## \*\*\* 1NC

### 1NC T—USFG

#### A. Interpretation—the aff has to defend USFG action on energy production incentives or restrictions—‘resolved’ means to enact a policy by law.

Words and Phrases 64 (Permanent Edition)

Definition of the word “resolve,” given by Webster is “to express an opinion or determination by resolution or vote; as ‘it was resolved by the legislature;” It is of similar force to the word “enact,” which is defined by Bouvier as meaning “to establish by law”.

#### B. Our interpretation is best—

#### 1. Predictability—ignoring the resolution opens up an infinite number of topics—this undermines our ability to have in-depth research on their arguments destroying the value of debate.

#### 2. Ground—the resolution exists to create fair division of aff and neg ground—any alternative framework allows the aff to pick a moral high ground that destroys neg offense.

#### 3. Education—academics must learn to engage the public’s line of thinking—abstract moralism without addressing how to get our policies passed is useless.

Isaac 2—Jeffrey Isaac, Professor of Political Science at Indiana University [Spring 2002, “Ends, Means, and Politics,” *Dissent*, http://www.dissentmagazine.org/article/?article=601]

What is striking about much of the political discussion on the left today is its failure to engage this earlier tradition of argument. The left, particularly the campus left—by which I mean “progressive” faculty and student groups, often centered around labor solidarity organizations and campus Green affiliates—has become moralistic rather than politically serious. Some of its moralizing—about Chiapas, Palestine, and Iraq—continues the third worldism that plagued the New Left in its waning years. Some of it—about globalization and sweatshops— is new and in some ways promising (see my “Thinking About the Antisweatshop Movement,” Dissent, Fall 2001). But what characterizes much campus left discourse is a substitution of moral rhetoric about evil policies or institutions for a sober consideration of what might improve or replace them, how the improvement might be achieved, **and what the likely costs**, as well as the benefits, **are of any reasonable strategy**. One consequence of this tendency is a failure to worry about methods of securing political support through democratic means or to recognize the distinctive value of democracy itself. It is not that conspiratorial or antidemocratic means are promoted. On the contrary, the means employed tend to be preeminently democratic—petitions, demonstrations, marches, boycotts, corporate campaigns, vigorous public criticism. And it is not that political democracy is derided. Projects such as the Green Party engage with electoral politics, locally and nationally, in order to win public office and achieve political objectives. But what is absent is a sober reckoning with the preoccupations and opinions of **the vast majority of Americans**, who are not drawn to vocal denunciations of the International Monetary Fund and World Trade Organization and **who do not believe that the discourse of “anti-imperialism” speaks to their lives**. Equally absent is critical thinking about why citizens of liberal democratic states—including most workers and the poor—value liberal democracy and subscribe to what Jürgen Habermas has called “constitutional patriotism”: a patriotic identification with the democratic state because of the civil, political, and social rights it defends. Vicarious identifications with Subcommandante Marcos or starving Iraqi children allow left activists to express a genuine solidarity with the oppressed elsewhere that is surely legitimate in a globalizing age. But these symbolic avowals are not an effective way of contending for political influence or power in the society in which these activists live. The ease with which the campus left responded to September 11 by rehearsing an all too-familiar narrative of American militarism and imperialism is not simply disturbing. **It** **is a sign of this left’s alienation from the society in which it operates** (the worst examples of this are statements of the Student Peace Action Coalition Network, which declare that “the United States Government is the world’s greatest terror organization,” and suggest that “homicidal psychopaths of the United States Government” engineered the World Trade Center attacks as a pretext for imperialist aggression. See http://www.gospan.org). Many left activists seem more able to identify with (idealized versions of) Iraqi or Afghan civilians than with American citizens, whether these are the people who perished in the Twin Towers or the rest of us who legitimately fear that we might be next. This is not because of any “disloyalty.” Charges like that lack intellectual or political merit. It is because of a debilitating moralism; because it is easier to denounce wrong than to take real responsibility for correcting it, easier to locate and to oppose a remote evil than to address a proximate difficulty. The campus left says what it thinks. But it exhibits little interest in how and why so many Americans think differently. The “peace” demonstrations organized across the country within a few days of the September 11 attacks—in which local Green Party activists often played a crucial role—were, whatever else they were, a sign of their organizers’ lack of judgment and common sense. Although they often expressed genuine horror about the terrorism, they focused their energy not on the legitimate fear and outrage of American citizens but rather on the evils of the American government and its widely supported response to the terror. Hardly anyone was paying attention, but they alienated anyone who was. This was utterly predictable. And that is my point. The predictable consequences did not matter. What mattered was simply the expression of righteous indignation about what is wrong with the United States, as if September 11 hadn’t really happened. Whatever one thinks about America’s deficiencies, it must be acknowledged that a political praxis preoccupation with this is foolish and self-defeating. The other, more serious consequence of this moralizing tendency is the failure to think seriously about global politics. The campus left is rightly interested in the ills of global capitalism. But politically it seems limited to two options: expressions of “solidarity” with certain oppressed groups—Palestinians but not Syrians, Afghan civilians (though not those who welcome liberation from the Taliban), but not Bosnians or Kosovars or Rwandans—and automatic opposition to American foreign policy in the name of anti-imperialism. The economic discourse of the campus left is a universalist discourse of human needs and workers rights; but it is accompanied by a refusal to think in political terms about the realities of states, international institutions, violence, and power. This refusal is linked to a peculiar strain of pacifism, according to which any use of military force by the United States is viewed as aggression or militarism. case in point is a petition circulated on the campus of Indiana University within days of September 11. Drafted by the Bloomington Peace Coalition, it opposed what was then an imminent war in Afghanistan against al-Qaeda, and called for peace. It declared: “Retaliation will not lead to healing; rather it will harm innocent people and further the cycle of violence. Rather than engage in military aggression, those in authority should apprehend and charge those individuals believed to be directly responsible for the attacks and try them in a court of law in accordance with due process of international law.” This declaration was hardly unique. Similar statements were issued on college campuses across the country, by local student or faculty coalitions, the national Campus Greens, 9- 11peace.org, and the National Youth and Student Peace Coalition. As Global Exchange declared in its antiwar statement of September 11: “vengeance offers no relief. . . retaliation can never guarantee healing. . . and to meet violence with violence breeds more rage and more senseless deaths. Only love leads to peace with justice, while hate takes us toward war and injustice.” On this view military action of any kind is figured as “aggression” or “vengeance”; harm to innocents, whether substantial or marginal, intended or unintended, is absolutely proscribed; legality is treated as having its own force, independent of any means of enforcement; and, most revealingly, “healing” is treated as the principal goal of any legitimate response. None of these points withstands serious scrutiny. A military response to terrorist aggression is not in any obvious sense an act of aggression, unless any military response—or at least any U.S. military response—is simply defined as aggression. While any justifiable military response should certainly be governed by just-war principles, the criterion of absolute harm avoidance would rule out the possibility of any military response. It is virtually impossible either to “apprehend” and prosecute terrorists or to put an end to terrorist networks without the use of military force, for the “criminals” in question are not law-abiding citizens but mass murderers, and there are no police to “arrest” them. And, finally, while “healing” is surely a legitimate moral goal, it is not clear that it is a political goal. Justice, however, most assuredly is a political goal. The most notable thing about the Bloomington statement is its avoidance of political justice. Like many antiwar texts, it calls for “social justice abroad.” It supports redistributing wealth. But criminal and retributive justice, protection against terrorist violence, or the political enforcement of the minimal conditions of global civility—these are unmentioned. They are unmentioned because to broach them is to enter a terrain that the campus left is unwilling to enter—the terrain of violence, a realm of complex choices and dirty hands. This aversion to violence is understandable and in some ways laudable. America’s use of violence has caused much harm in the world, from Southeast Asia to Central and Latin America to Africa. The so-called “Vietnam Syndrome” was the product of a real learning experience that should not be forgotten. In addition, the destructive capacities of modern warfare— which jeopardize the civilian/combatant distinction, and introduce the possibility of enormous ecological devastation—make war under any circumstances something to be feared. No civilized person should approach the topic of war with anything other than great trepidation. And yet the left’s reflexive hostility toward violence in the international domain is strange. It is inconsistent with avowals of “materialism” and evocations of “struggle,” especially on the part of those many who are not pacifists; it is in tension with a commitment to human emancipation (is there no cause for which it is justifiable to fight?); and it is oblivious to the tradition of left thinking about ends and means. To compare the debates within the left about the two world wars or the Spanish Civil War with the predictable “anti-militarism” of today’s campus left is to compare a discourse that was serious about political power with a discourse that is not. This unpragmatic approach has become a hallmark of post–cold war left commentary, from the Gulf War protests of 1991, to the denunciation of the 1999 U.S.-led NATO intervention in Kosovo, to the current post–September 11 antiwar movement. In each case protesters have raised serious questions about U.S. policy and its likely consequences, but in a strikingly ineffective way. They sound a few key themes: the broader context of grievances that supposedly explains why Saddam Hussein, or Slobodan Milosevic, or Osama bin Laden have done what they have done; the hypocrisy of official U.S. rhetoric, which denounces terrorism even though the U.S. government has often supported terrorism; the harm that will come to ordinary Iraqi or Serbian or Afghan citizens as a result of intervention; and the cycle of violence that is likely to ensue. These are important issues. But they typically are raised by left critics not to promote real debate about practical alternatives, but to avoid such a debate or to trump it. As a result, the most important political questions are simply not asked. It is assumed that U.S. military intervention is an act of “aggression,” but no consideration is given to the aggression to which intervention is a response. The status quo ante in Afghanistan is not, as peace activists would have it, peace, but rather terrorist violence abetted by a regime—the Taliban—that rose to power through brutality and repression. This requires us to ask a question that most “peace” activists would prefer not to ask: What should be done to respond to the violence of a Saddam Hussein, or a Milosevic, or a Taliban regime? What means are likely to stop violence and bring criminals to justice? Calls for diplomacy and international law are well intended and important; they implicate a decent and civilized ethic of global order. But they are also vague and empty, because they are not accompanied by any account of how diplomacy or international law can work effectively to address the problem at hand. The campus left offers no such account. To do so would require it to contemplate tragic choices in which moral goodness is of limited utility. Here what matters is not purity of intention but the intelligent exercise of power. Power is not a dirty word or an unfortunate feature of the world. It is the core of politics. Power is the ability to effect outcomes in the world. Politics, in large part, involves contests over the distribution and use of power. To accomplish anything in the political world, one must attend to the means that are necessary to bring it about. And to develop such means is to develop, and to exercise, power. To say this is not to say that power is beyond morality. It is to say that power is not reducible to morality. As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one’s intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics—as opposed to religion—pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about unintended consequences as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with “good” may engender impotence, it is often the pursuit of “good” that generates evil. This is the lesson of communism in the twentieth century: **it is not enough that one’s goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals** and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

#### C. Voting issue—resolving the topicality is a pre-condition for debate to occur.

Shively 2k—Ruth Lessl Shively, Assistant Prof Political Science, Texas A&M University [Partisan Politics and Political Theory, p. 181-2]

The requirements given thus far are primarily negative. The ambiguists must say "no" to-they must reject and limit-some ideas and actions. In what follows, we will also find that they must say "yes" to some things. In particular, they must say "yes" to the idea of rational persuasion. This means, first, that they must recognize the role of agreement in political contest, or the basic accord that is necessary to discord. The mistake that the ambiguists make here is a common one. The mistake is in thinking that agreement marks the end of contest-that consensus kills debate. But this is true only if the agreement is perfect-if there is nothing at all left to question or contest. In most cases, however, our agreements are highly imperfect. We agree on some matters but not on others, on generalities but not on specifics, on principles but not on their applications, and so on. And this kind of limited agreement is the starting condition of contest and debate. As John Courtney Murray writes: We hold certain truths; therefore we can argue about them. It seems to have been one of the corruptions of intelligence by positivism to assume that argument ends when agreement is reached. In a basic sense, the reverse is true. There can be no argument except on the premise, and within a context, of agreement. (Murray 1960, 10) In other words, **we cannot argue about something** if we are not communicating: **if we cannot agree on the topic and terms of argument** **or if we have utterly different ideas about what counts as evidence or good argument**. At the very least, we must agree about what it is that is being debated before we can debate it. For instance, one cannot have an argument about euthanasia with someone who thinks euthanasia is a musical group. One cannot successfully stage a sit-in if one's target audience simply thinks everyone is resting or if those doing the sitting have no complaints. Nor can one demonstrate resistance to a policy if no one knows that it is a policy. In other words, contest is **meaningless** if there is a lack of agreement or communication about what is being contested. Resisters, demonstrators, and **debaters** **must** have some shared ideas about the subject and/or the terms of their disagreements. The participants and the target of a sit-in must share an understanding of the complaint at hand. And a demonstrator's audience must know what is being resisted. In short, the contesting of an idea presumes some agreement about what that idea is and how one might go about intelligibly contesting it. In other words, contestation rests on some basic agreement or harmony.

### 1NC OLC CP

#### Text: The Office of Legal Counsel should determine, through a discursive archaeological investication, that the Executive Branch lacks the legal authority for indefinite detention. The President should require the Office of Legal Counsel to publish any legal opinions regarding policies adopted by the Executive Branch.

#### The CP is competitive and solves the case—OLC rulings do not actually remove authority but nevertheless hold binding precedential value on the executive.

Trevor W. Morrison, October 2010. Professor of Law, Columbia Law School. “STARE DECISIS IN THE OFFICE OF LEGAL COUNSEL,” Columbia Law Review, 110 Colum. L. Rev. 1448, Lexis.

On the other hand, an OLC that says "yes" too often is not in the client's long-run interest. n49 Virtually all of OLC's clients have their own legal staffs, including the White House Counsel's Office in the White House and the general counsel's offices in other departments and agencies. Those offices are capable of answering many of the day-to-day issues that arise in those components. They typically turn to OLC when the issue is sufficiently controversial or complex (especially on constitutional questions) that some external validation holds special value. n50 For example, when a department confronts a difficult or delicate constitutional question in the course of preparing to embark upon a new program or course of action that raises difficult or politically sensitive legal questions, it has an interest in being able to point to a credible source affirming the  [\*1462]  legality of its actions. n51 The in-house legal advice of the agency's general counsel is unlikely to carry the same weight. n52 Thus, even though those offices might possess the expertise necessary to answer at least many of the questions they currently send to OLC, in some contexts they will not take that course because a "yes" from the in-house legal staff is not as valuable as a "yes" from OLC. But that value depends on OLC maintaining its reputation for serious, evenhanded analysis, not mere advocacy. n53

The risk, however, is that OLC's clients will not internalize the long-run costs of taxing OLC's integrity. This is in part because the full measure of those costs will be spread across all of OLC's clients, not just the client agency now before it. The program whose legality the client wants OLC to review, in contrast, is likely to be something in which the client has an immediate and palpable stake. Moreover, the very fact that the agency has come to OLC for legal advice will often mean it thinks there is  [\*1463]  at least a plausible argument that the program is lawful. In that circumstance, the agency is unlikely to see any problem in a "yes" from OLC.

Still, it would be an overstatement to say that OLC risks losing its client base every time it contemplates saying "no." One reason is custom. In some areas, there is a longstanding tradition - rising to the level of an expectation - that certain executive actions or decisions will not be taken without seeking OLC's advice. One example is OLC's bill comment practice, in which it reviews legislation pending in Congress for potential constitutional concerns. If it finds any serious problems, it writes them up and forwards them to the Office of Management and Budget, which combines OLC's comments with other offices' policy reactions to the legislation and generates a coordinated administration position on the legislation. n54 That position is then typically communicated to Congress, either formally or informally. While no statute or regulation mandates OLC's part in this process, it is a deeply entrenched, broadly accepted practice. Thus, although some within the Executive Branch might find it frustrating when OLC raises constitutional concerns in bills the administration wants to support as a policy matter, and although the precise terms in which OLC's constitutional concerns are passed along to Congress are not entirely in OLC's control, there is no realistic prospect that OLC would ever be cut out of the bill comment process entirely. Entrenched practice, then, provides OLC with some measure of protection from the pressure to please its clients.

But there are limits to that protection. Most formal OLC opinions do not arise out of its bill comment practice, which means most are the product of a more truly voluntary choice by the client to seek OLC's advice. And as suggested above, although the Executive Branch at large has an interest in OLC's credibility and integrity, the preservation of those virtues generally falls to OLC itself. OLC's nonlitigating function makes this all the more true. Whereas, for example, the Solicitor General's aim of prevailing before the Supreme Court limits the extent to which she can profitably pursue an extreme agenda inconsistent with current doctrine, OLC faces no such immediate constraint. Whether OLC honors its oft-asserted commitment to legal advice based on its best view of the law depends largely on its own self-restraint.

