# UGA DG Aff Cites – GSU 2013

# 1 vs. Mich BJ

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#### The United States Federal Judiciary should substantially increase environmental restrictions on the President of the United States’ authority to introduce armed forces into hostilities.

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#### Contention 1: Environmental Destruction

#### The DOD is the largest polluter globally – exemptions prevent compliance

ET 10 (EarthTalk, “U.S. Military – The World's Largest Polluter” – Political Affairs, 11/1, http://www.politicalaffairs.net/u-s-military-the-world-s-largest-polluter/)

As the world’s largest polluter, the U.S. military has its work cut out for it when it comes to greening its operations. According to the nonprofit watchdog group, Project Censored, American forces generate some 750,000 tons of toxic waste annually—more than the five largest U.S. chemical companies combined. Although this pollution occurs globally on U.S. bases in dozens of countries, there are tens of thousands of toxic “hot spots” on some 8,500 military properties right here on America soil. “Not only is the military emitting toxic material directly into the air and water,” reports Project Censored, “it’s poisoning the land of nearby communities, resulting in increased rates of cancer, kidney disease, increasing birth defects, low birth weight and miscarriage.” The non-profit Military Toxics Project is working with the U.S. government to identify problem sites and educate neighbors about the risks. Meanwhile, the U.S. military manages 25 million acres of land that provides habitat for some 300 threatened or endangered species. The military has harmed endangered animal populations by bomb tests (and been sued for it), reports Project Censored, and military testing of low-frequency underwater sonar technology has been implicated in the stranding deaths of whales worldwide. Despite being linked to such problems, the U.S. Department of Defense (DoD) has repeatedly sought exemptions from Congress for compliance with federal laws including the Migratory Bird Treaties Act, the Wildlife Act, the Endangered Species Act, the Clean Air Act and the National Environmental Policy Act. It’s unclear whether the U.S. military is taking heed of criticisms in regard to pollution and endangered species management, but it is undoubtedly concerned about climate change, as its effects on the environment could lead to unprecedented natural resource wars and mass migrations of people. And reducing our reliance on potentially hostile foreign oil sources is a short term national security imperative as well. A recent Obama administration directive calls for the DoD to draw 20 percent of its power from renewable sources by 2020. Nikihl Sonnad of the GreenFuelSpot website reports that the Army and Air Force are planning to include solar arrays on several bases in sunny western states. The Air Force is also building the nation’s largest biomass energy plants in Florida and Georgia, and the Navy is building three large geothermal energy plants and funding research into extracting energy from ocean waves.

#### Environmental damage from armed conflict will increase – collateral damage and low-tech weaponry

Parsons 98 (Rymn James – Lieutenant Commander, JAGC, U.S. Navy. Staff Judge Advocate to Commander, “The Fight to Save the Planet: U.S. Armed Forces, "Greenkeeping," and Enforcement of the Law Pertaining to Environmental Protection During Armed Conflict”, 1998, 10 Geo. Int'l Envtl. L. Rev. 441, lexis)

Environmental damage occurs with any adverse, incremental change in the existing status of the environment. n138 What then, is the "environment"? There are many definitions but none is universally accepted. n139 One might define the environment as the sum total of the components and constituents of the atmosphere, [\*460] biosphere, geosphere, hydrosphere, and lithosphere. n140 Another definition is that the environment is anything not made by humans. n141 States have been reluctant to expand the definition of environment to include such things as natural resources, climate modification, biodiversity, and ecosystems for fear of limiting their military options. n142 The U.S. Council on Environmental Quality's definition of the environment is "the natural and physical environment and the relationship of people with that environment." n143 This definition illustrates the problems of breadth, ambiguity, and circularity that plague this most basic concept, viz., exactly what are we attempting to protect. The real controversy lies not in defining "environment" but in identifying the threshold of damage that will give rise to a violation of international law. n144 In the future, armed conflict will continue and the damage from armed conflict, based on current trends, is certain to increase. n145 Modern technology has brought us to the age of new and more powerful precision guided or "smart" weapons, n146 but not every combatant has "smart" weapons in its arsenal and even those powers with "smart" weapons may not use them exclusively. For example, in the Gulf War, the United States mixed laser-guided bomb and missile attacks on Iraqi military installations with "carpet bombing" of the Iraqi Republican Guard. The former were much reported on the nightly television news; the latter was a much greater portion of the total ordnance expended in the air campaign. n147 Despite significant advances, "surgical precision" in the delivery of weapons is not yet [\*461] the norm even among the best of modern armed forces. n148 Significant collateral damage to the environment must therefore be anticipated even when precision guided munitions are used. In some cases, decidedly "low-tech" weapons such as contact naval mines remain militarily useful and plentiful. n149 They also have the advantage of being affordable by poor nations and nations without the capability to employ sophisticated weapons systems. Other powerful "poor man's" weapons of mass destruction include gas-enhanced explosives, biological and chemical weapons. n150 As the level of a weapon's sophistication decreases and as the reach of its effects increases, collateral damage to the environment also increases. In order to protect the environment, legal restraints on the use of all weapons are needed. Moral restraints have been ineffective. Tolerance of environmental damage during war is deep-rooted. n151 Many ethical traditions including Judeo-Christian, Muslim, Greek, and Taoist value nature. But none of these ancient cultural norms have operated in any significant way to limit environmental destruction in wartime. n152 Indeed, tolerance for environmental damage may be growing despite advancing military technologies that promise a lessening of adverse environmental impact. n153

#### Warfare techniques cause irreversible environmental destruction that has a ripple effect globally – invisible threshold now

Cohan 3 (John Alan – J.D., Loyola Law School, “MODES OF WARFARE AND EVOLVING STANDARDS OF ENVIRONMENTAL PROTECTION UNDER THE INTERNATIONAL LAW OF WAR”, 2003, 15 Fla. J. Int'l L. 481, lexis)

A further problem is that predictions of the extent of damage to an environment are somewhat tentative. The reverberations from environmental harm are quixotic compared to the reverberations from harm done to conventional targets such as a military air field or radar apparatus. The building can be rebuilt, and the impact on the surrounding infrastructure is somewhat straightforward. But in contrast, environmental damage, whether based on collateral damage or direct attacks on the environment itself, is something that has much more complex reverberations. Moreover, environmental damage is often difficult to contain or control, regardless of the intent of the actor. The environmental harm caused by Iraq's actions during Desert Storm continues to have adverse effects in terms of poisoning of the soil and waters, and will continue to have adverse effects on the local region, if not the world's oceans, for many years to come. On the other hand, "many predictions of what Gulf War damage would do to the environment proved exaggerated." n228 Thus, operations in future wars may well need to undergo scrutiny over a period of time before the degree of environmental risk can be established. Often enough, environmental damage may prove irreversible. Destruction or contamination of an area by chemical or biological agents may require the relocation of people and the migration (or extinction) of local species. An example of this, mentioned above, is the Scottish island of Gruinard which to this day remains contaminated with the causative agent of anthrax. Today military leaders and policymakers often display a growing concern for the environment by considering the foreseeability of environmental damage when they calculate proportionality. This is in contrast to wars of, say, fifty years ago, where concern over war's devastating effects on the environment was somewhat remote by comparison. The future will certainly bring us greater abilities to effectively manipulate the potentially dangerous forces that are pent-up in [\*538] the environment. On humanitarian principles, our efforts to develop environmental modification techniques needs to be dedicated to the benefit of humankind and nature. They must be carried out in good faith, facilitated by international understanding and cooperation and in the spirit of good neighborliness. The global environment is being subjected to ever more serious strains by a growing world population that seeks at least the basic necessities of life as well as some of its amenities. In order to help ensure that the increasingly limited resources of our environment are not further reduced by hostile military activities, it is urged that environmental issues in general and those raised by environmental warfare in particular be widely publicized, through schools, the press and by other means, in order to help develop and strengthen cultural norms in opposition to military activities that cause direct or indirect environmental harm.

#### Biodiversity is key to a variety of human services

Coyne and Hoekstra 7 – \* Professor at the University of Chicago in the Department of Ecology and Evolution, wrote over 100 scholarly papers and a scholarly book, Speciation AND \*\*professor of biology in the Department of Organismic and Evolutionary Biology at Harvard University (Jerry & Hopi, 9/24/07, “The Greatest Dying,” <http://www.truthout.org/article/jerry-coyne-and-hopi-e-hoekstra-the-greatest-dying>)

We are relentlessly taking over the planet, laying it to waste and eliminating most of our fellow species. Moreover, we're doing it much faster than the mass extinctions that came before. Every year, up to 30,000 species disappear due to human activity alone. At this rate, we could lose half of Earth's species in this century. And,unlike with previous extinctions, there's no hope that biodiversity will ever recover, since the cause of the decimation - us - is here to stay.     To scientists, this is an unparalleled calamity, far more severe than global warming, which is, after all, only one of many threats to biodiversity. Yet global warming gets far more press. Why? One reason is that, while the increase in temperature is easy to document, the decrease of species is not. Biologists don't know, for example, exactly how many species exist on Earth. Estimates range widely, from three million to more than 50 million, and that doesn't count microbes, critical (albeit invisible) components of ecosystems. We're not certain about the rate of extinction, either; how could we be, since the vast majority of species have yet to be described? We're even less sure how the loss of some species will affect the ecosystems in which they're embedded, since the intricate connection between organisms means that the loss of a single species can ramify unpredictably.     But we do know some things. Tropical rainforests are disappearing at a rate of 2 percent per year. Populations of most large fish are down to only 10 percent of what they were in 1950. Many primates and all the great apes - our closest relatives - are nearly gone from the wild.     And we know that extinction and global warming act synergistically. Extinction exacerbates global warming: By burning rainforests, we're not only polluting the atmosphere with carbon dioxide (a major greenhouse gas) but destroying the very plants that can remove this gas from the air. Conversely, global warming increases extinction, both directly (killing corals) and indirectly (destroying the habitats of Arctic and Antarctic animals). As extinction increases, then, so does global warming, which in turn causes more extinction - and so on, into a downward spiral of destruction.     Why, exactly, should we care? Let's start with the most celebrated case: the rainforests. Their loss will worsen global warming - raising temperatures, melting icecaps, and flooding coastal cities. And, as the forest habitat shrinks, so begins the inevitable contact between organisms that have not evolved together, a scenario played out many times, and one that is never good. Dreadful diseases have successfully jumped species boundaries, with humans as prime recipients. We have gotten aids from apes, sars from civets, and Ebola from fruit bats. Additional worldwide plagues from unknown microbes are a very real possibility.     But it isn't just the destruction of the rainforests that should trouble us. Healthy ecosystems the world over provide hidden services like waste disposal, nutrient cycling, soil formation, water purification, and oxygen production. Such services are best rendered by ecosystems that are diverse. Yet, through both intention and accident, humans have introduced exotic species that turn biodiversity into monoculture. Fast-growing zebra mussels, for example, have outcompeted more than 15 species of native mussels in North America's Great Lakes and have damaged harbors and water-treatment plants. Native prairies are becoming dominated by single species (often genetically homogenous) of corn or wheat. Thanks to these developments, soils will erode and become unproductive - which, along with temperature change, will diminish agricultural yields. Meanwhile,with increased pollution and runoff, as well as reduced forest cover, ecosystems will no longer be able to purify water; and a shortage of clean water spells disaster.     In many ways, oceans are the most vulnerable areas of all. As overfishing eliminates major predators, while polluted and warming waters kill off phytoplankton, the intricate aquatic food web could collapse from both sides. Fish, on which so many humans depend, will be a fond memory. As phytoplankton vanish, so does the ability of the oceans to absorb carbon dioxide and produce oxygen. (Half of the oxygen we breathe is made by phytoplankton, with the rest coming from land plants.) Species extinction is also imperiling coral reefs - a major problem since these reefs have far more than recreational value: They provide tremendous amounts of food for human populations and buffer coastlines against erosion.     In fact, the global value of "hidden" services provided by ecosystems - those services, like waste disposal, that aren't bought and sold in the marketplace - has been estimated to be as much as $50 trillion per year, roughly equal to the gross domestic product of all countries combined. And that doesn't include tangible goods like fish and timber. Life as we know it would be impossible if ecosystems collapsed. Yet that is where we're heading if species extinction continues at its current pace.     Extinction also has a huge impact on medicine. Who really cares if, say, a worm in the remote swamps of French Guiana goes extinct? Well, those who suffer from cardiovascular disease. The recent discovery of a rare South American leech has led to the isolation of a powerful enzyme that, unlike other anticoagulants, not only prevents blood from clotting but also dissolves existing clots. And it's not just this one species of worm: Its wriggly relatives have evolved other biomedically valuable proteins, including antistatin (a potential anticancer agent), decorsin and ornatin (platelet aggregation inhibitors), and hirudin (another anticoagulant).     Plants, too, are pharmaceutical gold mines. The bark of trees, for example, has given us quinine (the first cure for malaria), taxol (a drug highly effective against ovarian and breast cancer), and aspirin. More than a quarter of the medicines on our pharmacy shelves were originally derived from plants. The sap of the Madagascar periwinkle contains more than 70 useful alkaloids, including vincristine, a powerful anticancer drug that saved the life of one of our friends.     Of the roughly 250,000 plant species on Earth, fewer than 5 percent have been screened for pharmaceutical properties. Who knows what life-saving drugs remain to be discovered? Given current extinction rates, it's estimated that we're losing one valuable drug every two years.     Our arguments so far have tacitly assumed that species are worth saving only in proportion to their economic value and their effects on our quality of life, an attitude that is strongly ingrained, especially in Americans. That is why conservationists always base their case on an economic calculus. But we biologists know in our hearts that there are deeper and equally compelling reasons to worry about the loss of biodiversity: namely, simple morality and intellectual values that transcend pecuniary interests. What, for example, gives us the right to destroy other creatures? And what could be more thrilling than looking around us, seeing that we are surrounded by our evolutionary cousins, and realizing that we all got here by the same simple process of natural selection? To biologists, and potentially everyone else, apprehending the genetic kinship and common origin of all species is a spiritual experience - not necessarily religious, but spiritual nonetheless, for it stirs the soul.     But, whether or not one is moved by such concerns, it is certain that our future is bleak if we do nothing to stem this sixth extinction. We are creating a world in which exotic diseases flourish but natural medicinal cures are lost; a world in which carbon waste accumulates while food sources dwindle; a world of sweltering heat, failing crops, and impure water.In the end,we must accept the possibility that we ourselves are not immune to extinction**.** Or,if we survive, perhaps only a few of us will remain, scratching out a grubby existence on a devastated planet**.** Globalwarming will seem like a secondary problem when humanity finally faces the consequences of what we have done to nature: not just another Great Dying, butperhapsthe greatest dying of them all.

#### Rulings during hostilities are key – allows for binding environmental statutes

Dorfman 4 (Bridget – J.D. Candidate, 2004, University of Pennsylvania Law School, “PERMISSION TO POLLUTE: THE UNITED STATES MILITARY, ENVIRONMENTAL DAMAGE, AND CITIZENS' CONSTITUTIONAL CLAIMS”, 2004, 6 U. Pa. J. Const. L. 604, lexis)

The United States military establishment is a significant polluter of the air, land, and water. n1 The Cold War demanded enormous consumption of resources so that weapons could be developed and military dominance could be preserved. n2 The Army, Navy, Air Force, and Marines test weapons, build dams and roads, discharge toxic wastes, create noise, and release pollutants into rivers and oceans and air. The United States military is the most powerful and expensive military force that has ever existed, and this environmental damage is one of the by-products. n3 One strategy employed by the citizens who want to protect the environment and themselves is to sue the government under any one of a number of environmental statutes. In some of these lawsuits, the plaintiffs include claims that the military has violated their federal constitutional rights. Yet the federal courts regularly and summarily dismiss these constitutional claims. The prioritization of military needs over environmental needs may benefit the military in the short term while a particular weapon needs to be tested or personnel need to be trained. In the longer term, however, all Americans are harmed because the environment is itself a source of both health and security. This Comment examines how and why federal constitutional claims fail when asserted by citizens in lawsuits against the United [\*605] States military establishment. This Comment is broad in scope, surveying federal cases in which citizens raise constitutional claims regarding various military actions. While not all of these plaintiffs were motivated by their concern for the environment, environmental damage was the result of military action in all of these cases and environmental statutes provided the legal tools to stop the damage. Some cases reach back thirty years, to the beginning of the modern environmental movement. The scope is limited, however, to cases in American courts over military activities occurring inside the territorial United States. Therefore, the scope excludes the environmental pollution that results from actual warfare. n4 Three factors make the potential conflicts between the military and the environment increasingly relevant today. First, the current Bush administration has been criticized by congressional Democrats, nonprofit organizations, and other commentators not only for failing to enforce our environmental laws, n5 but also for rolling them back. n6 Second, America's war on terrorism and the war with Iraq n7 have created a more militarized world, with more training, troop movement, and weapons testing, all of which increase environmental degradation. Today's weapons are more destructive and more countries have them. National security has been at the forefront of the nation's consciousness since September 11, 2001, and conventional wisdom dictates that national security must clash with environmental protection goals. The memory of past terrorist attacks and the threat of future ones render Americans willing to sacrifice the environment for security, perhaps understandably. Third, this is a time of heightened concern for the environment; environmental ills are worsening n8 and environmental consciousness is increasing. n9 The environmental costs of nearly a half century of Cold [\*606] War preparations have come to light, and the public is less willing to accept environmental costs that would have been accepted without question in an earlier era. n10 Part I of this Comment begins with a brief introduction to the general relationship between the military and the environment, and then takes up the analysis of federal cases in which citizens have sued the military for environmental infractions under the Third and Fifth Amendments in Part II. Part III provides a discussion of some of the reasons why these constitutional claims fail. In Part IV the Comment concludes that the courts commit a disservice to all citizens by disregarding their legitimate claims under the Bill of Rights, by both prioritizing what the military claims it needs above the Constitution and by allowing environmental degradation to continue unnecessarily. I. The Military and the Environment The military establishment is subject to a panoply of environmental statutes, which can be grouped into a handful of categories. n11 One category consists of planning statutes such as the National Environmental Policy Act ("NEPA") n12 and the Endangered Species Act ("ESA"), n13 which require government agencies to consider the environmental consequences of their actions. Another category consists of prospective statutes such as the Clean Water Act ("CWA"), n14 the Clean Air Act ("CAA"), n15 the Resource Conservation and Recovery Act ("RCRA"), n16 and the Toxic Substances Control Act ("TSCA"), n17 which seek to minimize or eliminate pollution before it is created. Finally, there are retrospective statutes such as the Comprehensive [\*607] Environmental Response, Compensation and Liability Act ("CERCLA"), n18 which seek to clean up and restore the environment after the damage has been done. n19 In order to comply with these and other environmental statutes, the Defense of Department ("DoD") has a Deputy Under Secretary for Environmental Security and an entire bureaucratic structure complete with environmental audits, research and development, insertion of environmental performance standards into procurement contracts, training programs to impart environmental awareness to military personnel, and public forums in which to discuss cleanup plans. n20 The DoD issues a "Report on Environmental Compliance" every year, describing the environmental impacts of the various DoD divisions. n21 The DoD also spends between $ 2.5 and $ 3 billion on environmental compliance in the territorial United States alone. n22 Despite the DoD's budgetary commitment to the environment, the relationship between the military and the environment is an inherently tense one. One commentator notes a culture clash: The two subject matter areas are characterized by radically different institutional and structural contexts. Whereas the national security field involves a highly disciplined, largely secret enterprise mobilized behind unitary goal-oriented missions, frequently beyond the reach of judicial supervision, environmental policy has been made in a relatively transparent setting with a high degree of public consultation and input, with the institution of judicial review playing a catalytic role. n23 This tension is most starkly expressed by the military's belief that environmental laws do not even apply in wartime. n24 The military requires victory at nearly any cost; the environment bears the burden of that determination. Yet, according to commentator Stephen Dycus, there is a rising current of environmentalism in the military establishment, a realization that environmental stewardship is part and parcel of national security, not an impediment to it. n25 In 1990, then-Defense Secretary Dick Cheney said that "defense and the environment is not an either/or proposition. To choose between them is impossible in this [\*608] real world of serious defense threats and genuine environmental concerns." n26 Some Pentagon officials have expressed the same view, pledging to repair past environmental wrongs and adhere to a stricter code of environmental protection while protecting the country. n27 Yet the DoD's most recent authorization bill, sent to President Bush on November 12, 2003, for his signature, n28 provided for military exemptions from the ESA and the Marine Mammal Protection Act, and the Pentagon is pushing this year for further exemptions from the RCRA, CERCLA, and CAA. n29

#### Specifically with overseas installations

Carlson 2k (Commander Margaret – JAGC, U.S. Navy (B.A. Villanova University 1983, J.D., Marshall- Wythe School of Law at the College of William and Mary, “Environmental Diplomacy: Analyzing Why the U.S. Navy Still Falls Short Overseas”, 47 Naval L. Rev. 62, lexis)

Arguably, this new view toward environmental protection serves DoD and DON well and brings these institutions closer in step with civilian society. DOD is responsible for managing and caring for thousands of military installations and defense sites throughout the United States and overseas. Its operations are subject to the same environmental, safety, and health laws and regulations as private industry, as well as additional requirements for federal facilities. The day-to-day operations and activities of a typical military installation generally [\*70] mirror those of a small city. As a result, DOD installations face most of the same environmental problems confronting our nation's industrial and commercial sectors. n17 That is not to say that all is roses. Although domestic military installations are required to comply with many traditional U.S. environmental laws, overseas installations are not. The program we will explore, is built on the concepts encompassed in domestic legislation, but does not mirror that legislation verbatim. The environmental requirements applicable to our overseas installations reflect the peculiar balance of sovereignty inherent in the basing of foreign forces within a host nation. The requirements represent a unique synthesis of executive orders, U.S. domestic and host-nation environmental standards, DoD policy and international agreements. Often the obligations reflected by those requirements are self-imposed as a matter of policy rather than mandated as a matter of law. n18

#### Environmental discontent fuels anti-basing movements globally – collapses counter-terror and Iran and China containment

Scoville 6 (Ryan M. – Stanford Law School, “A Sociological Approach to the Negotiation of Military Base Agreements” 2006, 14 U. Miami Int'l & Comp. L. Rev. 1, lexis)

Over the past half century, the United States has relied on its overseas military bases to protect its interests and meet a range of national security goals. n1 Bases in East Asia, for example, were indispensable during both the Korean War and Vietnam. n2 U.S. facilities in the Pacific facilitated intelligence gathering, operated as logistics and command centers, and enabled rapid deployment to conflict zones. n3 In Europe, too, an expansive network of bases abetted the U.S. effort to foster stability and contain Soviet influence during the Cold War. n4 Extensive U.S. reliance on foreign bases, however, did not diminish with the fall of the Soviet Union. According to the Department of Defense, the United States currently owns or rents a total of 860 military installations in approximately 40 foreign countries. n5 Motivated [\*3] by strategic demands related to the war on terrorism, the Pentagon is today developing a basing strategy that will establish several new foreign installations while reducing reliance on others. n6 Poland, Bulgaria, and Romania will reportedly house new U.S. facilities before long. n7 The Bush administration may also establish several permanent military bases in Iraq and Afghanistan. n8 Facilities in Central Asia will facilitate the war on terrorism. n9 Newly established bases in the Middle East and Eastern Europe, in addition to others that the Bush administration will soon establish, are elements of a massive transformation in the layout of U.S. military installations overseas, a transformation so dramatic that it constitutes a "big bang" in forward deployment strategy. n10 Not since the beginning of the Cold War has the United States so drastically restructured its network of foreign bases. n11 In the short term, these bases are supposed to facilitate the war on terrorism and increase U.S. influence over states such as Iran and Syria. In the long term, the bases may contain a rising [\*4] China, much like bases in Germany, Greece, and Japan contained the Soviet Union years ago. Despite the United States's continuing reliance on foreign military bases, it cannot set up new installations abroad or maintain its current installations without imposing substantial burdens on receiving states. n12 Noisy military aircraft, base-related crime, environmental degradation, and the threat of attack from enemies of the United States are all significant drawbacks to housing U.S. forces, and these problems have consistently generated discontent in host nations. Residents of Okinawa, for example, have opposed the presence of U.S. forces in their prefecture since the early post-World War II period, n13 and citizens of the Philippines did similarly until the removal of U.S. bases in 1991. n14 Antibase protests have also become increasingly strident among South Korean citizens in recent years. n15 In each of these countries and several others, angry citizens have coalesced to form social movements. These citizens have picketed, petitioned, held referenda, and demanded reform. These social movements should matter to the United States. Anti-U.S. military base movements reflect the legitimate grievances of foreign citizens who host U.S. forces, and they affect the United States's ability to station its troops abroad. Organized opposition to bases in the Philippines required the Philippine government to alter its negotiating strategy with the United States on base-related issues and eventually led to the expiration of the two countries' military base agreement. n16 Anti-American sentiment in Saudi Arabia during the U.S. war in Afghanistan [\*5] prevented Saudi officials from allowing the United States to fly sorties from their territory. n17 Today, the United States is repositioning its forces in South Korea in part because of widespread Korean discontent. n18 Given that bases are and will likely remain an important component of U.S. foreign policy, and given that anti-base movements have constrained the United States's ability to operate bases overseas, it is important to consider the conditions that enable anti-base movements to achieve their aims. Clearly, not all movements are successful. For example, while opposition to U.S. military bases in the Philippines precipitated U.S. force withdrawal in 1991, bases remain in Okinawa, even though citizens there have protested the U.S. presence for decades. Being able to explain why some anti-base movements fail while others succeed would help the United States to proactively adapt base agreements to the political contexts of receiving states--an outcome that could both increase the sustainability of the U.S. forward deployment strategy and reduce the burden that that strategy places on host nations. Being able to anticipate effective anti-base movements would also allow the United States to manage its configuration of bases more efficiently by reducing the need for diplomatically costly, post hoc amendments to base agreements, and by helping to identify proactively local populations that will most require appeasement.

