case and claim advantages off of exclusion – explodes aff advantage ground and possible link shields.

### 1NC PIC

#### The ongoing legacy of the Korematsu Era war powers authority cases should be distinguished to apply to reparations and redress suits, but not detention or national security law. The Korematsu Era war powers authority cases should not be used as precedents in the future to justify presidential war powers and all racial myths used in the case should be acknowledged as false.

#### The ongoing legacy of the Korematsu era internment cases is more complex than the affirmative has presented it – the legacy carries the tainted memory of the atrocities of internment, but it also carries the seeds of reparations for the injustices committed against the Japanese – there is redeemable value in the legacy of Korematsu era cases

Yamamoto 12

(Eric. K., Fred T. Korematsu Professor of Law and Social Justice, William S. Richardson School of Law, University of Hawaii, “The Evolving Legacy of Japanese American Internment Redress: Next Steps We Can (an Should) Take”, Seattle Journal for Social Justice, Volume 11 Issue 1 Article 7, <http://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1631&context=sjsj>)

The Fred T. Korematsu Center for Law and Equality's conference on Gordon Hirabayashi's life and contributions to civil liberties is both timely and significant. It is timely because Gordon recently passed on, and he was a man of extraordinary conviction and quiet courage. In challenging the United States government and its mass racial internment, he stood tall not only for Japanese Americans but for all Americans. It is significant because the issues his challenge raised—the role of the judiciary in protecting civil liberties during times of national distress and later, the importance of redress for deep injustice—live on today in the United States and in countries throughout the world. Those issues and their linkage to the original World War II and more recent coram nobis internment legal cases are the focus of this presentation. We all have gained immeasurably from the conviction and courage of Gordon and of fellow internment challengers Fred Korematsu. Minoni "Min" Yasui. and Mitsuye Endo.3 Our deepest respect and fond aloha to them all.¶ I. A Key Piece of the Legacy of the Internment Cases: The Court's Role in National Security and Civil Liberties Controversies¶ A. "Hands-Off"or "Watchful Care"¶ Let us start with a brief story that illuminates a part of the conference's theme of the "internment cases looking forward." This theme focuses on what the role of judges and justices will be in reviewing future legal challenges to government national security restrictions of civil liberties. This is a crucial question eleven years into post-9/11 America. Will the courts take a "hands-off role, deferring to the government's proffered justification of "national security necessity." even when unproven? (That is what the United States Supreme Court did in upholding the World War II Japanese American exclusion in Korematsu and curfew in HirabayasJii.4) Or will the courts exercise "watchful care" over our constitutional liberties by carefully scrutinizing the government's national security justification and requiring the government to prove bona fide necessity, as Judge Mary Schroeder did in reviewing the Hirabayashi coram nobis claims? (The internment may well have been invalidated in 1944 in Korematsu if the high court had embraced that role of watchful care. ¶ B. Justice Sotomayor and the Future Role of Judges.¶ I posed these very questions to Supreme Court Justice Sonia Sotomayor during her recent "Jurist-in-Residence" week at my law school. She was insightful and inspiring. I asked her. "What role will .American courts likely embrace in ruling on future national security restrictions that curtail civil liberties—hands-off or watchful care?" Much is at stake.¶ Speaking generally without reference to any cases, she first observed that there is still substantial disagreement about the role of the courts and that judges and scholars take both views.6 But, she said, there has been a "modicum of progress" in the role of judges in reviewing these disputes and in assuring that civil liberties are appropriately protected in the face of government claims of necessity. And that is in part because of what the World War II cases revealed.¶ Indeed, the original internment and curfew challenges, illuminated by the later coram nobis re-openings, showed the grave injustice of hands-off judging (which enables the government security apparatus to mislead the country about "necessity"). Courts do need to demand some level of government accountability—a "modicum of progress," but important progress nonetheless. And that is a key part of the living legacy of Gordon, Fred, and Min.¶ II. Another Key Piece of the Evolving Legacy: On-Going Redress Initiatives for Historic Injustice in the United States and Internationally¶ Next, let us explore insights and raise questions about another key aspect of the evolving legacy of the internment litigation by examining not so much its impact on the law's treatment of national security and civil liberties—which remain important—but rather the redress available to those Japanese Americans interned, and the profound impact it has had on reparations claims and reconciliation initiatives in the United States and around the world.

#### **reparations good – key to racial justice**

Harvey 7

Jennifer, Associate Professor of Religion, Department Chair, Drake University, Whiteness and Morality: Pursuing Racial Justice through Reparations and Sovereignty, p. 142-3)sbl

The theoretical frameworks and historical analysis I have articulated to this point suggest the appropriateness, and the moral and political legitimacy of Native struggles for self-determination and sovereignty, as well as movements for reparations for the enslavement of people of African descent. Such is the case, even aside from a more explicit argument pertaining to white racial particularity and white responsibility. But, the theory and historical analysis here pulls in a particular way on those of us who are white in this national landscape. The theoretical clarity afforded in exploring "what race is" makes clear that racial justice must be pursued through material processes. These pursuits must intervene in the very processes that create whiteness. In theoretical terms, white U.S.-Americans are constituted as such by concrete materialities and social practices. Disruptive responses to white supremacy must, therefore, also be pursued in the form of concrete materialities and social practices. In historical terms, white people lost our humanity as we were racialized and nationalized through genocide, colonization, enslavement, imperialism, and lynching; this inhumanity has been sustained and perpetuated by ongoing legacies of these activities. In ethical terms, realities of unredressed racial justice—and their ongoing effects in the present—have resounding moral implications that go to the core of who we are as white racial selves. The meaning of race in the United States implicates the atrocities of racial oppression into our very beings as white people, individually and communally. It is in this crucible of theory, history, and ethics that it becomes possible for me to claim there exists an imperative of reparations in relation to the moral crisis of "being white." For it is only to the extent that we live out concrete responses to the materialities of oppression that we truly engage the question "Who might we become and how?" And, to this question, one response becomes that reparations to Native peoples and people of African descent represent pivotal means for disrupting the processes through which we become white (the how), as activity through which we might become more human (the who might we become). Reparations are an imperative, first, for justice: to address the ongoing legacies of colonization in relation to Native peoples, to ameliorate the vestiges of slavery that remain at work in the lives of African American communities and to engage in a process of accountability for the massive human rights violations that were (and continue to be) committed against both peoples. Reparations are an imperative, second, for transformation: to beckon white people to live agency in ways that might alter the present meanings of white in economic-material and moral-spiritual terms. Reparations are an imperative, third, for authentic pursuits of cross-racial and cross-national reconciliation and the solidarity about which many white theologians and ethicists in the liberationist tradition, white feminists in particular, express concern.2 "Restitution,. . ." writes Haunani-Kay Trask, "must be a precondition for reconciliation."3

### 1NC T

#### A – Interpretation:

#### Topical affirmatives must affirm the resolution through instrumental defense of action by the United States Federal Government.