2. Formal Requests, Binding Answers, and Lawful Alternatives. - Over time, OLC has developed practices and policies that help maintain its independence and credibility. First, before it provides a written opinion, n55 OLC typically requires that the request be in writing from the head or general counsel of the requesting agency, that the request be as specific and concrete as possible, and that the agency provide its own written  [\*1464]  views on the issue as part of its request. n56 These requirements help constrain the requesting agency. Asking a high-ranking member of the agency to commit the agency's views to writing, and to present legal arguments in favor of those views, makes it more difficult for the agency to press extreme positions.

Second, as noted in the Introduction, n57 OLC's legal advice is treated as binding within the Executive Branch until withdrawn or overruled. n58 As a formal matter, the bindingness of the Attorney General's (or, in the modern era, OLC's) legal advice has long been uncertain. n59 The issue has never required formal resolution, however, because by longstanding tradition the advice is treated as binding. n60 OLC protects that tradition today by generally refusing to provide advice if there is any doubt about whether the requesting entity will follow it. n61 This guards against "advice-shopping by entities willing to abide only by advice they like." n62 More broadly, it helps ensure that OLC's answers matter. An agency displeased with OLC's advice cannot simply ignore the advice. The agency might  [\*1465]  construe any ambiguity in OLC's advice to its liking, and in some cases might even ask OLC to reconsider its advice. n63 But the settled practice of treating OLC's advice as binding ensures it is not simply ignored.

In theory, the very bindingness of OLC's opinions creates a risk that agencies will avoid going to OLC in the first place, relying either on their general counsels or even other executive branch offices to the extent they are perceived as more likely to provide welcome answers. This is only a modest risk in practice, however. As noted above, legal advice obtained from an office other than OLC - especially an agency's own general counsel - is unlikely to command the same respect as OLC advice. n64 Indeed, because OLC is widely viewed as "the executive branch's chief legal advisor," n65 an agency's decision not to seek OLC's advice is likely to be viewed by outside observers with skepticism, especially if the in-house advice approves a program or initiative of doubtful legality.

OLC has also developed certain practices to soften the blow of legal advice not to a client's liking. Most significantly, after concluding that a client's proposed course of action is unlawful, OLC frequently works with the client to find a lawful way to pursue its desired ends. n66 As the OLC Guidelines put it, "when OLC concludes that an administration proposal is impermissible, it is appropriate for OLC to go on to suggest modifications that would cure the defect, and OLC should stand ready to work with the administration to craft lawful alternatives." n67 This is a critical component of OLC's work, and distinguishes it sharply from the courts. In addition to "providing a means by which the executive branch lawyer can contribute to the ability of the popularly-elected President and his administration to achieve important policy goals," n68 in more instrumental terms the practice can also reduce the risk of gaming by OLC's clients. And that, in turn, helps preserve the bindingness of OLC's opinions. n69

 [\*1466]  To be sure, OLC's opinions are treated as binding only to the extent they are not displaced by a higher authority. A subsequent judicial decision directly on point will generally be taken to supersede OLC's work, and always if it is from the Supreme Court. OLC's opinions are also subject to "reversal" by the President or the Attorney General. n70 Such reversals are rare, however. As a formal matter, Dawn Johnsen has argued that "the President or attorney general could lawfully override OLC only pursuant to a good faith determination that OLC erred in its legal analysis. The President would violate his constitutional obligation if he were to reject OLC's advice solely on policy grounds." n71 Solely is a key word here, especially for the President. Although his oath of office obliges him to uphold the Constitution, n72 it is not obvious he would violate that oath by pursuing policies that he thinks are plausibly constitutional even if he has not concluded they fit his best view of the law. It is not clear, in other words, that the President's oath commits him to seeking and adhering to a single best view of the law, as opposed to any reasonable or plausible view held in good faith. Yet even assuming the President has some space here, it is hard to see how his oath permits him to reject OLC's advice solely on policy grounds if he concludes that doing so is indefensible as a legal matter. n73 So the President needs at least a plausible legal basis for  [\*1467]  disagreeing with OLC's advice, which itself would likely require some other source of legal advice for him to rely upon.

The White House Counsel's Office might seem like an obvious candidate. But despite recent speculation that the size of that office during the Obama Administration might reflect an intention to use it in this fashion, n74 it continues to be virtually unheard of for the White House to reverse OLC's legal analysis. For one thing, even a deeply staffed White House Counsel's Office typically does not have the time to perform the kind of research and analysis necessary to produce a credible basis for reversing an OLC opinion. n75 For another, as with attempts to rely in the first place on in-house advice in lieu of OLC, any reversal of OLC by the White House Counsel is likely to be viewed with great skepticism by outside observers. If, for example, a congressional committee demands to know why the Executive Branch thinks a particular program is lawful, a response that relies on the conclusions of the White House Counsel is unlikely to suffice if the committee knows that OLC had earlier concluded otherwise. Rightly or wrongly, the White House Counsel's analysis is likely to be treated as an exercise of political will, not dispassionate legal analysis. Put another way, the same reasons that lead the White House to seek OLC's legal advice in the first place - its reputation for  [\*1468]  providing candid, independent legal advice based on its best view of the law - make an outright reversal highly unlikely. n76

Of course, the White House Counsel's Office may well be in frequent contact with OLC on an issue OLC has been asked to analyze, and in many cases is likely to make it abundantly clear what outcome the White House prefers. n77 But that is a matter of presenting arguments to OLC in support of a particular position, not discarding OLC's conclusion when it comes out the other way. n78The White House is not just any other client, and so the nature of - and risks posed by - communications between it and OLC on issues OLC is analyzing deserve special attention. I take that up in Part III. n79 My point at this stage is simply that the prospect of literal reversal by the White House is remote and does not meaningfully threaten the effective bindingness of OLC's decisions.

### 1NC WP DA

#### Plan destroys executive power and flexibility

GOLDSMITH 12 Harvard Law School Professor, focus on national security law, presidential power, cybersecurity, and conflict of laws, Former Assistant Attorney General, Office of Legal Counsel, and Special Counsel to the Department of Defense, Hoover Institution Task Force on National Security and Law. [Jack Goldsmith, March 2012, Power and Constraint, pages 228-231]

Another cost of lawfare is the fragmentation of authority within the executive branch during war. The Commander in Chief traditionally had unified hierarchical command over the executive branch that empowered him to act quickly and that promoted accountability to the public by identifying him as the person responsible for all executive action. This understanding has broken down in the last decade. We have seen how consequential independent inspectors general are in checking the presidency's national security goals. Lawyers too have gained more independence and power that the President cannot effectively control, especially in the military, but in other pockets of the executive branch as well. These lawyers enforce the law (when they interpret it correctly), but they also attenuate the unity of accountability and command. The increasing involvement of courts and other outside actors in military and intelligence decisions does not violate the theory of the unitary executive, but it has a similar effect on the executive branch. As we have seen, judicial **review of wartime tactics has all sorts of hard-to-see constraining consequences on presidential decision-making**. The decentralized legal enforcers that have risen in power in the last decade splinter the Commander in Chief's executive unity like nothing in American wartime history. Benjamin Wittes closes his book Detention and Denial by speculating what would happen if a prisoner released from GTMO is later found in an al Qaeda leadership position. "We have no accountability when our system fails," he says, before asking, "Were these releases the fault of courts (whose threats of review spurred them), the Bush administration (which carried them out), . . . or the left and the international community (which ruthlessly pushed for them)?"' The problem is deeper and wider than Wittes describes. It is deeper because he does not mention the independent players inside the executive branch who shape and constrain presidential action through investigation and legal interpretation. And it is broader because it applies far beyond the detention context to surveillance, targeting, and every element of the war on terrorism. Moreover, the opposite of Wittes's speculation is also possible, indeed likely: the President will be blamed when something goes wrong even if because of the splintering of executive authority, he lacked the effective power to do what in retrospect should have been done. Distributed accountability can bring many benefits, but its undoubted costs are the difficulty of identifying the locus of accountability when something goes wrong, and the possibility that the leader of the flattened organization will be blamed even though he lacked effective control. A related cost of lawfare is the weakening of wartime presidential initiative and dispatch. When more eyes have to review an operation in advance, it takes longer. Covert operations have many layers of review and approval beginning with many in the CIA and moving up through other bureaucracies to the President. Decisions on the targets in this war often go through a similarly extensive review process for targets off the traditional battlefield, and less extensive but still elaborate reviews for targets on a tradi-tional battlefield. In general, all military and intelligence actions of any significance have elaborate and law-heavy preclearance processes. These up-front reviews delay action and can be so burdensome to negotiate that they result in otherwise useful and appropriate **actions not being taken** at all. Another factor slowing down and sometimes precluding executive action is the anticipated personal and professional costs of accountability. The rise of powerful, networked, and harshly critical NGOs has meant that not only top government officials, but midlevel ones as well, are subject to vivid, reputation-harming charges published globally on the Internet, as well as the possibility of lawsuits in the United States and abroad. The "mere threat of lawsuits and legal charges effectively bullies American decision makers**, alters their actions, intimidates our security forces, and limits our country's ability to gather intelligence**," says Donald Rumsfeld, lamenting lawfare's effect.' Stripped of its negative connotations, Rumsfeld's judgment—which in less colorful terms applies to every accountability constraint described in this book—should not be controversial. "Bullying" and "intimidating" are forms of influencing, and influencing government behavior to make it more prudent and lawful is the point of the legalized accountability mechanisms. "I think people should think twice; I think that's a good thing," says the ACLU's Jameel Jaffer upon learning about the effect of legal scrutiny and criticism on government officials. "I don't want people to think twice about doing things that are both in the national interest and consistent with the law but if by think twice you mean think twice before sticking a man in a box with a bug, then absolutely, think twice," he adds, referring to one of the Bush administration's most controversial interrogation techniques.' There is no doubt that lawfare significantly influences and constrains officials, not only by direct prohibitions but also, and more significantly, by **getting them to "think twice" about what they are doing**. The hard question is whether this influence goes too far. The bug-in-the-box is now prohibited by law, partly as a result of Jaffer's efforts, but in many cases what is in the national interest and what is lawful are not black and white, but rather various shades of gray. Government officials every day have to decide how far to push into this gray area. The accountability mechanisms give them pause and lead them not to push as far into the darker shades. Whether that leads them to a place in the gray area where they should be or short of where they should be depends on facts about the future that no one has, as well as one's view of the relevant law, which is not always clear. As a result of the last decade executive officials up and down the chain of command are much more sensitive to law and accountability, and many worry that this sensitivity leads to excessive caution. It is hard to know if they are right, but Jaffer's opposite and easy-sounding injunction—follow the law and act in the national security interest—is far too simple.

#### Reforms result in catastrophic terrorism—releases them and kills intel gathering

Goldsmith 9—Jack, Henry L. Shattuck Professor at Harvard Law School [February 4, 2009, “Long-Term Terrorist Detention and Our National Security Court,” http://www.brookings.edu/~/media/research/files/papers/2009/2/09%20detention%20goldsmith/0209\_detention\_goldsmith.pdf]

These three concerns challenge the detention paradigm. They do nothing to eliminate the need for detention to prevent detainees returning to the battlefield. But many believe that we can meet this need by giving trials to everyone we want to detain and then incarcerating them under a theory of conviction rather than of military detention. I disagree. For many reasons, it is too risky for the U.S. government to deny itself the traditional military detention power altogether, and to commit itself instead to try or release every suspected terrorist. For one thing, military detention will be necessary in Iraq and Afghanistan for the foreseeable future. For another, we likely cannot secure convictions of all of the dangerous terrorists at Guantánamo, much less all future dangerous terrorists, who legitimately qualify for non-criminal military detention. The evidentiary and procedural standards of trials, civilian and military alike, are much higher than the analogous standards for detention. With some terrorists too menacing to set free, the standards will prove difficult to satisfy. Key evidence in a given case may come from overseas and verifying it, understanding its provenance, or establishing its chain of custody in the manners required by criminal trials may be difficult. This problem is exacerbated when evidence was gathered on a battlefield or during an armed skirmish. The problem only grows when the evidence is old. And perhaps most importantly, the use of such evidence in a criminal process may compromise intelligence sources and methods, requiring the disclosure of the identities of confidential sources or the nature of intelligence-gathering techniques, such as a sophisticated electronic interception capability. Opponents of non-criminal detention observe that despite these considerations, the government has successfully prosecuted some Al Qaeda terrorists—in particular, Zacharias Moussaoui and Jose Padilla. This is true, but it does not follow that prosecutions are achievable in every case in which disabling a terrorist suspect represents a surpassing government interest. Moreover, the Moussaoui and Padilla prosecutions highlight an under-appreciated cost of trials, at least in civilian courts. The Moussaoui and Padilla trials were messy affairs that stretched, and some observers believe broke, our ordinary criminal trial conceptions of conspiracy law and the rights of the accused, among other things. The Moussaoui trial, for example, watered down the important constitutional right of the defendant to confront witnesses against him in court, and the Padilla trial rested on an unprecedentedly broad conception of conspiracy.15 An important but under-appreciated cost of using trials in all cases is that these prosecutions will invariably bend the law in ways unfavorable to civil liberties and due process, and these changes, in turn, will invariably spill over into non-terrorist prosecutions and thus skew the larger criminal justice process.16 A final problem with using any trial system, civilian or military, as the sole lawful basis for terrorist detention is that the trials can result in short sentences (as the first military commission trial did) or even acquittal of a dangerous terrorist.17 In criminal trials, guilty defendants often go free because of legal technicalities, government inability to introduce probative evidence, and other factors beyond the defendant's innocence. These factors are all exacerbated in terrorist trials by the difficulties of getting information from the place of capture, by classified information restrictions, and by stale or tainted evidence. One way to get around this problem is to assert the authority, as the Bush administration did, to use non-criminal detention for persons acquitted or given sentences too short to neutralize the danger they pose. But such an authority would undermine the whole purpose of trials and would render them a sham. As a result, putting a suspect on trial can make it hard to detain terrorists the government deems dangerous. For example, the government would have had little trouble defending the indefinite detention of Salim Hamdan, Osama Bin Laden's driver, under a military detention rationale. Having put him on trial before a military commission, however, it was stuck with the light sentence that Hamdan is completing at home in Yemen. As a result of these considerations, insistence on the exclusive use of criminal trials and the elimination of non-criminal detention would significantly raise the chances of releasing dangerous terrorists who would return to kill Americans or others. Since noncriminal military detention is clearly a legally available option—at least if it is expressly authorized by Congress and contains adequate procedural guarantees—this risk should be unacceptable. In past military conflicts, the release of an enemy soldier posed risks. But they were not dramatic risks, for there was only so much damage a lone actor or small group of individuals could do.18 Today, however, that lone actor can cause far more destruction and mayhem because technological advances are creating ever-smaller and ever-deadlier weapons. It would be astounding if the American system, before the advent of modern terrorism, struck the balance between security and liberty in a manner that precisely reflected the new threats posed by asymmetric warfare. We face threats from individuals today that are of a different magnitude than threats by individuals in the past; having government authorities that reflect that change makes sense.

#### Executive flex necessary to respond to and prevent crises

POSNER & VERMEULE 7—\*Eric A. Posner, Professor of Law at the University of Chicago Law School AND \*\*Adrian Vermeule, Professor of Law at Harvard [*Terror in the Balance: Security, Liberty, and the Courts*, Oxford University Press, pg. 4]

A different view, however, is that the history is largely one of political and constitutional success. The essential feature of the emergency is that national security is threatened; because the executive is the only organ of government with the resources, power, and flexibility to respond to threats to national security, it is natural, inevitable, and desirable for power to flow to this branch of government. Congress rationally acquiesces; courts rationally defer. Civil liberties are compromised because civil liberties interfere with effective response to the threat; but civil liberties are never eliminated because they remain important for the well-being of citizens and the effective operation of the government. People might panic, and the government must choose policies that enhance morale as well as respond to the threat, but there is nothing wrong with this. The executive implements bad policies as well as good ones, but error is inevitable, just as error is inevitable in humdrum policymaking during normal times. Policy during emergencies can never be mistake-free; it is enough if policymaking is not systematically biased in any direction, so that errors are essentially random and wash out over many decisions or over time. Both Congress and the judiciary realize that they do not have the expertise or resources to correct the executive during an emergency. Only when the emergency wanes do the institutions reassert themselves, but this just shows that the basic constitutional structure remains unaffected by the emergency. In the United States, unlike in many other countries, the constitutional system has never collapsed during an emergency.

#### Multiple crisis inevitable—executive strength key—Iran Prolif, terrorism, Russian aggression, economic collapse, Senkaku conflict.