#### Containing Iran solves nuclear war

**London** **10** (Herbert – President Emeritus of Hudson Institute and Professor Emeritus of New York University, The Coming Crisis in the Middle East, Family Security Matters, 6/23, http://www.hudson.org/index.cfm?fuseaction=publication\_details&id=7101&pubType=HI\_Opeds)

The gathering storm in the Middle East is gaining momentum. War clouds are on the horizon and like conditions prior to World War I all it takes for explosive action to commence is a trigger. Turkey’s provocative flotilla - often described in Orwellian terms as a humanitarian mission - has set in motion a flurry of diplomatic activity, but if the Iranians send escort vessels for the next round of Turkish ships, it could present a casus belli. It is also instructive that Syria is playing a dangerous game with both missile deployment and rearming Hezbollah. According to most public accounts Hezbollah is sitting on 40,000 long, medium and short range missiles and Syrian territory has served as a conduit for military material from Iran since the end of the 2006 Lebanon War. Should Syria move its own scuds to Lebanon or deploy its troops as reinforcement for Hezbollah, a wider regional war with Israel could not be contained. In the backdrop is an Iran with sufficient fissionable material to produce a couple of nuclear weapons. It will take some time to weaponize missiles, but the road to that goal is synchronized in green lights since neither diplomacy nor diluted sanctions can convince Iran to change course. Iran is poised to be the hegemon in the Middle East. It is increasingly considered the “strong horse” as American forces incrementally retreat from the region. Even Iraq, ironically, may depend on Iranian ties in order to maintain internal stability. From Qatar to Afghanistan all political eyes are on Iran. For Sunni nations like Egypt and Saudi Arabia regional strategic vision is a combination of deal making to offset the Iranian Shia advantage and attempting to buy or develop nuclear weapons as a counter weight to Iranian ambition. However, both of these governments are in a precarious state. Should either fall, all bets are off in the Middle East neighborhood. It has long been said that the Sunni “tent” must stand on two legs, if one, falls, the tent collapses. Should that tent collapse and should Iran take advantage of that calamity, it could incite a Sunni-Shia war. Or feeling its oats and no longer dissuaded by an escalation scenario with nuclear weapons in tow, war against Israel is a distinct possibility. However, implausible it may seem at the moment, the possible annihilation of Israel and the prospect of a second holocaust could lead to a nuclear exchange. The only wild card that can change this slide into warfare is an active United States’ policy. Yet curiously, the U.S. is engaged in both an emotional and physical retreat from the region. Despite rhetoric which suggests an Iran with nuclear weapons is intolerable, it has done nothing to forestall that eventual outcome. Despite the investment in blood and treasure to allow a stable government to emerge in Iraq, the anticipated withdrawal of U.S. forces has prompted President Maliki to travel to Tehran on a regular basis. And despite historic links to Israel that gave the U.S. leverage in the region and a democratic ally, the Obama administration treats Israel as a national security albatross that must be disposed of as soon as possible. As a consequence, the U.S. is perceived in the region as the “weak horse,” the one that is dangerous to ride. In every Middle East capital the words “unreliable and United States” are linked. Those seeking a moderate course of action are now in a distinct minority. A political vacuum is emerging, one that is not sustainable and one the Iranian leadership looks to with imperial exhilaration.

#### Chinese containment prevents Asian arms races

Mauro 7 (Ryan – geopolitical analyst for Tactical Defense Concepts and for the Northeast Intelligence Network, founder of WorldThreats.com, national security advisor to the Christian Action Network, and an intelligence analyst with the Asymmetrical Warfare and Intelligence Center (AWIC), “The Consequences of Withdrawal from Iraq”, 5/7, http://www.worldthreats.com/?p=27)

Consequences in Asia American forces would be less able to block the shipment of drugs, banned goods, and WMD technology from North Korea to the Middle East. This increased revenue would help shore up North Korea’s oppressive regime, and allow them to arm our enemies. China’s rise in power would become inevitable and accelerated, as our Asian allies doubted our commitments, and would decide on appeasement and entering China’s sphere of influence, rather than relying upon America. The new dynamics in Asia, with allies of America questioning our strength, would result in a nuclear arms race. Japan would have no option but to develop nuclear weapons (although she may do so regardless). Two scenarios would arise: China would dominate the Pacific and America’s status as a superpower would quickly recede, or there would be a region wide nuclear stalemate involving Burma, China, India, Pakistan, North Korea, South Korea, Japan, and possibly Taiwan and Australia.

#### Causes nuclear war

**Cimbala 10** - Prof. of Political Science @ Penn State, (Stephen, Nuclear Weapons and Cooperative Security in the 21st Century, p. 117-8)

Failure to contain proliferation in Pyongyang could spread nuclear fever throughout Asia. Japan and South Korea might seek nuclear weapons and missile defenses. A pentagonal configuration of nuclear powers in the Pacific basis (Russia, China, Japan, and the two Koreas – not including the United States, with its own Pacific interests) could put deterrence at risk and create **enormous temptation toward nuclear preemption**. Apart from actual use or threat of use, North Korea could exploit the mere existence of an assumed nuclear capability in order to support its coercive diplomacy. As George H. Quester has noted: If the Pyongyang regime plays its cards sensibly and well, therefore, the world will not see its nuclear weapons being used against Japan or South Korea or anyone else, but will rather see this new nuclear arsenal held in reserve (just as the putative Israeli nuclear arsenal has been held in reserve), as a deterrent against the outside world’s applying maximal pressure on Pyongyang and as a bargaining chip to extract the economic and political concessions that the DPRK needs if it wishes to avoid giving up its peculiar approach to social engineering. A **five-sided nuclear competition** in the Pacific would be linked, in geopolitical deterrence and proliferation space, to the existing nuclear deterrents in India and Pakistan, and to the emerging nuclear weapons status of Iran. An **arc of nuclear instability** from Tehran to Tokyo could place U.S. proliferation strategies into the ash heap of history and call for more drastic military options, not excluding preemptive war, defenses, and counter-deterrent special operations. In addition, an eight-sided nuclear arms race in Asia would increase the likelihood of accidental or inadvertent nuclear war. It would do so because: (1) some of these states already have histories of protracted conflict; (2) states may have politically unreliable or immature command and control systems, especially during a crisis involving a decision for nuclear first strike or retaliation; unreliable or immature systems might permit a technical malfunction that caused an unintended launch, or a deliberate but unauthorized launch by rogue commanders; (3) faulty intelligence and warning systems might cause one side to misinterpret the other’s defensive moves to forestall attack as offensive preparations for attack, thus triggering a mistaken preemption.

#### Plan solves – it’s a sign of goodwill and trust\*

Weyand 12 (Matt –Executive Online Editor, Indiana Journal of Global Legal Studies, “Department of Defense, Inc.: The DoD's Use of Corporate Strategies to Manage U.S. Overseas Military Bases”, 2012, 19 Ind. J. Global Leg. Stud. 391, lexis)

The United States also is able to usually avoid costs by contracting out of liability for any pollution associated with its overseas military bases. Prior to building or using an overseas military base, the United States negotiates a contract with the host nation. n109 This contract, which creates an "alliance" between the United States and the host nation, is a "short, straightforward treat[y] that express[es] 'common objectives' related to 'national security' and 'international threats to the peace.'" n110 Once the United States has formed an "alliance" with the host nation, it negotiates a Status of Forces Agreement (SOFA). The SOFA "establishes the framework under which armed forces operate within a foreign country" n111 ; it ensures that U.S. personnel present in a host nation have rights and legal protections. n112 Although the United States shares jurisdiction with some countries, it primarily uses the SOFA to retain exclusive jurisdiction, and to "put any U.S. forces stationed in the host country as far beyond its domestic laws as possible." n113 SOFAs undermine the host nation's sovereignty, n114 and thus inevitably "give rise to explosive political disputes." n115 Host nations must also engage in "burden sharing" with the United States. n116 Under "burden sharing," host nations pay the United States to support its presence in their country. n117 In 2002, Japan, which spends the largest amount of any country, paid $ 4.4 billion. Many host nations, including major players such as Germany and Japan, are becoming increasingly frustrated with the U.S. military's "above the law" attitude. Under Germany's SOFA with the United States, the United States is responsible for environmental and noise pollution. n118 [\*406] Nevertheless, the U.S. military has polluted the land around its bases in Germany and has refused to clean it up. Germany's ire with the U.S. military has kicked off a race to the bottom among the poorer countries in Eastern Europe, such as Bulgaria, Poland, and Romania, which have less stringent environmental regulations. n119 These countries are "poor and desperate enough to be willing . . . to let the Americans pollute as they wish, cost free, in order to get what economic benefits they can." n120 The United States has polluted in Japan. The U.S. military has used the reservoir of the Fukuchi Dam, which provides water to the residents of Okinawa, for training exercises, and "significant amounts of discarded munitions have been discovered in the surrounding watershed area." n121 However, Japan is powerless to prevent this pollution or to compel the United States to remediate the environmental damage it causes. In their SOFA with Japan, the United States explicitly contracted away liability for any environmental damage its military bases might cause. n122 According to Article 18 (5)(3) of the SOFA, Japanese citizens have the power to sue and collect damages from the United States. n123 However, despite this provision in the SOFA, Japanese citizens are also powerless to hold the United States liable for its environmental degradations. Although many successful suits have been brought (including one assessing more than $ 24 million in damages), the United States will not pay. n124 From the United States' perspective, "it is 'strange' that the American military should have to pay damages for practicing warfare to protect Japan." n125 IV. The Dark Side of Efficiency: The End of Cooperation The DoD's twenty-first century global posture, which "emphasiz[e]s long-term military access to countries," relies heavily on the cooperation [\*407] and goodwill of host nations. n126 However, the DoD's overseas military bases create many negative externalities, which host nations are ultimately forced to absorb. Consequently, countries worldwide have become increasingly hostile toward U.S. overseas military bases. n127 In order for the DoD to continue to economically manufacture security using the corporate strategies of rightsizing, outsourcing, and offshoring, a balance must be struck between efficiency and diplomacy. This section consists of two subsections. The first subsection describes how the DoD's current basing and diplomatic posture has negatively impacted diplomatic relationships with host nations and how U.S. responses to these negative externalities have caused diplomatic relations to further deteriorate. The second subsection suggests how the DoD can improve and sustain diplomatic relations by striking the proper balance between efficiency and diplomatic decency. A. Negative Externalities Overseas military bases create negative social externalities in host nations. Perhaps the most representative example of these negative social externalities is the history of military violence against the women of Okinawa, Japan. n128 Since the U.S. occupation at the end of WWII, Okinawan women have been the victims of military violence. Between WWII and the Korean War, sexual and physical violence against Japanese women was "rampant and indiscriminate." n129 In recent years, date-rape violence has been increasing. n130 The most notorious and reprehensible incident of rape occurred in September 1995 when two Marines and a sailor "abducted a twelve-year-old girl they picked out at random, beat and raped her, and left her on a beach." n131 After the rape, the United States invoked Article 17 of their Japanese SOFA-which gives the United States jurisdiction over crimes committed by U.S. troops in Okinawa-and refused to surrender the soldiers to Japanese authorities. n132 The rape and the U.S. military's response to it shocked the people of Okinawa, incited massive anti-American [\*408] demonstrations, n133 and spearheaded a movement to expel U.S. troops from the island. n134 In 2005, after ten years of unrest and continuing military violence against Okinawan women, the United States agreed to transfer, over a six-year period, thousands of U.S. troops from Okinawa to Guam. Overseas military bases also create negative environmental externalities. Perhaps the most representative example of these negative environmental externalities is the history of U.S. military pollution in Vieques, Puerto Rico. For sixty years, the island of Vieques was the home of a U.S. Navy live-bombing range and an ammunition facility, n135 and over those sixty years, the U.S. Navy's pollution greatly damaged the local ecosystem. n136 On the western side of the island, the U.S. Navy disposed of nearly "[two] million pounds of military and industrial waste." n137 In 2005, the Environmental Protection Agency listed the Navy's live-bombing range, which was located on the eastern side of Vieques, as one of the most hazardous waste sites in the United States. n138 The land and water surrounding the range have been extensively polluted: "[c]oral reefs and sea-grass beds have sustained significant damage from bombing, sedimentation, and chemical contamination. The groundwater has been contaminated by nitrates and explosives." n139 Furthermore, the range has been "seriously contaminated by heavy metals" such as depleted uranium, and "studies have documented that those metals have entered the food chain." n140 In May 2003, after years of protests and demonstrations, the U.S. Navy was expelled from Vieques. n141 The United States has not responded diplomatically to complaints about the negative externalities caused by its overseas-basing. In response to the rape of the twelve-year-old Okinawan girl, General Richard Meyers, commander of U.S. forces in Japan, said "this was a singular tragedy caused by 'three bad apples' even though he knew that sexually violent crimes committed by U.S. soldiers against Okinawans were running at the rate of two per month." n142 And, Admiral Richard Macke, commander of U.S. forces in the Pacific, said: "I think [\*409] that [the rape] was absolutely stupid. For the price they paid to rent the car [with which to abduct their victim], they could have had a girl." n143 These impolitic comments only served to fuel the fire of outrage in Okinawa. High-ranking officers responded to the claims of the Vieques movement by arguing, in effect, that the United States military is the victim, not the people of Vieques. According to the U.S. military, civilian encroachment on the military installations on Vieques undermined the military's ability to use these installations for training. n144 B. The Balance between Efficiency and Diplomacy: Respect Allies and Follow the Law It will be difficult for the DoD to find the balance between efficiency and diplomacy. On one hand, the DoD's new overseas-basing strategy and its use of rightsizing, outsourcing, and offshoring to manage its overseas military bases have reduced overhead and allowed the DoD to manufacture security more economically. On the other hand, the DoD's overseas-basing strategy and the negative externalities caused by overseas bases have resulted in the United States military being expelled from many countries. It is tempting for the DoD to continue to cut diplomatic corners; however, cutting corners has cost the DoD the cooperation of allies, and in order for the DoD to continue manufacturing security, it will need the cooperation of foreign countries more than ever. If the DoD does not redress the wrongs created by overseas military bases and work to prevent similar wrongs from occurring in the future, it will not be able to fully actualize and maintain its overseas-basing posture, and will therefore not be able to provide security to American citizens. Because the DoD is closing many overseas bases and creating smaller bases with no permanent troop presence, many of the issues associated with overseas military bases, such as pollution and rape, might become moot. Nevertheless, the DoD will still maintain major bases in foreign countries, and if the DoD does not find the balance between efficiency and diplomacy, the continued presence of these bases will be jeopardized. Consequently, to achieve the necessary balance between efficiency and diplomacy, the United States must: 1) discontinue the use of SOFAs, or at the very least, engage in fair bargaining practices and forge bilateral SOFAs with all host nations; 2) consistently and transparently prosecute U.S. troops for crimes committed in host [\*410] nations; and 3) clean up overseas military bases and prevent pollution from occurring in the future. SOFAs allow the DoD to impose its will on host nations, to undermine the host nation's sovereignty, and to cause diplomatic strife. Thus, SOFAs inherently undermine the alliance between the United States and the host nation. In an ideal world, the United States would discontinue the use of SOFAs. However, this may not be possible or practical. Consequently, the United States must, at the very least, engage in a meaningful SOFA-bargaining process with host nations: it must form a true alliance with the host nation, an alliance based on mutual trust and assurances. As part of this bargaining process, burden sharing can be used as a bargaining chip. For example, a host nation may allow the United States to opt out of some liability for pollution if the United States pledges to minimize pollution and does not require the host nation to engage in burden sharing. Moreover, to ensure goodwill and continued cooperation, the DoD should forge bilateral SOFAs with all host nations, not just with countries that have the power to bargain for them. The United States must carefully guard its reputation abroad-if prospective host nations know that the United States has a history of polluting, it will be more difficult to enlist them as our allies. If the United States is going to continue to demand immunity for its American troops overseas, at the very least, it must consistently prosecute troops who commit crimes in a host nation. U.S. troops must be held accountable for any criminal acts they commit in host nations, and the United States High Command should establish a top-down policy of instructing troops that they will be prosecuted for crimes they commit. By putting U.S. soldiers on notice, the United States will increase the likelihood that they will not commit crimes. Collaborating with the host nation's law enforcement, and transparently prosecuting U.S. troops will ensure that the host nation's citizens will feel that justice has been served. Because the DoD's new defense strategy is so dependent upon the cooperation of host nations, the United States must actively foster goodwill and trust. If the United States does not win the hearts and minds of the local populace, it will continue to risk being expulsed from host nations, as it was in Japan. Although cleaning up overseas military bases will be expensive, not doing so will jeopardize relations with host nations. If the DoD pollutes, it must cleanup after itself. Prevention is often cheaper than remediation, so the DoD should establish procedures for the proper disposal of military and industrial waste. The DoD could design these procedures based on U.S. environmental law or the laws of the host nations. As a sign of good will, the DoD should follow the more stringent [\*411] of either its laws or the laws of the host nation. Countries will be more willing to allow the United States to build bases on their soil if the United States has a record of not polluting or, at the very least, a record of cleaning up after itself. n145

### 2

#### Contention 2 is Citizen Suits

**Court environmental restrictions on executive war powers authority spur citizen suits for noncompliance**

**Donovan 11** (Emily Donovan, J.D., 2010, Albany Law School, Albany, New York, “Deferring to the Assertion of National Security: The Creation of a National Security Exemption Under the National Environmental Policy Act of 1969,” Winter 2011, West Northwest Journal of Environmental Law and Policy, 17 Hastings W.-N.W. J. Env. L. & Pol'y 3)

Furthermore, it is the **Court's responsibility** to ensure that the Executive is abiding by such laws, rather than creating its own. To do so, the Court must review the actions of agencies when challenged rather than simply defer to the judgments of such agencies, even in times of war. If the Court fails to do so, there is no check on the Executive's power; the Executive is free to disregard the limits that Congress has placed on it. n137 In Hamdan v. Rumsfeld, the U.S. Supreme Court properly refused to allow the Executive to ignore the limits on its power. n138 The Court held that "whether or not the President has independent power, absent congressional authorization, ... he may not disregard limitations that Congress has, in proper exercise of its own war powers, placed on his powers." n139 The Executive cannot use war as a justification for any and all action it desires to take. The Executive has certain powers while Congress has certain others, with a strict separation between the powers of each, as ""the power to make the necessary laws is in Congress; the power to execute in the President... . But neither can the President, in war more than in peace, intrude upon the proper authority of Congress, nor Congress upon the proper authority of the President.'" n140 Each branch of government must stay within the bounds of its power and must not usurp the powers of the other branches. If the Executive is allowed to do whatever it pleases in times of war, the notion of separation of powers, upon which this nation was founded, is destroyed. n141 In Hamdan, the Court would not allow this. At issue was the Executive's use of a military commission to try Hamdan, a Yemeni national captured by [\*25] militia forces in Afghanistan and then turned over to the U.S., for then-unspecified crimes, later designated as conspiracy "to commit ... offenses triable by military commission." n142 The Court found that no congressional act authorized the Executive to convene a military commission to try Hamdan, and "absent a more specific congressional authorization, the task of this Court is ... to decide whether Hamdan's military commission is so justified." n143 If the Executive's power to take action is not specifically authorized by Congress, the Court has a duty to examine the action to see if it is justified. **If the Court** instead simply **defers**, it allows the Executive **too much authority**, authority in excess of what was intended for it. In the absence of congressional authorization, the Executive must show that the act is necessary in order for the Court to permit it; the Executive failed to do so in Hamdan. n144 Because there was no congressional authorization for the Executive's action establishing a military commission and because the Executive failed to show necessity, the Court would not permit the action. The Court refused to simply defer to the Executive's judgment merely because it was during a time of war. Instead, the Court conducted the proper analysis and concluded that the Executive was overstepping its bounds; the fact that it was a time of war did not authorize the Executive to exceed its authority. n145 The U.S. Supreme Court also refused to defer to the Executive in Hamdi v. Rumsfeld, where it made clear its role in reviewing challenges. n146 The Court declared that it will give weight to the Executive's judgments during times of war, stating that "we accord the greatest respect and consideration to the judgments of military authorities in matters relating to the actual prosecution of a war ... ." n147 However, it explained that this does not mean that it will simply defer to the Executive. n148 Instead, it will review the Executive's actions. As the Court noted, "it does not infringe on the core role of the military for the courts to exercise their own time-honored and [\*26] constitutionally mandated roles of reviewing and resolving claims like those presented here." n149 The Court reviewed the Executive's decision to detain Hamdi, an American citizen classified as an "enemy combatant," indefinitely during the war with Afghanistan, without allowing him to challenge the basis for his detention. n150 The Court stated that "the threats to military operations posed by a basic system of independent review are not so weighty as to trump a **citizen's core rights to challenge** meaningfully the Government's case and to be heard by an impartial adjudicator." n151 In other words, the Court held that it would not refrain from reviewing the Executive's action merely because the Executive claimed that doing so would be a threat to its military operations; the threat to such operations does not trump a citizen's right to review. The Court stressed the importance of the doctrine of separation of powers and declared that "we have long since made clear that a state of war is **not a blank check** for the President when it comes to the rights of the Nation's citizens." n152 A state of war does not mean that the Executive can do whatever it pleases. And if it tries to do so, judicial review is the mechanism to stop it as "the Great Writ of habeas corpus allows the Judicial Branch to play a necessary role in maintaining this delicate balance of governance, serving as an important judicial check on the Executive's discretion in the realm of detentions." n153 If the Court defers to the Executive's decisions rather than engaging in the appropriate review, it allows the Executive's power to go unchecked, permitting the Executive to take actions that are not authorized by the Legislature. It is up to the Court to ensure that the Executive Branch is not creating its own laws, but rather is abiding by the laws as created by the Legislative Branch. IV. Congress Did Not Intend to Add a National Security Exemption to NEPA The Legislative Branch did not include a national security exemption under NEPA. n154 It did, on the other hand, create exemptions for national security under other environmental laws, including the Clean Air Act, n155 the [\*27] Clean Water Act, n156 the Coastal Zone Management Act ("CZMA"), n157 the Endangered Species Act, n158 and the Marine Mammal Protection Act ("MMPA"). n159 Therefore, if Congress intended a national security exemption to NEPA, it would have included it in the statute as it did with all of the other environmental statutes. Because the scope of NEPA is broad, it may overlap with these other statutes at times, as it did in Winter, where the MMPA and the CZMA were also at issue. However, when an agency is granted a national security exemption under a different statute that explicitly allows for it, as was the Navy in Winter, its duties under NEPA should not be affected. An agency that is exempted, for example, from a rule that says it cannot take a marine mammal (MMPA), does not necessarily have to be exempted from a rule that says it must prepare an EIS before engaging in an activity that will result in the taking of a marine mammal (NEPA). It is one thing to be allowed to take a marine mammal and another to have to consider the environmental impacts of taking the mammal before doing so. In fact, this is **the essence of NEPA**: agencies must consider the environmental impacts of their actions **before engaging in them**, allowing them to discover and take steps to lessen the impacts if they so choose, but will not be required to effect any substantive result. Therefore, the grant of an exemption to a substantive statute, like the MMPA, should not affect an agency's duty to comply with the procedural statute, NEPA. The goal is that, after considering the impacts of the proposed action under NEPA, the agency will either decide not to take the action or to implement mitigation measures to lessen the environmental impacts of the action, even though it is permitted to take the action under the national security exemption to the substantive statute. Because Congress did not include a national security exemption under NEPA, the agencies of the Executive Branch must abide by it, even in times of war, and the courts cannot take it upon themselves to except these agencies from doing so. n160 Instead, the courts must give effect to what Congress enacted. As the Maryland Court of Appeals stated, "we are obliged to ascertain and carry out the legislative intent; to consider the language of the enactment in its natural and ordinary signification; to not insert or omit words to make a statute express an intention not evidenced in [\*28] its original form." n161 Courts cannot substitute their own opinions of what the law should be for what the law says; they must apply the law as it is stated. And, as stated, NEPA does not include a national security exemption. If Congress does intend a national security exemption to exist in NEPA, it must write this into the statute, but until then it is not within the Court's authority to create such an exemption. n162 V. Conclusion By deferring to the agencies of the Executive Branch in determining whether to grant injunctive relief in NEPA noncompliance cases, the Court ignores its duty to act as a check on the Executive's power and instead grants the Executive an exemption from NEPA. When injunctive relief is requested, the Court is required to give due weight to each competing harm and grant relief to the party toward whom equity tips. This means that, in NEPA noncompliance cases where national security is asserted as a defense, courts must balance the harm to the environment against the harm to national security. When courts ignore their duty to conduct this balancing and instead defer to the assertion of national security, they create a national security exemption to NEPA, one which the legislature did not include or intend. The agencies of the Executive Branch serve an important role and the preservation of national security is of extreme importance, but environmental impacts from the actions of these agencies can be just as significant; the effects of agency action on our health and safety can be just as damning as the absence of action on the preservation of national security. **Courts must not**, without first examining the environmental effects, deny **injunctive relief** any time an agency claims that an injunction will prevent it from protecting **national security**. When an agency's proposed action is in the interest of national security and compliance with NEPA would truly cause a delay that would impede the agency's ability to protect and preserve national security, an exception to NEPA compliance may be justified. But a court cannot decide if this is true without first weighing the competing harms. Courts must explore the truth of the national security [\*29] assertion to ensure that it is not being used merely as a pretext to avoid complying with NEPA. NEPA serves as an important check on agency action. It forces agencies to consider the consequences of and alternatives to their actions, in turn leading to substantive changes in decision-making. NEPA's EIS requirements also serve to **inform the public** and to **create records** which courts can review in determining challenges for noncompliance. While the agencies of the Executive Branch may play a crucial role in the protection and preservation of our national security, this should not give them a free pass to escape NEPA compliance; it is important for them to consider the environmental impacts of their proposed actions. The Legislature did not intend to exempt agencies in the business of protecting national security from NEPA. If it did, it would have written a national security exemption into the statute, just as it wrote one into other major environmental statutes. If a national security exemption to NEPA is the Legislature's intent, the Legislature should write it into the statute. But unless and until Congress writes a national security exemption into NEPA, courts have a duty to conduct the **appropriate balancing** in determining whether to grant **injunctive relief** in NEPA **noncompliance cases** rather than merely giving it lip service in order to refrain from creating an exemption which Congress did not intend.