#### B – Definitions

#### Should denotes an expectation of enacting a plan

#### American Heritage Dictionary 2000 (Dictionary.com)

should. The will to do something or have something take place: I shall go out if I feel like it.

#### Federal government is the central government in Washington DC

Encarta Online 2005,

http://encarta.msn.com/encyclopedia\_1741500781\_6/United\_States\_(Government).html#howtocite

United States (Government), the combination of federal, state, and local laws, bodies, and agencies that is responsible for carrying out the operations of the United States. The federal government of the United States is centered in [Washington, D.C.](http://encarta.msn.com/encyclopedia_761576320/Washington_D_C.html)

#### Resolved implies a policy

Louisiana House 3-8-2005, <http://house.louisiana.gov/house-glossary.htm>

Resolution A legislative instrument that generally is used for making declarations, stating policies, and making decisions where some other form is not required. A bill includes the constitutionally required enacting clause; a resolution uses the term "resolved". Not subject to a time limit for introduction nor to governor's veto. ( Const. Art. III, §17(B) and House Rules 8.11 , 13.1 , 6.8 , and 7.4)

#### C – Vote neg –

#### First is Decisionmaking

#### The primary purpose of debate should be to improve our skills as decision-makers. We have an obligation to the people affected by our decisions to use debate as a method for honing these critical thinking and information processing abilities.

Austin J. Freeley and David L. Steinberg – John Carroll University / U Miami – 2009, Argumentation and Debate: Critical Thinking for Reasoned Decision Making, p. 1-4, googlebooks

After several days of intense debate, first the United States House of Representatives and then the U.S. Senate voted to authorize President George W. Bush to attack Iraq if Saddam Hussein refused to give up weapons of mass destruction as required by United Nations's resolutions. Debate about a possible military\* action against Iraq continued in various governmental bodies and in the public for six months, until President Bush ordered an attack on Baghdad, beginning Operation Iraqi Freedom, the military campaign against the Iraqi regime of Saddam Hussein. He did so despite the unwillingness of the U.N. Security Council to support the military action, and in the face of significant international opposition.¶ Meanwhile, and perhaps equally difficult for the parties involved, a young couple deliberated over whether they should purchase a large home to accommodate their growing family or should sacrifice living space to reside in an area with better public schools; elsewhere a college sophomore reconsidered his major and a senior her choice of law school, graduate school, or a job. Each of these\* situations called for decisions to be made. Each decision maker worked hard to make well-reasoned decisions.¶ Decision making is a thoughtful process of choosing among a variety of options for acting or thinking. It requires that the decider make a choice. Life demands decision making. We make countless individual decisions every day. To make some of those decisions, we work hard to employ care and consideration; others seem to just happen. Couples, families, groups of friends, and coworkers come together to make choices, and decision-making bodies from committees to juries to the U.S. Congress and the United Nations make decisions that impact us all. Every profession requires effective and ethical decision making, as do our school, community, and social organizations.¶ We all make many decisions every day. To refinance or sell one's home, to buy a high-performance SUV or an economical hybrid car. what major to select, what to have for dinner, what candidate to vote for, paper or plastic, all present us with choices. Should the president deal with an international crisis through military invasion or diplomacy? How should the U.S. Congress act to address illegal immigration?¶ Is the defendant guilty as accused? The Daily Show or the ball game? And upon what information should I rely to make my decision? Certainly some of these decisions are more consequential than others. Which amendment to vote for, what television program to watch, what course to take, which phone plan to purchase, and which diet to pursue all present unique challenges. At our best, we seek out research and data to inform our decisions. Yet even the choice of which information to attend to requires decision making. In 2006, TIME magazine named YOU its "Person of the Year." Congratulations! Its selection was based on the participation not of ''great men" in the creation of history, but rather on the contributions of a community of anonymous participants in the evolution of information. Through blogs. online networking. You Tube. Facebook, MySpace, Wikipedia, and many other "wikis," knowledge and "truth" are created from the bottom up, bypassing the authoritarian control of newspeople, academics, and publishers. We have access to infinite quantities of information, but how do we sort through it and select the best information for our needs?¶ The ability of every decision maker to make good, reasoned, and ethical decisions relies heavily upon their ability to think critically. Critical thinking enables one to break argumentation down to its component parts in order to evaluate its relative validity and strength. Critical thinkers are better users of information, as well as better advocates.¶ Colleges and universities expect their students to develop their critical thinking skills and may require students to take designated courses to that end. The importance and value of such study is widely recognized.¶ Much of the most significant communication of our lives is conducted in the form of debates. These may take place in intrapersonal communications, in which we weigh the pros and cons of an important decision in our own minds, or they may take place in interpersonal communications, in which we listen to arguments intended to influence our decision or participate in exchanges to influence the decisions of others.¶ Our success or failure in life is largely determined by our ability to make wise decisions for ourselves and to influence the decisions of others in ways that are beneficial to us. Much of our significant, purposeful activity is concerned with making decisions. Whether to join a campus organization, go to graduate school, accept a job oiler, buy a car or house, move to another city, invest in a certain stock, or vote for Garcia—these are just a few of the thousands of decisions we may have to make. Often, intelligent self-interest or a sense of responsibility will require us to win the support of others. We may want a scholarship or a particular job for ourselves, a customer for out product, or a vote for our favored political candidate.

#### Additionally, The best route to improving decision-making is through discussion about public policy

#### Mutually accessible information – There is a wide swath of literature on governmental policy topics – that ensures there will be informed, predictable, and in-depth debate over the aff’s decision. Individual policymaking is highly variable depending on the person and inaccessible to outsiders.

#### Harder decisions make better decisionmakers – The problems facing public policymakers are a magnitude greater than private decisions. We all know plans don’t actually happen, but practicing imagining the consequences of our decisions in the high-stakes games of public policymaking makes other decisionmaking easier.