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The president should keep in mind that millions around the world yearn to know they have the backing of the most powerful country on Earth. As he surely knows, even his words make a big difference.

And while Obama plans to dedicate his efforts to the domestic agenda, a number of brewing international crises are sure to steal his attention and demand his time. Here are a few of the foreign policy issues that, like it or not, may force Obama to divert his focus from domestic concerns in this new term.

Syria unraveling: The United Nations says more than 60,000 people have already died in a civil war that the West has, to its shame, done little to keep from spinning out of control. Washington has warned that the use of chemical or biological weapons might force its hand. But the regime may have already used them. The West has failed to nurture a moderate force in the conflict. Now Islamist extremists are growing more powerful within the opposition. The chances are growing that worst-case scenarios will materialize. Washington will not be able to endlessly ignore this dangerous war.

Egypt and the challenge of democracy: What happens in Egypt strongly influences the rest of the Middle East -- and hence world peace -- which makes it all the more troubling to see liberal democratic forces lose battle after battle for political influence against Islamist parties, and to hear blatantly anti-Semitic speech coming from the mouth of Mohammed Morsy barely two years before he became president.

Iran's nuclear program: Obama took office promising a new, more conciliatory effort to persuade Iran to drop its nuclear enrichment program. Four years later, he has succeeded in implementing international sanctions, but Iran has continued enriching uranium, leading United Nations inspectors to find "credible evidence" that Tehran is working on nuclear weapons. Sooner or later the moment of truth will arrive. If a deal is not reached, Obama will have to decide if he wants to be the president on whose watch a nuclear weapons race was unleashed in the most dangerous and unstable part of the world.

North Africa terrorism: A much-neglected region of the world is becoming increasingly difficult to disregard. In recent days, Islamist extremists took American and other hostages in Algeria and France sent its military to fight advancing Islamist extremists in Mali, a country that once represented optimism for democratic rule in Africa, now overtaken by militants who are potentially turning it into a staging ground for international terrorism.

Russia repression: As Russian President Vladimir Putin succeeds in crushing opposition to his increasingly authoritarian rule, he and his allies are making anti-American words and policies their favorite theme. A recent ban on adoption of Russian orphans by American parents is only the most vile example. But Washington needs Russian cooperation to achieve its goals at the U.N. regarding Iran, Syria and other matters. It is a complicated problem with which Obama will have to wrestle.

Then there are the long-standing challenges that could take a turn for the worse, such as the Israeli-Palestinian conflict. Obama may not want to wade into that morass again, but events may force his hand.

And there are the so-called "black swans," events of low probability and high impact. There is talk that China and Japan could go to war over a cluster of disputed islands.

A war between two of the world's largest economies could prove devastating to the global economy, just as a sudden and dramatic reversal in the fragile Eurozone economy could spell disaster. Japan's is only the hottest of many territorial disputes between China and its Asian neighbors. Then there's North Korea with its nuclear weapons.

We could see regions that have garnered little attention come back to the forefront, such as Latin America, where conflict could arise in a post-Hugo Chavez Venezuela.

The president -- and the country -- could also benefit from unexpectedly positive outcomes. Imagine a happy turn of events in Iran, a breakthrough between Israelis and Palestinians, the return of prosperity in Europe, a successful push by liberal democratic forces in the Arab uprising countries, which could create new opportunities, lowering risks around the world, easing trade, restoring confidence and improving the chances for the very agenda Obama described in his inaugural speech.

The aspirations he expressed for America are the ones he should express for our tumultuous planet. Perhaps in his next big speech, the State of the Union, he can remember America's leadership position and devote more attention to those around the world who see it as a source of inspiration and encouragement.

After all, in this second term Obama will not be able to devote as small a portion of his attention to foreign policy as he did during his inaugural speech.

International disengagement is not an option. As others before Obama have discovered, history has a habit of toying with the best laid, most well-intentioned plans of American presidents.

### 1nc Politics

#### GOP will move past the shutdown to force a fight on the debt ceiling – looking for signs of weakness – the economy will collapse.

DICKERSON 9 – 30 – 13 Slate chief political correspondent [John Dickerson, The Battle Cry of the GOP, http://www.slate.com/articles/news\_and\_politics/politics/2013/09/republicans\_government\_shutdown\_and\_debt\_limit\_which\_fight\_does\_the\_gop.html]

If the government shuts down, it may be because House Republicans were contemplating the next fight over the debt limit more than the current one over keeping the government running. Though closing the federal government would affect the economy, a breach of the debt limit could cause economic collapse. Within the GOP, there are two major strains of thought: those who would like to fight now over funding the government and those who would like to fight later over a debt limit increase when the Treasury Department hits its borrowing limit Oct. 17. Each camp’s view is shaped by how seriously its individual members take the warnings of debt limit cataclysm, and how he or she interprets the president’s declaration that he will not negotiate on any matters tied to increasing the debt limit.

The “fight later” group argues for settling the question of funding the government in order to close ranks and focus the public on the bigger fight over the debt limit. Effectively that means voting for the so-called “clean” continuing resolution—the measure passed by Senate Democrats on Friday.

Their thinking is based on the idea that Republicans will have more leverage on the debt limit—and the president will have less. In the current fight, Republicans, who have tried to use the government funding crisis to kill or delay Obamacare, have been bucking public opinion. Though people may not like the law, polls have shown that they don't think it is worth risking a government shutdown to attack it. In a recent CBS poll, for example, 56 percent said they wanted Congress to make the health care law work and only 38 percent said the law should be stopped by defunding it. When it comes to the debt ceiling, however, the country supports the Republican position. Fifty-five percent in the CBS/New York Times poll said the debt ceiling should only be raised if spending cuts are also enacted. Another 24 percent didn't want it raised at all. That means 79 percent of Americans disagree with the president who wants the debt ceiling raised without conditions.

Here the president's interests and the interests of Senate Democrats could split in a way that might offer an opening to Republicans. The president is not up for re-election. It doesn't matter to him that only about 20 percent of the country thinks it's a good idea to lift the debt limit without cutting spending, but to some senators up for re-election it matters quite a lot. Could Majority Leader Harry Reid get a “clean” debt limit bill through the Senate? Red state Democratic senators up for re-election in 2014 have already had to reaffirm their support for the unpopular Obamacare. They might not want to take another unpopular vote.

The president has said he won't negotiate on the debt limit. In this game of chicken, he says he has thrown the steering wheel out of the window. But can he do that? One senator pointed me to a passage from Bob Woodward's The Price of Politics in which Obama's former Treasury secretary explains the catastrophe that would ensue if the president didn’t sign a debt limit bill—even one he didn’t like. “It would have massive effects,” Geithner said. “Every financial asset in the United States, every financial asset in the world, rests on that basic foundation [of a stable U.S. Treasury securities] … you put that in question, everything comes crashing down and you cannot rebuild it. It’s something that will be lasting for generations.”

If part of this high-stakes gamble is interpreting the mindset of your opponent, House Republicans imagine that President Obama is driving a bus full of children. No matter how much he talks tough, he'll swerve at the last minute because too much is at stake.

The other GOP group, known as the “fight now” camp, buys into the overwhelming economic consensus that breaching the debt limit is insane. Even walking up to it is dangerous. The General Accounting Office found that in 2011 simply approaching the deadline cost $1.4 billion in extra borrowing costs. These Republicans think that in a showdown over the debt limit they will have to buckle, which would be their second capitulation in less than a month if they cave now on the government shutdown. Their supporters would riot. So, given the cave that they see coming on the debt ceiling, they must hold firm on not funding the government and endure a limited shutdown, which their constituents will only praise them for.

On Monday afternoon, it appeared as if House Speaker John Boehner was going with option two—a fight now rather than a certain buckle over the debt limit later. The House sent a funding bill back to the Senate with yet another round of amendments. This time they were asking to delay the implementation of the Affordable Care Act’s individual mandate and asked for an amendment to remove the congressional subsidy for insurance coverage, known as the Vitter amendment. Boehner said there would be no vote on a clean continuing resolution, which suggested we were headed to Shutdownsville.

But a careful reading of what Boehner actually said suggests he was talking just about that moment in time. When the Senate rejects the latest House GOP effort Monday night, Boehner could still bring up the clean Senate funding bill and pass it with Democratic votes before midnight or after only a brief shutdown. That would cause him heartburn in his conference, but it might tell us that he has decided to make peace now so that he can fight later.

#### PLAN destroys Obama – sends a major signal of weakness

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One of the mechanisms by which congressional opposition influences presidential cost-benefit calculations is by sending signals of American disunity to the target state. Measuring the effects of such congressional signals on the calculations of the target state is always difficult. In the case of Iraq it is exceedingly so, given the lack of data on the non-state insurgent actors who were the true “target” of the American occupation after the fall of the Hussein regime. Similarly, in the absence of archival documents, such as those from the Reagan Presidential Library presented in chapter 5, it is all but impossible to measure the effects of congressional signals on the administration’s perceptions of the military costs it would have to pay to achieve its objectives militarily.

By contrast. measuring the domestic political costs of congressional opposition, while still difficult, is at least a tractable endeavor. Chapter 2 posited two primary pathways through which congressional opposition could raise the political costs of staying the course militarily for the president. First. high-profile congressional challenges to a use of force can affect real or anticipated public opinion and bring popular pressures to bear on the president to change course. Second, congressional opposition to the president’s conduct of military affairs can compel him to spend considerable political capital in the military arena to the detriment of other major items on his programmatic agenda. On both of these dimensions, congressional opposition to the war in Iraq appears to have had the predicted effect.

#### Losing authority would embolden the GOP on the debt ceiling fight

SEEKING ALPHA 9 – 10 – 13 [“Syria Could Upend Debt Ceiling Fight” <http://seekingalpha.com/article/1684082-syria-could-upend-debt-ceiling-fight>]

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

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

While a failure in the House would put action against Syria in limbo, I have felt that the market has overstated the impact of a strike there, which would be limited in nature. Rather, investors should focus on the profound ripple through the power structure in Washington, which would greatly impact impending battles over spending and the debt ceiling. Currently, the government loses spending authority on September 30 while it hits the debt ceiling by the middle of October. Markets have generally felt that Washington will once again strike a last-minute deal and avert total catastrophe. Failure in the Syrian vote could change this. For the Republicans to beat Obama on a President's strength (foreign military action), they will likely be emboldened that they can beat him on domestic spending issues. Until now, consensus has been that the two sides would compromise to fund the government at sequester levels while passing a $1 trillion stand-alone debt ceiling increase. However, the right wing of Boehner's caucus has been pushing for more, including another $1 trillion in spending cuts, defunding of Obamacare, and a one year delay of the individual mandate. Already, Conservative PACs have begun airing advertisements, urging a debt ceiling fight over Obamacare. With the President rendered hapless on Syria, they will become even more vocal about their hardline resolution, setting us up for a showdown that will rival 2011's debt ceiling fight.

I currently believe the two sides will pass a short-term continuing resolution to keep the government open, and then the GOP will wage a massive fight over the debt ceiling. While Obama will be weakened, he will be unwilling to undermine his major achievement, his healthcare law. In all likelihood, both sides will dig in their respective trenches, unwilling to strike a deal, essentially in a game of chicken. If the House blocks Syrian action, it will take America as close to a default as it did in 2011. Based on the market action then, we can expect massive volatility in the final days of the showdown with the Dow falling 500 points in one session in 2011. As markets panicked over the potential for a U.S. default, we saw a massive risk-off trade, moving from equities into Treasuries. I think there is a significant chance we see something similar this late September into October. The Syrian vote has major implications on the power of Obama and the far-right when it comes to their willingness to fight over the debt ceiling. If the Syrian resolution fails, the debt ceiling fight will be even worse, which will send equities lower by upwards of 10%.

Investors must be prepared for this "black swan" event. Looking back to August 2011, stocks that performed the best were dividend paying, less-cyclical companies like Verizon (VZ), Wal-Mart (WMT), Coca-Cola (KO) and McDonald's (MCD) while high beta names like Netflix (NFLX) and Boeing (BA) were crushed. Investors also flocked into treasuries despite default risk while dumping lower quality bonds as spreads widened. The flight to safety helped treasuries despite U.S. government issues. I think we are likely to see a similar move this time. Assuming there is a Syrian "no" vote, I would begin to roll back my long exposure in the stock market and reallocate funds into treasuries as I believe yields could drop back towards 2.50%. Within the stock market, I think the less-cyclical names should outperform, making utilities and consumer staples more attractive. For more tactical traders, I would consider buying puts against the S&P 500 and look toward shorting higher-beta and defense stocks like Boeing and Lockheed Martin (LMT). I also think lower quality bonds would suffer as spreads widen, making funds like JNK vulnerable. Conversely, gold (GLD) should benefit from the fear trade. I would also like to address the potential that Congress does not vote down the Syrian resolution. First, news has broken that Russia has proposed Syria turn over its chemical stockpile. If Syria were to agree (Syria said it was willing to consider), the U.S. would not have to strike, canceling the congressional vote. The proposal can be found here. I strongly believe this is a delaying tactic rather than a serious effort. In 2005, Libya began to turn over chemical weapons; it has yet to complete the hand-off. Removing and destroying chemical weapons is an exceptionally challenging and dangerous task that would take years, not weeks, making this deal seem unrealistic, especially because a cease-fire would be required around all chemical facilities. The idea that a cease-fire could be maintained for months, essentially allowing Assad to stay in office, is hard to take seriously. I believe this is a delaying tactic, and Congress will have to vote within the next two weeks. The final possibility is that Democrats back their President and barely ram the Syria resolution through. I think the extreme risk of a full-blown debt stand-off to dissipate. However, Boehner has promised a strong fight over the debt limit that the market has largely ignored. I do believe the fight would still be worse than the market anticipates but not outright disastrous. As such, I would not initiate short positions, but I would trim some longs and move into less cyclical stocks as the risk would still be the debt ceiling fight leading to some drama not no drama. Remember, in politics everything is connected. Syria is not a stand-alone issue. Its resolution will impact the power structure in Washington. A failed vote in Congress is likely to make the debt ceiling fight even worse, spooking markets, and threatening default on U.S. obligations unless another last minute deal can be struck.

#### Global nuke wars

Kemp 10—Director of Regional Strategic Programs at The Nixon Center, served in the White House under Ronald Reagan, special assistant to the president for national security affairs and senior director for Near East and South Asian affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace [Geoffrey Kemp, 2010, *The East Moves West: India, China, and Asia’s Growing Presence in the Middle East*, p. 233-4]

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

### 1NC Case

#### A focus on discourse or representations substitutes philosophical musing for material politics.

Taft-Kaufman, 95 - Professor, Department of Speech Communication And Dramatic Arts, Central Michigan University – 1995 (Jill, “Other ways: Postmodernism and performance praxis,”  [The Southern Communication Journal](http://proquest.umi.com/pqdlink?RQT=318&pmid=17630&TS=1184952735&clientId=17822&VType=PQD&VName=PQD&VInst=PROD), Vol.60, Iss. 3;  pg. 222)

In its elevation of language to the primary analysis of social life and its relegation of the de-centered subject to a set of language positions, postmodernism ignores the way real people make their way in the world. While the notion of decentering does much to remedy the idea of an essential, unchanging self, it also presents problems. According to Clarke (1991): Having established the material quality of ideology, everything else we had hitherto thought of as material has disappeared. There is nothing outside of ideology (or discourse). Where Althusser was concerned with ideology as the imaginary relations of subjects to the real relations of their existence, the connective quality of this view of ideology has been dissolved because it lays claim to an outside, a real, an extra-discursive for which there exists no epistemological warrant without lapsing back into the bad old ways of empiricism or metaphysics. (pp. 25-26) Clarke explains how the same disconnection between the discursive and the extra-discursive has been performed in semiological analysis: Where it used to contain a relation between the signifier (the representation) and the signified (the referent), antiempiricism has taken the formal arbitrariness of the connection between the signifier and signified and replaced it with the abolition of the signified (there can be no real objects out there, because there is no out there for real objects to be). (p. 26) To the postmodernist, then, real objects have vanished. So, too, have real people. Smith (1988) suggests that postmodernism has canonized doubt about the availability of the referent to the point that "the real often disappears from consideration" (p. 159). Real individuals become abstractions. Subject positions rather than subjects are the focus. The emphasis on subject positions or construction of the discursive self engenders an accompanying critical sense of irony which recognizes that "all conceptualizations are limited" (Fischer, 1986, p. 224). This postmodern position evokes what Connor (1989) calls "an absolute weightlessness in which anything is imaginatively possible because nothing really matters" (p. 227). Clarke (1991) dubs it a "playfulness that produces emotional and/or political disinvestment: a refusal to be engaged" (p. 103). The luxury of being able to muse about what constitutes the self is a posture in keeping with a critical venue that divorces language from material objects and bodily subjects.