#### Granting injunctive relief in war powers halts non-compliance with environmental regulations, validates citizen enforcement efforts

**London 09** [Ian K. J.D. Candidate, 2011, Denver University Law Review, Winter v. National Resources Defense Council: Enabling the Military's Ongoing Rollback of Environmental Legislation, 2009, L/N]

Finally, the Winter Court's willingness to defer to the Navy's judgment and to allow the Navy to bypass clear NEPA requirements is part of a broader, more troubling trend. Professor Babcock accuses the Department of Defense ("DOD") of manipulating post-9/11 national security concerns to stage an offensive against constraining environmental legislation. n138 Professor Babcock explains this trend in light of the broader post-9/11 erosion of civil liberties exemplified by the USA PATRIOT Act. n139 The USA PATRIOT Act, enacted in the months immediately following 9/11, was intended to enhance the government's power to combat terrorist threats, but had the additional effect of eroding civil liberties. n140 Until recently, the military had to resort to various statutory waiver systems to circumvent environmental legislation. n141 But military efforts to curtail environmental legislation found new traction in the post-9/11 and post-USA PATRIOT Act reality. n142 For example, in the years immediately following the 9/11 terrorist attacks, the DOD convinced Congress to exempt the military from key areas of the Migratory Bird Treaty Act ("MBTA"), the Marine Mammal Protection Act ("MMPA"), and the Endangered Species Act ("ESA"). n143 These exemptions were characterized as essential to national security. n144 This trend shows no sign of slowing. n145 In fact, the Navy urged the Court in Winters to view the Navy's MMPA exemption as evidence that other environmental regimes should necessarily be subordinated to military [\*212] training. n146 Then-Vice President Dick Cheney referred to the post-9/11 restrictions on civil liberties as "the new normalcy." n147 These assertions suggest an intent to roll back all constraining environmental legislation, not just MMPA or NEPA, which should have given the Court pause. With Winter, this troubling trend has spread to NEPA. The Court accepted the Navy's tenuous assertion that the SOCAL training exercises are necessary to ensure military preparedness. n148 Such deference to the Navy's factual determinations, and willingness to create military exemptions to existing environmental regimes, allows the military to dodge its environmental obligations. While deference to the military's professional judgment is to a certain extent desirable, it is possible for courts to defer to an unreasonable extent. When a court unquestioningly accepts one party's characterization of a case, the court simply cannot accurately evaluate the propriety of injunctive relief. In Winter, the Court's complete deference to the Navy's factual determinations unfairly tipped the balance of equities and public policy interests against the plaintiffs. The Court's complete deference to the Navy will likely have an impact far beyond the parties involved. First, the Court's decision implies that the military can comply with NEPA's objectives without having to comply with NEPA procedures. Second, the Court's decision perpetuates the military's offensive against "constraining" environmental legislation. n149 In Winter, the Court missed out on an opportunity to **slow this trend, and prevent the military's rollback of environmental legislation**.

#### Supreme court action is key – sends a clear message that supports citizen suits

Taylor 13

[Archita, J.D., Seattle University School of Law, Lead Article Editor on the Seattle Journal of Environmental Law. Adopting the Principle of Equitable Relief in Clean Water Act Challenges, 5/13/13, <http://www.sjel.org/vol3/adopting-the-principle-of-equitable-relief-in-cwa-challenges>]

As with all other issues of law that are unsettled, Supreme Court review of the issue of equitable relief being excluded from the civil penalty bar in the CWA would bring a sense of finality to the issue. At this time, three different circuit courts and multiple district courts have taken up this issue, arriving at conflicting views on how to resolve the matters. A Supreme Court majority decision would not only settle the issue, but it would also send a message that environmental enforcement has become a priority as a result of the changing circumstances and limited resources in the fragile environment. Furthermore, it would send a message that limited government resources for enforcement require a supplement to government efforts to bring suit against violators.127 Since their inception, citizen suits have not only deterred violators, but have also achieved significant compliance gains.128As the Rapanos v. United States Supreme Court plurality decision suggests, the Supreme Court should take up the issue of equitable relief and should hand a decisive victory to citizen litigants who seek to bring forth suits against violators of the CWA.129 Though it was extremely important for the Supreme Court to take up the Rapanos case, the plurality decision in Rapanos has only brought more uncertainty to the issue of jurisdiction in regards to the CWA.130 A clear Supreme Court majority decision in the current circuit split regarding the exclusion of civil penalties under the citizen suit provision of the CWA, indicating that the civil penalty bar under the citizen suit portion of the CWA does not include equitable relief. Such a decision would send a clear message to those that the CWA seeks to regulate, that environmental legislation enforcement is a clear priority for the government. Furthermore, it would reinforce the importance of citizen suits, and it would allow citizen litigants to ease some of the burden of enforcement from the government.131 VI. Conclusion Citizen suits have recently come to the forefront of environmental legislation enforcement because of the government’s diminished capacity to regulate violators. Citizen suits have historically played an important role in the enforcement of environmental legislation, but with growing environmental concerns and fewer government resources, they will prove to be a critical aspect of environmental legislation enforcement in the coming years. In ensuring that citizen litigants are given the full force of authority to pursue their claims against violators, they must be allowed to pursue equitable relief under the civil penalty bar of the citizen suit provision of the CWA. Equitable relief has played a historically significant role in halting harmful conduct and addressing conditions that pose a threat to the public. 132 Without the ability to stop violators and address the root of the violation, citizen suits would lack one of the most critical components of enforcement. A binding Supreme Court majority decision allowing equitable relief under the civil penalty bar would not only reinforce the importance of citizen suits in environmental legislation enforcement, but would also send a clear message to those that the CWA regulates that environmental regulation is a priority and will continue to be a priority proceeding into the future.

#### Warming suits rest on shaky ground – standing and political questions key

Guarino 11 -- Exec Editor @ Boston College Enviro Affairs Law Review, Edwards Wildman Palmer LLP Associate (Katherine A., 2011, "NOTE: THE POWER OF ONE: CITIZEN SUITS IN THE FIGHT AGAINST GLOBAL WARMING," 38 B.C. Envtl. Aff. L. Rev. 125, L/N)

I. THE JUSTICIABILITY AND STANDING BARRIERS Since their inception, global warming suits have faced challenging legal barriers. n26 The most significant barriers have been justiciability of a global warming claim and standing to sue for a crisis affecting millions. n27 A. The Political Question Doctrine One of the most challenging obstacles facing global warming plaintiffs is justiciability, or the political question doctrine. n28 Under Article III of the Constitution, the federal courts only have jurisdiction over questions, issues, cases, and controversies that are "justiciable." n29 A matter is "'justiciable' when it is constitutionally capable of being decided by a federal court." n30 Conversely, "nonjusticiability" or a "political question" exists when a matter has been committed exclusively to the political branches by the Constitution or by federal law. n31 In that case, a federal court would not have jurisdiction over the matter. n32 When a matter is justiciable, however, a federal court has an obligation to exercise [\*129] jurisdiction over it. n33 The policy behind this duty is to prevent a court from dismissing an action because it has political implications. n34 In practice, dismissal for nonjusticiability has been rare; since Baker v. Carr in 1962, discussed below, the Supreme Court has only dismissed two cases as political questions. n35 The Court has yet to rule explicitly on the justiciability of a global warming claim. n36 1. The Baker Factors Until the 1960s, determining which matters were better left to other branches of the government was a confusing and disorderly task. n37 Baker v. Carr rescued the doctrine of justiciability from irregular application by proposing a list of six "formulations" that describe a political question: n38 [(1)] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [(2)] a lack of judicially discoverable and manageable standards for resolving it; or [(3)] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [(4)] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [(5)] an unusual need for unquestioning adherence to a political decision already made; or [(6)] the potentiality of embarrassment from multifarious pronouncements by various departments on one question. n39 [\*130] The Baker Court ensured that these factors would not be used to block legitimate cases from federal court by setting a high standard for non-justiciability. n40 The effect has been rare assertion of the political question doctrine in most cases, n41 including common law tort claims. n42 However, the political question doctrine has presented a challenge for plaintiffs in the nascent area of global warming. n43 The Supreme Court later added a threshold requirement to the Baker analysis: "whether and to what extent the issue is textually committed" to a political branch. n44 In Nixon v. United States, the Court set out a two-pronged test for determining whether this threshold was met: (1) identification of the issues that the plaintiff's claims pose and (2) interpreting the constitutional text in question to determine the extent to which the issues are "textually committed" to a political branch. n45 2. Global Warming Claims are Held Justiciable The first global warming case to apply the Baker factors was Connecticut v. American Electric Power Co. (AEP). n46 When AEP was brought before the District Court for the Southern District of New York, the court conservatively chose to view the global warming issue as too complex and too entwined with politics to be justiciable. n47 However, by the time the case reached the Second Circuit on appeal, the first global warming case, Massachusetts v. EPA, had been handed down by the Supreme [\*131] Court. n48 Although that case did not explicitly address the justiciability issue, it stands for the principle that federal courts have jurisdiction to hear cases alleging global warming as an injury. n49 By upholding a state's standing to sue for injury deriving from the EPA's failure to regulate greenhouse gas emissions, the Supreme Court had endorsed, for the first time, global warming suits in general. n50 In the wake of Massachusetts v. EPA's recognition of global warming as an adequate injury for standing--and in effect, nonjusticiability n51 --the Second Circuit reversed. n52 Applying the Baker factors, the Second Circuit in AEP rejected the power companies' argument that the plaintiffs' use of a federal common law nuisance cause of action to reduce domestic carbon dioxide emissions would "impermissibly interfere with the President's authority to manage foreign relations." n53 The court countered that the plaintiffs were not asking the court "to fashion a comprehensive and far-reaching solution to global climate change." n54 Instead, they were seeking to limit the emissions of only the six defendant plants based upon their contention that these defendants are causing them injury. n55 Assessing the second Baker factor, the court reasoned that complex federal public nuisance cases have been commonplace during the past century of legal history, n56 and that "well-settled principles of tort and public nuisance law" have frequently been used to analyze a variety of new and complex problems. n57 [\*132] As to the third Baker factor, defendants argued that the complexities surrounding global warming give way to "unmanageable policy questions a court would then have to confront" in deciding the case. n58 The court disagreed, holding that a federal court deciding a common law nuisance cause of action, "brought by domestic plaintiffs against domestic companies for domestic conduct, does not establish a national or international emissions policy." n59 The court added that the plaintiffs "need not await an 'initial policy determination' in order to proceed on this . . . claim," n60 and that Congress's hesitancy to pass a law regulating greenhouse gas emissions does not equal an intent "to supplant the existing common law in that area." n61 In assessing the final three Baker factors, the court recognized that the United States does not have a "unified" global warming policy. n62 Thus, by deciding this case, it is impossible for the court to "demonstrate any lack of respect for the political branches, contravene a relevant political decision already made, or result in multifarious pronouncements that would embarrass the nation." n63 The defendants themselves cited legislation indicating that the United States intends to create legislation in the future, which will reduce the emission of greenhouse gases. n64 In sum, the court held that the district court erred in its dismissal of the plaintiffs' claim on justiciability grounds. n65 B. Standing Another hurdle for global warming plaintiffs is standing. n66 This prerequisite to suit limits the jurisdiction of federal courts to certain delineated "Cases" and "Controversies" under Article III, Section 2 of the U.S. Constitution. n67 There are two basic forms of standing: state--or [\*133] parens patriae--standing n68 and individual standing. n69 As parens patriae, or "parent of the country," a state asserts a "quasi-sovereign interest" in protecting the health and well-being of its citizens, as well as its own "interest independent of and behind the titles of its citizens, in all the earth and air within its domain." n70 The Supreme Court has allowed states a lowered bar, or special solicitude, for standing given their unique status. n71 An individual, in contrast, sues for his or her own personal injury without the benefit of a lowered bar to standing. n72 In the case of global warming plaintiffs, standing is problematic in three ways: (1) the uncertainty of the injury; (2) the sufficiency of scientific evidence linking global warming with its effects; and (3) the redressability of a world-wide problem. n73 1. Modern Standing: The Lujan Cases In the 1980s, the Reagan Administration's policies to stem the flow of citizen suits and limit the EPA's enforcement capabilities narrowed the standing doctrine. n74 These policies resulted in two landmark standing decisions, both written by Justice Scalia: n75 Lujan v. National Wildlife Federation (Lujan I) and Lujan v. Defenders of Wildlife (Lujan II). n76 The Lujan cases turned the modern standing doctrine into a strict test. a. The Modern Standing Test In Lujan I, decided in 1990, the Supreme Court identified two requirements that an individual must establish in order to bring suit: (1) [\*134] some specific harm caused by the defendant; and (2) either a "legal wrong" caused by the challenged action, or that the plaintiff is "adversely affected or aggrieved . . . within the meaning of a relevant statute." n77 In that case, the plaintiffs' claim failed to satisfy the standing test due to lack of specificity and certainty of injury. n78 If there was any question that Lujan I had altered the standing doctrine, Justice Scalia affirmed that the doctrine was indeed narrowed two years later in Lujan II. n79 In his plurality opinion, Justice Scalia synthesized a three-part "irreducible constitutional minimum of standing" from past cases: (1) injury in fact, which is (a) "concrete and particularized" and (b) "actual or imminent"; (2) "a causal connection between the injury and the conduct complained of"; and (3) "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." n80 The Court held that a nebulous future intent to observe endangered species in a foreign country did not constitute actual or imminent injury. n81 Also, redressability could not be obtained because even if the Court granted the "injunction requiring the Secretary to publish [the plaintiffs'] desired regulation," it would not be binding on the agencies and thus ineffective in producing the desired result. n82 In his concurrence, Justice Kennedy foreshadowed the global warming cases of the new millennium with a broad proclamation: "Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before." n83 b. Burden of Proof for Standing and the Merits Another important part of the Lujan II decision is its discussion of the requisite burden of proof of standing for each stage in the litigation. n84 When a plaintiff seeks to assert standing at the pleading stage, "general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to [\*135] support the claim.'" n85 Summary judgment, on the other hand, requires an assertion of specific facts. n86 Finally, when proving a claim on the merits, the facts must be adequately supported by the evidence. n87 At this point in the litigation, the burden of proof is a preponderance of the evidence. n88 Thus, proof of standing at the pleading stage requires a lower burden than proof on the merits. n89 2. Global Warming Suits a. The Broadening of the Standing Doctrine for Global Warming Plaintiffs The first global warming case to be decided by the Supreme Court, Massachusetts v. EPA, changed the course of the standing doctrine, broadening it to allow more plaintiffs standing to sue under a cause of action based on global warming. n90 The case is considered a landmark decision in environmental law because of its bold grant of standing for a seemingly untraceable and unparticularized injury. n91 Massachusetts sought review of the EPA's decision not to regulate greenhouse gas emissions from motor vehicles under the Clean Air Act. n92 In its capacity as parens patriae, the Commonwealth claimed both present and future injuries, such as loss of coastline due to rising sea levels and more intense storm events, "severe and irreversible changes to natural ecosystems," and an increase in the spread of disease. n93 The Court could have [\*136] followed Lujan II and rejected the claim of injury for lack of particularity, imminence, or traceability. n94 Instead, the Court reached back to turn-of-the-century precedent, Georgia v. Tennessee Copper, Co., for the notion that states deserve "special solicitude" in the standing analysis when invoking a quasi-sovereign interest. n95 In a 5-4 decision, the Court held that Massachusetts had alleged: (1) particularized injury, because of its ownership of substantial property that had already been swallowed by rising seas; n96 (2) causation, because defendants had contributed significantly to the plaintiff's injuries by refusing to regulate greenhouse gas emissions; n97 and (3) redressability, because even an incremental improvement in the plaintiff's harm would help redress the injury. n98 Massachusetts v. EPA gave plaintiffs with pending global warming cases new hope by opening up the courts to their claims for the first time. n99 However, the decision on standing was surprising to the legal community, as evidenced by Chief Justice Roberts's vigorous dissent. n100 The dissent accused the majority of using "the dire nature of global warming . . . as a bootstrap for causation and redressability." n101 It further argued that the plaintiff's alleged injury was neither imminent nor actual, but "pure conjecture," going so far as to deny that global warming could ever constitute a particularized injury. n102 In spite of these concerns, the majority of the Supreme Court placed its imprimatur on global warming suits in general, n103 giving future global warming litigants positive authority to cite in their arguments. n104 [\*137] b. The Second Circuit Grants Non-State Entities Standing for Global Warming AEP, a public nuisance action for global warming injury brought by a group of states, land trusts, and a city, solidified the new broader standing analysis of Massachusetts v. EPA and extended it to non-state parties. n105 In that case, the plaintiffs sued electric power plants for injuries arising from defendants' contribution to global warming by burning fossil fuels. n106 The states and city asserted a litany of present and future injuries, including temperature increase leading to a decrease in mountain snowpack used for drinking water, earlier spring melting, flooding, and sea level rise, which had already begun to inundate their coastal property and would continue without abatement. n107 The trusts claimed the following "special" future injuries: a decrease in the ecological value of their properties, permanent inundation of some of their property, and destruction of wildlife habitat from smog and salinization. n108 At the district court level, the plaintiffs' claims were dismissed as nonjusticiable. n109 The district court judge refused to analyze the issue of standing because it "would involve an analysis of the merits of Plaintiffs' claims." n110 However, on appeal, the Second Circuit vacated the lower court's decision, holding that the state plaintiffs had asserted concrete, particularized, and redressable injury that was "fairly traceable" to the actions of defendants, thus meeting the standing test under Lujan II. n111 For the first time, non-state plaintiffs--New York City and the land trusts--were also granted standing for asserting similar injuries. n112 Since the court vacated and remanded back to the district court, it never addressed the merits of the case. n113 In December of 2010, the Supreme Court granted certiorari to American Electric Power Co. n114 This will be the first opportunity for the Supreme Court to rule on the legitimacy of public nuisance [\*138] claims against greenhouse-gas-emitting companies for global warming injuries. n115