#### External actors – the decisions we make should be analyzed not in a vacuum but in the complex social field that surrounds us

#### Second is Predictable Limits - The resolution proposes the question the negative is prepared to answer and creates a bounded list of potential affs for us to think about. Debate has unique potential to change attitudes and grow critical thinking skills because it forces pre-round internal deliberation on a of a focused, common ground of debate

Robert E. Goodin and Simon J. Niemeyer- Australian National University- 2003,

When Does Deliberation Begin? Internal Reflection versus Public Discussion in Deliberative Democracy, POLITICAL STUDIES: 2003 VOL 51, 627–649, http://onlinelibrary.wiley.com/doi/10.1111/j.0032-3217.2003.00450.x/pdf

What happened in this particular case, as in any particular case, was in some respects peculiar unto itself. The problem of the Bloomfield Track had been well known and much discussed in the local community for a long time. Exaggerated claims and counter-claims had become entrenched, and unreflective public opinion polarized around them. In this circumstance, the effect of the information phase of deliberative processes was to brush away those highly polarized attitudes, dispel the myths and symbolic posturing on both sides that had come to dominate the debate, and liberate people to act upon their attitudes toward the protection of rainforest itself. The key point, from the perspective of ‘democratic deliberation within’, is that that happened in the earlier stages of deliberation – before the formal discussions (‘deliberations’, in the discursive sense) of the jury process ever began. The simple process of jurors seeing the site for themselves, focusing their minds on the issues and listening to what experts had to say did virtually all the work in changing jurors’ attitudes. Talking among themselves, as a jury, did very little of it. However, the same might happen in cases very different from this one. Suppose that instead of highly polarized symbolic attitudes, what we have at the outset is mass ignorance or mass apathy or non-attitudes. There again, people’s engaging with the issue – focusing on it, acquiring information about it, thinking hard about it – would be something that is likely to occur earlier rather than later in the deliberative process. And more to our point, it is something that is most likely to occur within individuals themselves or in informal interactions, well in advance of any formal, organized group discussion. There is much in the large literature on attitudes and the mechanisms by which they change to support that speculation.31 Consider, for example, the literature on ‘central’ versus ‘peripheral’ routes to the formation of attitudes. Before deliberation, individuals may not have given the issue much thought or bothered to engage in an extensive process of reflection.32 In such cases, positions may be arrived at via peripheral routes, taking cognitive shortcuts or arriving at ‘top of the head’ conclusions or even simply following the lead of others believed to hold similar attitudes or values (Lupia, 1994). These shorthand approaches involve the use of available cues such as ‘expertness’ or ‘attractiveness’ (Petty and Cacioppo, 1986) – not deliberation in the internal-reflective sense we have described. Where peripheral shortcuts are employed, there may be inconsistencies in logic and the formation of positions, based on partial information or incomplete information processing. In contrast, ‘central’ routes to the development of attitudes involve the application of more deliberate effort to the matter at hand, in a way that is more akin to the internal-reflective deliberative ideal. Importantly for our thesis, there is nothing intrinsic to the ‘central’ route that requires group deliberation. Research in this area stresses instead the importance simply of ‘sufficient impetus’ for engaging in deliberation, such as when an individual is stimulated by personal involvement in the issue.33 The same is true of ‘on-line’ versus ‘memory-based’ processes of attitude change.34 The suggestion here is that we lead our ordinary lives largely on autopilot, doing routine things in routine ways without much thought or reflection. When we come across something ‘new’, we update our routines – our ‘running’ beliefs and pro cedures, attitudes and evaluations – accordingly. But having updated, we then drop the impetus for the update into deep-stored ‘memory’. A consequence of this procedure is that, when asked in the ordinary course of events ‘what we believe’ or ‘what attitude we take’ toward something, we easily retrieve what we think but we cannot so easily retrieve the reasons why. That more fully reasoned assessment – the sort of thing we have been calling internal-reflective deliberation – requires us to call up reasons from stored memory rather than just consulting our running on-line ‘summary judgments’. Crucially for our present discussion, once again, what prompts that shift from online to more deeply reflective deliberation is not necessarily interpersonal discussion. The impetus for fixing one’s attention on a topic, and retrieving reasons from stored memory, might come from any of a number sources: group discussion is only one. And again, even in the context of a group discussion, this shift from ‘online’ to ‘memory-based’ processing is likely to occur earlier rather than later in the process, often before the formal discussion ever begins. All this is simply to say that, on a great many models and in a great many different sorts of settings, it seems likely that elements of the pre-discursive process are likely to prove crucial to the shaping and reshaping of people’s attitudes in a citizens’ jury-style process. The initial processes of focusing attention on a topic, providing information about it and inviting people to think hard about it is likely to provide a strong impetus to internal-reflective deliberation, altering not just the information people have about the issue but also the way people process that information and hence (perhaps) what they think about the issue. What happens once people have shifted into this more internal-reflective mode is, obviously, an open question. Maybe people would then come to an easy consensus, as they did in their attitudes toward the Daintree rainforest.35 Or maybe people would come to divergent conclusions; and they then may (or may not) be open to argument and counter-argument, with talk actually changing minds. Our claim is not that group discussion will always matter as little as it did in our citizens’ jury.36 Our claim is instead merely that the earliest steps in the jury process – the sheer focusing of attention on the issue at hand and acquiring more information about it, and the internal-reflective deliberation that that prompts – will invariably matter more than deliberative democrats of a more discursive stripe would have us believe. However much or little difference formal group discussions might make, on any given occasion, the pre-discursive phases of the jury process will invariably have a considerable impact on changing the way jurors approach an issue. From Citizens’ Juries to Ordinary Mass Politics? In a citizens’ jury sort of setting, then, it seems that informal, pre-group deliberation – ‘deliberation within’ – will inevitably do much of the work that deliberative democrats ordinarily want to attribute to the more formal discursive processes. What are the preconditions for that happening? To what extent, in that sense, can findings about citizens’ juries be extended to other larger or less well-ordered deliberative settings? Even in citizens’ juries, deliberation will work only if people are attentive, open and willing to change their minds as appropriate. So, too, in mass politics. In citizens’ juries the need to participate (or **the anticipation of participating) in formally organized group discussions might be the ‘prompt’ that evokes those attributes**. But there might be many other possible ‘prompts’ that can be found in less formally structured mass-political settings. Here are a few ways citizens’ juries (and all cognate micro-deliberative processes)37 might be different from mass politics, and in which lessons drawn from that experience might not therefore carry over to ordinary politics: • A citizens’ jury concentrates people’s minds on a single issue. Ordinary politics involve many issues at once. • A citizens’ jury is often supplied a background briefing that has been agreed by all stakeholders (Smith and Wales, 2000, p. 58). In ordinary mass politics, there is rarely any equivalent common ground on which debates are conducted. • A citizens’ jury separates the process of acquiring information from that of discussing the issues. In ordinary mass politics, those processes are invariably intertwined. • A citizens’ jury is provided with a set of experts. They can be questioned, debated or discounted. But there is a strictly limited set of ‘competing experts’ on the same subject. In ordinary mass politics, claims and sources of expertise often seem virtually limitless, allowing for much greater ‘selective perception’. • Participating in something called a ‘citizens’ jury’ evokes certain very particular norms: norms concerning the ‘impartiality’ appropriate to jurors; norms concerning the ‘common good’ orientation appropriate to people in their capacity as citizens.38 There is a very different ethos at work in ordinary mass politics, which are typically driven by flagrantly partisan appeals to sectional interest (or utter disinterest and voter apathy). • In a citizens’ jury, **we think and listen in anticipation of the discussion phase, knowing that we soon will have to defend our views in a discursive setting where they will be probed intensively**.39 In ordinary mass-political settings, there is no such incentive for paying attention. It is perfectly true that citizens’ juries are ‘special’ in all those ways. But if being special in all those ways makes for a better – more ‘reflective’, more ‘deliberative’ – political process, then those are design features that we ought try to mimic as best we can in ordinary mass politics as well. There are various ways that that might be done. Briefing books might be prepared by sponsors of American presidential debates (the League of Women Voters, and such like) in consultation with the stakeholders involved. Agreed panels of experts might be questioned on prime-time television. Issues might be sequenced for debate and resolution, to avoid too much competition for people’s time and attention. Variations on the Ackerman and Fishkin (2002) proposal for a ‘deliberation day’ before every election might be generalized, with a day every few months being given over to small meetings in local schools to discuss public issues. All that is pretty visionary, perhaps. And (although it is clearly beyond the scope of the present paper to explore them in depth) there are doubtless many other more-or-less visionary ways of introducing into real-world politics analogues of the elements that induce citizens’ jurors to practice ‘democratic deliberation within’, even before the jury discussion gets underway. Here, we have to content ourselves with identifying those features that need to be replicated in real-world politics in order to achieve that goal – and with the ‘possibility theorem’ that is established by the fact that (as sketched immediately above) there is at least one possible way of doing that for each of those key features.