#### Discursive focus creates epistemological blindspots and won’t alter current security structures/mindsets

Hyde-Price, 2001 (Adrian, Professor of International Politics at Bath, “Europes new security challenges” p. 39)

Securitization thus focuses almost exclusively on the discursive domain and eschews any attempt to determine empirically what constitutes security concerns.  It does not aspire to comment on the reality behind a securitization discourse or on the appropriate instruments for tackling security problems. Instead, it suggests that security studies – or what Waever calls securitization studies –should focus on the discursive moves whereby issues are securitized. The Copenhagen school thus emphasizes the need to understand the “speech acts” that accomplish a process of securitization.  Their focus is on the linguistic and conceptual dynamics involved, even though they recognize the importance of the institutional setting within which securitization takes place.  The concept of securitization offers some important insights for security studies.  However, it is too epistemologically restricted to contribute to a significant retooling of security studies.  On the positive side, it draws attention to the way in which security agendas are constructed bgy politicians and other political actors.  It also indicates the utility of discourse analysis as an additional tool of analysis for security studies.  However, at best, securitization studies can contribute one aspect of security studies.  It cannot provide the foundations for a paradigm shift in the subdiscipline.  Its greatest weakness is its epistemological hypochondria.  That is, its tendency to reify epistemological problems and push sound observations about knowledge claims to their logical absurdity.  Although it isimportant to understand the discursive moves involved in perception of security in, say, the Middle East, it is also necessary to make some assessment of nondiscursive factors like the military balance or access to freshwater supplies.  For the Copenhagen school, however, these nondiscursive factors are relegated to second place.  They are considered only to the extent that they facilitate or impede the speech act.  In this way, the Copenhagen school is in danger of cutting security studies off from serious empirical research and setting it adrift on a sea of floating signifiers.

#### No impact to threat con

Eric A. **Posner and** Adrian **Vermeule 3**, law profs at Chicago and Harvard, Accommodating Emergencies, September, <http://www.law.uchicago.edu/files/files/48.eap-av.emergency.pdf>

Against the view that panicked government officials overreact to an emergency, and unnecessarily curtail civil liberties, we suggest a more constructive theory of the role of fear. Before the emergency, government officials are complacent. They do not think clearly or vigorously about the potential threats faced by the nation. After the terrorist attack or military intervention, their complacency is replaced by fear. Fear stimulates them to action. Action may be based on good decisions or bad: fear might cause officials to exaggerate future threats, but it also might arouse them to threats that they would otherwise not perceive. **It is impossible to say in the abstract whether decisions and actions provoked by fear are likely to be better than decisions and actions made in a state of calm**. But our limited point is that there is no reason to think that the fear-inspired decisions are likely to be worse. For that reason, the existence of fear during emergencies does not support the antiaccommodation theory that the Constitution should be enforced as strictly during emergencies as during non-emergencies.

C. The Influence of Fear during Emergencies

Suppose now that the simple view of fear is correct, and that it is an unambiguously negative influence on government decisionmaking. Critics of accommodation argue that this negative influence of fear justifies skepticism about emergency policies and strict enforcement of the Constitution. However, this argument is implausible. It is doubtful that fear, so understood, has more influence on decisionmaking during emergencies than decisionmaking during non-emergencies.

The panic thesis, implicit in much scholarship though rarely discussed in detail, holds that citizens and officials respond to terrorism and war in the same way that an individual in the jungle responds to a tiger or snake. The national response to emergency, because it is a standard fear response, is characterized by the same circumvention of ordinary deliberative processes: thus, (i) the response is instinctive rather than reasoned, and thus subject to error; and (ii) the error will be biased in the direction of overreaction. While the flight reaction was a good evolutionary strategy on the savannah, in a complex modern society the flight response is not suitable and can only interfere with judgment. Its advantage—speed—has minimal value for social decisionmaking. No national emergency requires an immediate reaction—except by trained professionals who execute policies established earlier—but instead over days, months, or years people make complex judgments about the appropriate institutional response. And the asymmetrical nature of fear guarantees that people will, during a national emergency, overweight the threat and underweight other things that people value, such as civil liberties.

But if decisionmakers rarely act immediately, then the tiger story cannot bear the metaphoric weight that is placed on it. Indeed, the flight response has nothing to do with the political response to the bombing of Pearl Harbor or the attack on September 11. The people who were there—the citizens and soldiers beneath the bombs, the office workers in the World Trade Center—no doubt felt fear, and most of them probably responded in the classic way. They experienced the standard physiological effects, and (with the exception of trained soldiers and security officials) fled without stopping to think. It is also true that in the days and weeks after the attacks, many people felt fear, although not the sort that produces a irresistible urge to flee. **But this kind of fear is not the kind in which cognition shuts down**. (Some people did have more severe mental reactions and, for example, shut themselves in their houses, but these reactions were rare.) The fear is probably better described as a general anxiety or jumpiness, an anxiety that was probably shared by government officials as well as ordinary citizens.53

While, as we have noted, there is psychological research suggesting that normal cognition partly shuts down in response to an immediate threat, we are aware of no research suggesting that people who feel anxious about a non-immediate threat are incapable of thinking, or thinking properly, or systematically overweight the threat relative to other values. Indeed, it would be surprising to find research that clearly distinguished “anxious thinking” and “calm thinking,” given that anxiety is a pervasive aspect of life. People are anxious about their children; about their health; about their job prospects; about their vacation arrangements; about walking home at night. No one argues that people’s anxiety about their health causes them to take too many precautions—to get too much exercise, to diet too aggressively, to go to the doctor too frequently—and to undervalue other things like leisure. So it is hard to see why anxiety about more remote threats, from terrorists or unfriendly countries with nuclear weapons, should cause the public, or elected officials, to place more emphasis on security than is justified, and to sacrifice civil liberties.

Fear generated by immediate threats, then, causes instinctive responses that are not rational in the cognitive sense, not always desirable, and not a good basis for public policy, but it is not this kind of fear that leads to restrictions of civil liberties during wartime. The internment of Japanese Americans during World War II may have been due to racial animus, or to a mistaken assessment of the risks; it was not the direct result of panic; indeed there was a delay of weeks before the policy was seriously considered.54 Post-9/11 curtailments of civil liberties, aside from immediate detentions, came after a significant delay and much deliberation. The civil libertarians’ argument that fear produces bad policy trades on the ambiguity of the word “panic,” which refers both to real fear that undermines rationality, and to collectively harmful outcomes that are driven by rational decisions, such as a bank run, where it is rational for all depositors to withdraw funds if they believe that enough other depositors are withdrawing funds. Once we eliminate the false concern about fear, it becomes clear that the panic thesis is indistinguishable from the argument that during an emergency people are likely to make mistakes. But if the only concern is that during emergencies people make mistakes, there would be no reason for demanding that the constitution be enforced normally during emergencies. Political errors occur during emergencies and nonemergencies, but the stakes are higher during emergencies, and that is the conventional reason why constitutional constraints should be relaxed.

#### Relying on the heuristic of scenario planning is best – it allows us to cope with impossibly complex systems and use that complexity to our advantage

Gorka et al 12 (Dr. Sebastian L. V., Director of the Homeland Defense Fellows Program at the College of International Security Affairs, National Defense University, teaches Irregular Warfare and US National Security at NDU and Georgetown, et al., Spring 2012, “The Complexity Trap,” Parameters, <http://www.carlisle.army.mil/USAWC/parameters/Articles/2012spring/Gallagher_Geltzer_Gorka.pdf>)

Once we abandon complexity and begin to talk of prioritization, diffusion of power, and speed of change, we start to see that there is a deep irony in the complexity trap. Proclaiming complexity to be the bedrock principle of today’s approach to strategy indicates a failure to understand that the very essence of strategy is that it allows us to cope with complexity—or at least good strategy does. Strategy is a commitment to a particular course of action, a heuristic blade that allows us to cut through large amounts of data with an overriding vision of how to connect certain available means with certain desired ends. **By winnowing the essential from the extraneous, such heuristics often outperform more complicated approaches to complex** (or even allegedly “wicked”) **problems that end up being computationally intractable**. **The more complex the system, the more important it is to rely on heuristics to deal with it**. Whether through the use of heuristics or otherwise, **the ability to peer through seemingly impenetrable complexity and to identify underlying patterns and trends is richly rewarded when others remain confused or intimidated by the apparent inscrutability of it all**—especially when that ability is coupled with a recognition that **small changes can have a big impact when amplified throughout an interconnected system**. If complexity, whether real or perceived, is truly the defining characteristic of the current strategic environment, then we should be witnessing a corresponding renaissance in grand strategy design and longterm strategic planning. 40 Not so, unfortunately—or at least not yet. More to the point, **because strategy copes with complexity, complexity actually rewards truly strategic actors**. Those who are prepared, organized, and rich in physical and human capital can exploit complexity to secure their interests. For example, **international regime complexity enables “chessboard politics**” whereby strategic actors can shop among forums for the best international venue to promote their policy preferences or can use cross-institutional political strategies to achieve a desired outcome. 41 Due to its high concentration of technical and legal expertise, the United States is ideally suited to exploit this complexity and to thrive in an age of chessboard politics. 42 The first step is replacing the current reactive worship of complexity with proactive prioritization. To escape the complexity trap, let us dare to decide—that is, let us strategize.

### 1NC—Legitimacy

#### Wartime means Obama will ignore the decision. Noncompliance undermines the Court’s legitimacy and makes the plan worthless

Pushaw 4—Professor of law @ Pepperdine University [Robert J. Pushaw, Jr., “Defending Deference: A Response to Professors Epstein and Wells,” Missouri Law Review, Vol. 69, 2004]

Civil libertarians have urged the Court to exercise the same sort of judicial review over war powers as it does in purely domestic cases—i.e., independently interpreting and applying the law of the Constitution, despite the contrary view of the political branches and regardless of the political repercussions.54 This proposed solution ignores the institutional differences, embedded in the Constitution, that have always led federal judges to review warmaking under special standards. Most obviously, the President can act with a speed, decisiveness, and access to information (often highly confidential) that cannot be matched by Congress, which must garner a majority of hundreds of legislators representing multiple interests.55 Moreover, the judiciary by design acts far more slowly than either political branch. A court must wait for parties to initiate a suit, oversee the litigation process, and render a deliberative judgment that applies the law to the pertinent facts.56 Hence, by the time federal judges (particularly those on the Supreme Court) decide a case, the action taken by the executive is several years old. Sometimes, this delay is long enough that the crisis has passed and the Court’s detached perspective has been restored.57 At other times, however, the war rages, the President’s action is set in stone, and he will ignore any judicial orders that he conform his conduct to constitutional norms.58 In such critical situations, issuing a judgment simply weakens the Court as an institution, as Chief Justice Taney learned the hard way.59

Professor Wells understands the foregoing institutional differences and thus does not naively demand that the Court exercise regular judicial review to safeguard individual constitutional rights, come hell or high water. Nonetheless, she remains troubled by cases in which the Court’s examination of executive action is so cursory as to amount to an abdication of its responsibilities—and a stamp of constitutional approval for the President’s actions.60 Therefore, she proposes a compromise: requiring the President to establish a reasonable basis for the measures he has taken in response to a genuine risk to national security.61 In this way, federal judges would ensure accountability not by substituting their judgments for those of executive officials (as hap-pens with normal judicial review), but rather by forcing them to adequately justify their decisions.62

This proposal intelligently blends a concern for individual rights with pragmatism. Civil libertarians often overlook the basic point that constitutional rights are not absolute, but rather may be infringed if the government has a compelling reason for doing so and employs the least restrictive means to achieve that interest.63 Obviously, national security is a compelling governmental interest.64 Professor Wells’s crucial insight is that courts should not allow the President simply to assert that “national security” necessitated his actions; rather, he must concretely demonstrate that his policies were a reasonable and narrowly tailored response to a particular risk that had been assessed accurately.65

Although this approach is plausible in theory, I am not sure it would work well in practice. Presumably, the President almost always will be able to set forth plausible justifications for his actions, often based on a wide array of factors—including highly sensitive intelligence that he does not wish to dis-close.66 Moreover, if the President’s response seems unduly harsh, he will likely cite the wisdom of erring on the side of caution. If the Court disagrees, it will have to find that those proffered reasons are pretextual and that the President overreacted emotionally instead of rationally evaluating and responding to the true risks involved. But are judges competent to make such determinations? And even if they are, would they be willing to impugn the President’s integrity and judgment? If so, what effect might such a judicial decision have on America’s foreign relations? These questions are worth pondering before concluding that “hard look” review would be an improvement over the Court’s established approach.

Moreover, such searching scrutiny will be useless in situations where the President has made a wartime decision that he will not change, even if judicially ordered to do so. For instance, assume that the Court in Korematsu had applied “hard look” review and found that President Roosevelt had wildly exaggerated the sabotage and espionage risks posed by Japanese-Americans and had imprisoned them based on unfounded fears and prejudice (as appears to have been the case). If the Court accordingly had struck down FDR’s order to relocate them, he would likely have disobeyed it.

Professor Wells could reply that this result would have been better than what happened, which was that the Court engaged in “pretend” review and stained its reputation by upholding the constitutionality of the President’s odious and unwarranted racial discrimination. I would agree. But I submit that the solution in such unique situations (i.e., where a politically strong President has made a final decision and will defy any contrary court judgment) is not judicial review in any form—ordinary, deferential, or hard look. Rather, the Court should simply declare the matter to be a political question and dismiss the case. Although such Bickelian manipulation of the political question doctrine might be legally unprincipled and morally craven, 67 at least it would avoid giving the President political cover by blessing his unconstitutional conduct and instead would force him to shoulder full responsibility. Pg. 968-970

### 1NC No Solvency—Prez reject

#### Obama will disregard the Court. He is on record

Pyle 12—Professor of constitutional law and civil liberties @ Mount Holyoke College [Christopher H. Pyle, “Barack Obama and Civil Liberties,” Presidential Studies Quarterly, Volume 42, Issue 4, December 2012, Pg. 867–880]

Preventive Detention

But this is not the only double standard that Obama's attorney general has endorsed. Like his predecessors, Holder has chosen to deny some prisoners any trials at all, either because the government lacks sufficient evidence to guarantee their convictions or because what “evidence” it does have is fatally tainted by torture and would deeply embarrass the United States if revealed in open court. At one point, the president considered asking Congress to pass a preventive detention law. Then he decided to institute the policy himself and defy the courts to overrule him, thereby forcing judges to assume primary blame for any crimes against the United States committed by prisoners following a court-ordered release (Serwer 2009).

According to Holder, courts and commissions are “essential tools in our fight against terrorism” (Holder 2009). If they will not serve that end, the administration will disregard them. The attorney general also assured senators that if any of the defendants are acquitted, the administration will still keep them behind bars. It is difficult to imagine a greater contempt for the rule of law than this refusal to abide by the judgment of a court. Indeed, it is grounds for Holder's disbarment.

As a senator, Barack Obama denounced President Bush's detentions on the ground that a “perfectly innocent individual could be held and could not rebut the Government's case and has no way of proving his innocence” (Greenwald 2012). But, three years into his presidency, Obama signed just such a law. The National Defense Authorization Act of 2012 authorized the military to round up and detain, indefinitely and without trial, American citizens suspected of giving “material support” to alleged terrorists. The law was patently unconstitutional, and has been so ruled by a court (Hedges v. Obama 2012), but President Obama's only objection was that its detention provisions were unnecessary, because he already had such powers as commander in chief. He even said, when signing the law, that “my administration will not authorize the indefinite military detention without trial of American citizens,” but again, that remains policy, not law (Obama 2011). At the moment, the administration is detaining 40 innocent foreign citizens at Guantanamo whom the Bush administration cleared for release five years ago (Worthington 2012b).

Thus, Obama's “accomplishments” in the administration of justice “are slight,” as the president admitted in Oslo, and not deserving of a Nobel Prize. What little he has done has more to do with appearances than substance. Torture was an embarrassment, so he ordered it stopped, at least for the moment. Guantanamo remains an embarrassment, so he ordered it closed. He failed in that endeavor, but that was essentially a cosmetic directive to begin with, because a new and larger offshore prison was being built at Bagram Air Base in Afghanistan—one where habeas petitions could be more easily resisted. The president also decided that kidnapping can continue, if not in Europe, then in Ethiopia, Somalia, and Kenya, where it is less visible, and therefore less embarrassing (Scahill 2011). Meanwhile, his lawyers have labored mightily to shield kidnappers and torturers from civil suits and to run out the statute of limitations on criminal prosecutions. Most importantly, kidnapping and torture remain options, should al-Qaeda strike again. By talking out of both sides of his mouth simultaneously, Obama keeps hope alive for liberals and libertarians who believe in equal justice under law, while reassuring conservatives that America's justice will continue to be laced with revenge.