#### **Courts model the plan and rule in favor of environmental citizen’s suits – forces US emissions reductions**

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IV. COMER V. MURPHY OIL USA: A TEST CASE FOR FUTURE GLOBAL WARMING PLAINTIFFS In the words of T.S. Eliot, the end of Comer v. Murphy Oil USA came, "[n]ot with a bang, but with a whimper." n211 In the wake of the startling dismissal of Comer based on a procedural technicality and the subsequent denial of the unorthodox writ of mandamus, the Supreme Court has granted its sister case, American Electric Power Co. (AEP), certiorari. n212 Because the Comer plaintiffs opted for a procedural resolution to their case instead of the usual certiorari, they essentially relegated the merits to the earlier-filed American Electric Power, Co. n213 That case will answer the same questions posed by Comer, namely whether parties injured by the effects of global warming have standing and whether global warming issues are justiciable. n214 As the Supreme Court examines, for the first time, the merits of a public nuisance suit against greenhouse-gas-emitting companies, it will likely be influenced by the developing trend in lower courts toward acceptance of public nuisance as a vessel for litigating global warming tort suits. n215 The fate of cases like AEP may be read through the lens of Comer. n216 [\*149] Global warming plaintiffs should turn to the "lost" Fifth Circuit panel decision in Comer in forming their arguments. However, a complete victory on the merits for such global warming plaintiffs is dubious. Part IV.A, below, predicts that the Supreme Court, in AEP, will probably follow the Fifth Circuit panel's original holding in Comer on the issues of standing, justiciability, and use of tort causes of action. As support for this decision, the Court will look to public nuisance pollution precedent and Massachusetts v. EPA. n217 Part IV.B foresees difficulty on the issue of causation when the merits are finally decided. n218 The chain of causation from injury to greenhouse gas emissions by individual defendants is simply too attenuated to satisfy proximate cause. n219 A. In Future Global Warming Tort Suits, the Supreme Court Will Likely Resurrect the Lost Fifth Circuit Panel Decision on the Issues of Standing, Justiciability, and Tort Causes of Action The only global warming case the Supreme Court has litigated is Massachusetts v. EPA. n220 Although in that case the Supreme Court addressed a different claim--the ability of a state to challenge a rulemaking decision by the EPA--that case is pivotal in predicting how the Court will rule in AEP. n221 The Court also has an interest in deciding this issue before it results in a flood of climate change suits. n222 Even though no plaintiff has actually recovered for global warming injury, recent appellate decisions allowing such plaintiffs to have their day in court has opened a door that was once closed. Private citizens can now choose an energy plant at random to blame for storm damage or flooding in their coastal home. n223 In light of this new judicial tolerance of global warming suits, it is likely that many plaintiffs will initiate such suits until the Supreme Court rules on the issue. n224 [\*150] 1. Justiciability Based on its own interpretations of the political question doctrine, the Supreme Court will likely uphold the justiciability of a state tort claim like the one in AEP. n225 Since Massachusetts v. EPA did not deal directly with justiciability, global warming plaintiffs will have to rely on the political question standard as set out in Baker v. Carr and Nixon v. United States. n226 The Fifth Circuit failed to apply the Baker factors at all because it found that the defendants had not proven that the plaintiffs' state tort claim was textually committed to a political branch of government. n227 The Court may find that the Fifth Circuit misread its political question doctrine precedent. n228 Since Baker states that finding any one of its factors "inextricable from the case at bar" would implicate the political question doctrine, the Supreme Court may have implied that the factors should be analyzed as a whole. n229 However, the stronger argument seems to be that the 1993 case, Nixon, clarified the Supreme Court's intent as to the 1962 Baker factors. In Nixon, the Supreme Court recognized that before the Baker factors could be applied, a preliminary assessment of whether the issue was textually committed to a political branch was necessary. n230 This is a logical interpretation of Baker because the policy behind the Baker factors is in favor of upholding justiciability. n231 This purpose is strengthened by the fact that, since Baker, the Supreme Court has only dismissed two cases for nonjusticiability, one of which was Nixon. n232 The Fifth Circuit panel in Comer cited extensive precedent for the notion that federal courts may not abstain from deciding a case once they have jurisdiction, and that the political question doctrine is a limited exception to that rule. n233 The Supreme Court has held that a federal court cannot avoid its responsibility to decide a case merely because [\*151] it has political implications, n234 lies outside the scope of a federal judge's expertise, or because it is difficult, complex, novel, or esoteric. n235 Global warming certainly has political implications because the government is currently deciding whether to pass legislation regarding greenhouse gas emissions. n236 Tort recovery for injury from global warming is novel and possibly complex, but both of those qualities do not make it nonjusticiable. n237 Therefore, in evaluating the justicability of the AEP claims, the Supreme Court will likely agree with the Fifth Circuit's panel opinion in Comer that the state tort claim for injury from global warming is justiciable because there is no constitutional or statutory provision committing the issue to a political branch. n238 2. Standing In a global warming case like AEP, the Supreme Court will likely hold that the plaintiffs have standing to sue for tort injury from global warming because of its similar holding for global warming plaintiffs in Massachusetts v. EPA. n239 Although Massachusetts v. EPA dealt with a statutory claim under the Clean Air Act, the Court still went through the same Article III standing analysis. n240 This is because standing is a prerequisite for all suits. n241 The main difference between Massachusetts v. EPA and AEP is that in the former case, the plaintiff was a state. n242 However, the plaintiffs in AEP include both states and private land trusts, and thus may cite Massachusetts v. EPA as a case in which the Court granted state global warming plaintiffs special solicitude in the standing analysis. n243 Justices Scalia, Thomas, and Alito, and Chief Justice Roberts will almost certainly vote to deny standing based on their dissenting opinion in Massachusetts v. EPA. n244 There, Chief Justice Roberts recognized [\*152] the catastrophic implications of global warming, but, in the interest of efficiency, would have denied standing because it is a crisis that may ultimately affect "nearly everyone on the planet." n245 Private individuals may also achieve standing based on Massachusetts v. EPA. The majority opinion contains no holding that says citizen plaintiffs cannot assert injury from global warming for standing purposes. n246 On the contrary, it treats the Commonwealth as an injured property owner. n247 The best argument for individual plaintiffs will be that the Massachusetts v. EPA decision granted parens patriae standing and proprietary standing concurrently, thus implying that Massachusetts would have achieved standing even if it were not a state. n248 It is true that in making the subsidiary determination of proprietary standing, the Court exceeded its narrow duty of only ruling on the necessary issues. n249 This type of analysis also made Massachusetts v. EPA a confusing decision to interpret n250 --it was thoroughly criticized by Chief Justice Roberts's dissent. n251 [\*153] However, the message of Massachusetts v. EPA is clear: injury from global warming is a cognizable claim for standing purposes. n252 Based on the Supreme Court's acceptance of standing based on global warming injury, global warming plaintiffs will likely satisfy the injury prong of standing. n253 Since the Court already decided in Massachusetts v. EPA that loss of coastline from rising tides brought on by global warming is a "concrete" and "particular" injury under the Lujan test, n254 it would likely agree with the Fifth Circuit that damage from increased storm severity, another effect of global warming, is a sufficiently particularized injury. n255 In fact, the Massachusetts Court specifically recognized the connection between rising ocean temperatures from global warming and an increase in the "ferocity of hurricanes." n256 Proving redressability by money damages in a future case may be more difficult. n257 The AEP plaintiffs will not encounter this problem, as they seek an injunction, n258 but money damages were requested in Comer [\*154] and could be a part of future climate change cases. Since Massachusetts v. EPA granted the Commonwealth merely a procedural remedy--the ability to challenge the EPA's denial of their rulemaking petition--if future climate change plaintiffs request money damages, the Court may hold that the injury of global warming plaintiffs cannot be redressed by money damages. n259 However, for standing purposes, the Court does not need to actually give the plaintiffs money; it simply must decide whether money would alleviate their injury in some way. n260 Although, arguably, money will not lessen the effects of global warming, it will allow the plaintiffs the ability to rebuild and restore the property they lost. n261 No court has ever granted money damages for injury from global warming. However, the Supreme Court need only look to the whole of tort law for the principle that an award of money damages can and does redress injuries from a myriad of sources. n262 Massachusetts v. EPA also stands for the principle that any contribution to global warming through greenhouse gas emissions is sufficient to prove causation in the standing analysis. n263 The Fifth Circuit panel in Comer relied directly on the Supreme Court's words in Massachusetts v. EPA that the EPA's "meaningful contribution" to global warming by refusing to regulate greenhouse gases sufficiently proved traceability. n264 The defendants' alternative argument that "the causal link between emissions, sea level rise, and Hurricane Katrina is too attenuated," was also dismissed because of its similarity to a failed argument in Massachusetts v. EPA. n265 The Fifth Circuit relied also on the Supreme Court's acceptance of the link between greenhouse gas emissions and global warming. n266 It recognized that not only had the Court accepted "a causal chain virtually identical" to that of the plaintiffs, but it had gone one step further and recognized injury stemming from the EPA, an [\*155] agency that did not directly emit the greenhouse gases. n267 It is clear from this comparison that the Fifth Circuit agreed with the Supreme Court's treatment of the standing issue for global warming cases. n268 Because of the stark similarity between the injury and causation alleged in AEP, Comer, and Massachusetts v. EPA, it is likely that the Supreme Court would agree with the Fifth Circuit panel's 2009 ruling when it hears AEP. n269 B. The Final Barrier: Proof of Causation Despite the recent successes of global warming plaintiffs on the preliminary issues of justiciability and standing, they have yet to encounter the most formidable barrier of all: proof on the merits. n270 The difference between the burden of proof for standing at the pleading stage and the burden for proof on the merits is significant. n271 At the pleading stage, the plaintiffs only need to make general allegations of harm, as yet unsupported by specific facts. n272 The plaintiffs in Comer succeeded before the Fifth Circuit panel based on this lowered bar to standing. n273 However, the court stopped short of addressing the merits of the claims, and thus, of awarding damages at this stage. n274 On the merits, global warming plaintiffs would be forced to support their claims by a preponderance of the evidence. n275 Proximate cause would have presented the greatest obstacle to the Comer plaintiffs because the chain of causation from defendants' emission of greenhouse gases, to global warming, to increased storm intensity, to Hurricane Katrina, to damaged property, was extremely attenuated. n276 [\*156] In fact, the Fifth Circuit judge in Comer intimated that he would have affirmed a dismissal on proximate cause grounds. n277 Similarly, District Court Judge Senter foresaw "daunting evidentiary problems" for the plaintiffs if they sought to prove causation by a preponderance of the evidence. n278 The Supreme Court, in addressing proximate cause in the AEP case, will likely recognize that the early pollution cases analogized by global warming plaintiffs are in fact quite different when it comes to causation. n279 In Georgia v. Tennessee Copper Co., for example, the chain of causation extended directly from the defendants' isolated emission of "noxious gas" to the effect the gas had on the neighboring state. n280 In contrast, global warming stems from an incalculable number of sources and affects the entire planet in ways that are still not fully understood by scientists. For global warming plaintiffs, the defendants' emission of greenhouse gases is not the "but-for" cause of the injury-causing effect of global warming. n281 For example, in Comer that was Hurricane Katrina. n282 Hurricanes are natural processes that would occur even without global warming. n283 The Comer plaintiffs' contribution argument, while sufficient for standing, would likely be insufficient to prove tort proximate cause. n284 Since no global warming claim brought under a tort cause of action has yet been litigated on the merits, global warming plaintiffs will be left without a means of supporting their tenuous claims. CONCLUSION Within the span of nine months, the Fifth Circuit flung open and then slammed shut the doors of the court on plaintiffs seeking money damages from contributors to global warming. n285 But all is not yet lost. As one of the Comer plaintiffs mused, [\*157] Although the victory was taken away from these citizens in the most unusual and unfortunate of ways, the refusal of the United States Supreme Court to take action in no way erases the words so eloquently written by Judge James Dennis, nor does it diminish this first effort as a guide and an inspiration for the future. n286 Should the Supreme Court accept the challenge that thirteen Fifth Circuit judges shirked, and choose to resurrect the lost panel decision for American Electric Power, Co. (AEP) and its progeny, it could mean a flood of citizen litigation for climate change. n287 In the past two decades, the effects of global warming have grown increasingly more bothersome, swallowing coastlines with rising tides, raising temperatures in already arid regions, and creating some of the most ferocious storms in history. n288 These effects have caused injury to millions of people and their property, and will only continue to wreak further havoc. n289 Once upon a time, the standing analysis was strict. n290 Plaintiffs could not gain access to the courts with an attenuated claim of causation. n291 However, the Supreme Court's landmark decision in Massachusetts v. EPA turned the tables in favor of global warming plaintiffs. n292 In recognizing a seemingly endless chain of causation as sufficient to confer standing, the Supreme Court gave its imprimatur to future global warming suits. n293 The problem is, standing does not end the inquiry. Once global warming plaintiffs drag their long chains of causation into a merits battle, their arguments may not have the same force. Under a higher proximate cause standard, "fair traceability" is no longer a viable connection between the defendants' actions and the [\*158] plaintiffs' harm. n294 The chain will break under the strain of tort causation. n295 For the meantime, the Supreme Court has not ruled on any tort global warming cases. AEP still stands as a triumphant beacon of judicial activism, lighting the way for cases like Comer that came closer than ever to victory against global warming contributors. n296 The Second Circuit in AEP marked a departure from the strict standing test of Lujan, as would Comer, had the 2009 panel decision been left intact. n297 Ultimate resolution of global warming tort suits in favor of the plaintiffs would likely encourage more victims of hurricanes and coastal inundation to bring suit against local greenhouse-gas-emitting villains. n298 The time has come for the courts to choose the role they will play in defending the Earth from global warming.

#### Climate litigation helps spur action to solve warming

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B. Litigation Much of the litigation of the past few years focused on federal resistance both to the EPA’s regulation and to states’ efforts to regulate fuel composition, mileage, and GHG emissions. Results have been less than favorable to the states, and even Mass. v. EPA is back in court because of the refusal of the Bush Administration to act.121 Now, attorneys general and NGOs have launched a major offensive in federal court. Using both federal and state public nuisance theories, they are trying to obtain extensive relief, seeking to force electrical power generators and automakers to reduce GHG emissions or bear the costs global warming imposes on our society and ecosystems.122 These cases serve an important public information function. This, in turn puts pressure on a recalcitrant administration and legislature to enact more **comprehensive** but politically palatable **solutions**, such as cap-andtrade. Since consumer behavior, particularly energy use, can **radically influence GHG volume**, consumer awareness may spark consumer behavior modifications; though information for consumers and investors remains difficult to obtain.123 These cases also offer a chance for the responsibility of global warming related damages to shift from receptors onto generators through efficient, effective, and creative equitable relief.124 In addition, the generators’ tremendous exposure to liability in these public nuisance cases may be just enough incentive to spur generators to develop their own creative solutions to the problems associated with GHG emissions.

#### US judiciary causes international modeling of effective climate policies – causes global adaptation – independently solves environmental leadership and soft power

Long 8 – Professor of Law @ Florida Coastal School of Law [Andrew Long, “International Consensus and U.S. Climate Change Litigation,” 33 Wm. & Mary Envtl. L. & Pol'y Rev. 177, Volume 33 | Issue 1 Article 4 (2008)

1. Enhancing U.S. International Leadership In a time of unfavorable global opinion toward the United States, explicit judicial involvement with international norms will move the United States **closer to the international community** by acknowledging the relevance of international environmental norms for our legal system. As in other contexts, explicit **judicial internalization of climate change norms would "build**[ ] **U.S. 'soft power,**' [enhance] its moral authority, and strengthen[ ] U.S. capacity for global leadership"2 °3 on climate change, and other global issues. More specifically, domestic judicial consideration of the global climate regime would reaffirm that although the United States has rejected Kyoto, we take the obligation to respect the global commons seriously by recognizing that obligation as a facet of the domestic legal system. U.S. courts' overall failure to interact with the international climate regime, as in other issue areas, has "serious consequences for their roles in international norm creation."2" As judicial understandings of climate change law converge, the early and consistent contributors to the transnational judicial dialogue will likely play the strongest role in shaping the emerging international normative consensus.2"' As Justice L'Heureux- Dube of the Canadian Supreme Court noted in an article describing the decline of the U.S. Supreme Court's global influence, "[decisions which look only inward ... have less relevance to those outside that jurisdiction." °6 Thus, if U.S. courts hope to participate in shaping the normative position on climate change adopted by judiciaries throughout the world, explicit recognition of the relationship between domestic and international law is vital. With climate change in particular, norm development through domestic application should be an important aspect of global learning. The problem requires a global solution beyond the scope of any prior multilateral environmental agreements. This provides a situation in which U.S. judicial reasoning in applying aspects of climate regime thinking to concrete problems will fall into fertile international policy soil. Accordingly, the recognition of international norms in **domestic climate change litigation may play a strengthening role in the perception of U.S. leadership**, encourage U.S. development and exportation of effective domestic climate strategies, and promote international agreements that will enhance consistency with such approaches. In short, explicit judicial discussion of international climate change norms as harmonious with U.S. law can **enhance U.S. ability to regain** a **global leadership** position on the issue and, thereby, more significantly shape the future of the international climate regime. 2. Promoting the Effectiveness of the International Response Along with promoting U.S. interests and standing in the international community, climate change litigation has a direct role to play in developing the international regime if courts directly engage that regime." 7 Just as the United States as an actor may benefit from acknowledging and applying international norms, the regime in which the actions occur will benefit through application and acceptance. Indeed, a case such as Massachusetts v. EPA that directly engages only domestic law can nonetheless be understood to impact international lawmaking by considering its actors."' More important, however, will be cases in which the domestic judiciary gives life to international agreements through direct engagement-a "role [that] is particularly important as a check on the delegitimization of international legal rules that are not enforced."" 9 Assuming, as we must in the arena of climate change, that international law can only effect significant changes in behavior through penetration of the domestic sphere, domestic litigation that employs international law not only provides an instance in which the international appears effective but, more importantly, molds it into a shape that will enable further use in domestic cases or suggest necessary changes internationally. By engaging the international, domestic cases can also provide articulation for the norms that have emerged. The precise meaning of the UNFCCC obligation that nations take measures must be hammered out on the ground. In the United States, if Congress has not acted, it is appropriate for the courts to begin this process by measuring particular actions against the standard. 3. Encouraging Consistency in Domestic Law and Policy In the absence of national climate change law and policy, explicit discussion of international sources and norms in litigation will provide a well-developed baseline for a uniform judicial approach in the domestic realm. This could occur both within and beyond the United States. Within the United States, bringing international environmental law into the mix of judicial reasoning would provide common grounding that unifies the decisions and begins to construct a more systematic preference for development of an effective legal response to international threats. Specifically, if an international climate change norm is found relevant to interpretation of a domestic statute, reference will be appropriate to that norm when future questions of interpretation of the domestic statute arise.210 Thus, to the extent that climate change cases rely upon consensus concerning the scientific evidence of climate change, future cases should use that consensus as a measuring stick for claims of scientific uncertainty.2n The same can occur with norm development. For example, had the Court in Massachusetts tied its jurisdictional or substantive holding to an identifiable norm, the opinion would have greater clarity and value as a precedent in other contexts within the United States. Outside the United States, this approach would provide value to other, more transnationally oriented domestic courts.212 This would serve a norm entrepreneurship function and likely increase agreement among domestic courts on how to approach climate change issues raised under statutes designed for other purposes. 4. Enabling a Check at the Domestic-International Interface Finally, climate change litigation has something to offer for the growth of administrative law at the interface of domestic and international law. At least two points are noteworthy. First, U.S. courts can serve a unique function of providing legal accountability for U.S. failure to honor its UNFCCC commitments.213 Although this might be achieved implicitly, arguably the approach of Massachusetts, doing so explicitly would provide a check of a different magnitude. An explicit check here would serve the purposes identified above, as well as offering the practical benefit of increasing compliance. The dualist tradition, and perhaps concerns of domestic political backlash, weigh against grounding a decision solely in the UNFCC. However, looking to it as a major point in a narrative defining the development of a partly domestic obligation to take national action for the redress of climate change would serve the same beneficial purpose. This approach has the advantage of building a significant bridge over the dualist divide between domestic and international law without ripping the Court's analysis from traditional, dualist moorings. Pg. 212-216

#### Newest and BEST studies show that warming is real and anthropogenic

Muller 12 (Richard A., professor of physics at the University of California, Berkeley, and a former MacArthur Foundation fellow, “The Conversion of a Climate-Change Skeptic,” 7-28-12, <http://www.nytimes.com/2012/07/30/opinion/the-conversion-of-a-climate-change-skeptic.html?_r=2&pagewanted=all>)

CALL me a converted skeptic. Three years ago I identified problems in previous climate studies that, in my mind, threw doubt on the very existence of global warming. Last year, following an intensive research effort involving a dozen scientists, I concluded that global warming was real and that the prior estimates of the rate of warming were correct. I’m now going a step further: Humans are almost entirely the cause. My total turnaround, in such a short time, is the result of careful and objective analysis by the Berkeley Earth Surface Temperature project, which I founded with my daughter Elizabeth. Our results show that the average temperature of the earth’s land has risen by two and a half degrees Fahrenheit over the past 250 years, including an increase of one and a half degrees over the most recent 50 years. Moreover, it appears likely that essentially all of this increase results from the human emission of greenhouse gases. These findings are stronger than those of the Intergovernmental Panel on Climate Change, the United Nations group that defines the scientific and diplomatic consensus on global warming. In its 2007 report, the I.P.C.C. concluded only that most of the warming of the prior 50 years could be attributed to humans. It was possible, according to the I.P.C.C. consensus statement, that the warming before 1956 could be because of changes in solar activity, and that even a substantial part of the more recent warming could be natural. Our Berkeley Earth approach used sophisticated statistical methods developed largely by our lead scientist, Robert Rohde, which allowed us to determine earth land temperature much further back in time. We carefully studied issues raised by skeptics: biases from urban heating (we duplicated our results using rural data alone), from data selection (prior groups selected fewer than 20 percent of the available temperature stations; we used virtually 100 percent), from poor station quality (we separately analyzed good stations and poor ones) and from human intervention and data adjustment (our work is completely automated and hands-off). In our papers we demonstrate that none of these potentially troublesome effects unduly biased our conclusions. The historic temperature pattern we observed has abrupt dips that match the emissions of known explosive volcanic eruptions; the particulates from such events reflect sunlight, make for beautiful sunsets and cool the earth’s surface for a few years. There are small, rapid variations attributable to El Niño and other ocean currents such as the Gulf Stream; because of such oscillations, the “flattening” of the recent temperature rise that some people claim is not, in our view, statistically significant. What has caused the gradual but systematic rise of two and a half degrees? We tried fitting the shape to simple math functions (exponentials, polynomials), to solar activity and even to rising functions like world population. By far the best match was to the record of atmospheric carbon dioxide, measured from atmospheric samples and air trapped in polar ice. Just as important, our record is long enough that we could search for the fingerprint of solar variability, based on the historical record of sunspots. That fingerprint is absent. Although the I.P.C.C. allowed for the possibility that variations in sunlight could have ended the “Little Ice Age,” a period of cooling from the 14th century to about 1850, our data argues strongly that the temperature rise of the past 250 years cannot be attributed to solar changes. This conclusion is, in retrospect, not too surprising; we’ve learned from satellite measurements that solar activity changes the brightness of the sun very little.

#### US climate leadership spurs international action – solves extinction

Khosla 9 – President of the International Union for the Conservation of Nature (Ashok, 1/29/09, “A new President for the United States: We have a dream,” http://www.iucn.org/knowledge/news/opinion/?2595/new-President-for-the-United-States-We-have-a-dream)

A rejuvenated America, with a renewed purpose, commitment and energy to make its contribution once again towards a better world could well be the turning point that can reverse the current decline in the state of the global economy, the health of its life support systems and the morale of people everywhere. This extraordinary change in regime brings with it the promise of a deep change in attitudes and aspirations of Americans, a change that will lead, hopefully, to new directions in their nation’s policies and action. In particular, we can hope that from being a very reluctant partner in global discussions, especially on issues relating to environment and sustainable development, the United States will become an active leader in international efforts to address the Millennial threats now confronting civilization and even the survival of the human species. For the conservation of biodiversity, so essential to maintaining life on Earth, this promise of change has come not a moment too soon. It would be a mistake to put all of our hopes on the shoulder of one young man, however capable he might be. The environmental challenges the world is facing cannot be addressed by one country, let alone by one man. At the same time, an inspired US President guided by competent people, who does not shy away from exercising the true responsibilities and leadership his country is capable of, could do a lot to spur the international community into action. To paraphrase one of his illustrious predecessors, “the world asks for action and action now.” What was true in President Roosevelt’s America 77 years ago is even more appropriate today. From IUCN’s perspective, the first signals are encouraging. The US has seriously begun to discuss constructive engagement in climate change debates. With Copenhagen a mere 11 months away, this commitment is long overdue and certainly very welcome. Many governments still worry that if they set tough standards to control carbon emissions, their industry and agriculture will become uncompetitive, a fear that leads to a foot-dragging “you go first” attitude that is blocking progress. A positive intervention by the United States could provide the vital catalyst that moves the basis of the present negotiations beyond the narrowly defined national interests that lie at the heart of the current impasse. The logjam in international negotiations on climate change should not be difficult to break if the US were to lead the industrialized countries to agree that much of their wealth has been acquired at the expense of the environment (in this case greenhouse gases emitted over the past two hundred years) and that with the some of the benefits that this wealth has brought, comes the obligation to deal with the problems that have resulted as side-effects. With equitable entitlement to the common resources of the planet, an agreement that is fair and acceptable to all nations should be easy enough to achieve. Caps on emissions and sharing of energy efficient technologies are simply in the interest of everyone, rich or poor. And both rich and poor must now be ready to adopt less destructive technologies – based on renewables, efficiency and sustainability – both as a goal with intrinsic merit and also as an example to others. But climate is not the only critical global environmental issue that this new administration will have to deal with. Conservation of biodiversity, a crucial prerequisite for the wellbeing of all humanity, no less America, needs as much attention, and just as urgently. The United States’ self-interest in conserving living natural resources strongly converges with the global common good in every sphere: in the oceans, by arresting the precipitate decline of fish stocks and the alarming rise of acidification; on land, by regenerating the health of our soils, forests and rivers; and in the atmosphere by reducing the massive emission of pollutants from our wasteful industries, construction, agriculture and transport systems.

#### Warming causes extinction

Mazo 10 (Jeffrey Mazo – PhD in Paleoclimatology from UCLA, Managing Editor, Survival and Research Fellow for Environmental Security and Science Policy at the International Institute for Strategic Studies in London, 3-2010, “Climate Conflict: How global warming threatens security and what to do about it,” pg. 122)

The best estimates for global warming to the end of the century range from 2.5-4.~C above pre-industrial levels, depending on the scenario. Even in the best-case scenario, the low end of the likely range is 1.goC, and in the worst 'business as usual' projections, which actual emissions have been matching, the range of likely warming runs from 3.1--7.1°C. Even keeping emissions at constant 2000 levels (which have already been exceeded), global temperature would still be expected to reach 1.2°C (O'9""1.5°C)above pre-industrial levels by the end of the century." Without early and severe reductions in emissions, the effects of climate change in the second half of the twenty-first century are likely to be catastrophic for the stability and security of countries in the developing world - not to mention the associated human tragedy. Climate change could even undermine the strength and stability of emerging and advanced economies, beyond the knock-on effects on security of widespread state failure and collapse in developing countries.' And although they have been condemned as melodramatic and alarmist, many informed observers believe that unmitigated climate change beyond the end of the century could pose an existential threat to civilisation." What is certain is that there is no precedent in human experience for such rapid change or such climatic conditions, and even in the best case adaptation to these extremes would mean profound social, cultural and political changes.