#### TOPICAL VERSION OF THE AFF-FILTER 2AC OFFENSE

### 1NC Case

#### **Korematsu has functionally been overturned already – lower court decisions, Supreme Court statements in other cases, and Congressional reparations.**

Whalin 6, U.S. Courts Attorney, J.D. from GSU

(Sarah A. Whalin, “National Security Versus Due Process: Korematsu Raises Its Ugly Head Sixty Years Later in Hamdi and Padilla," Georgia State University Law Review: Vol. 22: Iss. 3, Article 7, http://digitalarchive.gsu.edu/gsulr/vol22/iss3/7)

Both Congress and the Supreme Court have expressed disapproval of the injustice resulting from the internment of Japanese-Americans during World War II. In 1988, Congress passed the Civil Liberties Act, specifically apologizing for and making restitution to those Japanese-American individuals whom the government evacuated and interned. In addition to focusing on the past in “acknowledge[ing] the fundamental injustice of the evacuation, relocation, and internment…; apologiz[ing] on behalf of the… United States…;” and “mak[ing] restitution to those… who were interned,” this Act also sought to “discourage the occurrence of similar injustices and violations of civil liberties in the future.” The Supreme Court has also denounced the Court’s decision in Korematsu; eight of the nine Justices on the Hamdi and Padilla Court stated the Court wrongly decided Korematsu. Further, the District Court for the Northern District of California overturned Korematsu’s conviction and stated that the Supreme Court’s decision in Korematsu v. United States “stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant in protecting constitutional guarantees. It stands as a caution that in times of distress the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability. It stands as a caution that in times of international hostility and antagonisms our institutions, legislative, executive and judicial, must be prepared to exercise their authority to protect all citizen from the petty fears and prejudices that are so easily aroused.”

#### **Overturning Korematsu is irrelevant – it’s not a legal precedent – reverse bias.**

Asian American Law Symposium 9

(“Justice Restored: The Legacy of Korematsu II and the Future of Civil Liberties”, Spring Symposium featured Karen Korematsu (Fred Korematsu's daughter), Dale Minami (lead attorney on Fred Korematsu’s coram nobis team), and the Honorable Marilyn Hall Patel of the Northern District of California (who presided over and wrote the coram nobis decision) 16 Asian Am. L.J. 225, 3/13/9)

AUDIENCE MEMBER: How do we address the fact that the original Korematsu decision has never been overturned? MR. MINAMI: Well, I think the final paragraph of Judge Patel's opinion sums it up very well. And it's really interesting if you read Hamdi v. Rumsfeld n1 because Sandra Day O'Connor's opinion has a paragraph that almost is uncannily similar to this. Judge Patel writes: Korematsu remains on the pages of our legal and political history. As a legal precedent it is now recognized as having very limited application. As historical precedent it stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant in protecting constitutional guarantees. It stands as a caution that in times of distress the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability. It stands as a caution that in times of international hostility and antagonisms our institutions, legislative, executive and judicial, must be prepared to exercise their authority to protect all citizens from the petty fears and prejudices that are so easily aroused. n2¶ ¶ This is written in 1984, and after September 11th it became even more prophetic. I totally agree that the legal precedential value is somewhat limited in the sense that if you ever read Hamdan, or some later Supreme Court decisions on the Guantanamo cases, they cite Korematsu hardly at all, except as historical precedent. If they were truly thinking of this as a legal precedent, they could have used that in one way or another. But I think it's been so criticized as a precedent and I think the coram nobis helped to the degree that it proved that the original decisions were based on a foundation of fraud. That you can uproot an entire minority group or group of people without due process, without trial, without hearing, without notice of charges, and take them away for indefinite periods - that kind of precedent is no longer good law. That's just my feeling about it.

#### **The aff’s approach to internment views it as an aberrational failure of an otherwise effective constitution – reinscribes legal legitimacy to a racist system that prevents us from understanding the bigger picture of oppression**

Matsuda 98

(Mari J., Law Student, Boston College Law Review, “SYMPOSIUM: Foreword: McCarthyism, The Internment and the Contradictions of Power,” Boston College Law Review, December 1998, 40 B.C. L. Rev 9, Lexis)

These writers challenge traditional interpretations. They challenge the emerging view that the internment was an aberrational and tragic failure of Constitutionalism under duress of war, rather than business as usual in a country where racism and capitalism have always proved the unbeatable pair in a doubles match against individual rights and equality. To use the internment as a lens is to take the denial of human rights directed against Japanese Americans as a starting point for understanding the bigger picture of repression in America. This goes beyond retrieval of the facts of the internment and condemnation of the Constitutional wrong. Fortunately for the writers in this symposium, they are able to go beyond because of a significant and ongoing body of work documenting the facts and condemning the outrage of the internment. n22 This symposium is stage two, the interpretive work, taking what we know about the internment to the inside of American jurisprudence, and turning the inside out. It is challenging work.