It is probably naïve to expect much more of an elected official. Few presidents willingly give up power or seek to leave their office “weaker” than they found it. Few now have what it takes to stand up to the national security state or to those in Congress and the corporations that profit from it. Moreover, were the president to revive the torture policy, there would be insufficient opposition in Congress to stop him. The Democrats are too busy stimulating the economies of their constituents and too timid to defend the rule of law. The Republicans are similarly preoccupied, but actually favor torture, provided it can be camouflaged with euphemisms like “enhanced interrogation techniques” (Editorial 2011b).

### Congress Backlash

#### Congress will backlash. It will functionally bar the Court from exercising its authority

Vladeck 11—Professor of Law and Associate Dean for Scholarship @ American University [Stephen I. Vladeck, “Why Klein (Still) Matters: Congressional Deception and the War on Terrorism,” Journal of National Security Law, Volume 5, 6/16/2011, 9:38 AM

Six weeks later, Congress enacted the USA PATRIOT Act, which included a series of controversial revisions to immigration, surveillance, and other law enforcement authorities.34 But it would be over four years before Congress would again pass a key counterterrorism initiative, enacting the Detainee Treatment Act of 2005 (DTA)35 after—and largely in response to—the Supreme Court’s grant of certiorari in Hamdan v. Rumsfeld.36 In the five years since, Congress had enacted a handful of additional antiterrorism measures, including the Military Commissions Act (MCA) of 2006,37 as amended in 2009,38 the Protect America Act of 2007,39 and the 2008 amendments40 to the Foreign Intelligence Surveillance Act of 1978, known in shorthand as the FAA.41 And yet, although Congress has spoken in these statutes both to the substantive authority for military commissions and to the scope of the government’s wiretapping and other surveillance powers, it has otherwise left some of the central debates in the war on terrorism completely unaddressed.42 Thus, Congress has not revisited the scope of the AUMF since September 18, 2001, even as substantial questions have been raised about whether the conflict has extended beyond that which Congress could reasonably be said to have authorized a decade ago.43 Nor has Congress intervened, despite repeated requests that it do so, to provide substantive, procedural, or evidentiary rules in the habeas litigation arising out of the military detention of noncitizen terrorism suspects at Guantánamo.44

As significantly, at the same time as Congress has left some of these key questions unanswered, it has also attempted to keep courts from answering them. Thus, the DTA and the MCA purported to divest the federal courts of jurisdiction over habeas petitions brought by individuals detained at Guantánamo and elsewhere.45 Moreover, the 2006 MCA precluded any lawsuit seeking collaterally to attack the proceedings of military commissions,46 along with “any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.”47 And although the Supreme Court in Boumediene invalidated the habeas-stripping provision as applied to the Guantánamo detainees,48 the same language has been upheld as applied elsewhere,49 and the more general non-habeas jurisdiction-stripping section has been repeatedly enforced by the federal courts in other cases.50

Such legislative efforts to forestall judicial resolution of the merits can also be found in the telecom immunity provisions of the FAA,51 which provided that telecom companies could not be held liable for violations of the Telecommunications Act committed in conjunction with certain governmental surveillance programs.52 Thus, in addition to changing the underlying substantive law going forward, the FAA pretermitted a series of then-pending lawsuits against the telecom companies.53

Analogously, Congress has attempted to assert itself in the debate over civilian trials versus military commissions by barring the use of appropriated funds to try individuals held at Guantánamo in civilian courts,54 and by also barring the President from using such funds to transfer detainees into the United States for continuing detention or to other countries, as well.55 Rather than enact specific policies governing criteria for detention, treatment, and trial, Congress’s modus operandi throughout the past decade has been to effectuate policy indirectly by barring (or attempting to bar) other governmental actors from exercising their core authority, be it judicial review or executive discretion.

Wasserman views these developments as a period of what Professor Blasi described as “constitutional pathology,” typified by “an unusually serious challenge to one or more of the central norms of the constitutional regime.” Nevertheless, part of how Wasserman defends the “Klein vulnerable” provisions of the MCA and FAA is by concluding that the specific substantive results they effectuate can be achieved by Congress, and so Klein does not stand in the way. But if Redish and Pudelski’s reading of Klein is correct, then the fact that Congress could reach the same substantive results through other means is not dispositive of the validity of these measures. To the contrary, the question is whether any of these initiatives were impermissibly “deceptive,” such that Congress sought to “vest the federal courts with jurisdiction to adjudicate but simultaneously restrict the power of those courts to perform the adjudicatory function in the manner they deem appropriate.”56 pg. 257-259

### 1nc—Comstock

#### Article III trials will encourage Congress to pass a Comstock statute for terrorist. They will remain indefinitely detained

Wedel 11—JD Candidate @ Stanford Law School [Collin P. Wedel (Prospective Law Clerk to the Honorable Ruggero J. Aldisert, United States Court of Appeals for the Third Circuit), “War Courts: Terror's Distorting Effects on Federal Courts,” Legislation and Policy Brief, Volume 3 1 Issue 1, 1-6-2011]

Article III trials, therefore, seem to offer the greatest protection against arbitrary and indefinite detention. Regardless what process the courts followed, alleged terrorists would still receive a sentence matching the crime for which they were convicted. But a recent Supreme Court decision and a proposed rule from the Bureau of Prisons cast doubt on whether Article III trials—and, more importantly, Article III sentences—will continue to protect against indefinite detention.

The Supreme Court's ruling in United States v. Comstock sets a disturbing precedent for terrorist-detainees. 89 Comstock involved sentencing issues for sex offenders, a topic seemingly unrelated to terrorism. Yet the Court held that Congress may use its Necessary and Proper Clause powers to permanently detain dangerous sex offenders if they appear to pose a threat to the surrounding community upon release." That Congress may order the civil commitment of dangerous prisoners after completing their sentences sets the stage for transplanting an indefinite detention regime into the criminal sphere. The possibility that this reasoning would or could be extended to cover terrorists subject to Article III criminal sentencing is far from remote. Indeed, many commentators noticed instantly Comstock's potential impact on terror connected inmates.91

The statute at issue in Comstock authorizes a court to civilly commit a soon-to-be-released prisoner if he (1) previously "engaged or attempted to engage in sexually violent conduct or child molestation," (2) "suffers from a serious mental illness, abnormality, or disorder," and (3) as a result of the disorder, remains "sexually dangerous to others" such that "he would have serious difficulty in refraining from sexually violent conduct or child molestation if released." 92 If a court finds all of these factors, it may commit the prisoner to the Attorney General's custody, who must make "all reasonable efforts" to return the prisoner to the state in which he was tried or in which he is domiciled.9 3 If the Attorney General is unsuccessful in this endeavor, the prisoner is sent to a federal treatment facility and remains there until he is no longer dangerous.94

By its terms, this statute applies to sex criminals, not terrorists.

Nevertheless, this opinion, which garnered the support of seven justices, clears away any foreseeable barriers to Congress issuing a similar statute aimed at terrorists. After Comstock, Congress may authorize the Attorney General to detain "dangerous" criminals in perpetuity after the termination of their sentences under its Necessary and Proper Clause powers. A statute codifying that notion would alter terrorism prosecutions radically. Pg. 24

## \*\*\* 2NC

### Discourse D

#### Reps don't shape reality

Balzacq 5—Thierry, Professor of Political Science and International Relations at Namur University [“The Three Faces of Securitization: Political Agency, Audience and Context” *European Journal of International Relations*, London: Jun 2005, Volume 11, Issue 2]

However, despite important insights, this position remains highly disputable. The reason behind this qualification is not hard to understand. With great trepidation my contention is that one of the main distinctions we need to take into account while examining securitization is that between 'institutional' and 'brute' threats. In its attempts to follow a more radical approach to security problems wherein threats are institutional, that is, mere products of communicative relations between agents, the CS has neglected the importance of 'external or brute threats', that is, threats that do not depend on language mediation to be what they are - hazards for human life. In methodological terms, however, any framework over-emphasizing either institutional or brute threat risks losing sight of important aspects of a multifaceted phenomenon. Indeed, securitization, as suggested earlier, is successful when the securitizing agent and the audience reach a common structured perception of an ominous development. In this scheme, there is no security problem except through the language game. Therefore, how problems are 'out there' is exclusively contingent upon how we linguistically depict them. This is not always true. For one, language does not construct reality; at best, it shapes our perception of it. Moreover, it is not theoretically useful nor is it empirically credible to hold that what we say about a problem would determine its essence. For instance, what I say about a typhoon would not change its essence. The consequence of this position, which would require a deeper articulation, is that some security problems are the attribute of the development itself. In short, threats are not only institutional; some of them can actually wreck entire political communities regardless of the use of language. Analyzing security problems then becomes a matter of understanding how external contexts, including external objective developments, affect securitization. Thus, far from being a departure from constructivist approaches to security, external developments are central to it.

#### Their impact claims are non-causal assertions – economic ties and democracy prevent genocide

O’Kane 97 [“Modernity, the Holocaust, and politics”, Economy and Society, February, ebsco]

Chosen policies cannot be relegated to the position of immediate condition (Nazis in power) in the explanation of the Holocaust. Modern bureaucracy is not ‘intrinsically capable of genocidal action’ (Bauman 1989: 106). Centralized state coercion has no natural move to terror. In the explanation of modern genocides it is chosen policies which play the greatest part, whether in effecting bureaucratic secrecy, organizing forced labour, implementing a system of terror, harnessing science and technology or introducing extermination policies, as means and as ends. As Nazi Germany and Stalin’s USSR have shown, furthermore, those chosen policies of genocidal government turned away from and not towards modernity. The choosing of policies, however, is not independent of circumstances. An analysis of the history of each case plays an important part in explaining where and how genocidal governments come to power and analysis of political institutions and structures also helps towards an understanding of the factors which act as obstacles to modern genocide. But it is not just political factors which stand in the way of another Holocaust in modern society. Modern societies have not only pluralist democratic political systems but also economic pluralism where workers are free to change jobs and bargain wages and where independent firms, each with their own independent bureaucracies, exist in competition with state-controlled enterprises. In modern societies this economic pluralism both promotes and is served by the open scientific method. By ignoring competition and the capacity for people to move between organizations whether economic, political, scientific or social, Bauman overlooks crucial but also very ‘ordinary and common’ attributes of truly modern societies. It is these very ordinary and common attributes of modernity which stand in the way of modern genocides.

#### Patriarchy doesn’t cause war—their evidence can’t explain variations in the outbreak of conflict.

Jack S. Levy, Governors' Professor of Political Science at Rutgers University, 1998 (“The Causes Of War And The Conditions Of Peace,” *Annual Review of Political Science*, Volume 1, June, Available Online to Subscribing Institutions via Annual Reviews Full Text)

Another exception to the focus on variations in war and peace can be found in some feminist theorizing about the outbreak of war, although most feminist work on war focuses on the consequences of war, particularly for women, rather than on the outbreak of war (Elshtain 1987, Enloe 1990, Peterson 1992, Tickner 1992, Sylvester 1994). The argument is that the gendered nature of states, cultures, and the world system contributes to the persistence of war in world politics. This might provide an alternative (or supplement) to anarchy as an answer to the first question of why violence and war repeatedly occur in international politics, although the fact that peace is more common than war makes it difficult to argue that patriarchy (or anarchy) causes war. Theories of patriarchy might also help answer the second question of variations in war and peace, if they identified differences in the patriarchal structures and gender relations in different international and domestic political systems in different historical contexts, and if they incorporated these differences into empirically testable hypotheses about the outbreak of war. This is a promising research agenda, and one that has engaged some anthropologists. Most current feminist thinking in political science about the outbreak of war, however, treats gendered systems and patriarchal structures in the same way that neorealists treat anarchy—as a constant—and consequently it cannot explain variations in war and peace.

#### Patriarchy doesn’t cause war—*war* causes *patriarchy*.

Joshua S. Goldstein, Professor of International Relations at American University, 2001 (“Reflections: The Mutuality of Gender and War," *War and Gender*, Published by Cambridge University Press, ISBN 0521001803, p. 411-412)

First, peace activists face a dilemma in thinking about causes of war and working for peace. Many peace scholars and activists support the approach, "if you want peace, work for justice." Then, if one believes that sexism contributes to war, one can work for gender justice specifically (perhaps among others) in order to pursue peace. This approach brings strategic allies to the peace movement (women, labor, minorities), but rests on the assumption that injustices cause war. The evidence in this book suggests that causality runs at least as strongly the other way. War is not a product of capitalism, imperialism, gender, innate aggression, or any other single cause, although all of these influence wars' outbreaks and outcomes. Rather, war has in part fueled and sustained these and other injustices. 9 So, "if you want peace, work for peace." Indeed, if you want justice (gender and others), work for peace. Causality does not run just upward through the levels of analysis, from types of individuals, societies, and governments up to war. It runs downward too. Enloe suggests that changes in attitudes towards war and the military may be the most important way to "reverse women's oppression." The dilemma is that peace work focused on justice brings to the peace movement energy, allies, and moral grounding, yet, in light of this book's evidence, the emphasis on injustice as the main cause of war seems to be empirically inadequate. 10

#### Our characterization of threats is not a link – the alternative results in more policing

Liotta 5 —Prof of Humanities at Salve Regina University, Professor of Humanities at Salve Regina University, Newport, RI, and Executive Director of the Pell Center for International Relations and Public Policy [P. H. “Through the Looking Glass” Sage Publications]

Although it seems attractive to focus on exclusionary concepts that insist on desecuritization, privileged referent objects, and the ‘belief’ that threats and vulnerabilities are little more than social constructions (Grayson, 2003), all these concepts work in theory but fail in practice. While it may be true that national security paradigms can, and likely will, continue to dominate issues that involve human security vulnerabilities – and even in some instances mistakenly confuse ‘vulnerabilities’ as ‘threats’ – there are distinct linkages between these security concepts and applications. With regard to environmental security, for example, Myers (1986: 251) recognized these linkages nearly two decades ago: National security is not just about fighting forces and weaponry. It relates to watersheds, croplands, forests, genetic resources, climate and other factors that rarely figure in the minds of military experts and political leaders, but increasingly deserve, in their collectivity, to rank alongside military approaches as crucial in a nation’s security. Ultimately, we are far from what O’Hanlon & Singer (2004) term a global intervention capability on behalf of ‘humanitarian transformation’. Granted, we now have the threat of mass casualty terrorism anytime, anywhere – and states and regions are responding differently to this challenge. Yet, the global community today also faces many of the same problems of the 1990s: civil wars, faltering states, humanitarian crises. We are nowhere closer toaddressing how best to solve these challenges, even as they affect issues of environmental, human, national (and even ‘embedded’) security. Recently, there have been a number of voices that have spoken out on what the International Commission on Intervention and State Sovereignty has termed the ‘responsibility to protect’:10 the responsibility of some agency or state (whether it be a superpower such as the United States or an institution such as the United Nations) to enforce the principle of security that sovereign states owe to their citizens. Yet, the creation of a sense of urgency to act – even on some issues that may not have some impact for years or even decades to come – is perhaps the only appropriate first response. The real cost of not investing in the right way and early enough in the places where trends and effects are accelerating in the wrong direction is likely to be decades and decades of economic and political frustration – and, potentially, military engagement. Rather than justifying intervention (especially military), we ought to be justifying investment. Simply addressing the immensities of these challenges is not enough. Radical improvements in public infrastructure and support for better governance, particularly in states and municipalities (especially along the Lagos–Cairo–Karachi–Jakarta arc), will both improve security and create the conditions for shrinking the gap between expectations and opportunity. A real debate ought to be taking place today. Rather than dismissing ‘alternative’ security foci outright, a larger examination of what forms of security are relevant and right among communities, states, and regions, and which even might apply to a global rule-set – as well as what types of security are not relevant – seems appropriate and necessary. If this occurs, a truly remarkable tectonic shift might take place in the conduct of international relations and human affairs. Perhaps, in the failure of states and the international community to respond to such approaches, what is needed is the equivalent of the 1972 Stockholm conference that launched the global environmental movement and established the United Nations Environmental Programme (UNEP), designed to be the environmental conscience of the United Nations. Similarly, the UN Habitat II Conference in Istanbul in 1996 focused on the themes of finding adequate shelter for all and sustaining human development in an increasingly urbanized world. Whether or not these programs have the ability to influence the future’s direction (or receive wide international support) is a matter of some debate. Yet, given that the most powerful states in the world are not currently focusing on these issues to a degree sufficient to produce viable implementation plans or development strategies, there may well need to be a ‘groundswell’ of bottom-up pressure, perhaps in the form of a global citizenry petition to push the elusive world community toward collective action.Recent history suggests that military intervention as the first line of response to human security conditions underscores a seriously flawed approach. Moreover, those who advocate that a state’s disconnectedness from globalization is inversely proportional to the likelihood of military (read: US) intervention fail to recognize unfolding realities (Barnett, 2003, 2004). Both middle-power and major-power states, as well as the international community, must increasingly focus on long-term creeping vulnerabilities in order to avoid crisis responses to conditions of extreme vulnerability. Admittedly, some human security proponents have recently soured on the viability of the concept in the face of recent ‘either with us or against us’ power politics (Suhrke, 2004). At the same time, and in a bit more positive light, some have clearly recognized the sheer impossibility of international power politics continuing to feign indifference in the face of moral categories. As Burgess (2004: 278) notes, ‘for all its evils, one of the promises of globalization is the unmasking of the intertwined nature of ethics and politics in the complex landscape of social, economic, political and environmental security’. While it is still not feasible to establish a threshold definition for human security that neatly fits all concerns and arguments (as suggested by Owen, 2004: 383), it would be a tragic mistake to assume that national, human, and environmental security are mutually harmonious constructs rather than more often locked in conflictual and contested opposition with each other. Moreover, aspects of security resident in each concept are indeed themselves embedded with extraordinary contradictions. Human security, in particular, is not now, nor should likely ever be, the mirror image of national security. Yet, these contradictions are not the crucial recognition here. On the contrary, rather than focusing on the security issues themselves, we should be focusing on the best multi-dimensional approaches to confronting and solving them. One approach, which might avoid the massive tidal impact of creeping vulnerabilities, is to sharply make a rudder shift from constant crisis intervention toward strategic planning, strategic investment, and strategic attention. Clearly, the time is now to reorder our entire approach to how we address – or fail to address – security.