#### **Soft power facilitates institutions – solves global problems**

Ikenberry 11 (G. John Ikenberry – Professor of Politics and International Affairs at Princeton University , Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order, 2011)

Rather than a single overriding threat, the United States and other countries face a host of diffuse and evolving threats. Global warming, nuclear proliferation, jihadist terrorism, energy security, health pandemics— these and other dangers loom on the horizon. **Any of these** threats **could** endanger Americans' lives and way of life either directly or indirectly by **destabiliz**ing **the global system** upon which American security and prosperity depends. Pandemics and global warming are not threats wielded by human hands, but their consequences could be equally devastating. Highly infectious disease has the potential to kill millions of people. Global warming threatens to trigger waves of environmental migration and food shortages and may further destabilize weak and poor states around the world. The world is also on the cusp of a new round of nuclear proliferation, putting mankinds deadliest weapons in the hands of unstable and hostile states. Terrorist networks offer a new specter of nonstate transnational violence. Yet none of these threats is, in itself, so singularly preeminent that it deserves to be the centerpiece of American grand strategy in the way that antifascism and anticommunism did in an earlier era.15 What is more, these various threats are interconnected—and it is their interactive effects that represent the most acute danger. This point is stressed by Thomas Homer-Dixon: "Its the convergence of stresses that's especially treacherous and makes synchronous failure a possibility as never before. In coming years, our societies won't face one or two major challenges at once, as usually happened in the past. Instead, they will face an alarming variety of problems—likely including oil shortages**, climate change,** economic instability**, and** mega-terrorism—all at the same time." The danger is that several of these threats will materialize at the same time and interact to generate greater violence and instability "What happens, for example, if together or in quick succession the world has to deal with a sudden shift in climate that sharply cuts food production in Europe and Asia, a severe oil price increase that sends economies tumbling around the world, and a string of major terrorist attacks on several Western capital cities?"16 The global order itself would be put at risk, as well as the foundations of American national security. What unites these threats and challenges, as I noted in chapter 7, is that they are all manifestations of rising security interdependence. More and more of what goes on in other countries matters for the health and safety of the United States and the rest of the world. Many of the new dangers—such as health pandemics and transnational terrorist violence— stem from the weakness of states rather than their strength. At the same time, technologies of violence are evolving, providing opportunities for weak states or nonstate groups to threaten others at a greater distance. When states are in a situation of security interdependence, they cannot go it alone. They must negotiate and cooperate with other states and seek mutual restraints and protections. The United States cannot hide or protect itself from threats under conditions of rising security interdependence. It must get out in the world and work with other states to build frameworks of cooperation and leverage capacities for action. If the world of the twenty-first century were a town, the security threats faced by its leading citizens would not be organized crime or a violent assault by a radical mob on city hall. It would be a breakdown of law enforcement and social services in the face of constantly changing and ultimately uncertain vagaries of criminality, nature, and circumstance. The neighborhoods where the leading citizens live can only be made safe if the security and well-being of the beaten-down and troubled neighborhoods were also improved. No neighborhood can be left: behind. At the same time, the town will need to build new capacities for social and economic protection. People and groups will need to cooperate in new and far-reaching ways. But the larger point is that today the United States confronts an unusually diverse and diffuse array of threats and challenges. When we try to imagine what the premier threat to the United States will be in 2020 or 2025, it is impossible to say with any confidence that it will be X, Y, or Z. Moreover, even if we could identify X, Y, or Z as the premier threat around which all others turn, it is likely to be complex and interlinked with lots of other international moving parts. Global pandemics are connected to failed states, homeland security, international public health capacities, et cetera. Terrorism is related to the Middle East peace process, economic and political development, nonproliferation, intelligence cooperation, European social and immigration policy, et cetera. The rise of China is related to alliance cooperation, energy security, democracy promotion, the WTO, management of the world economy, et cetera. So again, we are back to renewing and rebuilding the architecture of global governance and frameworks of cooperation to allow the United States to marshal resources and tackle problems along a wide and shifting spectrum of possibilities. Pg. 350-353

#### Adaptation of legal regimes to deal with climate is critical to adaptation – prevents worst impacts of warming

Craig 10 – Professor of Law & Associate Dean for Environmental Programs @ Florida State University [Robin Kundis Craig, “'Stationarity is Dead' - Long Live Transformation: Five Principles for Climate Change Adaptation,” Harvard Environmental Law Review, Vol. 34, No. 1, 2010, pp. 9-75

Climate change is creating positive feedback loops that may irreversibly push ecosystems over ecological thresholds, destroying coupled socio-ecological systems. In January 2009, the U.S. Climate Change Science Program ("USCCSP") reported that the Arctic tundra represents a "clear example" of climate change pushing an ecosystem beyond an ecological threshold. 21 Warmer temperatures in the Arctic reduces the duration of snow cover, which in turn reduces the tundra's ability to reflect the sun's energy, leading to an "amplified, positive feedback effect. '22 The result has been "a relatively sudden, domino-like chain of events that result in conversion of the arctic tundra to shrubland, triggered by a relatively slight increase in temperature," 23 and the consequences for people living in these areas have been severe. For example, the Inupiat Eskimo village of Kivalina, Alaska, is suing for the costs of moving elsewhere, in response to the steady erosion of the village itself.24 Similarly, most Canadian Inuit live near the coast, on lands that exist only because of permafrost. Warming Arctic conditions threaten to deprive them of their homelands.25 Thus, a variety of natural systems and the humans who depend on them - what are termed socio-ecological systems26 - are vulnerable to climate change impacts. While developing and implementing successful **mitigation strategies** clearly **remains critical** in the quest to avoid worst-case climate change scenarios, we have passed the point where mitigation efforts alone can deal with the problems that climate change is creating.27 Because of "committed" warming - climate change that will occur regardless of the world's success in implementing mitigation measures, a result of the already accumulated greenhouse gases ("GHGs") in the atmosphere 28 - what happens to socio ecological systems over the next decades, and most likely over the next few centuries, will largely be beyond human control. The time to start preparing for these changes is now, by making adaptation part of a national climate change policy. Nevertheless, American environmental law and policy are not keeping up with climate change impacts and the need for adaptation.29 To be sure, adjustments to existing analysis requirements are relatively easy, as when the Eastern District of California ordered the FWS to consider the impacts of climate change in its Biological Opinion under the ESA.30 Agencies and courts have also already incorporated similar climate change analyses into the National Environmental Policy Act's ("NEPA") Environmental Impact Statement ("EIS") requirement3 ' and similar requirements in other statutes. 32 Even so, adapting law to a world of continuing climate change impacts will be a far more complicated task than addressing mitigation. When the law moves beyond analysis requirements to actual environmental regulation and natural resource management,33 it will find itself in the increasingly uncomfortable world of changing complex systems and complex adaptive management - a world of unpredictability, poorly understood and changing feedback mechanisms, nonlinear changes, and ecological thresholds. As noted, climate change alters baseline ecosystem conditions in ways that are currently beyond immediate human control,34 regardless of mitigation efforts. These baseline conditions include air, water, and land temperatures; hydrological conditions, including the form, timing, quality, and amount of precipitation, runoff, and groundwater flow; soil conditions; and air quality. Alterations in these basic ecological elements, in turn, are prompting shifts and rearrangements of species, food webs, ecosystem functions, and ecosystem services.35 Climate change thus complicates and even **obliterates familiar ecologies**, with regulatory and management consequences. Nor are these regulatory and management consequences an as-yet-still hypothetical problem. In February 2008, a group of researchers noted in Science that current water resource management in the developed world is grounded in the concept of stationarity - "the idea that natural systems fluctuate within an unchanging envelope of variability."36 However, because of climate change, "stationarity is dead."37 These researchers emphasized that impacts to water supplies from climate change are now projected to occur "during the multidecade lifetime of major water infrastructure projects" and are likely to be wide-ranging and pervasive, affecting every aspect of water supply.38 As a result, the researchers concluded that stationarity "should no longer serve as a central, default assumption in water-resource risk assessment and planning. Finding a suitable successor is crucial for human adaptation to changing climate."39 Further, these authors realized the critical question is what a successor regime to stationarity should look like. 40 With the onset of climate change impacts, humans have decisively lost the capability - to the extent that we ever had it - to dictate the status of ecosystems and their services. As a result, and perhaps heretically, this Article argues that, for adaptation purposes, we are better off treating climate change impacts as a rather than as anthropogenic disturbances, 41 with a consequent shift in regulatory focus: we cannot prevent all of climate change's impacts,42 but we can certainly improve the efficiency and effectiveness of our responses to them. As this slow-moving tsunami 43 bears down on us, some loss is inevitable - but loss of everything is not. Climate change is creating a world of triage, best guesses, and shifting sands, and the sooner we start adapting legal regimes to these new regulatory and management realities, the sooner we can marshal energy and resources into actions that will help humans, species, and ecosystems cope with the changes that are coming. Pg. 13-16

#### Terror causes extinction

Ayson 10 (Robert, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand – Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects”, Studies in Conflict & Terrorism, 33(7), July)

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today's and tomorrow's terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,[40](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928" \l "EN0040) and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”[41](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0041) Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington's relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington's early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country's armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abetters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents' … long-standing interest in all things nuclear.”[42](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0042) American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide. There is also the question of how other nuclear-armed states respond to the act of nuclear terrorism on another member of that special club. It could reasonably be expected that following a nuclear terrorist attack on the United States, both Russia and China would extend immediate sympathy and support to Washington and would work alongside the United States in the Security Council. But there is just a chance, albeit a slim one, where the support of Russia and/or China is less automatic in some cases than in others. For example, what would happen if the United States wished to discuss its right to retaliate against groups based in their territory? If, for some reason, Washington found the responses of Russia and China deeply underwhelming, (neither “for us or against us”) might it also suspect that they secretly were in cahoots with the group, increasing (again perhaps ever so slightly) the chances of a major exchange. If the terrorist group had some connections to groups in Russia and China, or existed in areas of the world over which Russia and China held sway, and if Washington felt that Moscow or Beijing were placing a curiously modest level of pressure on them, what conclusions might it then draw about their culpability? If Washington decided to use, or decided to threaten the use of, nuclear weapons, the responses of Russia and China would be crucial to the chances of avoiding a more serious nuclear exchange. They might surmise, for example, that while the act of nuclear terrorism was especially heinous and demanded a strong response, the response simply had to remain below the nuclear threshold. It would be one thing for a non-state actor to have broken the nuclear use taboo, but an entirely different thing for a state actor, and indeed the leading state in the international system, to do so. If Russia and China felt sufficiently strongly about that prospect, there is then the question of what options would lie open to them to dissuade the United States from such action: and as has been seen over the last several decades, the central dissuader of the use of nuclear weapons by states has been the threat of nuclear retaliation. If some readers find this simply too fanciful, and perhaps even offensive to contemplate, it may be informative to reverse the tables. Russia, which possesses an arsenal of thousands of nuclear warheads and that has been one of the two most important trustees of the non-use taboo, is subjected to an attack of nuclear terrorism. In response, Moscow places its nuclear forces very visibly on a higher state of alert and declares that it is considering the use of nuclear retaliation against the group and any of its state supporters. How would Washington view such a possibility? Would it really be keen to support Russia's use of nuclear weapons, including outside Russia's traditional sphere of influence? And if not, which seems quite plausible, what options would Washington have to communicate that displeasure? If China had been the victim of the nuclear terrorism and seemed likely to retaliate in kind, would the United States and Russia be happy to sit back and let this occur? In the charged atmosphere immediately after a nuclear terrorist attack, how would the attacked country respond to pressure from other major nuclear powers not to respond in kind? The phrase “how dare they tell us what to do” immediately springs to mind. Some might even go so far as to interpret this concern as a tacit form of sympathy or support for the terrorists. This might not help the chances of nuclear restraint.

## 2AC

## Case

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#### Disease

**Greger 8** (M.D., is Director of Public Health and Animal Agriculture at The Humane Society of the United States (Michael Greger, , Bird Flu: A Virus of Our Own Hatching, <http://birdflubook.com/a.php?id=111>)

Senate Majority Leader Frist describes the recent slew of emerging diseases in almost biblical terms: “All of these [new diseases] were advance patrols of a great army that is preparing way out of sight.”3146 Scientists like Joshua Lederberg don’t think this is mere rhetoric. He should know. Lederberg won the Nobel Prize in medicine at age 33 for his discoveries in bacterial evolution. Lederberg went on to become president of Rockefeller University. “Some people think I am being hysterical,” he said, referring to pandemic influenza, “but there are catastrophes ahead. We live in evolutionary competition with microbes—bacteria and viruses. There is no guarantee that we will be the survivors.”3147 There is a concept in host-parasite evolutionary dynamics called the Red Queen hypothesis, which attempts to describe the unremitting struggle between immune systems and the pathogens against which they fight, each constantly evolving to try to outsmart the other.3148 The name is taken from Lewis Carroll’s Through the Looking Glass in which the Red Queen instructs Alice, “Now, here, you see, it takes all the running you can do to keep in the same place.”3149 Because the pathogens keep evolving, our immune systems have to keep adapting as well just to keep up. According to the theory, animals who “stop running” go extinct. So far our immune systems have largely retained the upper hand, but the fear is that given the current rate of disease emergence, the human race is losing the race.3150 In a Scientific American article titled, “Will We Survive?,” one of the world’s leading immunologists writes: Has the immune system, then, reached its apogee after the few hundred million years it had taken to develop? Can it respond in time to the new evolutionary challenges? These perfectly proper questions lack sure answers because we are in an utterly unprecedented situation [given the number of newly emerging infections].3151 The research team who wrote Beasts of the Earth conclude, “Considering that bacteria, viruses, and protozoa had a more than two-billion-year head start in this war, a victory by recently arrived Homo sapiens would be remarkable.”3152 Lederberg ardently believes that emerging viruses may imperil human society itself. Says NIH medical epidemiologist David Morens, When you look at the relationship between bugs and humans, the more important thing to look at is the bug. When an enterovirus like polio goes through the human gastrointestinal tract in three days, its genome mutates about two percent. That level of mutation—two percent of the genome—has taken the human species eight million years to accomplish. So who’s going to adapt to whom? Pitted against that kind of competition, Lederberg concludes that the human evolutionary capacity to keep up “may be dismissed as almost totally inconsequential.”3153 To help prevent the evolution of viruses as threatening as H5N1, the least we can do is take away a few billion feathered test tubes in which viruses can experiment, a few billion fewer spins at pandemic roulette. The human species has existed in something like our present form for approximately 200,000 years. “Such a long run should itself give us confidence that our species will continue to survive, at least insofar as the microbial world is concerned. Yet such optimism,” wrote the Ehrlich prize-winning former chair of zoology at the University College of London, “might easily transmute into a tune whistled whilst passing a graveyard.”3154

#### **Food shortages**

Cribb 10 (Julian, the principal of Julian Cribb & Associates, specialists in science communication, 1996-2002 he was Director, National Awareness, for Australia’s national science agency, CSIRO, has received 32 awards for journalism including the Order of Australia Association Media Prize, fellow of the Australian Academy of Technological Sciences and Engineering. The Coming Famine: The Global Food Crisis and what we can do to avoid it, University of California Press, 2010, p. 20)

The threat of conflict over food, land, and water is not, however, confined to the marginal world. Increasingly it imperils the economic powerhouses of the global economy in the early twenty-first century. In 2001 the Australian strategic analyst Alan Dupont predicted, “Food is destined to have greater strategic weight and import in an era of environmental scarcity. While optimists maintain that the world is perfectly capable of meeting the anticipated increases in demand for essential foodstuffs, there are enough imponderables to suggest that prudent governments would not want to rely on such a felicitous outcome." Anticipating the food crisis of 2007-8 by several years, he presciently added, "East Asia's rising demand for food and diminishing capacity to feed itself adds an unpredictable new element to the global food equation for several reasons. The gap between production and consumption of key foodstuffs globally is narrowing dangerously and needs to be reversed." Bearing out his words, Singapore president Lee Hsieng Loong told a 2008 international defense conference, "In the longer term, the trends towards tighter supplies and higher prices will likely reassert themselves. This has serious security implications. The impact of a chronic food shortage will be felt especially by the poor countries. The stresses from hunger and famine can easily result in social upheaval and civil strife, exacerbating conditions that lead to failed states. Between countries, competition for food supplies and displacement of people across borders could deepen tensions and provoke conflict and wars."15

#### Oil conflict escalate

**Klare 2002** (Michael – board of directors of the Arms Control Association, the National Council of the Federation of American Scientists, and the advisory board of the Arms Division of Human Rights Watch, Resource Wars: The New Landscape of Global Conflict, p. 27-29)

Of all the resources discussed in this book, none is more likely to provoke conflict between states in the twenty-first century than oil. Petroleum stands out from other materials-water, minerals, timber, and so on-because of its pivotal role in the global economy and its capacity to ignite large-scale combat. No highly industrialized society can survive at present without substantial supplies of oil, and so any significant threat to the continued availability of this resource will prove a cause of crisis and, in extreme cases, provoke the use of military force. Action of this sort could occur in any of the major oil-producing areas, including the Middle East and the Caspian basin. Lesser conflicts over petroleum are also likely, as states fight to gain or retain control over resource-rich border areas and offshore economic zones. Big or small, conflicts over oil will constitute a significant feature of the global security environment in the decades to come. Petroleum has, of course, been a recurring source of conflict in the past. Many of the key battles of World War II, for example, were triggered by the Axis Powers' attempts to gain control over petroleum supplies located in areas controlled by their adversaries. The pursuit of greater oil revenues also prompted Iraq's 1990 invasion of Kuwait, and this, in turn, provoked a massive American military response. But combat over petroleum is not simply a phenomenon of the past; given the world's ever-increasing demand for energy and the continuing possibility of supply interruptions, the outbreak of a conflict over oil is just as likely to occur in the future. The likelihood of future combat over oil is suggested, first of all, by the growing buildup of military forces in the Middle East and other oil-producing areas. Until recently, the greatest concentration of military power was to found along the East-West divide in Europe and at other sites of superpower competition. Since 1990, however, these concentrations have largely disappeared, while troop levels in the major oil zones have been increased. The United States, for example, has established a permanent military infrastructure in the Persian Gulf area and has "prepositioned" sufficient war materiel there to sustain a major campaign. Russia, meanwhile, has shifted more of its forces to the North Caucasus and the Caspian Sea basin, while China has expanded its naval presence in the South China Sea. Other countries have also bolstered their presence in these areas and other sites of possible conflict over oil. Geology and geography also add to the risk of conflict. While relatively abundant at present, natural petroleum does not exist in unlimited quantities; it is a finite, nonrenewable substance. At some point in the future, available supplies will prove inadequate to satisfy soaring demand, and the world will encounter significant shortages. Unless some plentiful new source of energy has been discovered by that point, competition over the remaining supplies of petroleum will prove increasingly fierce. In such circumstances, any prolonged interruption in the global flow of oil will be viewed by import- dependent states as a mortal threat to their security-and thus as a matter that may legitimately be resolved through the use of military force. Growing scarcity will also result in higher prices for oil, producing enormous hardship for those without the means to absorb added costs; in consequence, widespread internal disorder may occur. Geography enters the picture because many of the world's leading sources of oil are located in contested border zones or in areas of recurring crisis and violence. The distribution of petroleum is more concentrated than other raw materials, with the bulk of global sup- plies found in a few key producing areas. Some of these areas-the North Slope of Alaska and the American Southwest, for example- are located within the borders of a single country and are relatively free of disorder; others, however, are spread across several coun- tries-which may or may not agree on their common borders-and/ or are located in areas of perennial unrest. To reach global markets, moreover, petroleum must often travel (by ship or by pipeline) through other areas of instability. Because turmoil in these areas can easily disrupt the global flow of oil, any outbreak of conflict, however minor, will automatically generate a risk of outside intervention.

#### **Terror**

Ayson 10 (Robert, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand – Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects”, Studies in Conflict & Terrorism, 33(7), July)

*A Catalytic Response: Dragging in the Major Nuclear Powers*

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today's and tomorrow's terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,[40](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928" \l "EN0040) and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”[41](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0041) Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington's relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington's early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country's armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abetters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents' … long-standing interest in all things nuclear.”[42](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0042) American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide.

#### Economic collapse

Merlini 11

[Cesare Merlini, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs (IAI) in Rome. He served as IAI president from 1979 to 2001. Until 2009, he also occupied the position of executive vice chairman of the Council for the United States and Italy, which he co-founded in 1983. His areas of expertise include transatlantic relations, European integration and nuclear non-proliferation, with particular focus on nuclear science and technology. A Post-Secular World? DOI: 10.1080/00396338.2011.571015 Article Requests: Order Reprints : Request Permissions Published in: journal Survival, Volume 53, Issue 2 April 2011 , pages 117 - 130 Publication Frequency: 6 issues per year Download PDF Download PDF (357 KB) View Related Articles To cite this Article: Merlini, Cesare 'A Post-Secular World?', Survival, 53:2, 117 – 130]

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even **involving the use of nuclear weapons**. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular **rational approach would be sidestepped** by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism.

## K

### Agamben K 2ac

#### 1. Framework- the role of the ballot is to weigh the plan against a competitive policy option

#### Net benefits-

#### First- Fairness- they moot the entirety of the 1ac, makes it impossible to be affirmative

#### Second – Education- Policy education is good- it teaches future decisionmaking

#### 2. K doesn’t come first

**Owens 2002** (David – professor of social and political philosophy at the University of Southampton, Re-orienting International Relations: On Pragmatism, Pluralism and Practical Reasoning, Millenium, p. 655-657)

Commenting on the ‘philosophical turn’ in IR, Wæver remarks that ‘[a] frenzy for words like “epistemology” and “ontology” often signals this philosophical turn’, although he goes on to comment that these terms are often used loosely.4 However, loosely deployed or not, it is clear that debates concerning ontology and epistemology play a central role in the contemporary IR theory wars. In one respect, this is unsurprising since it is a characteristic feature of the social sciences that periods of disciplinary disorientation involve recourse to reflection on the philosophical commitments of different theoretical approaches, and there is no doubt that such reflection can play a valuable role in making explicit the commitments that characterise (and help individuate) diverse theoretical positions. Yet, such a philosophical turn is not without its dangers and I will briefly mention three before turning to consider a confusion that has, I will suggest, helped to promote the IR theory wars by motivating this philosophical turn. The first danger with the philosophical turn is that it has an inbuilt tendency to prioritise issues of ontology and epistemology **over explanatory** and/or interpretive **power** as if the latter two were merely a **simple function** of the former. But while the explanatory and/or interpretive power of a theoretical account is not wholly independent of its ontological and/or epistemological commitments (otherwise criticism of these features would not be a criticism that had any value), **it is by no means clear that it is**, in contrast, wholly dependent **on these philosophical commitments**. Thus, for example, one need not be sympathetic to rational choice theory to recognise that it can provide powerful accounts of certain kinds of problems, such as the tragedy of the commons in which dilemmas of collective action are foregrounded. It may, of course, be the case that the advocates of rational choice theory cannot give a good account of why this type of theory is powerful in accounting for this class of problems (i.e., how it is that the relevant actors come to exhibit features in these circumstances that approximate the assumptions of rational choice theory) and, if this is the case, it is a philosophical weakness—but **this does not undermine** the point that, for a certain class of problems, rational choice theory may provide the best account available to us. In other words, while the critical judgement of theoretical accounts in terms of their ontological and/or epistemological sophistication is one kind of critical judgement, **it is not the only or even necessarily the** most important kind. The second danger run by the philosophical turn is that because prioritisation of ontology and epistemology promotes theory-construction from philosophical first principles, it cultivates a theory-driven rather than problem-driven approach to IR. Paraphrasing Ian Shapiro, the point can be put like this: since it is the case that there is always a plurality of possible true descriptions of a given action, event or phenomenon, the challenge is to decide which is the most apt in terms of getting a perspicuous grip on the action, event or phenomenon in question given the purposes of the inquiry; yet, from this standpoint, ‘theory-driven work is part of a reductionist program’ in that it ‘dictates always opting for the description that calls for the explanation that flows from the preferred model or theory’.5 The justification offered for this strategy rests on the mistaken belief that it is necessary for social science because general explanations are required to characterise the classes of phenomena studied in similar terms. However, as Shapiro points out, this is to misunderstand the enterprise of science since ‘whether there are general explanations for classes of phenomena is a **question for social-scientific inquiry**, not to be prejudged before conducting that inquiry’.6 Moreover, this strategy easily slips into the promotion of the pursuit of generality over that of empirical validity. The third danger is that the preceding two combine to encourage the formation of a particular image of disciplinary debate in IR—what might be called (only slightly tongue in cheek) ‘the Highlander view’—namely, an image of warring theoretical approaches with each, despite occasional temporary tactical alliances, dedicated to the strategic achievement of sovereignty over the disciplinary field. It encourages this view because the turn to, and prioritisation of, ontology and epistemology stimulates the idea that there can only be one **theoretical approach which gets things right**, namely, the theoretical approach that gets its ontology and epistemology right. This image feeds back into IR exacerbating the first and second dangers, and so a potentially vicious circle arises.