#### Single issue focus on Korematsu Era cases won’t solve other precedents – these precedents run as far back as the Civil War

Pushaw 11

(Robert J., James Wilson Endowed Professor. Pepperdine University School of Law, 12-15, “Explaining Korematsu”, Pepperdine Law Review, Volume 39, Issue 1, http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1357&context=plr&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fhl%3Den%26as\_sdt%3D0%2C11%26as\_ylo%3D2012%26q%3Dkorematsu%2Bchemerinsky#search=%22korematsu%20chemerinsky%22)

The Justices have always properly recognized that the Constitution commits all war powers to the political branches, which have a paramount duty to protect national security. Even when the assertion of those powers allegedly violates individual rights, the Court has tended to defer to the President's judgment that a particular action is militarily necessary, which rests upon the expert advice of his executive subordinates who have processed huge amounts of information. Furthermore, the Court often has no realistic option but to yield to a strong President who enjoys popular and congressional support when he makes such decisions.¶ Thus, Korematsu is not an aberration, but rather followed precedent set during the Civil War (such as The Prize Cases and Valhmdigham) and World War I.144 My study of history convinces me that it is simply wishful thinking to hope that the Court will avoid similar decisions in the future.

## 2NC CP

### spillover

#### this is not merely a historical FYI – the multifaceted, complex legacy of the korematsu era cases has provided the modern legal basis for a massive wave of demands for reparations from Blacks, Native Americans, Filipino war veterans, and others – ending the legacy of these cases eviscerates the foundations of a global reparations movement

Yamamoto 12

(Eric. K., Fred T. Korematsu Professor of Law and Social Justice, William S. Richardson School of Law, University of Hawaii, “The Evolving Legacy of Japanese American Internment Redress: Next Steps We Can (an Should) Take”, Seattle Journal for Social Justice, Volume 11 Issue 1 Article 7, <http://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1631&context=sjsj>)

A. Far-reaching Impacts of Internment Redress¶ First, visualize these dimensions of internment redress: the first major publicly visible "truth commission" recording poignant personal testimonies of injustice, investigating responsibility, and issuing a powerful fact-finding and assessment report: the courts re-entering the fray and reversing course after forty years, pronouncing government wrongdoing and the need for accountability: and Congress stepping up and passing the monumental Civil Liberties Act of 1988, mandating a presidential apology to each survivor and authorizing substantial symbolic reparations and creation of a major public education fund.7¶ Next, recognize the goals: truth-telling, government accountability, and social healing by doing justice—healing the persisting wounds of those wrongfully incarcerated and the wounds of American society for its failure of democracy.¶ Finally, consider since 1988 the global explosion of truth commissions and redress, reconciliation, and reparations initiatives (with demands for apologies and claims for reparations). Reparatory justice claims in the United States have been advanced by African Americans (slavery, lynching, and segregation): Native Hawaiians (restoration of land and self-governance): Native Americans (treaty violations and land confiscation): Latino farm workers (back pay): Mexican Americans (forcible removal from California during the depression): and Filipino war veterans (promised benefits).¶ And globally, note that redress, reconciliation, and reparations initiatives for past government-inflicted injustice have swept across Canada. New Zealand. South Africa. Siena Leone. Rwanda. Peru, Argentina, Columbia. Chile. East Timor. Nepal. Sri Lanka. Cambodia. Japan, and Korea. This list is just a beginning. Some groups have been more genuine in motivation and approach than others, yet all are a part of the global reparatory justice phenomenon. Most of these groups have links to, or even direct roots in, the US redress for Japanese Americans.¶ Looking broadly, redressing the deep wounds of injustice has become a matter central to the future of civil societies that claim legitimacy as democracies in part through a commitment to civil and human rights. Whether a country heals persisting wounds is increasingly viewed now as integral to its stature and prosperity both domestically and globally. Fust, healing is integral domestically to enable communities to deal with pain, guilt, and division linked to its past in order to live peaceably and work productively together in the present. Second, healing is integral globally to legitimize a country as a democracy truly committed to civil and human rights (which affects a country's standing on international security and responsible economic development). People, communities, and governments—especially democracies claiming allegiance to human rights principles—all have a stake in justice that repairs. That is another piece of the legacy of Gordon Hirabayashi, Fred Korematsu, Min Yasui, and Mitsuye Endo, as well as Judge Mary Schroeder and Judge Marilyn Hall Patel.¶ But the story is also more complicated than this—more multifaceted, with brighter and darker sides. It is likely that the full legacy of internment redress and its long-term impacts beyond the Japanese American community are still being determined—and we all have a role to play. To illuminate this point I will offer three related stories.

### solvency

#### in this sense, we are called to a task more challenging than the repudiation of the korematsu legacy – we are called to productively reform it, to keep parts of the legacy of internment alive as a catalyst for political work towards reparations across the world.

Yamamoto 12

(Eric. K., Fred T. Korematsu Professor of Law and Social Justice, William S. Richardson School of Law, University of Hawaii, “The Evolving Legacy of Japanese American Internment Redress: Next Steps We Can (an Should) Take”, Seattle Journal for Social Justice, Volume 11 Issue 1 Article 7, <http://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1631&context=sjsj>)

With all of this in mind. I will make an observation and then pose a question. The observation is this: The long-term legacy of internment redress, beyond catharsis and vindication for Japanese Americans, is still evolving: it is still to be determined. And how it evolves is in part dependent on how we—those who have benefitted directly or indirectly from internment redress—carry forth the lessons of the redress struggle and contribute our time and energy to the reparatory justice struggles of others. Running the Fred T. Korematsu Center for Law and Equality and the Densho Project—sponsoring research, clinical teaching fellows, and conferences, as well as handling community cases and filing amicus briefs, is truly significant. Also significant is giving time and money, lending political contacts, and providing words of support for post-9/11 struggles and for the justice claims of others—all aspects of the evolving legacy of internment redress.¶ But there is something more to the evolution of this legacy, something more specific and equally valuable. Here is the question (it is really more of a challenge), for scholars and advocates (or combined scholar-advocates), and for all those engaged in justice-thinking as well as justice-practice. Drawing from redress experiences and insights, and with an eye on others\* on-going and future redress struggles, how do we help generate cutting-edge ideas and practical approaches that resonate in policy halls, courts, and public minds and that work for on-the-ground organizers and advocates!¶ How do we participate in and contribute to the redress struggles of others? More specifically, how do we further refine "practical theory" about what engenders the kind of "social healing through justice" that: (1) speaks to the hearts and minds of governments and people with a history of injustice, and (2) both guides on-going redress efforts and assesses then efficacy? This indeed is what, in my experience, scholars and advocates around the world are asking for in greater depth and sophistication to help drive forward then on-the-ground present-day redress and reconciliation initiatives.¶ Recently. Professor Lori Bannai responded to Senator Diane Feinstein's request to testify in Congress on proposed legislation that disallows the military from detaining American civilians deemed enemy combatants indefinitely without charges or trial. Drawing upon Fred Korematsu's and Gordon Hirabayashi's words and deeds. Professor Bannai presented a compelling template for preventing the kind of deep, broad-scale injustice that later requires reparation.17 This past spring. I was in South Korea speaking at Seoul National University about strategic next steps for Comfort Women redress, and then at Jeju National University about halting prospects for social healing of the persisting wounds from the April 3. 1948. massacre of thousands of civilians by the Korean military and police during the American "peacetime" occupation of South Korea. I was there as the newly appointed Fred T. Korematsu Professor of Law and Social Justice to present a requested strategic "perspective from the United States" that drew insights in part from Japanese American internment redress. ¶ Responding to these kinds of calls by others may indeed be an integral part of an enduring legacy of internment redress. There is more to say on this, but I will end by suggesting that understandings of what it takes to heal the wounds of injustice have taken major steps forward, yet they offer no comprehensive approaches—they are still works in progress. But the empowering dynamics of victim testimonies, documentary revelations of government wrongdoing, commission or court pronouncements of responsibility, presidential apologies, legislative reparations payments, and sustained public education—all dimensions of Japanese American internment redress—have pointed social psychologists, theologians, political theorists, and legal scholars toward the kind of "social healing through justice" that genuinely begins to repair the damage of historic injustice.¶ Legal scholars and community advocates are increasingly harnessing the power of international human rights tenets of reparatory justice—restitution, rehabilitation, restructuring, and reparation—for major government transgressions. This work links the very foundations of past Japanese American internment redress to on-going and future struggles for redress for the persisting harms of government injustice—both within and without the United States. Our response to this continuing challenge—in words and ideas, and in outreach and actions—may well be key to the evolving "social healing through justice" legacy of Gordon, Fred, and Min.