#### Racism is not the individual cause of violence – evolution demonstrates violence is more complex

Gat 9 —Ezer Weitzman Professor for National Security in the Department of Political Science at Tel Aviv [Azar, “So Why Do People Fight? Evolutionary Theory and the Causes of War” European Journal of International Relations 15]

Bradley Thayer’s excellent article (2000) and book (2004) are the most comprehensive contribution to a small but growing body of work in the field of International Relations that has taken up the evolutionary perspective,1 and he is the only one that directly addresses the causes of war. Given our shared perspective, it is not surprising that we agree on a great deal. Con- centrating on how Darwinism explains and validates some major realist propositions, Thayer points out, for example, the evolutionary rationale behind the realist stress on egotistic competition and conflict between states for survival and ascendancy, arguing that this is merely an extension of the same from the individual, kin-group, and tribal levels. He also suggests that evolutionary theory can resolve the disagreements that exist among realists as to the causes and aims of inter-state competition and conflict. Classical realists, such as Morgenthau (1961), claimed that states seek power and act to gain it even by force because the quest for dominance is in human nature. By contrast, structural realists (Waltz, 1979) hold that it is not human nature but rather the endemic struggle for survival in an anarchic system that forces states to seek power, in self-defense and irrespective of their wishes, because of mutual fear and the dictates of the security dilemma. Offensive structural realists have stressed that the constraints of the anarchic state system force states that seek to survive not only to defend their power but also to try to actively increase it by dominating and subduing the others, again regardless of their true wishes; this has been labeled ‘the tragedy of great power politics’ (Mearsheimer, 2001). Critics have long suggested that realists tend to confuse ends and means. Inter alia, their overall correct focus on the quest for power has caused them to lose sight of the underlying reality that explains why the struggle for power takes place. Morgenthau (1961: 4–5, 27–37, 113–16, and chs 5–8), for example, is famously ambivalent about the relationship between power and other aims of foreign policy, sometimes suggesting that power is a universal means for attaining the latter, but more often claiming that all other aims are largely a disguise for the quest for power. Even resources are discussed by him purely as a means for power, but not as coveted objects. However, if, as he claims, the quest for power is rooted in human nature, why is it there and why is its significance so overwhelming, if indeed it is? Structural realism raises no less difficult questions. If it is mutual appre- hension and the security dilemma in an anarchic system that force states to act to preserve and expand their power, why — in the absence of other motives — does the mutual apprehension that fuels the security dilemma exist in the first place? Even though realists have been predisposed to stress the struggle over scarce resources, somehow this has not figured prominently in their explanation of state conduct, including war. This pretty obvious but long unnoticed point has been well made by Schweller (1994, 1996), who has claimed that states go to war not merely for security reasons but also in order to achieve ‘coveted values,’ because they see ‘opportunity for gain,’ ‘profit,’ ‘rewards,’ or ‘spoils.’ He, and others, have exposed the ‘status quo bias’ in much of the recent International Relations literature, wherein, indeed, scholars such as Waltz, Walt, and Snyder seem to believe that, inherently, no profit can be made from aggressive action in the international arena because of the balancing effect of the coalition that will form to oppose an expansionist state.2 In the wake of the above criticism, Mearsheimer (2001: 20) has recognized that in Waltz’s ‘defensive realism’ there are actually no reasons for war; yet he has failed to see that his own ‘offensive structural realism’ suffers from the very same problem. Similarly based on the security dilemma alone, it leaves ananswered — indeed, unraised — the question of why that dilemma should arise at all if no positive motives for aggression exist on any side. Realists have lost touch with the purpose of the whole exercise. Schweller does not specify what the ‘coveted values,’ ‘gain,’ ‘profit,’ ‘rewards,’ and ‘spoils’ for which states go to war might be, though his list of historical examples provides ample illustration. People generally have a pretty good idea of the aims that may motivate states to go to war; yet an attempt at a strict definition and explanation of them is widely regarded as futile, because individuals and collectives are believed to be capable of being driven to war by practically any reason — for the attainment of any aim or value, which are held to be largely ‘construed’ culturally. This brings us to the age-old philosophical and psychological question regarding the nature of the basic human system of motivation. Cultural diversity in human societies is stressed for excellent reasons, but all too often to the point of losing sight of our easily observed core of species specificity.3 As this article suggests, despite their many particularities, societies through- out history have manifested a remarkably similar set of reasons for fighting. Arguing that the human motivational system as a whole should be approached from the evolutionary perspective, the article begins with an examination of what can be meaningfully referred to as the ‘human state of nature,’ the 99.5% of the genus Homo’s evolutionary history in which humans lived as hunter-gatherers. In this ‘state of nature’ people’s behavior patterns are generally to be considered as having been evolutionarily adaptive. The inter- action of biological propensities and cultural development in shaping the causes of war in historical state societies is examined in the second part of the article. Although I shall now survey the reasons for warfare among hunter- gatherers one by one, it is not my intention to provide yet another ‘list’ of elements, such as that provided in Hobbes’s Leviathan, ch. 6, or by modern psychologists (e.g. Burton, 1990; Maslow, 1970). In the absence of an evolutionary perspective, these lists typically have something arbitrary and trivial about them. They lack a unifying regulatory rationale that suggests why the various needs and desires came into being, or how they relate to one another. Instead, I seek to show how the various reasons come together in an integrated motivational complex. This complex has been shaped by the logic of evolution and natural selection for geological times. It is the totality of human motivation — in relation to the causes of violence and war — that this article seeks to lay out and explain.4 To understand the fundamental causes of war is to grasp how (a) the pursuit of evolution-shaped human objects of desire, (b) by means of the violent strategic behavioural option, (c) is endemic in anarchic systems. Here, too, it is all the so-called ‘levels’ — the individual, the state, and the state system — in their causal interactions, that have to be comprehended as a whole. The Human State of Nature Subsistence Resources In contrast to long-held Rousseauian beliefs that reached their zenith in the 1960s, widespread deadly violence within species — including humans — has been found to be the norm in nature (Gat, 2006; Keeley, 1996; LeBlanc with Register, 2003). Competition over resources is a prime cause of aggression and deadly violence. The reason for this is that food, water, and, to a lesser degree, shelter against the elements are tremendous selection forces. As Darwin, following Malthus, explained, living organisms, including humans, tend to propagate rapidly. Their numbers are constrained and checked only by the limited resources of their particular ecological habitats and by all sorts of competitors. Contrary to the Rousseauian imagination, humans, and animals, did not live in a state of primordial plenty. Even in lush environments plenty is a misleading notion, for it is relative, first, to the number of mouths that have to be fed. The more resource-rich a region is, the more people it attracts from outside, and the greater the internal population growth that takes place. As Malthus pointed out, a new equilibrium between resource volume and population size would eventually be reached, recreating the same tenuous ratio of subsistence that was the fate of pre-industrial societies throughout history. Hence the inherent state of competition and conflict found among Stone Age people. Let us understand more closely the evolutionary calculus that can make the highly dangerous activity of fighting over resources worthwhile. In our affluent societies, it might be difficult to comprehend how precarious people’s subsistence in pre-modern societies was (and still is). The specter of hunger and starvation was ever-present. Affecting both mortality and reproduction, they constantly trimmed down population numbers. Thus struggle over resources was very often evolutionarily cost-effective. The benefits of fighting also had to be matched against possible alternatives (other than starvation). One of them was to move elsewhere. This, of course, often happened, especially if one’s enemy was much stronger, but this strategy had clear limitations. By and large, there were no ‘empty spaces’ for people to move to. In the first place, space is not even, and the best, most productive, habitats were normally already taken. Furthermore, a move meant leaving a habitat with whose resources and dangers the group’s members were intimately familiar. Such a change could involve heavy penalties. Moreover, giving in to pressure from outside might establish a pattern of victimization. Encouraged by its success, the alien group might repeat and even increase its pressure. Standing for one’s own might mean lessening the occurrence of conflict in the future. No less, and perhaps more, than actual fighting, conflict is about deterrence. Reproduction The struggle for reproduction is about access to sexual partners of reproduc- tive potential. There is a fundamental asymmetry between males and females in this respect, which runs throughout nature. At any point in time, a female can be fertilized only once. Consequently, evolutionarily speaking, she must take care to make the best of it. It is quality rather than quantity that she seeks. She must select the male who looks the best equipped for survival and reproduction, so that he will impart his genes, and his qualities, to the offspring. In those species, like the human, where the male also contributes to the raising of the offspring, his skills as a provider and his loyalty are other crucial considerations. In contrast to the female, there is theoretically almost no limit to the number of offspring a male can produce. He can fertilize an indefinite number of females, thus multiplying his own genes in the next generations. The main brake on male sexual success is competition from other males. Around this rationale, sexual strategies in nature are highly diverse and most nuanced, ranging from extreme polygamy to monogamy (Daly and Wilson, 1983; Ridley, 1994; Symons, 1979). However, although monogamy reduces, it by no means terminates, male competition. If the male is restricted to one partner, it becomes highly important for him as well to choose the partner with the best reproductive qualities he can get: young, healthy, and optimally built for bearing offspring; that is, in sexual parlance, the most attractive female. The need to take care of very slowly maturing offspring, which required sustained investment by both parents, turned humans in the monogamous direction. However, competition over the best female partners remains. Furthermore, humans, and men in particular, are not strictly mono- gamous. In most known human societies polygamy was legitimate, though only a select few well-to-do men were able to support, and thus have, the extra wives and children. Second, in addition to official or unofficial wives, men tend to search for extra-marital sexual liaisons. How does all this affect human violent conflict and fighting? The evidence across the range of hunter-gatherer peoples tells the same story. Within the tribal groupings, women-related quarrels, violence, so-called blood feuds, and homicide were rife, often constituting the principal category of violence. Between groups, the picture was not very different, and was equally uniform. Warfare regularly involved the stealing of women, who were then subjected to multiple rape, or taken for marriage, or both. So hunter-gatherer fighting commonly involved the stealing and raping of women, but was this the cause or a side effect of hunter-gatherer fighting? This is a pointless question that has repeatedly led scholars to a dead end. It artificially takes out and isolates one element from the wholeness of the human motivational complex that may lead to warfare, losing sight of the overall rationale that underpins these elements. Both somatic and repro- ductive elements are present in humans; moreover, both these elements are intimately interconnected, for people must feed, find shelter, and protect themselves in order to reproduce successfully. Conflict over resources was at least partly conflict over the ability to acquire and support women and children, and to demonstrate that ability in advance, in order to rank worthy of the extra wives. Resources, reproduction, and, as we shall see, status are interconnected and interchangeable. Motives are mixed, interacting, and widely refracted, yet this seemingly immense complexity and inexhaustible diversity can be traced back to a central core, shaped by the evolutionary rationale. Anthropological studies show that successful men in hunter-gatherer societies had several wives, in rare cases as many as a dozen, with a record of two dozen in the most productive environments. Many wives naturally meant a large number of children for a man, sometimes scores, who often comprised a large part of the next generation in the tribe (Chagnon, 1979: 380; Daly and Wilson, 1983: 88–9, 332–3; Keen, 1982; Symons, 1979: 143). Again, women are such a prominent motive for competition and conflict because reproductive opportunities are a very strong selective force indeed. This does not mean that people always want to maximize the number of their children. Although there is some human desire for children per se and a great attachment to them once they exist, it is mainly the desire for sex — Malthus’ ‘passion’ — which functions in nature as the powerful biological proximate mechanism for maximizing reproduction. As humans, and other living creatures, normally engage in sex throughout their fertile lives, they have a vast reproductive potential, which, before the introduction of effective contraception, mainly depended for its realization on resource availability. Polygyny (and female infanticide) created women scarcity and increased men’s competition for, and conflict over, them (Divale and Harris, 1976). Among Aboriginal Australian tribes, about 30% of the Murngin adult males are estimated to have died violently, and similar findings have been recorded for the Tiwi. The Plains Indians showed a deficit of 50% for the adult males in the Blackfoot tribe in 1805 and a 33% deficit in 1858, while during the reservation period the sex ratio rapidly approached 50–50. Among the Eskimo of the central Canadian arctic, the rate of violent deaths was estimated at one per thousand persons per year, 10 times the 1990 US rate which is the highest in the developed world. Among the !Kung of the Kalahari Desert, known as the ‘harmless people,’ the rate of killing was 0.29 persons per thousand per year, and had been 0.42 before the coming of state authority, 3–4 times higher than the 1990 US rate (Gat, 2006: 129–32). The data for pre-state agriculturalists is basically the same. Among the Yanomamo of the Orinoco about 15% of the adults died as a result of inter- and intra-group violence: 24% of the males and 7% of the females. The Waorani (Auca) of the Ecuadorian Amazon hold the registered world record: more than 60% of adult deaths were caused by feuding and warfare. In Highland New Guinea violent mortality estimates are very similar: among the Dani, 28.5% of the men and 2.4% of the women; among the Enga, 34.8% of the adult males; among the Goilala, whose total population was barely over 150, there were 29 (predominantly men) killed during a period of 35 years; among the Lowland Gebusi, 35.2% of the adult males and 29.3% of the adult females (Gat, 2006: 129–32). The interconnected competition over resources and reproduction is the root cause of conflict and fighting in humans as in all other animal species. Other causes and expressions of fighting in nature, and the motivational and emotional mechanisms associated with them, are derivative of, and subordinate to, these primary causes, and originally evolved this way in humans as well. It is to these ‘second-level’ causes and motivational mechanisms, directly linked to the first, that we now turn.

### Ext Pyle—Prez reject

#### 3. The court is a paper tiger. Preponderance of the lit is on our side

Wheeler 9—Professor of political science @ Ball State University [Darren A. Wheeler, “Checking Presidential Detention Power in the War on Terror: What Should We Expect from the Judiciary?” Presidential Studies Quarterly, December 2009, pg. 677–700]

However, a closer examination of the process that followed the Supreme Court's detainee decisions reveals that the Bush administration was actually quite adept at retaining significant power over detainee matters (Ball 2007; Fisher 2008; Schwarz and Huq 2007; Wheeler 2008). Consequently, it is possible to make the argument that, despite media and Bush administration rhetoric to the contrary, the Supreme Court actually serves as a poor check on presidential detention power in the war on terror. A significant body of academic literature, amassed over a considerable period of time, lends support to this alternative argument, as these authors conclude that the courts are generally a poor check on executive war powers (Fisher 2005; Henkin 1996; Howell 2003; Koh 1990; Rossiter and Longaker 1976; Scigliano 1971). Which view on judicial power in the war on terror is accurate? Is the Supreme Court severely limiting the president's detention powers, or are the courts merely a paper tiger—at worst, an inconvenience to presidential administrations determined to retain control over detainees in the war on terror? This article examines the question, does the Supreme Court serve as a significant check on presidential detention power in the war on terror? It concludes that there are important institutional and political factors that mitigate the Court's ability to be a significant check on presidential detention power in this context.