#### 3. Extinction outweighs

Bok 88

(Sissela, Professor of Philosophy at Brandeis, Applied Ethics and Ethical Theory, Rosenthal and Shehadi, Ed.)

The same argument can be made for Kant’s other formulations of the Categorical Imperative: “So act as to use humanity, both in your own person and in the person of every other, always at the same time as an end, never simply as a means”; and “So act as if you were always through your actions a law-making member in a universal Kingdom of Ends.” No one with a concern for humanity could consistently will to risk eliminating humanity in the person of himself and every other or to risk the death of all members in a universal Kingdom of Ends for the sake of justice. To risk their collective death for the sake of following one’s conscience would be, as Rawls said, “irrational, crazy.” And to say that one did not intend such a catastrophe, but that one merely failed to stop other persons from bringing it about would be beside the point when the end of the world was at stake. For although it is true that we cannot be held responsible for most of the wrongs that others commit, the Latin maxim presents a case where we would have to take such responsibility seriously – perhaps to the point of deceiving, bribing, even killing an innocent person, in order that the world not perish. To avoid self-contradiction, the Categorical Imperative would, therefore, have to rule against the Latin maxim on account of its cavalier attitude toward the survival of mankind. But the ruling would then produce a rift in the application of the Categorical Imperative. Most often the Imperative would ask us to disregard all unintended but foreseeable consequences, such as the death of innocent persons, whenever concern for such consequences conflicts with concern for acting according to duty. But, in the extreme case, we might have to go against even the strictest moral duty precisely because of the consequences. Acknowledging such a rift would post a strong challenge to the unity and simplicity of Kant’s moral theory.

#### True constraints are possible – court rulings are binding – past decisions prove

#### Even if they aren’t – the president will go along with them anyway – takes out the impact

Bradley and Morrison 13

[Curtis, William Van Alstyne Professor of Law, Duke Law School. and Trevor, Liviu Librescu Professor of Law, Columbia Law School, Presidential Power, Historical Practice, And Legal Constraint, 2013 Directors of The Columbia Law Review Association, Inc. Columbia Law Review May, 2013, L/N]

Insisting on a sharp distinction between the law governing presidential authority that is subject to judicial review and the law that is not also takes for granted a phenomenon that merits attention - that Presidents follow judicial decisions. n118 That assumption is generally accurate in the United States today. To take one relatively recent example, despite disagreeing with the Supreme Court's determination in Hamdan v. Rumsfeld that Common Article 3 of the Geneva Conventions applies to the war on terror, the Bush Administration quickly accepted it. n119 But the reason why Presidents abide by court decisions has a connection to the broader issue [\*1131] of the constraining effect of law. An executive obligation to comply with judicial decisions is itself part of the practice-based constitutional law of the United States, so presidential compliance with this obligation may demonstrate that such law can in fact constrain the President. This is true, as we explain further in Part III, even if the effect on presidential behavior is motivated by concerns about external political perceptions rather than an internal sense of fidelity to law (or judicial review). n120

#### War kills alt solvency

**Linklater 90** (Andrew, Senior Lecturer in Politics – Monash University, Beyond Realism and Marxism: Critical Theory and International Relations, p. 32)

These theoretical disagreements with Marxism generate major differences at the practical level. It is necessary to conclude that a post-Marxist critical theory of international relations must concede that technical and practical orientations to foreign policy are inescapable at least at this juncture. Such an approach must appreciate the need for classical realist methods of protecting the state under conditions of insecurity and distrust, and recognise the importance of the rationalist defence of order and legitimacy in the context of anarchy. It is important to take account of the rationalist claim that order is unlikely to survive if the major powers cannot reconcile their different national security interests. In a similar vein, a critical approach to international relations is obliged to conclude that the project of emancipation will not make significant progress if international order is in decline. One of its principal tasks would then be to understand how the community of states can be expanded so that it approximates a condition which maximises the importance of freedom and universality. In this case, a critical theory of international relations which recognises the strengths of realism and Marxism must aim for a political practice which deals concurrently with the problem of power, the need for order and the possibility of emancipation through the extension of human community

#### -- Alt fails – wishful calls for revamping sovereignty do nothing – simultaneous political action is vital to prevent short-term threats to survival

**Lombardi 96** (Mark Owen, Associate Professor of Political Science – Tampa, Perspectives on Third-World Sovereignty, p. 161)

Sovereignty is in our collective minds. What we look at, the way we look at it and what we expect to see must be altered. This is the call for international scholars and actors. The assumptions of the paradigm will dictate the solution and approaches considered. Yet, a mere call to change this structure of the system does little except activate reactionary impulses and intellectual retrenchment. Questioning the very precepts of sovereignty, as has been done in many instances, does not in and of itself address the problems and issues so critical to transnational relations. That is why theoretical changes and paradigm shifts must be coterminous with applicative studies. One does not and should not precede the other. We cannot wait until we have a neat self-contained and accurate theory of transnational relations before we launch into studies of Third-World issues and problem-solving. If we wait we will never address the latter and arguably most important issue-area: the welfare and quality of life for the human race.

#### -- Doesn’t solve the case – impact is short-term extinction – they’re too slow

#### -- Bare life isn’t the root of everything – ignores specificity, far too general, and empirically false

#### -- Alt fails – they view power as top-down – makes resistance impossible

**Hardt 00** (Michael Hardt, Literature @ Duke, 2000, Theory and Event, 4.3, p Muse)

But still none of that addresses the passivity you refer to. For that we have to look instead at Agamben’s notions of life and biopower. Agamben uses the term “naked life” to name that limit of humanity, the bare minimum of existence that is exposed in the concentration camp. In the final analysis, he explains, modem sovereignty rules over naked life and biopower is this power to rule over life itself What results from this analysis is not so much passivity, I would say, but powerlessness. There is no figure that can challenge and contest sovereignty. Our critique of Agamben’s (and also Foucault’s) notion of biopower is that it is conceived only from above and we attempt to formulate instead a notion of biopower from below, that is, a power by which the multitude itself rules over life. (In this sense, the notion of biopower one finds in some veins of ecofeminism such as the work of Vandana Shiva, although cast on a very different register, is closer to our notion of a biopower from below.) What we are interested in finally is a new biopolitics that reveals the struggles over forms of life.

#### -- Can’t advocate the plan – steals all the Aff crushing ground, allows tiny impossible to beat PICs and proves the Aff true

#### -- Turn – political vacuum – abandoning state reforms causes worse forces to fill-in

**Barbrook 97** (Dr. Richard, School of Westminster, Nettime, “More Provocations”, 6-5,

http://www.nettime.org/Lists-Archives/nettime-l-9706/msg00034.html)

I thought that this position is clear from my remarks about the ultra-left posturing of the 'zero-work' demand. In Europe, we have real social problems of deprivation and poverty which, in part, can **only be solved by state action**. This does not make me a statist, but rather an anti-anti-statist. By opposing such intervention because they are carried out by the state, anarchists are **tacitly lining up with the neo-liberals**. Even worse, refusing even to vote for the left, they acquiese to rule by neo-liberal parties. I deeply admire direct action movements. I was a radio pirate and we provide server space for anti-roads and environmental movements. However, this doesn't mean that I support political abstentionism or, even worse, the mystical nonsense produced by Hakim Bey. It is great for artists and others to adopt a marginality as a life style choice, but most of the people who are economically and socially marginalised were never given any choice. They are excluded from society as a result of deliberate policies of deregulation, privatisation and welfare cutbacks carried out by neo-liberal governments. During the '70s, I was a pro-situ punk rocker until Thatcher got elected. Then we learnt the hard way that voting did change things and **lots of people suffered** if state power was withdrawn from certain areas of our life, such as welfare and employment. Anarchism can be a fun artistic pose. However, human suffering is not.

#### -- Conditionality is a voter – creates time and strategy skews, argumentative irresponsibility, and dispo solves

**Perm -- do both -- so the plan and refuse sovereign power and draw lines between the inside and outside**

#### -- No impact

**Dickinson 4** (Dr. Edward Ross, Professor of History – University of Cincinnati, “Biopolitics, Fascism, Democracy: Some Reflections on Our Discourse About ‘Modernity’”, Central European History, 37(1), p. 18-19)

In an important programmatic statement of 1996 Geoff Eley celebrated the fact that Foucault’s ideas have “fundamentally directed attention away from institutionally centered conceptions of government and the state . . . and toward a dispersed and decentered notion of power and its ‘microphysics.’”48 The “broader, deeper, and less visible ideological consensus” on “technocratic reason and the ethical unboundedness of science” was the focus of his interest.49 But the “power-producing effects in Foucault’s ‘microphysical’ sense” (Eley) of the construction of social bureaucracies and social knowledge, of “an entire institutional apparatus and system of practice” ( Jean Quataert), simply do not explain Nazi policy.50 The destructive dynamic of Nazism was a product not so much of a particular modern set of ideas as of a particular modern political structure, one that could realize the disastrous potential of those ideas. What was critical was not the expansion of the instruments and disciplines of biopolitics, which occurred everywhere in Europe. Instead, it was the principles that guided how those instruments and disciplines were organized and used, and the external constraints on them. In National Socialism, biopolitics was shaped by a totalitarian conception of social management focused on the power and ubiquity of the völkisch state. In democratic societies, biopolitics has historically been **constrained** by a rights-based strategy of social management. This is a point to which I will return shortly. For now, the point is that what was decisive was actually politics at the level of the state. A comparative framework can help us to clarify this point. Other states passed compulsory sterilization laws in the 1930s — indeed, individual states in the United States had already begun doing so in 1907. Yet they **did not proceed** tothe next steps adopted by National Socialism — mass sterilization, mass “eugenic” abortion and murder of the “defective.” Individual figures in, for example, the U.S. did make such suggestions. But **neither** the **political structures** of democratic states **nor** their **legal and political principles** **permitted** such policies actually being enacted. Nor did the scale of forcible sterilization in other countries match that of the Nazi program. I do not mean to suggest that such programs were not horrible; but in a **democratic** political **context** they did not develop the dynamic of constant radicalization and escalation that characterized Nazi policies.

#### -- Turn – demanding limitations on war powers reverses power relations and encourages resistance to the state

**Campbell 98** (David, Professor of International Relations – University of Newcastle, Writing Security: United States Foreign Policy and the Politics of Identity, p. 203-205)

Recognizing the possibility of rearticulating danger leads us to a final question: what modes of being and forms of life could we or should we adopt? To be sure, a comprehensive attempt to answer such a question is beyond the ambit of this book. But it is important to note that asking the question in this way mistakenly implies that such possibilities exist only in the future. Indeed, the extensive and inten­sive nature of the relations of power associated with the society of security means that there has been and remains a not inconsiderable freedom to explore alternative possibilities. While traditional analy­ses of power are often economistic and negative, Foucault’s under­standing of power emphasizes its productive and enabling nature. Even more important, his understanding of power emphasizes the ontology of freedom presupposed by the existence of disciplinary and normalizing practices. Put simply, there cannot be relations of power unless subjects are in the first instance free: the need to institute negative and constraining power practices comes about only because without them freedom would abound. Were there no possibility of freedom, subjects would not act in ways that required containment so as to effect order.37 Freedom, though, is not the absence of power. On the contrary, because it is only through power that subjects exercise their agency, freedom and power cannot be separated. As Foucualt maintains: At the very heart of the power relationship, and constantly provok­ing it, are the recalcitrance of the will and the intransigence of free­dom. Rather than speaking of an essential freedom, it would be better to speak of an “agonism” — of a relationship which is at the same time reciprocal incitation and struggle; less of a face-to-face confronta­tion which paralyzes both sides than a permanent provocation.38 The political possibilities enabled by this permanent provocation of power and freedom can be specified in more detail by thinking in terms of the predominance of the “bio-power” discussed above. In this sense, because the governmental practices of biopolitics in Western nations have been increasingly directed towards modes of being and forms of life—such that sexual conduct has become an object of concern, individual health has been figured as a domain of discipline, and the family has been transformed into an instrument of government—the ongoing agonism between those pratices and the freedom they seek to contain means that individuals have articulataed a series of counterdemands drawn from those new fields of concern. For example, as the state continues to prosecute people according to sexual orientation, human rights activists have proclaimed the right of gays to enter into formal marriages, adopt children, and receive the same health and insurance benefits granted to their straight coun­terparts. These claims are a consequence of the permanent provoca­tion of power and freedom in biopolitics, and stand as testament to the **“strategic reversibility”** **of power relations**: if the terms of governmental practices can be made into focal points for resistances, then the “history of government as the ‘conduct of conduct’ is interwoven with the history of dissenting ‘counterconducts,’” Indeed, the emergence of the state as the major articulation of “the political” has involved an **unceasing agonism** between those in office and those they rule. State intervention in everyday life has long incited popular collective action, **the result** of which **has been** both **resistance to the state** and new claims upon the state. In particular, “the core of what we now call ‘citizenship’ . . .consists of multiple bargains hammered out by rulers and ruled in the course of their struggles over the means of state action, especially the making of war.” **In** more **recent times, constituencies associated with** women’s, youth, ecological, and peace movements (among others) **have** also **issued claims on society**.

#### -- Judge choice: representations are potential, not mandatory. Vote Aff for non-security reasons – avoids the link. Its logical and anything else causes reactionary conservativism.

#### -- Alt collapses

**Milbrath 96** (Lester W., Professor Emeritus of Political Science and Sociology – SUNY Buffalo, Building Sustainable Societies, Ed. Pirages, p. 289)

In some respects personal change cannot be separated from societal change. Societal transformation will not be successful without change at the personal level; such change is a necessary but not sufficient step on the route to sustainability. People hoping to live sustainably must adopt new beliefs, new values, new lifestyles, and new worldview. But **lasting** personal change is unlikely without simultaneous transformation of the socioeconomic/political system in which people function. Persons may solemnly resolve to change, but that resolve is **likely to weaken** as they perform day-today within a system reinforcing different beliefs and values. Change agents typically are met with denial and great resistance. Reluctance to challenge mainstream society is the major reason most efforts emphasizing education to bring about change are ineffective. If societal transformation must be speedy, and most of us believe it must, pleading with individuals to change is **not** **likely to be** **effective**.

#### -- Turn – the Messiah –

#### They cause Messianic politics – causes the worst violence

**Kohn 6** [Margaret, Asst. Prof. Poli Sci @ Florida, “Bare Life and the Limits of the Law,”.Theory and Event, 9:2, <http://muse.jhu.edu/journals/theory_and_event/v009/9.2kohn.html>, Retrieved 9-26-06//]

Is there an alternative to this nexus of anomie and nomos produced by the state of exception? Agamben invokes genealogy and politics as two interrelated avenues of struggle. According to Agamben, "To show law in its nonrelation to life and life in its nonrelation to law means to open a space between them for human action, which once claimed for itself the name of 'politics'." (88) In a move reminiscent of Foucault, Agamben suggests that breaking the discursive lock on dominant ways of seeing, or more precisely not seeing, sovereign power is the only way to disrupt its hegemonic effects. **Agamben** clearly **hopes that his theoretical analysis could contribute to the political struggle against authoritarianism, yet** he only offers tantalizingly abstract hints about how this might work. Beyond the typical academic conceit that theoretical work is a decisive element of political struggle, Agamben **seems to embrace a utopianism that provides little guidance for political action**. He imagines, "One day humanity will play with law just as children play with disused objects, not in order to restore them to their canonical use but to free them from it for good." (64) **More troubling is his messianic suggestion that "this studious play" will usher in a form of justice that cannot be made juridical**. Agamben might do well to consider Hannah Arendt's warning that the **belief in justice unmediated by law was one of the characteristics of totalitarianism**. It might seem unfair to focus too much attention on Agamben's fairly brief discussion of alternatives to the sovereignty-exception-law nexus, but it is precisely those sections that reveal the flaws in his analysis. It also brings us back to our original question about how to resist the authoritarian implications of the state of exception without falling into the liberal trap of calling for more law. For Agamben, the problem with the "rule of law" response to the war on terrorism is that it ignores the way that the law is fundamentally implicated in the project of sovereignty with its corollary logic of exception. Yet **the solution that he endorses reflects a similar blindness**. Writing in his utopian-mystical mode, he insists, "the only truly political action, however, is that which severs the nexus between violence and law."(88) Thus Agamben, in spite of all of his theoretical sophistication, ultimately falls into the trap of **hoping that politics can be liberated from law**, at least the law tied to violence and the demarcating project of sovereignty.

#### The impact is massive extermination

**Joines 99** (Richard E., Professor of English – Auburn University, “Contretemps: Derrida's Ante and the Call of Marxist Political Philosophy”, Cultural Logic, 3(1), Fall, http://clogic.eserver.org/3-1&2/joines.html)

29. Marxists argue that we are unable to imagine communism before its arrival, but "the someone or something" that follows hard upon the messianic event Derrida speaks of will usher in an opposite unimaginable concept of the political and establish the *rangordnung* of Nietzsche's ancient desires. Derrida's "appeal for an International whose essential basis or motivating force [is] not class, citizenship, or party" ("MS," p. 252) should be read and understood as a threat to any potential international organized around such concepts. Marxists witnessed the actualization of a similar, yet philosophically inadequate, threat in the twentieth century,17 but the new Messiah waited for (without waiting) will **make Hitler and Mussolini look like rank amateurs**. Marxists have the ability to recognize the content of this messianicity, yet they stubbornly persist in the delusion that Derrida is speaking of "something familiar," and that he is not a "class enemy." Certainly, he is not. He is **worse**, and we call him "comrade" at great risk to creating a communist future.

#### -- Alternative fails – critical theory has no mechanism to translate theory into practice

**Jones 99** (Richard Wyn, Lecturer in the Department of International Politics – University of Wales, Security, Strategy, and Critical Theory, CIAO, http://www.ciaonet.org/book/wynjones/wynjones06.html)

Because emancipatory political practice is central to the claims of critical theory, one might expect that proponents of a critical approach to the study of international relations would be reflexive about the relationship between theory and practice. Yet their thinking on this issue thus far does not seem to have progressed much beyond **grandiose statements of intent**. There have been no systematic considerations of how critical international theory can help generate, support, or sustain emancipatory politics beyond the seminar room or conference hotel. Robert Cox, for example, has described the task of critical theorists as providing “a guide to strategic action for bringing about an alternative order” (R. Cox 1981: 130). Although he has also gone on to identify possible agents for change and has outlined the nature and structure of some feasible alternative orders, he has not explicitly indicated whom he regards as the addressee of critical theory (i.e., who is being guided) and thus how the theory can hope to become a part of the political process (see R. Cox 1981, 1983, 1996). Similarly, Andrew Linklater has argued that “a critical theory of international relations must regard the practical project of extending community beyond the nation–state as its most important problem” (Linklater 1990b: 171). However, he has little to say about the role of theory in the realization of this “practical project.” Indeed, his main point is to suggest that the role of critical theory “is not to offer instructions on how to act but to reveal the existence of unrealised possibilities” (Linklater 1990b: 172). But the question still remains, reveal to whom? Is the audience enlightened politicians? Particular social classes? Particular social movements? Or particular (and presumably particularized) communities? In light of Linklater’s primary concern with emancipation, one might expect more guidance as to whom he believes might do the emancipating and how critical theory can impinge upon the emancipatory process. There is, likewise, little enlightenment to be gleaned from Mark Hoffman’s otherwise important contribution. He argues that critical international theory seeks not simply to reproduce society via description, but to understand society and change it. It is both descriptive and constructive in its theoretical intent: it is both an intellectual and a social act. It is not merely an expression of the concrete realities of the historical situation, but also a force for change within those conditions. (M. Hoffman 1987: 233) Despite this very ambitious declaration, once again, Hoffman gives no suggestion as to how this “force for change” should be operationalized and what concrete role critical theorizing might play in changing society. Thus, although the critical international theorists’ critique of the role that more conventional approaches to the study of world politics play in reproducing the contemporary world order may be persuasive, their account of the relationship between their own work and emancipatory political practice is unconvincing. Given the centrality of practice to the claims of critical theory, this is a very significant weakness. Without some plausible account of the **mechanisms** by which they hope to aid in the achievement of their emancipatory goals, proponents of critical international theory are hardly in a position to justify the assertion that “it represents the next stage in the development of International Relations theory” (M. Hoffman 1987: 244). Indeed, without a more convincing conceptualization of the theory–practice nexus, one can argue that critical international theory, by its own terms, has no way of redeeming some of its central epistemological and methodological claims and thus that it is a **fatally flawed** enterprise.

## CP

### Amendment CP – 2AC

#### 1. Perm do both –

#### Solves the link

Denning 2 (Brannon P, Assistant Professor of Law – Southern Illinois University School of Law; John R. Vile, Chair of Political Science – Middle Tennessee State University; November, 77 Tul. L. Rev. 247, Lexis)

The Article V process is, as the Framers intended, rigorous. The supermajority provisions for both proposal and ratification almost always guarantee that additions will not be made to the Constitution without both deep and broad support. Though some have criticized the necessity of such supermajorities, 127 holding additions to the Constitution in abeyance until it is clear that support is broad generally prevents populous regions from dominating less populous ones. This, in turn, allows the amendment to become part of the Constitution with a near-conclusive presumption of legitimacy. This legitimacy, then, helps free the other branches (courts, for example) to enforce it vigorously; indeed, such enforcement would likely be expected after an amendment makes it through Article V's arduous process. And if, after popular expectations were raised through the debates over proposal and ratification, the amendment is not enforced, institutions responsible for the foot-dragging may again face costs for evasion. This legitimization element is so crucial that the examples Strauss cites of amendments that, he argues, did not do anything immediately (the Reconstruction Amendments) or are not likely to have a significant effect despite their eventual ratification (the Twenty-Seventh Amendment), 128 could be cited as proof of what [\*279] happens when attempts are made to short-circuit (or play games with) Article V's procedural requirements. 129

#### 2. Can’t solve the case –

#### A) Signal – plan is key to signal that the judiciary is willing to take action on environmental issues – otherwise citizens won’t bring suits up – that’s Donovan and London

#### B) Compliance – the military will duck responsibility for environmental reviews absent explicit judicial reviews – past measures prove – that’s Babcock and Schwabach

#### C) Foreign perception – Court is key

Fontana 8 (David, Associate Professor of Law – George Washington University Law School, “The Supreme Court: Missing in Action”, Dissent Magazine, Spring, http://www.dissentmagazine.org/article/?article=1165)

*The Results of Inaction*
What is the problem with this approach? The answer, simply put, is that it legitimates and even catalyzes political activity by Congress and the president, but it does so without including in this political activity the critically influential background voice of the Supreme Court on issues related to individual rights. The Court has two main powers: one has to do with law and compulsion, the other has to do with political debate. The Court can legally compel other branches of government to do something. When it told states and the federal government in Roe v. Wade that they could not criminalize all abortions, for example, the Court’s decision was a binding legal order. But the Supreme Court also plays a role in political debate, even when it does not order anyone to do anything. If the Justices discuss the potential problems for individual rights of a governmental action, even if they don’t contravene the action, their decision still has enormous import. This is because other actors (members of Congress, lawyers, newspaper editorial writers, college teachers, and many others) can now recite the Court’s language in support of their cause. Supreme Court phrases such as “one person, one vote” have enormous symbolic effect and practical influence. If there had been a case about torture, for example, and some of the justices had written in detail about its evils, then Senator Patrick Leahy (senior Democrat on the Judiciary Committee) could have used the Justices’ arguments to criticize attorney general nominee Michael Mukasey during his confirmation hearings. Attorneys for those being detained at Guantánamo could have made appearances on CNN and (even) Fox News reciting the evils of torture as described by the Court. Concerns about rights could have been presented far more effectively than if, as actually happened, the Court refused to speak to these issues. The Supreme Court’s discussion of constitutional questions is particularly important for two reasons. First, the justices view these questions from a distinct standpoint. While members of Congress and the president have to focus more on short-term and tangible goods, members of the Court (regardless of which president appointed them) focus more on the long term and on abstract values. The Court offers a perspective that the other branches simply cannot offer. Second, when the Supreme Court presents this perspective, people listen. It is and has been for some time the most popular branch of American government. Although there is some debate about terminology and measurement, most scholars agree that the Court enjoys “diffuse” rather than “specific” support. Thus, even when Americans don’t like a specific decision, they still support the Court. By contrast, when the president or Congress does something Americans don’t like, their support drops substantially. AMERICANS BECOME more aware of the Court the more it involves itself in controversies. This is because of what political scientists call “positivity bias.” The legitimating symbols of the Court (the robes, the appearance of detachment, the sophisticated legal opinions) help to separate it from other political institutions—and in a good way for the Court. If the Justices had drawn attention to violations of individual rights, most of America would have listened and possibly agreed. As it is, our politics has been devoid of a voice—and an authoritative voice—on individual rights. For most of the time since September 11, few major political figures have been willing to stand up and speak in support of these rights. Recall that the Patriot Act was passed in 2001 by a vote of ninety-eight to one in the Senate, with very little debate. Congress overwhelmingly passed the Detainee Treatment Act (DTA) of 2005, which barred many of those complaining of torture from access to a U.S. court. Congress also overwhelmingly passed the Military Commissions Act (MCA) of 2006, which prevented aliens detained by the government from challenging their detention—and barred them from looking to the Geneva Conventions as a source of a legal claim.