### reparations good

No solvency without reparations – the aff is a prerequisite to any political engagement – failure to acknowledge the past leads to racialized violence.

Matsuda, ‘87 [1987; Mari J. Matsuda; Assistant Professor of Law, University of Hawaii, The William S. Richardson School of Law; "LOOKING TO THE BOTTOM: CRITICAL LEGAL STUDIES AND REPARATIONS"]

#### This interpretation supports a doctrine of reparations. Reparations recognizes the personhood of victims. Lack of legal redress for racist acts is an injury often more serious than the acts themselves, 274 because it signifies the political non-personhood of victims. The grant of reparations declares, "You exist. Your experience of deprivation is real. You are entitled to compensation for that deprivation. This nation and its laws acknowledge you." 275 This recognition is an important pre-requisite to the victim's political participation. Classic democratic theory holds that broad participation invigorates and informs the process of governance, 2 76 and yet the United States tolerates one of the lowest voter participation rates in the universe of nominally democratic countries.2 77 Affirming the legitimacy of victims' claims could bring back into the polity those who had concluded that this government has nothing to offer them. This in turn would bring new legitimacy to the government. The price of a continuing failure to recognize the experience of those at the bottom is the social dislocation and even violence 278 that follow when outsiders conclude they can gain nothing by participating in existing governmental processes. Further, discrimination that is officially condoned or ignored can lead to increasingly violent attacks on the victims of that discrimination.2 79 All of us, in this sense, are victims. We suffer from the deep divisions between races, the bitter prejudices maintained by both victim and perpetrator groups, and the inability to form community that comes when old wounds go unsalved.

## 1NR DA

### 2NC O/V

#### Court activism on war powers emboldens the president because it removes Congress from power

Rosen 2006 - professor of law at The George Washington University and the legal affairs editor of The New Republic (June, Jeffery, “Most Democratic Branch : How the Courts Serve America” Oxford University Press, 9780195174434, ebook)

Some defenders of bipartisan judicial restraint have argued plausibly that the Court should be freer to engage in adventurous interpretations of federal statutes than of the U.S. Constitution, because Congress is always free to reverse statutory decisions with which it disagrees, while constitutional decisions cannot be reversed, except by a constitutional amendment. And in an age when Congress is increasingly reluctant to take responsibility for policy choices, judicial restraint may be just as likely to encourage presidential unilateralism as it is to encourage a dialogue between the president and the Congress. But judicial creativity can remove any remaining incentives to congressional action: In the Hamdi case, for example, the Court detected congressional authorization where no explicit authorization existed and then made up judicial procedures in order to save the executive from its worst impulses. This had the unfortunate effect of removing any political pressure on Congress to adopt the comprehensive procedural safeguards that European countries with systems of preventative detention have adopted. It may a have also emboldened the president to take the remarkable and unconvincing unilateralist view that the congressional resolution authorizing him to find the perpetrators of the 9/11 attacks could be stretched to authorize him to break U.S. surveillance laws with domestic wiretaps of U.S. citizens. The national scandal that erupted when this secret spying program was revealed is consistent with similar scandals that emerged in Europe during the 1980s and ‘90s: namely, political pressure calling for new laws to regulate the executive invariably arise in response to well-publicized executive excess. Courts should not imagine they can create these legal regulations on their own in the absence of public support and debate.

#### Court enforcement doesn’t work – protecting individual rights spurs backlash

Dixon 2011 - Assistant Professor of Law, University of Chicago Law School (March, Rosalind, “Partial Constitutional Amendments” 13 U. Pa. J. Const. L. 643, Lexis)

As scholars such as Gerry Rosenberg and Michael Klarman have shown, there are a number of reasons why, if the Court attempts to protect individual rights in the face of clear opposition from a majority of Americans, it is unlikely to be effective in achieving its aims. n136 One reason is that in a decentralized judicial system such as that of the U.S., many federal district courts and state courts will refuse to give practical effect to such a ruling and will in most cases be able to do so without facing any meaningful prospect of review by the Court itself. n137 Another reason is that the meaningful protection of individual rights will often require active government support or expenditure, which will clearly be lacking if there is broad political opposition to particular constitutional change. n138 A third reason is that, if particular rights are sufficiently unpopular, they will tend to generate a form of counter-mobilization or backlash that not only limits the enjoyment of the particular right in question, but often also the broader political rights and interests of the citizens the Court is concerned to [\*677] protect. n139 Together, these factors all combine to mean that, except in certain limited circumstances, by simply refusing as a formal legal matter to overrule a prior counter-majoritarian or blocking decision, the Court will tend to have limited capacity to increase the actual enjoyment of rights those decisions may promise.