#### 5. Ambiguity means the plan doesn’t establish a precedent

Westerland et al. 10—Professor of Political Science @ University of Arizona [Chad Westerland, Jeffrey A. Segal (Chair of Political Science and SUNY Distinguished Professor @ StonyBrook University), Lee Epstein (Professor of Law and Political Science @ Northwestern University), Charles M. Cameron (Professor of Politics and Public Affairs @ Princeton University) Scott Comparato (Professor of Political Science @ Southern Illinois University), “Strategic Defiance and Compliance in the U.S. Courts of Appeals,” American Journal of Political Science, Vol. 54, No. 4, October 2010, Pg. 891–905]

Two features of the “horizontal stare decisis” equilibrium stand out. First, adherence to precedent is less likely when the sitting court finds the precedent highly objectionable—in this sense, stare decisis is conditional. Defiance will be more likely if the policy preferences of the sitting court are distant from those of the enacting court. Second, adherence to precedent is less likely if the precedent is old. Essentially, the intergenerational log-roll involves amovingwindow: older precedents are discarded while younger ones are afforded respect, especially if they are not too objectionable. These two features seem likely to emerge in any model of horizontal stare decisis with actors whose policy preferences differ.

A third feature is not explicitly analyzed in Rasmusen’s formal model but seems worth considering: enacting High Court uncertainty or ambivalence about the best policy. If the initial enacting High Court is itself split or uncertain about the best policy—as manifest, for example, by numerous dissents and concurrences—this uncertainty may allow subsequent High Courts legitimately to deviate from the precedent. Subsequent High Court deference to precedent may require the enacting High Court to speak with a clear, unified voice, especially in complex cases. Pg. 899

### Ext Vladeck 11—Cngrs Bklsh (Overview)

#### 3. Congress is necessary to implement any judicial restriction on the President. Even if the aff has ev that says the Courts can restrict the President, force them to provide a piece of evidence saying implementation will be successful. It won’t be—Congress has no evidence in strengthening its war powers vis-à-vis the President. This card means you vote neg on presumption

NZELIBE 6—Assistant Professor of Law, Northwestern University Law School [Jide Nzelibe, A Positive Theory of the War-Powers Constitution, Iowa Law Review, March, 2006, 91 Iowa L. Rev. 993]

B. Why the Courts Are Unlikely to Tip the Balance of War powers in Congress's Favor

Congress has, for prudent political reasons, often declined to use its formal powers to constrain the President in war-powers issues. But even if members of Congress seem to face significant domestic-audience constraints in participating in war-powers issues, one might ask why the courts do not intervene to level the policy-making playing field. Indeed, one oft-cited antidote to the perceived "imperial" actions of the President in the war-powers realm is judicial intervention. n291 Judicial intervention, it is commonly argued, will tip the institutional balance of powers in Congress's favor and encourage it to exercise its war-powers prerogative. n292

There are two compelling reasons why courts have resisted, and will likely continue to resist, intervening in war-powers disputes. First, due to the political calculus that many members of Congress face, the courts usually assume that it is unlikely that there is a genuine confrontation between the two political branches on war-powers disputes. Second, the courts are probably reluctant to intervene in inter-branch disputes in a sphere where they might have low institutional authoritativeness.

On the first point, the courts have been generally reluctant to protect legislative prerogatives in war powers when members of Congress have failed to do so. Indeed, many members of Congress often have political incentives not to confront the President on war-powers controversies. As such, many of the disputes regarding the division of **war power**s that come before the courts routinely involve what are essentially intra-legislative disputes, where a segment of Congress (often a minority) seems to disagree with the majority's decision. In most such cases, a majority of Congress has either explicitly accepted the President's national-security agenda or has implicitly acquiesced to the agenda without taking formal legislative action. In other words, in those cases there has not been a genuine constitutional impasse that might appropriately trigger court scrutiny. Courts, probably anticipating the political spoils at stake, decline to participate in a "political pass the [\*1060] blame" game by insisting that the courts will not do what Congress refuses to do for itself. n293

Where members of Congress are unwilling to constrain executive-branch authority through legislation, courts understandably recognize that judicial intervention might prove to be meaningless. First, where there is insufficient congressional support for a court decision that favors congressional intervention in war powers, members of Congress will very likely lack the political will to implement such a decision. In other words, members of Congress who fear that greater congressional intervention will expose them to electoral risks will have every incentive to sidestep a judicial ruling that awards them more powers in national-security affairs.

Second, courts will often lack the opportunity to effectively monitor the successful implementation of a bright-line judicial rule regarding the allocation of war powers. Judicial monitoring will often be difficult because there are so many procedural and jurisdictional hurdles to bringing a legal challenge to the allocation of **war power**s. Since most citizens will lack standing to bring the lawsuit, most such lawsuits will probably have to come from members of Congress. Even if disaffected members of Congress are able to overcome significant standing obstacles of their own, n294 they are still likely to face a slew of other procedural obstacles, including ripeness, n295 mootness, n296 and the political-question doctrine. n297

Furthermore, the risk of non-compliance with judicial decisions also implicates the institutional legitimacy of the courts to adjudicate on war-powers claims. As some commentators have observed, courts seem to be especially wary about intervening in separation-of-powers issues in foreign affairs, because the popular legitimacy that underlies judicial resolution of domestic constitutional disputes does not tend to extend to foreign-affairs [\*1061] disputes. n298 In other words, when issues involve the adjudication of individual-rights claims or domestic separation-of-powers disputes, courts can often tap into the popular acceptance of their role in resolving such disputes. n299 In disputes regarding the allocation of war powers, however, it is unlikely that the judicial branch will be able to draw on the popular underpinnings of its legitimacy to secure political-branch compliance with its decisions. This is because there does not seem to be much of a public appetite for increased judicial involvement in foreign-affairs disputes. n300 Moreover, unlike in the domestic realm where the courts play a key legitimating function in separation-of-powers disputes, the political branches have very little incentive to embrace a more active judicial role in disputes over the allocation of war powers. n301

In any event, even if greater judicial intervention in war-powers disputes were politically feasible, it is not clear that such intervention would compel Congress to play a more active role on war-powers issues. In other words, members of Congress are not likely to embrace a war-powers role that has significant electoral risks simply because such a role has been judicially sanctioned. Indeed, not only will members of Congress lack an incentive to comply with such judicial decisions, but judicial monitoring of legislative compliance will often prove very difficult to carry out. At most, if compelled to take on a more active role by a judicial decision when it is not in their political interest to do so, members of Congress will likely substitute legislative rubberstamping for silent acquiescence as the preferred response to the President's use-of-force initiatives. In sum, if greater political accountability for use-of-force decisions is the end goal, there is little evidence that judicially prompted congressional intervention will change the current war-powers landscape.

### Philosophy Dumb

#### Philosophical Critiques of Authority are misplaced – even if the theory is accurate, the conclusions about the impact and application are just lay assertions that should be ignored

POSNER & VERMEULE 7—\*Professor of Law at the University of Chicago Law School \*\*Professor of Law at Harvard [Eric A. Posner & Adrian Vermeule, Terror in the Balance: Security, Liberty, and the Courts, Oxford University Press] page 273-275

Emergency Powers and Lawyers' Expertise

We have laid out an affirmative theory of emergency powers and terrorism in chapter 1; criticized competing theories in chapters 2, 3, and 4; criticized some institutional alternatives in chapter 5; and laid out the implications of our view in chapters 6, 7, and 8. Rather than review these arguments in detail, we will take up a theme that runs throughout our discussion, which is the limited ability of lawyers, as lawyers, to contribute anything of value to the theory and practice of governmental decision making in emergencies.

Lawyers' training gives them confidence in their abilities to contribute to the working of government. Yet the principal contribution that lawyers can make is to engineer process; the lawyer's occupational hazard or professional deformation is the belief that more process is always better, a distortion caused by neglect of the costs of process, including the opportunity costs of governmental action that is delayed or forgone while the wheels of legal liberalism turn ponderously. In normal settings, involving the bureaucratic and judicial regulation of the small-scale claims that are the everyday stuff of the legal system, lawyers' proceduralism is often beneficial or, if it is bad, is rarely very damaging. In emergencies, however, where the stakes are high and time is of the essence, procedural excess can be disastrous.

Fortunately, however, as we have emphasized throughout, those in power when emergencies actually occur tend to recognize the limits of their expertise. Legislators defer to the executive, enacting statutes that delegate sweeping power to the president or that ratify presidential actions already undertaken. Such statutes supply material to process-minded lawyers who hope that statutory authorization means something and that legislatures play an important role in emergencies; but in fact the statutes are often epiphenomenal products of the emergency rather than moving parts in the government's response to the crisis. Judges, too, facing a real risk that their procedural complaints will hamper the nation's emergency policies, overwhelmingly tend to defer to the executive in a crisis, although they may pretty up the pig by straining to find statutory authorization for the executive's acts.

Not so with academic lawyers, a majority of whom are reflexively hostile to executive power in matters of national security (as opposed to administrative regulation of the economy), and who are not made responsible by actually having to make decisions that are consequential in the short term. The liberal legalist urge to turn everything into a question of process explains the oddly indirect character of the arguments from civil libertarian lawyers canvassed in chapters 2, 3, 4, and 5. These lawyers know that substantive arguments on the merits of emergency policies fall outside of their domain of competence or, at a minimum, will be rhetorically unconvincing to an audience that knows that lawyers often lack the information necessary to evaluate the choices made by national security experts. The temptation for civil libertarians is then to abandon substance in favor of sophisticated second-order arguments about the government's decision-making processes and its long-term institutional consequences. We have tried to meet these arguments on their own ground, by suggesting that these second-order tropes are in most cases far too speculative, precious, or implausible and that the corresponding solutions proposed by liberal legalists are gimmicky and infeasible-the prime example being Bruce Ackerman's proposal for emergency governance through a framework statute with a supermajoritarian escalator, discussed in chapter 5. For the most part, governments react rationally to emergencies (although perhaps mistakenly; it is hard for outsiders to evaluate), and things return to normal at the emergency's end. The most interesting and consequential second-order possibilities remain mostly academic.

Our emphasis on the limits of lawyers' expertise does not entail that some other discipline can stand in. Philosophers are experts in clarifying matters at the conceptual level, but emergencies do not occur at the conceptual level, and the hard questions about emergency policy are mostly institutional and empirical. As we saw in chapter 6, where we discussed arguments against coercive interrogation by Henry Shue and others, philosophers have a proclivity to slide rather quickly and quietly outside of their domain of professional competence, into institutional and empirical arguments that are the province of security experts in government and on which the philosophers lack critical information. There is no reason for officials or interested publics to afford their arguments special weight as philosophical argumentation, rather than the weight that the opinion of any person in the street deserves on matters of emergency policy.

As lawyers, our contribution has been negative, deliberately so. What lawyers can contribute, and what we have tried to do, is to restrain other lawyers and their philosophical allies from shackling the government's response to emergencies with intrusive judicial review and amorphous worries about the second-order effects of sensible first-order policies. We hope merely to clear the ground for government to react to emergencies, enabling it to adopt whatever policies survive review by national security experts and the political process. Such policies will often be mistaken, but it is very hard for lawyers to know which ones are mistaken, and in any case nothing in the lawyer's expertise supplies the necessary tools for improving on the government's choices.

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### Overview

#### Extinction

Asahi Shimbun 13 [The Asahi Shimbun, “EDITORIAL: We all must confront the ferocious destructive power of nuclear energy,” August 06, 2013, pg. http://tinyurl.com/n637acb]

A recent study by Alan Robock, an environmental scientist at Rutgers University, and others showed that a regional nuclear war in which India and Pakistan each uses 50 Hiroshima-size nuclear weapons, or half of their nuclear arsenals, could cause global “nuclear famine.” While these weapons account for only 0.03 percent of total destructive capability of the global nuclear arsenal, the study said that detonating them would cause massive pillars of black smoke and dust to rise high into the atmosphere, resulting in sharp declines in temperature around the world and serious depletion of the ozone layer. That would lead to a significant increase in harmful ultraviolet rays hitting the planet’s surface.

The effects would be long-lasting, eventually triggering a devastating global famine. In short, we are still on the brink of wholesale destruction through nuclear warfare.

#### Economic decline causes totalitarianism and turns the case

Tilford 8 — Earl Tilford, military historian and fellow for the Middle East and terrorism with The Center for Vision & Values at Grove City College, served as a military officer and analyst for the Air Force and Army for thirty-two years, served as Director of Research at the U.S. Army’s Strategic Studies Institute, former Professor of History at Grove City College, holds a Ph.D. in History from George Washington University, 2008 (“Critical Mass: Economic Leadership or Dictatorship,” Published by The Center for Vision & Values, October 6th, Available Online at http://www.visionandvalues.org/2008/10/critical-mass-economic-leadership-or-dictatorship/, Accessed 08-23-2011)

Nevertheless, al-Qaeda failed to seriously destabilize the American economic and political systems. The current economic crisis, however, could foster critical mass not only in the American and world economies but also put the world democracies in jeopardy.

Some experts maintain that a U.S. government economic relief package might lead to socialism. I am not an economist, so I will let that issue sit. However, as a historian I know what happened when the European and American economies collapsed in the late 1920s and early 1930s. The role of government expanded exponentially in Europe and the United States. The Soviet system, already well entrenched in socialist totalitarianism, saw Stalin tighten his grip with the doctrine of "socialism in one country," which allowed him to dispense with political opposition real and imagined. German economic collapse contributed to the Nazi rise to power in 1933. The alternatives in the Spanish civil war were between a fascist dictatorship and a communist dictatorship. Dictatorships also proliferated across Eastern Europe.

In the United States, the Franklin Roosevelt administration vastly expanded the role and power of government. In Asia, Japanese militarists gained control of the political process and then fed Japan's burgeoning industrial age economy with imperialist lunges into China and Korea; the first steps toward the greatest conflagration in the history of mankind ... so far ... World War II ultimately resulted. That's what happened the last time the world came to a situation resembling critical mass. Scores upon scores of millions of people died.

Could it happen again? Bourgeois democracy requires a vibrant capitalist system. Without it, the role of the individual shrinks as government expands. At the very least, the dimensions of the U.S. government economic intervention will foster a growth in bureaucracy to administer the multi-faceted programs necessary for implementation. Bureaucracies, once established, inevitably become self-serving and self-perpetuating. Will this lead to "socialism" as some conservative economic prognosticators suggest? Perhaps. But so is the possibility of dictatorship. If the American economy collapses, especially in wartime, there remains that possibility. And if that happens the American democratic era may be over. If the world economies collapse, totalitarianism will almost certainly return to Russia, which already is well along that path in any event. Fragile democracies in South America and Eastern Europe could crumble.

A global economic collapse will also increase the chance of global conflict. As economic systems shut down, so will the distribution systems for resources like petroleum and food. It is certainly within the realm of possibility that nations perceiving themselves in peril will, if they have the military capability, use force, just as Japan and Nazi Germany did in the mid-to-late 1930s. Every nation in the world needs access to food and water. Industrial nations -- the world powers of North America, Europe, and Asia -- need access to energy. When the world economy runs smoothly, reciprocal trade meets these needs. If the world economy collapses, the use of military force becomes a more likely alternative. And given the increasingly rapid rate at which world affairs move; the world could devolve to that point very quickly.

### Uniq Wall

#### Leadership means it’ll get fixed

MERCURY NEWS 9 – 30 – 13 <http://www.mercurynews.com/opinion/ci_24208446/mercury-news-editorial?source=rss>

As we once again experience the brinkmanship in our dysfunctional Congress that points to a government shutdown, the worst of it is this: It's just a practice round.

The main event comes later this month, when Congress must raise the debt ceiling or cause the nation to default on its debts. Federal officials can't be sure when the money will run out, but they think Oct. 17 is the deadline to avoid an international calamity.

Most Washington pundits seem convinced it won't come to that. It never has before.

But this time, we're not so sure.

The standoff increasingly looks like an ideological holy war, with reason and caution sacrificed at the altar of victory regardless of the cost to the American economy. And while the Republican Party and President Barack Obama both have dug in, it's the extreme, outrageous ultimatums of the tea party conservatives who apparently control the GOP in the House that got us to this point. Now it's difficult to see where negotiations can even begin.

But somebody's got to do something. We need a hero. Knowing that one side or the other may take the political blame for a national default is cold comfort to working Americans just emerging from the last recession.

The imminent government shutdown may prove painful to some Americans, but mostly it's inconvenient, uncomfortable and nerve-racking. However, the nation failing to pay its debts would be a disaster internationally. It would shake this nation's reputation to its core, send stock markets plunging and, with them, the economy.