#### And that’s key to solvency – prevents base kickout- that’s **Chanbonpin and Weyand**

#### D) Certainty – Legal decision key

Pildes 13 (Rick, udler Family Professor of Constitutional Law and Co-Faculty Director for the Program on Law and Security at NYU School of Law, "Does Judicial Review of National-Security Policies Constrain or Enable the Government?," 8/5, <http://www.lawfareblog.com/2013/08/does-judicial-review-of-national-security-policies-constrain-or-enable-the-government/>)

First, government actors have a need for legal clarity, particularly in national-security areas where the legal questions are novel and the stakes of guessing wrong particularly high. In the absence of more definitive court guidance, government lawyers and policymakers have spent a staggering number of hours trying to anticipate what courts might conclude is the valid scope of the government’s power to detain, or to use military trials, and similar questions. In many contexts, a significant element in what government actors need is simply legal clarity; knowledge of where the lines lie between the permitted and the forbidden can help government actors figure out how best to reach their legitimate goals. Surely there is something not fully functional about a system that requires a decade’s worth of guesswork, and all the resources involved, about exactly where the legal boundaries lie.

#### 3. No solvency --- delay

Duggin 5 (Sarah, Professor of Law – Catholic University of America, and Mary Collins, Law Clerk, Boston University Law Review, February, 85 B.U.L. Rev. 53, Lexis)

The process of amending the Constitution is often a lengthy one – the Twenty-seventh Amendment was adopted more than two hundred years after it was first proposed. 513 Recent Congresses have generally provided self-executing, seven-year sunset provisions in the resolutions proposing constitutional amendments, 514 but even an amendment on the fast track is likely to take several years to become part of the Constitution. Preparations for Presidential elections begin long before the actual events, and the threat of a national crisis is all too immediate. Congress should take interim measures to decrease the impact of the uncertainty created by the natural born citizenship proviso over the eligibility of Congressional leaders and cabinet members to assume the office of Acting President.

#### 4. Can’t solve citizen suits – amendments trade off with litigation and have no legal affect

Strauss 01

[David, Harry N. Wyatt Professor of Law, The University of Chicago, The Irrelevance Of Constitutional Amendments, 2001 The Harvard Law Review Association, L/N]

These arguments presuppose that amending the Constitution - and, by implication, failing to amend the Constitution - is a significant event. If this supposition is true, a formal, textual amendment might legitimately be read back into other provisions of the Constitution to produce a result that would not be warranted without the formal amendment. n24 But if the amendments carry no special significance - if they are not the principal means (or even an important means) by which the People change our constitutional order - then these interpretive approaches lose their foundation. It may be correct to interpret the Fourteenth Amendment to forbid gender discrimination, and the movement toward greater equality for women, including women's suffrage, may be a legitimate reason to interpret the Fourteenth Amendment this way. But the fact that women's suffrage was formally recognized by the Nineteenth Amendment - instead of coming about through, for example, state legislation or judicial interpretation - should not carry great weight. One final implication is the most practical of all. If amendments are in fact a sidelight, then it will usually be a mistake for people concerned about an issue to try to address it by amending the Constitution. Their resources are generally better spent on legislation, litigation, or private-sector activities. It is true that the effort to obtain a constitutional amendment may serve very effectively as a rallying point for political activity. A constitutional amendment may be an especially powerful symbol, and it may be worthwhile for a group to seek an amendment for just that reason. But in this respect constitutional amendments are comparable to congressional resolutions, presidential proclamations, or **declarations of national holidays**. If they bring about change, they do so because of their **symbolic value**, not because of their operative legal effect. The claim that constitutional amendments under Article V are not a principal means of constitutional change is a claim about the relationship between supermajoritarian amendments and fundamental, constitutional change. It should not be confused with the very different claim that judicial decisions cannot make significant changes without help from Congress or the President; n25 and it certainly should not [\*1468] be confused with a global skepticism about the efficacy of political activity generally. The point is that changes of constitutional magnitude - changes in the small-"c" constitution - are not brought about by discrete, supermajoritarian political acts like Article V amendments. It may also be true that such fundamental change is always the product of an evolutionary process and cannot be brought about by any discrete political act - by a single statute, judicial decision, or executive action, or (at the state level) by a constitutional amendment, whether adopted by majoritarian referendum or by some other means. What is true of Article V amendments may be equally true of these other acts: either they will ratify (while possibly contributing to) changes that have already taken place, or they will be ineffective until society catches up with the aspirations of the statute or decision. Alternatively, it may be that majoritarian acts (or judicial decisions), precisely because they **do not require that the ground be prepared so thoroughly**, can force the pace of change in a way that supermajoritarian acts cannot. A coalition sufficient to enact legislation might be assembled - or a judicial decision rendered - at a point when a society for the most part has not changed, but the legislation, once enacted (or the decision, once made), might be an important factor in bringing about more comprehensive change. The difference between majoritarian legislation and a supermajoritarian constitutional amendment is that the latter is far more likely to occur only after the change has, for all practical purposes, already taken place. Whatever one thinks of these broader speculations, however, they certainly do not entail a general skepticism about whether political activity matters at all. On the contrary, legislation and judicial decisions - as well as activity in the private realm that may not even be explicitly political - can accumulate to bring about fundamental and lasting changes that are then, sometimes, ratified in a textual amendment. Sustained political and nonpolitical activity of that kind is precisely what does bring about changes of constitutional magnitude. My claim is that such changes seldom come about, in a mature democracy, as the result of a formal amendment adopted by a supermajority.

#### 5. The counterplan is a voter –

#### A) Fairness - Steals the entirety of the aff and makes it impossible to generate offense

#### B) Education – changes the debate from whether the president should have authority to who should restrict it – causes stale debates about the process

#### C) Multi actor fiat --- not reciprocal, destroys predictability --- voting issue

Sullivan 95 (Kathleen M., Professor of Constitutional Law, Stanford Law School, and author of the influential Sullivan & Gunther Constitutional Law Casebook, Fall. (“Constitutional Amendments” – American Prospect) http://www.albionmonitor.com/1-12-96/amendmentitis.html)

Our Constitution is extraordinarily difficult to amend. Article V of the Constitution provides two routes, but both both require large supermajorities. First, Congress may propose amendments by a two-thirds vote of both houses. Second, the legislatures of two-thirds of the states may request that Congress call a constitutional convention. Amendments proposed by either route become valid only when ratified by three-fourths of the states. Once an amendment clears these hurdles into the Constitution, it is equally difficult to remove. The amendment that imposed Prohibition is the only one in our history ever to be repealed. The Constitution thus remains a remarkably pristine document. More than 11,000 amendments have been proposed, but only 33 have received the necessary congressional supermajorities and only 27 have been ratified by the states. Half of these amendments were enacted under extraordinary circumstances.

#### 6. Perm do the counterplan – its an example of plan enforcement

#### 7. Counterplan goes unenforced –

#### A) Executive will duck – plan action key

Griffin 11

[Stephen, Rutledge C. Clement, Jr. Professor in Constitutional Law, Tulane Law School, The National Security Constitution and the Bush Administration, The Yale Law Journal Online March 25, 2011, L/N]

In previous work, I have advanced the concept of the "legalized Constitution," which is essentially identical to Eskridge and Ferejohn's definition of the "Large 'C'" Constitution. n16 In the legalized Constitution, constitutional change occurs through formal amendments and judicial decisions. It is well known, however, that some parts of the Constitution, especially those having to do with foreign affairs and war powers, are enforced either irregularly by the judiciary or not at all. n17 This creates a space for a [\*371] "nonlegalized" but "Large 'C'" Constitution. Although it is not clear, Eskridge and Ferejohn imply that the judiciary enforces (or underenforces) all parts of the Constitution. n18 By contrast, I regard constitutional norms with respect to the initiation of war (the Declare War Clause of Article I, Section 8) as determinate but not enforced by the judiciary. Thus, I am not proceeding under the assumption that clauses with respect to war and foreign affairs are "underenforced." Rather, in crucial respects they are not enforced at all, thus leaving a clear field for de facto constitutional change through executive action. The theoretical task is to describe and explain how this occurs. The parts of the nonlegalized Constitution relevant to presidential power, such as the Commander-in-Chief Clause of Article II, are nonetheless supreme law even if they are not enforced by the judiciary. Presidents can wield, and have wielded, such clauses with enormous impact in contests for power both inside and outside the Executive Branch. The crucial point of distinction between Eskridge and Ferejohn's theory and my own is that these existing nonlegalized "Large 'C'" constitutional powers can and have been used by presidents to leverage significant constitutional change. The distinction between the parts of the "Large 'C'" Constitution that have been legalized by the judiciary and those that have not cuts across the theories offered by Eskridge and Ferejohn and those offered by Ackerman. These theories are similar in that they posit a process, alternative to that specified in Article V, to account for important changes that have kept the constitutional order up to date. But suppose a President uses "Large 'C'" but nonlegalized powers to transform the constitutional order? Eskridge and Ferejohn's model, in which non-Article V, nonjudicial changes are made through statutory and administrative channels, does not appear to allow for this possibility. By contrast, in the postwar era presidential power in foreign affairs expanded primarily through "Large 'C'" constitutional means. President Truman's decision to use his Article II Commander-in-Chief power unilaterally to involve U.S. armed forces in the Korean War is a classic example. n19

#### B) Congress will give exemptions during wartime

Tisler **11**

[Tiffany, J.D. Candidate, University of Toledo, 2011., FEDERAL ENVIRONMENTAL LAW WAIVERS AND HOMELAND SECURITY: ASSESSING WAIVER APPLICATION IN HOMELAND SECURITY SETTINGS AT THE SOUTHERN BORDER IN COMPARISON TO NATIONAL SECURITY SETTINGS INVOLVING THE MILITARY, Spring, 2011 The University of Toledo Law Review, L/N]

In times of war, the conflict between national-security goals and environmental laws tends to come out in favor of national security, n54 and shortly after 9/11 the United States was at war. As it was, the U.S. military never particularly liked the pre-9/11 waiver system, finding the scope of waivers too narrow and the time limits incompatible with long-term activities. n55 Thus, sensing the time to strike, the military began lobbying for changes to environmental-waiver provisions in the aftermath of 9/11. n56 The military has since actively and successfully sought changes to the waiver system, giving them much broader authority to disregard environmental laws, especially for reasons of "military readiness." n57 First, the military convinced Congress to attach riders to the 2004 and 2005 Defense Appropriations Acts exempting them from provisions of the Marine Mammal Protection Act ("MMPA"), some provisions of the ESA, and the entire Migratory [\*784] Bird Treaty Act. n58 Not only did the military successfully change the application of various sections of statute, it also changed the waiver structure for the MMPA, giving the Secretary of Defense the authority to grant waivers in addition to the President. n59 Though not always successful, military lobbying efforts have removed many external checks on military activities that impact the environment, creating a dim future for the environment. n60

#### \*\*Turn --- amendments crush public confidence --- tanks Constitutional credibility

Sullivan 95 (Kathleen M., Professor of Constitutional Law, Stanford Law School, and author of the influential Sullivan & Gunther Constitutional Law Casebook, Fall. (“Constitutional Amendments” – American Prospect) http://www.albionmonitor.com/1-12-96/amendmentitis.html)

For there are strong structural reasons for amending the Constitution only reluctantly and as a last resort. This strong presumption against constitutional amendment has been bedrock in our constitutional history, and there is no good reason for overturning it now. Proponents of the current wave of amendments suggest that it simply represents the appropriate product of a mobilized citizenry exercising popular sovereignty. We the People created the Constitution and, they imply, We the People are free to rewrite it as We please. Amendment advocates could, if they wished, cite Thomas Jefferson in their cause. Jefferson wrote in an 1816 letter, "Some men look at constitutions with sanctimonious reverence, and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment." But, he urged, one should not "believe that one generation is not as capable as another of taking care of itself, and of ordering its own affairs." As Jefferson had put it years earlier in a letter to James Madison, "I hold that a little rebellion now and then is a good thing." Constitutional idolatry, of course, is not an attractive organizing principle. But Jefferson's position lost out in our constitutional history for good reasons that do not depend on fetishizing the Constitution or treating it as mystically sacred. Stability is a key virtue of a Constitution 1. Stability. James Madison, one of the principal architects of Article V, disagreed with Jefferson. In Madison's view, "a little rebellion now and then" is to be avoided. To be sure, Madison acknowledged in Federalist No. 43 that "useful alterations will be suggested by experience," and that amending the Constitution must not be made so difficult as to "perpetuate its discovered faults." But Madison cautioned too "against that extreme facility" of constitutional amendment "which would render the Constitution too mutable." Implicit in this caution is the view that stability is a key virtue of a Constitution, and that excessive "mutability" would thus undercut the whole point of having a Constitution in the first place. As Chief Justice John Marshall put the point similarly in McCulloch v. Maryland, the Constitution is "intended to endure for ages to come." Keeping amendment relatively infrequent thus preserves public confidence in the stability of the basic constitutional structure.  While the Framers had to take the argument from stability on faith, the argument looks stronger two centuries later. The relative success of the American constitutional regime, one bloody civil war excepted, supports arguments along the lines of "if it ain't broke don't fix it." Our spare Constitution has withstood the test of time. Anyone with a Burkean trust in the collective wisdom embodied in custom and tradition ought to be wary of a sudden shift to rapid constitutional revision.  Prohibition, the only modern amendment to enact a social policy, is also the only modern amendment to have been repealed.

#### Nuclear war

Hemesath 00 (Paul A., Georgetown Law Journal, August, 88 Geo. L.J. 2473, Lexis)

In the case of an offensive nuclear attack, the importance of a coherent and legitimate decision cannot be overestimated. Even with the force of a congressional declaration of war, Harry Truman still faced critics that questioned the sagacity of his atomic decision in World War II. 183 Although the wisdom of any nuclear use may always remain open to criticism, the legality of such a decision should be beyond reproach. As previously noted, the potentially "unlimited costs" of a nuclear war are extremely difficult to fathom, both physically and politically. 184 A legitimate decision to utilize a nuclear weapon thus requires a high level of legality and consensus--two qualities that cannot be attained with a Congress plausibly asserting the nonexistence of the Executive's very constitutional authority to carry out the act.   Finding a resolution to nuclear war powers uncertainty is not an obvious endeavor. However, the harms associated with an unprepared and contentious "on-the-fly" decisionmaking process are serious enough to demand a principled solution based on the Constitution and not on improvised convenience. To reach such a solution, Congress must cohere in an attempt to draft an unambiguous War Powers Act and proceed to pursue remedies in the courts well in advance of a nuclear crisis. In return, the courts must either deign to decide the issue on its merits, or provide a definitive jurisdictional holding upon which the courts and the President may come to rely.

#### No solvency advocate for amending about environmental law --- voting issues --- means no literature to answer, makes it unpredictable, and divorces debate from real-world issues

#### CP spurs future amendments --- undermines rule of law

Sullivan 95 (Kathleen M., Professor of Constitutional Law, Stanford Law School, and author of the influential Sullivan & Gunther Constitutional Law Casebook, Fall, “Constitutional Amendments”, American Prospect, http://www.albionmonitor.com/1-12-96/amendmentitis.html)

2. The Rule of Law. The very idea of a constitution turns on the separation of the legal and the political realms. The Constitution sets up the framework of government. It also sets forth a few fundamental political ideals (equality, representation, individual liberties) that place limits on how far any short-term majority may go. This is our higher law. All the rest is left to politics. Those who lose in the short run of ordinary politics obey the winners out of respect for the long-run rules and boundaries set forth in the Constitution. Without such respect for the constitutional framework, the peaceful operation of ordinary politics would degenerate into fractious war. Frequent constitutional amendment can be expected to undermine this respect by breaking down the boundary between law and politics. The more you amend the Constitution, the more it seems like ordinary legislation. And the more the Constitution is cluttered up with specific regulatory directives, the less it looks like a fundamental charter of government. Picture the Ten Commandments with a few parking regulations thrown in. This is why opponents of new amendments often argue that they would tend to trivialize or politicize the Constitution. They trivialize it in the sense that they clutter it up and diminish its fundamentality. Consider the experience of the state constitutions. Most state constitutions are amendable by simple majority, including by popular initiative and referendum. While the federal Constitution has been amended only 27 times in over 200 years, the fifty state constitutions have had a total of nearly 6,000 amendments added to them. They have thus taken on what Marshall called in McCulloch "the prolixity of a legal code" -- a vice he praised the federal Constitution for avoiding. Many of these state constitutional amendments are products of pure interest-group politics. State constitutions thus are difficult to distinguish from general state legislation, and they water down the notion of fundamental rights in the process: The California constitution, for example, protects not only the right to speak but also the right to fish. Amendments politicize a constitution to the extent that they embed in it a controversial substantive choice. Here the experience of Prohibition is instructive: The only modern amendment to enact a social policy into the Constitution, it is also the only modern amendment to have been repealed. Amendments that embody a specific and controversial social or economic policy allow one generation to tie the hands of another, entrenching approaches that ought to be revisable in the crucible of ordinary politics.

#### Extinction

Sadat 4 (Henry H. Oberschelp Professor of Law, “An American Vision for Global Justice” Sept 7, <http://www.google.com/search?q=importance+of+supreme+court+legitimacy+poverty&num=20&hl=en&hs=277&lr=&client=firefox-a&rls=org.mozilla:en-US:official&start=20&sa=N>)

Bringing the rule of law back into American thinking about foreign policy will take time. But it is inevitable. Without rules, human civilization cannot survive; without rules, there is no true freedom. Law is, of course, only one element of foreign policy, but it is a powerful one. By appealing to principle, we can better persuade. By acquiring legitimacy, our actions take on a new authority. By delivering justice, we win hearts and minds. From Thomas Jefferson to Warren Christopher, the tradition of the lawyer statesman persists. The challenge ahead is formidable – it is hard to live in a global age. But we can take comfort in the words of Jean Monnet, one of the most passionate advocates of a United States of Europe after the war, and one of the chief architects of the European Community – although I should, in all fairness, disclose that he was a cognac merchant, not a lawyer! Monnet was never discouraged in his efforts to create the European Economic Community, and he later wrote in his memoirs, “Resistance is proportional to the scale of the change one seeks to bring about. It is even the surest sign that change is on the way. . . To abandon a project because it meets too many obstacles is often a grave mistake: the obstacles themselves provide the friction to make movement possible.”

#### Amendments jack SOP

Schaffner 5 (Joan, Associate Professor of Law – George Washington University Law School, “The Federal Marriage Amendment: To Protect the Sanctity of Marriage or Destroy Constitutional Democracy?”, American University Law Review , August, 54 Am. U.L. Rev. 1487, August, Lexis)

 [\*1525] Through amendment, the legislative branch has the power to enact laws that establish societal standards only so long as the laws enacted do not violate the constitutional rights of individuals. 222 The legislature is not empowered to draft laws to enshrine illegitimate prejudices of the majority. Allowing the legislature, with the endorsement of the executive, to amend the Constitution to expressly overrule a decision of the judiciary, which acted consistently with democratic principles by protecting the rights of a minority of the people, destroys the delicate balance of power among the branches.

#### That destroys diplomacy

Ikenberry 1 (G. John, Professor of Geopolitics and Global Justice – Georgetown, “Getting Hegemony Right”, National Interest, Spring, Lexis)

When other major states consider whether to work with the United States or resist it, the fact that it is an open, stable democracy matters. The outside world can see American policymaking at work and can even find opportunities to enter the process and help shape how the overall order operates. Paris, London, Berlin, Moscow, Tokyo and even Beijing-in each of these capitals officials can readily find reasons to conclude that an engagement policy toward the United States will be more effective than balancing against U.S. power. America in large part stumbled into this open, institutionalized order in the 1940s, as it sought to rebuild the postwar world and to counter Soviet communism. In the late 1940s, in a pre-echo of today's situation, the United States was the world's dominant state--constituting 45 percent of world GNP, leading in military power, technology, finance and industry, and brimming with natural resources. But America nonetheless found itself building world order around stable and binding partnerships. Its calling card was its offer of Cold War security protection. But the intensity of political and economic cooperation between the United States and its partners went well beyond what was necessary to counter the Soviet threat. As the historian Geir Lundestad has observed, the expanding American political order in the half century after World War II was in important respects an "empire by invitation."(n5) The remarkable global reach of American postwar hegemony has been at least in part driven by the efforts of European and Asian governments to harness U.S. power, render that power more predictable, and use it to overcome their own regional insecurities. The result has been a vast system of America-centered economic and security partnerships. Even though the United States looks like a wayward power to many around the world today, it nonetheless has an unusual ability to co-opt and reassure. Three elements matter most in making U.S. power more stable, engaged and restrained. First, America's mature political institutions organized around the rule of law have made it a relatively predictable and cooperative hegemon. The pluralistic and regularized way in which U.S. foreign and security policy is made reduces surprises and allows other states to build long-term, mutually beneficial relations. The governmental separation of powers creates a shared decision-making system that opens up the process and reduces the ability of any one leader to make abrupt or aggressive moves toward other states. An active press and competitive party system also provide a service to outside states by generating information about U.S. policy and determining its seriousness of purpose. The messiness of a democracy can, indeed, frustrate American diplomats and confuse foreign observers. But over the long term, democratic institutions produce more consistent and credible policies--policies that do not reflect the capricious and idiosyncratic whims of an autocrat.