### 2NC UQ

#### Judicial restraint now - court negation of the actions of other branches obliterates legitimacy

Collett, Law Prof at St. Thomas, 10

Winter, Judicial Independence and Accountability in an Age of Unconstitutional Constitutional Amendments, 41 Loy. U. Chi. L.J. 327

It is axiomatic to the American political order that the legislature makes the laws, the executive enforces the laws, and the judiciary interprets and applies the laws.  
Repeated and essentially **head-on confrontations** between the life-tenured branch and the representative branches of government will not, in the long run, be beneficial to either. The public confidence essential to the former and the vitality critical to the latter **may well erode** if self-restraint is not exercised in the utilization of the power **to negate the actions of the other branches.** [**102**](http://www.lexis.com/research/retrieve?_m=a6aacac57ffdbc04a101949a45ffd732&docnum=7&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtz-zSkAb&_md5=c84a9df15e12aed0971144c7cdcaecfe#n102)  
Public confidence in the judicial branch is based upon its belief that the people have authorized the judiciary to rule upon disputes based upon the law and that the court rulings are unbiased applications of existing law. Destroy confidence in either of these propositions, and **the authority of the court disappears.**

V. Conclusion

In the American legal scheme, existing law controls the process of proposing new constitutional amendments but rarely controls the content. This means that judicial review has some role to play in the process of constitutional amendment, [103](http://www.lexis.com/research/retrieve?_m=a6aacac57ffdbc04a101949a45ffd732&docnum=7&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtz-zSkAb&_md5=c84a9df15e12aed0971144c7cdcaecfe#n103) but there is little constitutional  basis for substantive review. [104](http://www.lexis.com/research/retrieve?_m=a6aacac57ffdbc04a101949a45ffd732&docnum=7&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtz-zSkAb&_md5=c84a9df15e12aed0971144c7cdcaecfe#n104) As courts expand their constitutional review to encompass constitutional changes initiated by the people or other branches of government, they risk exceeding their constitutional authority. Large numbers of Americans no longer believe that the courts are applying the law in cases involving constitutional challenges; instead, they have come to believe that the courts are imposing the political preferences of judges. [105](http://www.lexis.com/research/retrieve?_m=a6aacac57ffdbc04a101949a45ffd732&docnum=7&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtz-zSkAb&_md5=c84a9df15e12aed0971144c7cdcaecfe#n105) This distinction between political and legal legitimacy is at the heart of the contemporary culture war over the role of courts. Based on a belief that courts are engaged in politics, rather than legal analysis, citizens are attempting to exert greater political control over those preferences through constitutional amendments and increased involvement in judicial elections. [107](http://www.lexis.com/research/retrieve?_m=a6aacac57ffdbc04a101949a45ffd732&docnum=7&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtz-zSkAb&_md5=c84a9df15e12aed0971144c7cdcaecfe#n107) This is not a new phenomenon, [108](http://www.lexis.com/research/retrieve?_m=a6aacac57ffdbc04a101949a45ffd732&docnum=7&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtz-zSkAb&_md5=c84a9df15e12aed0971144c7cdcaecfe#n108) and it is a reasonable response to the perceived problem.  
Yet, with notable exceptions, the organized bar seems oblivious to this public perception. [109](http://www.lexis.com/research/retrieve?_m=a6aacac57ffdbc04a101949a45ffd732&docnum=7&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtz-zSkAb&_md5=c84a9df15e12aed0971144c7cdcaecfe#n109) Rather than responding to public concerns over the accountability of judges, leaders of the legal profession have demanded greater public respect for the independence of courts. [110](http://www.lexis.com/research/retrieve?_m=a6aacac57ffdbc04a101949a45ffd732&docnum=7&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtz-zSkAb&_md5=c84a9df15e12aed0971144c7cdcaecfe#n110) This is a bit like saying, "The answer to your belief that judges are out of control is to understand that judges should not be under any control"; such a response is hardly persuasive. Not surprisingly, these efforts have been largely unsuccessful. [**111**](http://www.lexis.com/research/retrieve?_m=a6aacac57ffdbc04a101949a45ffd732&docnum=7&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtz-zSkAb&_md5=c84a9df15e12aed0971144c7cdcaecfe#n111) Unless joined with serious discussions about judicial accountability, discussions of judicial independence merely reinforce public perceptions of the courts as political actors seeking to avoid political constraints.  
In contrast to the opacity of the bar on this issue of growing public distrust, some **recent court opinions can be read as offering a renewed commitment to judicial restraint**. [**112**](http://www.lexis.com/research/retrieve?_m=a6aacac57ffdbc04a101949a45ffd732&docnum=7&_fmtstr=FULL&_startdoc=1&wchp=dGLzVtz-zSkAb&_md5=c84a9df15e12aed0971144c7cdcaecfe#n112) If such a reading is correct, this bodes well for the renewal of Americans' confidence in the courts and the return of control over political issues to the political branches. If, however, such opinions merely reflect a **temporary ascendency** of judges holding conservative political and social views, it is likely that public efforts to exert political control over the courts will grow as liberals will come to share conservatives' long-held discontent with expansive judicial review.

#### Detention cases don’t non-unique the DA – no actual limitation on the executive

Devins 2010 - Professor of Law and Professor of Government, College of William & Mary (February, Neal, “Symposium: Presidential Power In Historical Perspective: Reflections on Calabresi and Yoo's the Unitary Executive: Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants” 12 U. Pa. J. Const. L. 491, Lexis)

From 1952 (when the Supreme Court slapped down President Truman's war-time seizure of the steel mills) n108 until 2004 (when the Court reasserted itself in the first wave of enemy combatant cases), the judiciary largely steered clear of war powers disputes. n109 In part, the Court deferred to presidential desires and expertise. The President sees the "rights of governance in the foreign affairs and war powers areas" as core executive powers. n110 Correspondingly, the President has strong incentives to expand his war-making prerogatives. n111 For its part, the Court has limited expertise in this area, and, as such, is extremely reluctant to stake out positions that may pose significant national security risks. n112 The Court, moreover, is extremely reluctant to risk elected branch opprobrium. Lacking the powers of purse and sword, the Court cannot ignore the risks of elected branch non-acquiescence. n113

Against this backdrop, the Court's repudiation of the Bush administration's enemy combatant initiative appears a dramatic break from past practice. Academic and newspaper commentary back up this claim - with these decisions being labeled "stunning" (Harold [\*513] Koh), n114 "unprecedented" (John Yoo), n115 "breathtaking" (Charles Krauthammer), n116 "astounding" (Neal Katyal), n117 "sweeping and categorical" (New York Times), n118 and "historic" (Washington Post and Wall Street Journal). n119 Upon closer inspection, however, the Court's decisions are anything but a dramatic break from past practice. Part I detailed how Court rulings tracked larger social and political forces. In this Part, I will show how the Court risked neither the nation's security nor elected branch non-acquiescence. n120 The Court's initial rulings placed few meaningful checks on the executive; over time, the Court - reflecting increasing public disapproval of the President - imposed additional constraints but never issued a ruling that was out-of-sync with elected government preferences. Separate and apart from reflecting growing public and elected government disapproval of Bush administration policies, the Court had strong incentives to intervene in these cases. The Bush administration had challenged the Court's authority to play any role in national security matters. n121 This frontal assault on judicial power prompted the Court to stand up for its authority to "say what the law is." In Part III, I will talk about the Court's interest in protecting its turf - especially in cases implicating individual rights.