The federal government has been shut down before, and the nation survived. In 1995 and 1996, the last time politics led to a shutdown, it was the Republicans who took the heat. They underestimated then-President Bill Clinton and misread the public's mood. They paid for it at the polls.

This time the GOP is blaming the president for being unwilling to negotiate -- but how you negotiate on a demand to stop or delay health care reform when it's already under way is beyond us. What's the compromise? Make it fail?

Hitting a firm debt ceiling and defaulting on financial obligations is another story. And, to contort a phrase from unsuccessful presidential candidate and billionaire Ross Perot, that giant sucking sound you hear is the leadership vacuum in our nation's capital.

We don't know the solution to the stalemate. Giving in to blackmail never is a good idea, but there has to be a way out for both sides that will save the nation from default.

Economic calamity Oct. 17 cannot be an option for this great, or at least once great, nation.

We need a hero. The leader who finds the way out of this is the one who will score with the public. And won't that be better than being able to blame the other guys for disaster?

#### We control the direction – they’ll back down unless they smell blood in the water

WASHINGTON TIMES 9 – 30 – 13 Short-term shutdown would pose little threat to national economy, <http://www.washingtontimes.com/news/2013/sep/30/short-term-shutdown-would-pose-little-threat-to-na/>

Boehner behind the scenes?

Joseph Lake, a U.S. analyst for The Economist Intelligence Unit, said he is hopeful that the strategy of House Speaker John A. Boehner, Ohio Republican, was to tie the GOP’s bid to delay Obamacare, the president’s health care reform law, to the government funding measure because he knows the economic impact from a temporary shutdown while the parties duke it out will be far more limited than that from a lapse of the $16.7 trillion debt limit later this month.

“The most optimistic reading of the current situation is that [the Ohio Republican] has, in effect, turned the budget talks into a referendum on Obamacare, because he realizes that to do so with the debt ceiling would be willfully irresponsible,” he said. “The more pessimistic take is that the first government shutdown in 17 years will embolden rank-and-file Republicans in the House to act just as recklessly when they are required to raise the government debt ceiling,” precipitating a real economic crisis.

Mr. Lake expects Republican allies in the business community, who are nearly unanimously calling for a timely increase in the debt limit, to prevail upon House Republicans to act before the Oct. 17 deadline when the Treasury says it will run out of borrowing authority and have only $30 billion in cash to pay daily bills that reach as high as $60 billion.

#### Obama is holding the line now

THE HILL 10 – 1 – 13 Obama schedules events to hammer Boehner on shutdown, <http://thehill.com/homenews/administration/326009-obama-schedules-events-to-hammer-boehner-on-shutdown>

President Obama will hold a series of events in the coming days to highlight the consequences of the government shutdown.

The events will hammer home the White House’s argument that it is Republicans who are preventing the government from reopening, White House aides say. They will also portray Speaker John Boehner (R-Ohio) as unwilling to buck a “faction” of the Republican caucus.

On Thursday, the president will appear at a local construction company that has benefited from federal loans. While there, he will highlight the real-world consequences of a shutdown, while casting blame for the crisis at the feet of House leadership.

The speech will follow a meeting Wednesday between Obama and top corporate executives, intended to force the hand of Republicans and pressure them to come to the table with a deal.

The meeting will remind the business leaders of the “consequences of the mere flirtation of default,” White House press secretary Jay Carney said on Tuesday.

On Tuesday, Obama appeared in the Rose Garden, using the bully pulpit to underscore the fact that he would not compromise on the current budget fight or the upcoming debt-ceiling clash, which White House officials say would be catastrophic to the economy.

“I will not negotiate over Congress’s responsibility to pay bills it’s already racked up,” Obama told reporters in a 20-minute statement. “I’m not going to allow anybody to drag the good name of the United States of America through the mud just to refight a settled election or extract ideological demands.”

The president’s apparent resoluteness came even as the White House grappled with the practical consequences of a shutdown.

In the White House press office, officials normally devoted to spinning the president’s message picked up some of the grunt work — like shepherding reporters across the White House grounds and placing the president’s remarks on his podium — usually reserved for now-furloughed low-level staffers.

The White House’s Twitter feed even promoted the wrong time for Obama’s remarks, more indication of the behind-the-scenes strain.

Most of the White House’s 438-member staff was deemed nonessential and sent home by midday, with only 129 staying at work. In the White House residence, only 15 of the 90 staffers were not furloughed.

The administration wouldn’t comment on who specifically was allowed to continue working, and who was sent home. But both White House senior adviser Valerie Jarrett and photographer Pete Souza could be observed through the windows of the Oval Office Tuesday afternoon.

The shutdown also threatened to throw a wrench in the president’s planned departure for an economic summit in Asia this weekend. Former President Clinton scrapped a trip to Japan during the 1995 shutdown, instead dispatching then-Vice President Al Gore.

Carney would only say that the trip remained on the president’s schedule, dodging questions about whether it was even logistically possible for Obama to travel amid a shutdown.

Despite the squeeze on resources, senior administration officials say the president has no intention to budge on this issue — or on the fight over the debt ceiling.

“It would set a really bad precedent,” one former senior administration official said. “And it would be a mistake on both fronts.”

There is a concern among White House officials that if Democrats accept a continuing resolution that includes concessions to the Tea Party, those House members would feel even more emboldened before fights over the debt ceiling or a funding bill that covers the entire year.

The White House is also betting that House Republicans will feel pressured to give in over the course of the next few days, according to the former administration official.

A spokesman for the president on Tuesday pointed to a pair of polls showing that voters are opposed to the idea of shutting down the government to oppose ObamaCare.

### A2 U Overwhelms

#### Will get done – but will be a fight – don’t assume uniqueness overwhelms

GARCIA 9 – 26 – 13 Macroeconomic Leading Economist Writer for Financial Times’ Alphaville, formerly Dow Jones Financial news Writer [Cardiff Garcia, Meet the new idiots, same as the… actually these idiots might be worse, <http://ftalphaville.ft.com/2013/09/26/1647792/meet-the-new-idiots-same-as-the-actually-these-idiots-might-be-worse/>]

To the seasoned finance blogger, US Congressional asshattery lacks the terrifying intrigue it had in 2011.

The world was in worse shape back then. It was pre-LTROs in Europe and high season for Eur-exit speculation, while in the US we were confronting another dispiriting summer slowdown and the legitimate possibility of a double-dip recession. As the possibility that the debt ceiling wouldn’t be lifted in time became frighteningly real, financial markets started flashing signs of acute distress, and consumer confidence cratered.

We got through it. The debt ceiling was raised enough to avoid approaching it again until after the end of the 2012 election. Earlier this year, notwithstanding the Trillion Dollar Coin distraction, the ceiling was raised once more.

And given the many fiscal battles of the past three years, some of which were the result of the 2011 agreement — the fiscal cliff, sequestration cuts, government shutdowns averted by continuing resolutions — it’s all become quite stale. And it’s also been easy to think that once again Congress will come to its senses at the last minute and, at the very least, avoid catastrophe.

But we just came across this piece by Ezra Klein arguing that the dispute between Republicans and Democrats this year is worse than it was in 2011, when they actually agreed on a few things:

In 2013, however, the parties don’t agree on anything:

1) Republicans believe Obamacare’s unpopularity gives them a mandate to defund or delay the law. Democrats believe that their victory in the last election gives them a mandate to implement their agenda.

2) Republicans believe there should be negotiations around raising the debt ceiling. Democrats emphatically don’t. Currently, there are no ongoing negotiations, nor any plan for them.

3) Republicans believe the aim of these negotiations should be defunding or delaying Obamacare. Democrats say they will not, under any circumstances, delay or defund Obamacare.

There is, quite literally, no shared ground for a deal. Democrats and Republicans disagree on everything from the principle of negotiations to the potential objective of those negotiations. …

Most in Washington and on Wall Street hold to a serene faith that the two parties will figure something out. And that’s probably right. But in interviews with both Democratic and Republican staff from the House and Senate leadership, as well as the White House, I have yet to hear a plausible story for how they figure something out.

We don’t have much more to add with respect to the politics, which has never been our specialty. Klein’s points resemble those made in a recent post by Stan Collender, who also worries about the extent to which the Congressional Republican leadership has control over its own members. See also Paul Krugman.

It seems at the moment as if the decision about whether to pass another continuing resolution or shut down the government will come down to the wire next week. A government shutdown wouldn’t be a complete disaster, especially if it’s short-lived, and double-especially if an agreement to get it up and running again helps lead to a deal on the debt ceiling.

### A2 Shutdown Thumper

#### \*\*\*\*Shutdown was a win for Obama – mobilizes his agenda

NBC NEWS 10 – 1 – 13 <http://nbcpolitics.nbcnews.com/_news/2013/10/01/20763839-winners-and-losers-of-the-government-shutdown?lite>

Here is a look at some of the shutdown's winners and losers.

Winners:

President Barack Obama

At the end of the day, Obama's signature domestic achievement — the Affordable Care Act — survived this fight intact.

What's more, the president didn't have to offer any concessions in exchange for leaving his namesake "Obamacare" law alone.

Unlike the 2011 debt-ceiling fight, when the administration agreed to the automatic spending cuts that would eventually form the basis of the sequester, this time the administration held the line and didn't yield much ground to Republicans.

 The developments mark a somewhat stunning turnaround for Obama's political fortunes over the last month.

Just a few week's ago, the administration was struggling badly to win congressional approval for intervention in Syria — an initiative which had no less than Obama's second-term relevance riding on it.

Now, Obama has dispensed with the Syria issue (for now) through diplomacy, and scored a major win over Republicans -- a rare victory, given the waning prospects for immigration reform or major gun control legislation during his presidency.

### Court Links

#### Courts link

Mirengoff 10 [Paul E. Mirengoff, JD Stanford, Attorney in DC, http://webcache.googleusercontent.com/search?q=cache:aNOGdaFrKhYJ:www.fed-soc.org/debates/dbtid.41/default.asp+obama+minimalism+blame+court+confirmation&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a, 6-23-10]

There's a chance that the Democrats' latest partisan innovation will come back to haunt them. Justice Sotomayor and soon-to-be Justice Kagan are on record having articulated a traditional, fairly minimalist view of the role of judges. If a liberal majority were to emerge -- or even if the liberals prevail in a few high profile cases -- the charge of "deceptive testimony" could be turned against them. And if Barack Obama is still president at that time, he likely will receive some of the blame.

### AT: Cong not key

#### Executive won’t act unilaterally – quotes FROM the treasury secretary directly

CNBC 10 – 1 – 13 Shutdown is nothing: Debt ceiling debacle could be ugly, John W. Schoen CNBC, <http://www.nbcnews.com/business/shutdown-nothing-debt-ceiling-debacle-could-be-ugly-8C11311718>

The Treasury has said it has no legal authority to decide which bills to pay and which to ignore. It's also not clear whether its payment system could be rejiggered to prioritize some payments over others.

In any case, failing to make any federal obligations would raise lasting questions about the U.S. government's "full faith and credit."

"Any plan to prioritize some payments over others is simply default by another name," Treasury Secretary Jack Lew warned in a letter to lawmakers last week.

Some default deniers also argue that President Obama has the power to override Congress and authorize the Treasury to continue borrowing, based on language in the 14th Amendment ("The validity of the public debt of the United States ... shall not be questioned.")

That's another novel theory Lew sought to slap down in a speech last month

"Raising the debt limit is Congress's responsibility because Congress, and Congress alone, is empowered to set the maximum amount the government can borrow to meet its financial obligations," he told the Economic Club of Washington, D.C.

### AT: Dickerson Econ Resilient

#### Destroys the global economy

DAVIDSON 9 – 15 – 13 co-founder and co-host of Planet Money, a co-production of the NYT and NPR [Adam Davidson, Our Debt to Society, http://www.nytimes.com/2013/09/15/magazine/our-debt-to-society.html?pagewanted=all&\_r=1&]

The Daily Treasury Statement, a public accounting of what the U.S. government spends and receives each day, shows how money really works in Washington. On Aug. 27, the government took in $29 million in repaid agricultural loans; $75 million in customs and duties; $38 million in the repayment of TARP loans; some $310 million in taxes; and so forth. That same day, the government also had bills to pay: $247 million in veterans-affairs programs; $2.5 billion to Medicare and Medicaid; $1.5 billion each to the departments of Education and Defense. By the close of that Tuesday, when all the spending and the taxing had been completed, the government paid out nearly $6 billion more than it took in.

This is the definition of a deficit, and it illustrates why the government needs to borrow money almost every day to pay its bills. Of course, all that daily borrowing adds up, and we are rapidly approaching what is called the X-Date — the day, somewhere in the next six weeks, when the government, by law, cannot borrow another penny. Congress has imposed a strict limit on how much debt the federal government can accumulate, but for nearly 90 years, it has raised the ceiling well before it was reached. But since a large number of Tea Party-aligned Republicans entered the House of Representatives, in 2011, raising that debt ceiling has become a matter of fierce debate. This summer, House Republicans have promised, in Speaker John Boehner’s words, “a whale of a fight” before they raise the debt ceiling — if they even raise it at all.

If the debt ceiling isn’t lifted again this fall, some serious financial decisions will have to be made. Perhaps the government can skimp on its foreign aid or furlough all of NASA, but eventually the big-ticket items, like Social Security and Medicare, will have to be cut. At some point, the government won’t be able to pay interest on its bonds and will enter what’s known as sovereign default, the ultimate national financial disaster achieved by countries like Zimbabwe, Ecuador and Argentina (and now Greece). In the case of the United States, though, it won’t be an isolated national crisis. If the American government can’t stand behind the dollar, the world’s benchmark currency, then the global financial system will very likely enter a new era in which there is much less trade and much less economic growth. It would be, by most accounts, the largest self-imposed financial disaster in history.

Nearly everyone involved predicts that someone will blink before this disaster occurs. Yet a small number of House Republicans (one political analyst told me it’s no more than 20) appear willing to see what happens if the debt ceiling isn’t raised — at least for a bit. This could be used as leverage to force Democrats to drastically cut government spending and eliminate President Obama’s signature health-care-reform plan. In fact, Representative Tom Price, a Georgia Republican, told me that the whole problem could be avoided if the president agreed to drastically cut spending and lower taxes. Still, it is hard to put this act of game theory into historic context. Plenty of countries — and some cities, like Detroit — have defaulted on their financial obligations, but only because their governments ran out of money to pay their bills. No wealthy country has ever voluntarily decided — in the middle of an economic recovery, no less — to default. And there’s certainly no record of that happening to the country that controls the global reserve currency.

Like many, I assumed a self-imposed U.S. debt crisis might unfold like most involuntary ones. If the debt ceiling isn’t raised by X-Day, I figured, the world’s investors would begin to see America as an unstable investment and rush to sell their Treasury bonds. The U.S. government, desperate to hold on to investment, would then raise interest rates far higher, hurtling up rates on credit cards, student loans, mortgages and corporate borrowing — which would effectively put a clamp on all trade and spending. The U.S. economy would collapse far worse than anything we’ve seen in the past several years.

Instead, Robert Auwaerter, head of bond investing for Vanguard, the world’s largest mutual-fund company, told me that the collapse might be more insidious. “You know what happens when the market gets upset?” he said. “There’s a flight to quality. Investors buy Treasury bonds. It’s a bit perverse.” In other words, if the U.S. comes within shouting distance of a default (which Auwaerter is confident won’t happen), the world’s investors — absent a safer alternative, given the recent fates of the euro and the yen — might actually buy even more Treasury bonds. Indeed, interest rates would fall and the bond markets would soar.

While this possibility might not sound so bad, it’s really far more damaging than the apocalyptic one I imagined. Rather than resulting in a sudden crisis, failure to raise the debt ceiling would lead to a slow bleed. Scott Mather, head of the global portfolio at Pimco, the world’s largest private bond fund, explained that while governments and institutions might go on a U.S.-bond buying frenzy in the wake of a debt-ceiling panic, they would eventually recognize that the U.S. government was not going through an odd, temporary bit of insanity. They would eventually conclude that it had become permanently less reliable. Mather imagines institutional investors and governments turning to a basket of currencies, putting their savings in a mix of U.S., European, Canadian, Australian and Japanese bonds. Over the course of decades, the U.S. would lose its unique role in the global economy.

The U.S. benefits enormously from its status as global reserve currency and safe haven. Our interest and mortgage rates are lower; companies are able to borrow money to finance their new products more cheaply. As a result, there is much more economic activity and more wealth in America than there would be otherwise. If that status erodes, the U.S. economy’s peaks will be lower and recessions deeper; future generations will have fewer job opportunities and suffer more when the economy falters. And, Mather points out, no other country would benefit from America’s diminished status. When you make the base risk-free asset more risky, the entire global economy becomes riskier and costlier.