### 2NC Link

#### Intervention in executive war powers causes backlash and costs legitimacy

Huq 2012 - Assistant professor of law, University of Chicago Law School (August, Aziz Z., “Structural Constitutionalism as Counterterrorism,” 100 Calif. L. Rev. 887, Lexis)

It is worth noting that Justice Souter's argument in favor of legislative involvement might be recast in slightly different terms. He could be understood to be claiming that splitting decisional power between Congress and the President generates more libertarian outcomes because both branches must concur in the employment of a coercive power, and it is less likely that both Congress and the executive will agree on a policy that raises fundamental liberty concerns. At the very least judicial repudiation of unilateral executive action creates frictional resistance against some unwise actions that impinge on constitutional rights. But again, this argument is contingent on transient political dynamics. If Congress tends to be less libertarian than the President, it is hard to see how this bilateralism requirement could make a difference. It may also be that judicial invalidations trigger public backlashes against the courts or draw attention to the absence of government power to extinguish a right, which in turn would lead to the enactment of perhaps even more sweeping security measures. Over the long term, moreover, constant reminders by courts that the power to eliminate liberties lies with legislators may instead accentuate the probability that Congress will act against individual liberties.

### 2NC Rule of Law illegal

#### Rol not racist

Stack 10, Professor of Anthropology at University of Aberdeen

(Trevor, “Review Essay A Just Rule of Law” aura.abdn.ac.uk/bitstream/2164/2175/1/Trevor\_Stack\_Review\_Essay\_A\_Just\_Rule\_of\_Law\_Social\_Anthropology.doc Trevor Stack Review Essay A Just Rule of Law Social Anthropology.doc)

Reading Mattei and Nader as well as Holston, I came to feel that I was wrong to advise the Citizen Power leader to take law more seriously. In showing how unjust the rule of law can be, however, the authors give all the more reason to take it seriously rather than simply ignoring it. Their books also hint at the following paths towards a just rule of law: Championing local or indigenous or popular law Mattei and Nader do not quite give up on the rule of law. Their subtitle hints that the rule of law is not always illegal and may even be just. Firstly, although they spend much of the book accusing the United States of using the rule of law as a means to the end of plunder, both in colonial and post-colonial times and in recent years, they note that during the Cold War the United States did stand for the rule of law and democracy, as a counter to Soviet totalitarianism and imperialism. In other words, the Cold War was a kind of “special period” during which the United States showed the political will required to hold itself and others to law (200-1). Secondly, Mattei and Nader contemplate the counter-hegemonic rule of law. Their final chapter takes up the cause of the various non-imperial uses of law that I have already mentioned: …it lies outside the purview of state law or cosmopolitan law. It might involve alliances or exploit counter-hegemony, but it remains a different force not grounded, as is the imperial rule of law, in the needs of corporate capitalist development masked as efficiency… Their efforts are legitimized by social necessity. Innovative legal restructuring may be what will allow us to pass this planet on to our grandchildren (211). In other words, salvation may come from sources of law other than those of the imperial state and its allies. For example, Mattei and Nader observe of the wave of protests in the Mexican state of Oaxaca in August 2006 by a coalition of teachers, peasants, workers, directed at removing the state governor from office, that: “People [in those protests] began to contemplate their relations with the state based on indigenous Oaxacan understandings of collective responsibility and customary law” (205). Being local and/or collective is of course no guarantee of being just. There are local hegemonies and states have sometimes undone them, while local collectives often turn out to be complicit in state hegemony. Mexico’s agrarian reform is an example. On the one hand, the federal government undid the local hegemonies of hacienda-owners. On the other hand, it replaced those local hegemonies with corporatism: peasant collectives were bound into the “peasant sector” of the ruling party, not least because they had only use rights to the lands, which remained state property. More broadly, the political scientist José Antonio Aguilar has complained that the Mexican state left power in the hands of all kinds of collectives, many of them local: it did so both by sins of commission, preferring to work through often unscrupulous leaders, and of omission, by failing to provide public services as well as security and justice. In this context, community autonomy has been used to justify a variety of nefarious practices: imprisoning Protestant converts for not contributing to Catholic town festivals, for example (Aguilar Rivera 2004). Seeking post hoc legalisation Holston observes that the illegal settling of São Paulo’s peripheries helped to unsettle the hierarchy of Brazilian society. Citizens went beyond the law in order to build (literally) a measure of autonomy or indeed to survive: “[t]he very illegality of house lots in peripheries makes land accessible to those who cannot afford the higher sale or rental prices of legal residence” (207). Moreover, the never-ending work of building their homes, known as autoconstrução, gave settlers a sense of entitlement – they had played their part in building the city. That sense of entitlement made for a kind of “insurgent citizenship”, one that challenged the inequality of “historical citizenship” and fuelled, for example, the election of Lula, who was from the urban peripheries (5-6). If illegal residence is a road to justice, it is not the rule of law’s road to justice. Arguably peripheral settlers were themselves profiting from illegality. But Holston notes that the urban poor had not yet given up on law: residential illegality eventually prompts a confrontation with legal authorities in which residents generally succeed, after long and arduous struggle, in legalizing their precarious land claims. Illegal residence is, therefore, a common and ultimately reliable way for the urban working classes to gain access to land and housing and to turn their possession into property. (207) The experience of “illegality” pushed them back to national law, to “make law an asset”, even if simply to keep that law at bay (207). That is classic counter-hegemony. However, Holston is ambivalent about post hoc legalisation. Legal limbo had historically kept people unequal and, even when used by subalterns, could still mean violence and impunity (271-5). My fieldwork in Mexico suggests likewise the need to distinguish between legalisation as a move toward a just rule of law and legalisation that simply creates opportunities to profit from illegality. Elites were fully complicit in the “informality” about which they liked to complain: they themselves hired workers without giving them legal benefits; politicians and leaders lived off the protection they afforded to informal businesses; lawyers, of course, had a field day. Organised crime has been parasitic on the informality of so many people’s livelihoods - the first to be charged protection by the formidable mafias were street sellers of pirate music and imitation clothing. Recent attempts at a government crackdown on organised crime, itself bypassing law, has unleashed an extraordinary wave of violence. In turn, lynch mobs in lower-class and rural areas as well as armed self-defence groups in wealthy suburbs claim to dispense the justice that the government has failed to provide.