#### Fiating states is a voter --- robs our best offense, no solvency advocate exists, and they don’t specify which so we can’t read DAs

#### Nepal models the CP --- they’ve built their independent judiciary around limiting amendments

CJA 3 (Center for Justice and Accountability, Supreme Court Brief, October, http://supreme.lp.findlaw.com/supreme\_court/briefs/03-334/03-334.mer.ami.cja.pdf)

Their tyrannical pasts and to ensure the protection of individual rights, emerging democracies have consistently looked to the United States and its Constitution in fashioning frameworks that safeguard the independence of their judiciaries. *See* Ran Hirschl, *The Political Origins of Judicial Empowerment through Constitutionalization: Lessons from Four Constitutional Revolutions*, 25 LAW & SOC. INQUIRY 91, 92 (2000) (stating that of the “[m]any countries . . . [that] have engaged in fundamental constitutional reform over the past three decades,” nearly all adopted “a bill of rights and establishe[d] some form of active judicial review”). Establishing judicial review by a strong and independent judiciary is a critical step in stabilizing and protecting these new democracies. *See* Christopher M. Larkins, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 AM. J. COMP. L. 605, 605-06 (1996) (describing the judicial branch as having “a uniquely important role” in transitional countries, not only to “mediate conflicts between political actors but also [to] prevent the arbitrary exercise of government power; *see also* Daniel C. Prefontaine and Joanne Lee, *The Rule of Law and the Independence of the Judiciary*, International Centre for Criminal Law Reform and Criminal Justice Policy (1998) (“There is increasing acknowledgment that an independent judiciary is the key to upholding the rule of law in a free society . . . . Most countries in transition from dictatorships and/or statist economies recognize the need to create a more stable system of governance, based on the rule of law.”), *available at* http://www.icclr.law.ubc.ca/ Publications/Reports/RuleofLaw.pdf (viewed Jan. 8, 2004). Although the precise form of government differs among countries, “they ultimately constitute variations within, not from, the American model of constitutionalism . . . [a] specific set of fundamental rights and liberties has the status of supreme law, is entrenched against amendment or repeal . . . and is enforced by an independent court . . . .” Stephen Gardbaum, *The New Commonwealth Model of Constitutionalism*, 49 AM. J. COMP. L. 707, 718

#### Leads to instability

Poudel 1 (Keshab, Ritualistic Respect, The National NewsMagazine, 21(19))

At a time when the country is facing manifold challenges in the field of social and economic transformation, Nepalese politicians and intellectuals are involved in an unending debate on the Constitution of Kingdom of Nepal1990 which has nothing to do with the overall development drive of the country. The Maoist insurgency broke out in 1996 following a decision by the Supreme Court to reinstate the House of Representatives. In the first five years under the new constitution, the country saw only two prime ministers. But after the Supreme Court's decision, Nepal has seen six prime ministers.  "If efforts to amend the constitution are made, the country will be plunged into further chaos," says a political analyst. "As there is a mechanism to internally improve the constitution, touching the constitution is not going to fulfill the interest of any party," he says. After a few years of relative stability and peace, controversies have been arising regularly following the Supreme Court's misinterpretation of constitution in 1995. The decision also paved the way for seemingly   unending political uncertainty as well as chaos and violence. Although the  decision has been accepted by all, it has stripped the prime minister of his  ability to discipline members by dissolving the House of Representatives, which  is a leading cause of today's political instability. The Nepali Congress, which secured an absolute majority in the last election, has seen three prime ministers in its two and half years in  power. When a small misinterpretation by the court can bring such unbearable instability and chaos, amending the constitution would open a Pandora's box. "The constitution must be allowed to evolve and develop," said Taranath Ranabhat, speaker of the House of Representatives, addressing a program organized by the Society for Constitutional and Parliamentary Exercises (SCOPE) on the 11th anniversary of the promulgation of the constitution. "There is no need to go for amendment."

#### The impact is nuclear war --- draws in China, India, and Pakistan

Poudel 2 (Keshab, Looming Uncertainty, The National NewsMagazine, 21(34), 3-8,

http://www.nepalnews.com.np/contents/englishweekly/spotlight/2002/mar/mar08/national2.htm)

Following the September 11 terrorist attacks, however, the United States and western European countries have been expressing solidarity with Nepal. The visit of US Secretary of State Colin Powell and expressions of concern from other western powers over the last three months underscore how the dimensions of violence in Nepal has extended beyond its frontiers. After the government imposed the state of emergency and the Maoist launched deadly assaults in Achham and Salyan districts, western powers have increased their interest in the kingdom. The growing concern expressed by Washington and European powers is understandable, as escalating violence and instability in Nepal could heighten the possibility of external intervention. Such intervention from either of Nepal's two neighbors — India and China — may trigger a direct conflict between the two. Even an indirect conflict between the two Asian powers could prove to be more dangerous than the confrontation between India and Pakistan. Foreign-relations experts say the recent visit of British Foreign Office Minister Ben Bradshaw to Nepal and US Ambassador Michael E. Malinowski trip to Achham and Salyan are clear indicators of Nepal's geo-strategical importance. Another senior US diplomat, A. Peter Burleigh, spoke more candidly about US concerns over the possibility of a prolonged confrontation. "[W]hen situations arise that challenge that positive world order, and which can be addressed by a collective response, it is the responsibility and obligation of all of our countries to come together to restore and preserve the peace," said Ambassador Malinowski in an address to a seminar on South Asian Peace Operations. "Here in Nepal, as we all know, there is no peace. But I do believe that there are lessons for both those of us who live in Nepal and for the international community," he said. Nepal's Position in South Asia Nepal has been ensnared in political instability following the restoration of democracy in 1990. After the Maoist insurgency began in 1996, the kingdom's economic, security and political processes have been thrown into a tangle. According to the Central Bureau of Statistics, Nepal has a length of 885-km (east-west) and a non-uniform mean width of 193-km (north-south). The kingdom shares a frontier of more than 1400 km with China in north and more than 1600 km with India in the east, west and south. The Nepal-India border is open and easy to cross. Although the frontier with China is more or less open, it straddles rugged mountain terrain. It is impossible to build border posts along the border with either country. Therefore, the geographical position of Nepal has been psychologically threatening to both neighbors. "China appears very sensitive towards activities against her in neighboring countries, including Nepal. China's security concern is indicated from [the visits of its] defense minister, senior army officials and home ministry officials from time to time," says Hiranya Lal Shrestha, a foreign relations expert in his article "Nepal-India Relations: Security Issue" published in Policy Study Series by the Institute of Foreign Affairs (November 2000). "At the same time, we cannot overlook the weaknesses of a landlocked state. Indian security perception regards the Himalayas as its sphere of influence. Since 14.9 percent of Nepal's territory lies to the north of the Himalayas, we may have to be divided into two spheres of influence if the northern neighbour also puts forward similar logic concerning its security perception. Nepal, in brief, does not want to remain under anyone's sphere of influence," says Shrestha. Be it the British Raj or independent India, Chinese influence in Nepal has always been a matter of concern to leaders of the south neighbor. In the book, "Life of Brian Houghton Hodgson, the British Resident at the Court of Nepal", William Wilson Hunter mentions how the British government was worried about Nepal's relations with China in 18th century. "But my situation by no means so agreeable as it might be if these barbarians did but know their own good. Instead of which they are insolent and hostile and play off on us, as far as they can dare, the Chinese etiquette and foreign polity. The Celestial Emperor is their idol, and, by the way, whilst I write, the  [Nepalese] sovereign himself is passing by the Residency in all royal pomp to go three miles in order to receive a letter which has just reached Nepal from Pekin. There they go! Fifty chiefs on horseback, royalty and royalty's advisors and on eight elephants and three thousand troops before and behind the cavalcade! They have reached the spot. The Emperor's letter, enclosed in a cylinder covered with brocade, hangs round the neck of a chief; who mounted on a spare elephant, is placed at the head of the cavalcade, and the cortege," writes Hodgson in a letter. This reflected how assertive and powerful the Chinese were in the internal dimensions of Nepalese politics in the 18th century. After independence, Indian leaders have been equally concerned about security issues, considering Nepal and Tibet to be the soft underbelly of their own country's security. "This is altogether more inexplicable when one examines the rapidity with which Nehru reacted to events in Nepal in the mid-fifties, forcefully intervening there to restore the Nepalese monarchy. Nepal and Tibet were both Himalayan kingdoms, both were of vital strategic importance to India, and they were both afflicted, almost simultaneously, whether externally or internally, and yet India and its political leadership reacted differently," writes Indian Foreign Minister Jaswant Singh in his book "Defending India". Referring to India's security, Indian Prime Minister Jawahar Lal Nehru once observed: "Now our interest in the internal conditions of Nepal became still more acute and personal, if I may say so, because of the developments in China and Tibet, to be frank. And regardless, of our feelings about Nepal, we were interested in our country's border. We have had from immemorial time a magnificent frontier, that is to say, the Himalayas are concerned, and they lie on the other side of Nepal. Therefore, the principal barrier to India lies on the other side of Nepal. Therefore, the principal barrier to India lies on the other side of Nepal and we are not going to tolerate any person coming over that barrier. Therefore, much as we appreciate the independence of Nepal, we cannot risk our own security by anything going wrong in Nepal." For his part, Li Peng, the chairman of China's National People's Congress, openly expressed China's security concerns in Nepal during the visit of Sher Bahadur Deuba in 1998 as a former prime minister. South Asia has three nuclear powers, India, China and Pakistan. Two powers, China and India, are competing for the status of regional power. Any form of direct confrontation between China and India in the south of the Himalayas will have far-reaching consequences.

### Oil Spills Add- On – 2AC

#### Citizen suits solve pipeline safety and oil spills

**Geis 11** (Stacey P. Geis is an Assistant United States Attorney at the United States Attorney's Office in San

Francisco and is the office's Environmental Crimes Coordinator, “An Accident Waiting to Happen? Prosecuting Negligence-Based Environmental Crimes,” United States Attorneys' Bulletin July 2011, <http://www.justice.gov/usao/eousa/foia_reading_room/usab5904.pdf>)

Undertaking a criminal investigation in a large **environmental disaster** (or any disaster that may have resulted in casualties or invokes a federal interest) is no easy endeavor. Numerous parties will be interested in the matter, including federal, state, and local law enforcement agencies; federal, state, and local regulators; federal safety boards charged with immediately investigating such disasters; local and state governments; federal, state, and local politicians; local citizens; and, of course, the press. It will be imperative **to navigate** through the obstacles presented by so many interested parties. It also will be imperative to coordinate and work with these parties, especially the relevant law enforcement agencies, safety boards, and regulators. While a separate article can be written on issues that arise while investigating a disaster such as an **oil spill** or **pipeline explosion**, a few points may be made. First, a prosecutor will need to decide whether to open a criminal investigation immediately or wait until other agencies, such as a federal safety board, conduct a separate investigation. There are pros and cons to both approaches and legal and policy issues to consider, all of which can be the subject of a separate article. Suffice it to say, if a prosecutor is faced with such a decision, he should discuss the matter with his management and consider reaching out to Main Justice or other districts to assess the appropriate route to take in a specific investigation. Second, coordination with state and local law enforcement and regulatory agencies is key. At some point, if potential violations of more than just federal statutes have occurred, a decision will need to be made regarding who takes the lead and moves forward with the investigation. For many reasons, including the high profile nature of the disaster, turf issues may arise. If, however, a strong relationship has been developed among federal, state, and local authorities, the issues surrounding who moves forward and in what manner can be minimized. Third, investigating these types of cases can take a **vast amount of resources**. Therefore, a prosecutor should seek to include resources from as many agencies as are willing to assist. EPA's Criminal Investigation Division will have an interest if it is a pollution case. The U.S. Fish and Wildlife Service will also have an interest if wildlife was harmed. The U.S. Coast Guard will have an interest if it involves a large oil spill in maritime waters. The FBI may assist, especially if fraud was involved or if lives were lost. Local and state law enforcement may also have a role here because they typically regulate and enforce the applicable state laws. Several of these agencies have specific expertise that may be used throughout the course of the investigation. Cross-designation of state and local law enforcement may be useful. Assistance from Main Justice is also a highly recommended option. DOJ's Environmental Crimes Section has highly competent, well-trained trial attorneys whose job is to provide assistance to the ninety-four districts in prosecuting environmental crimes. In addition to bringing specialized knowledge, they may also bring other resources to the investigation, such as additional attorneys, paralegals, or other agency assistance. Disasters happen—often with terrible consequences to the environment and surrounding community. Many of these disasters are unforeseeable and unavoidable, such as those caused by acts of God, including earthquakes or hurricanes. Other times they are not. In these latter instances, prosecutors will need to determine whether the disaster was caused by negligent behavior and, if so, whether the negligent behavior rises to a level warranting criminal prosecution as opposed to relying on a civil or administrative enforcement action as an appropriate remedy. Given a prosecutor's ability to prosecute ordinary negligence, **the sound exercise of prosecutorial discretion in these instances is key to ensuring just and proper resolutions**. Prosecuting negligence-based **environmental crimes** should only be done when the circumstances warrant it. There will be times, however, when a non-criminal remedy is simply not adequate to address or deter the offending behavior. In those instances, the prosecutor should consider whether a CWA negligence charge is appropriate. Such prosecutions, although relatively rare in the scheme of environmental crime prosecutions, not only result in specific deterrence but also **general deterrence**. It is not uncommon to see convictions in environmental cases change the behavior of not only the convicted defendant, but **entire industries**. Accidents happen, but sometimes human or corporate behavior creates an accident waiting to happen. When that is the case, prosecution of those responsible may help **reduce the likelihood** that a similar disaster happens again.

#### Extinction

Craig 11—Associate Dean for Environmental Programs @ Florida State University [Robin Kundis Craig, “Legal Remedies for Deep Marine Oil Spills and Long-Term Ecological Resilience: A Match Made in Hell,” Brigham Young University Law Review, 2011, 2011 B.Y.U.L. Rev. 1863

Systemic risk is as important as individual risk. Notwithstanding the National Environmental Policy Act's requirement that federal permitting agencies consider cumulative impacts to the environment, [n188](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1348065909828&returnToKey=20_T15563238106&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.735297.7128077165#n188) we currently evaluate the risks of offshore oil drilling primarily with respect to individual oil drilling operations in connection with individual permits and leases. As the Deepwater Horizon Commission recognized, however, the larger systemic context of such drilling is also important, and perhaps arguably more so. From a resilience perspective, a drilling operation that uses the only oil rig in a pristine marine environment is an inherently different risk problem than the Deepwater Horizon's situation of being one of thousands of similar rigs in a pervasively and multiply stressed Gulf. As Clark, Jones, and Holling have suggested, our trial-and-error experiments with Nature in our first-sense resilience [\*1895] dependence mode "now threaten errors larger and more costly than society can afford." [n189](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1348065909828&returnToKey=20_T15563238106&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.735297.7128077165#n189) Resilience thinking should more forcibly insist on multilayered systemic awareness, promoting limits on how much exploitation should be occurring simultaneously and encouraging more gradual resource development over longer periods of time. . Risk to the environment should be presumed, even when all actors follow all best practices. Our current first-sense resilience dependency produces laws that assume that ecosystems can be fixed—and, perhaps more importantly, as embodied in the OPA natural resource damages regulations, that natural processes will often be able to restore themselves without human effort. Resilience thinking, in contrast, effectively assumes that ecosystems could suddenly shift to a new regime at any time for any number of reasons that we do not understand and may not even be able to anticipate—the combined potential of the second and third conceptions of resilience. In the words of Clark, Jones, and Holling, "if a system has multiple regions of stability, then Nature can seem to play the practical joker rather than the forgiving benefactor." [n190](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1348065909828&returnToKey=20_T15563238106&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.735297.7128077165#n190) To exaggerate the differences in outlook just a bit, our current paradigm presumes that most ecosystems can cope with most human activities, while resilience thinking presumes that all changes to an ecosystem are at least potentially completely destabilizing—i.e., inherently risky, with the outer limits of that risk being potentially massive. To translate this change in presumption into legalese, full resilience thinking promotes a policy framework where most human activities in the environment could be—and perhaps should be—considered inherently dangerous activities. [\*1896] As every first-year law student learns, engaging in inherently dangerous activities tends to subject the actor to strict and fairly absolute liability for the kinds of harm that made the activity inherently dangerous. [n191](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1348065909828&returnToKey=20_T15563238106&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.735297.7128077165#n191) Under resilience thinking, those kinds of harm would include all of the unpredictable and unexpected changes to the ecosystem that might occur as a result of a disaster like the Deepwater Horizon oil spill, up to and including a substantial shift in ecosystem regime or ecosystem collapse. While full implementation of an "inherently dangerous activity" legal regime for all marine activities is unlikely, the case is fairly strong for deep sea oil exploration and drilling. It is at least worth pondering what such a consequence of resilience thinking might mean for risk assessment and behavioral incentives in this context. If nothing else, one would predict under such a new view of potential liability that oil companies' insurers might begin charging premiums that more accurately reflect the potentially catastrophic liability that resilience-minded regulations and policies would make legally cognizant—and might insist on the much more precautionary and safety-minded approach to offshore oil drilling that a multitude of commentators and the Deepwater Horizon Commission have sought in the wake of the Deepwater Horizon disaster. V. Conclusion The second and third senses of resilience, and the socio-ecological risks for humans that they underscore, should not be foreign concepts in the regulation of the marine environment, including (and perhaps especially) when it comes to regulating the offshore oil and gas exploration and drilling taking place at ever-increasing depths. Nor should the possibility that the cumulative stresses to the Gulf of Mexico have pushed its ecosystems to the brink of ecosystem thresholds be ignored in our regulatory regimes. By acknowledging that ecosystems are dynamic and subject to sudden and fairly catastrophic (at least from a human perspective) changes, full resilience thinking provides a path away from the trap of first-sense resilience dependence. Specifically, full resilience thinking recognizes that exploitative activities that affect the Gulf—not just deep sea oil drilling but also fishing and farming up the Mississippi River—put all of the human beings who depend on the ecosystem services, as well as the ecosystems themselves, at collective risk of catastrophic ecosystem collapse. A liability regime based on these unavoidable and potentially massive environmental risks would likely protect the Gulf of Mexico better than our current regime of natural resource damages, especially when injury occurs in the Gulf's murky depths.

#### And Says it solves natural gas explosions – o/w nuke war

**Lovins and Lovins 01**

[Amory Lovins- Co-Founder of Rocky Mountain Institute and six honorary doctorates and numerous major awards, including a 1997 Heinz Award, a 1993 MacArthur Fellowship, and the Onassis Foundation’s first Delphi Prize in 1989, and with Hunter Lovins he has shared a 1999 Lindbergh Award, a 1993 Nissan Prize, a 1983 Right Livelihood Award , Hunter Lovins- a former co-CEO of Rocky Mountain Institute, a Colorado-based nonprofit resource policy think tank. She holds a BA from Pitzer College, a JD from Loyola University School of Law with the Alumni Award for Outstanding Service to the School, and an honorary LHD from the University of Maine. “Brittle Power”- 2001 update and re-release of 1982 book. Pg 87-88]

LNG is less than half as dense as water, so a cubic meter of LNG (the usual unit of measure) weighs just over half a ton.1 LNG contains about thirty per- cent less energy per cubic meter than oil, but is potentially far more hazardous.2 Burning oil cannot spread very far on land or water, but a cubic meter of spilled LNG rapidly boils into about six hundred twenty cubic meters of pure natural gas, which in turn mixes with surrounding air. Mixtures of between about five and fourteen percent natural gas in air are flammable. Thus a single cubic meter of spilled LNG can make up to twelve thousand four hundred cubic meters of flammable gas-air mixture. A single modern LNG tanker typically holds one hundred twenty-five thousand cubic meters of LNG, equivalent to twenty-seven hundred million cubic feet of natural gas. That gas can form between about twenty and fifty billion cubic feet of flammable gas-air mixture—several hundred times the volume of the Great Pyramid of Cheops. About nine percent of such a tankerload of LNG will probably, if spilled onto water, boil to gas in about five minutes.3 (It does not matter how cold the water is; it will be at least two hundred twenty-eight Fahrenheit degrees hotter than the LNG, which it will therefore cause to boil violently.) The resulting gas, however, will be so cold that it will still be denser than air. It will therefore flow in a cloud or plume along the surface until it reaches an ignition source. Such a plume might extend at least three miles downwind from a large tanker spill within ten to twenty minutes.4 It might ultimately reach much farther—perhaps six to twelve miles.5 If not ignited, the gas is asphyxiating. If ignited, it will burn to completion with a turbulent diffusion flame reminiscent of the 1937 Hindenberg disaster but about a hundred times as big. Such a fireball would burn everything within it, and by its radiant heat would cause third-degree burns and start fires a mile or two away.6 An LNG fireball can blow through a city, creating “a very large number of ignitions and explosions across a wide area. No present or foreseeable equipment can put out a very large [LNG]... fire.”7 The energy content of a single standard LNG tanker (one hundred twenty-five thousand cubic meters) is equivalent to seven-tenths of a megaton of TNT, or about fifty-five Hiroshima bombs.

## PQD

### Armed Forces Thumper – 2AC

#### Obama will continue to consult for military actions – takes out the link

Rothkopf 13

[David, CEO and editor at large of Foreign Policy, The Gamble, 8/31/13, <http://www.foreignpolicy.com/articles/2013/08/31/the_gamble?page=0,1>]

Whatever happens with regard to Syria, the larger consequence of the president's action will resonate for years. The president has made it highly unlikely that at any time during the remainder of his term he will be able to initiate military action without seeking congressional approval. It is understandable that many who have opposed actions (see: Libya) taken by the president without congressional approval under the War Powers Act would welcome Obama's newly consultative approach. It certainly appears to be more in keeping with the kind of executive-legislative collaboration envisioned in the Constitution. While America hasn't actually required a congressional declaration of war to use military force since the World War II era, the bad decisions of past presidents make Obama's move appealing to the war-weary and the war-wary. But whether you agree with the move or not, it must be acknowledged that now that Obama has set this kind of precedent -- and for a military action that is exceptionally limited by any standard (a couple of days, no boots on the ground, perhaps 100 cruise missiles fired against a limited number of military targets) -- it will be very hard for him to do anything comparable or greater without again returning to the Congress for support. And that's true whether or not the upcoming vote goes his way. 4. This president just dialed back the power of his own office. Obama has reversed decades of precedent regarding the nature of presidential war powers -- and whether you prefer this change in the balance of power or not, as a matter of quantifiable fact he is transferring greater responsibility for U.S. foreign policy to a Congress that is more divided, more incapable of reasoned debate or action, and more dysfunctional than any in modern American history. Just wait for the Rand Paul filibuster or similar congressional gamesmanship. The president's own action in Libya was undertaken without such approval. So, too, was his expansion of America's drone and cyber programs. Will future offensive actions require Congress to weigh in? How will Congress react if the president tries to pick and choose when this precedent should be applied? At best, the door is open to further acrimony. At worst, the paralysis of the U.S. Congress that has given us the current budget crisis and almost no meaningful recent legislation will soon be coming to a foreign policy decision near you. Consider that John Boehner was instantly more clear about setting the timing for any potential action against Syria with his statement that Congress will not reconvene before its scheduled September 9 return to Washington than anyone in the administration has been thus far. Perhaps more importantly, what will future Congresses expect of future presidents? If Obama abides by this new approach for the next three years, will his successors lack the ability to act quickly and on their own? While past presidents have no doubt abused their War Powers authority to take action and ask for congressional approval within 60 days, we live in a volatile world; sometimes security requires swift action. The president still legally has that right, but Obama's decision may have done more -- for better or worse -- to **dial back the imperial presidency than anything his predecessors or Congress have done for decades.**

#### Fisa thumps the DA

WSJ 13 – Wall Street Journal, “The Absent Commander in Chief”, 6/16/13 <http://online.wsj.com/article/SB10001424127887324188604578545233232040760.html>

Even an effort by Mr. Obama to lead from behind would be better than this abdication. The President's mistake seems to be a combination of moral afflatus—how could anyone possibly imagine that he would abuse government power?—and treating the current furor as a law school seminar. The political danger is a lot greater than that. A real and growing risk is that Congress will move in a way that limits the war powers of the Commander in Chief and endangers national security. To take one example, support seems to be growing for Senate legislation from Democrats Ron Wyden and Jeff Merkley of Oregon and Republican Mike Lee of Utah that would require the declassification of certain legal opinions from the oversight court under the Foreign Intelligence Surveillance Act, or FISA. This infringes on executive power because the President has traditionally defined what is secret, especially in times of war.

#### 2. Court rules against executive now

Wong 13 -- PhD dissertation in Government to Georgetown University (U Jin, 4/22/2013, "THE BLANK CHECK: SUPREME COURT DECISION - MAKING IN NATIONAL SECURITY CLAIMS AND DURING WARTIME," http://repository.library.georgetown.edu/bitstream/handle/10822/558286/Wong\_georgetown\_0076D\_12276.pdf?sequence=1)

This study started out with two questions. The first was: ?Does war influence judicial decision - making?? The second was: ?Do **national security** claims influence judicial decision - making?? The answer to the first question is: In a general hypothetical s ignificant war, there is a **statistically significant finding** of voting against the government. In the models run using the Spaeth database where the government is a party, the influence of all significant wars on judicial decision - making generally was to vote against the government. Presidential approval ratings are statistically significant only in wartime, but with a positive coefficient. Outside of wartime, presidential approval ratings are not statistically likely to influence Supreme Court behavior. This result suggests that while Courts vote strategically and support a popular president, they are still statistically likely to find against the government in a significant war. These findings altogether suggest that that the Supreme Court votes strat egically with an eye towards the popularity of the president, but revert to skepticism of government‘s wartime claims as the war progresses. The answer to the second question is: National security claims brought by the government achieve a **statistically significant likelihood** that the Supreme Court will vote against the government. National security claims were statistically significant with a negative signifier. **This finding is consistent across all the major wars as well as peacetime**. It also suggest s that the Supreme Court generally is not predisposed to defer to the executive branch‘s arguments when it comes to national security claims

#### 3. Fisa thumps the DA

WSJ 13 – Wall Street Journal, “The Absent Commander in Chief”, 6/16/13 <http://online.wsj.com/article/SB10001424127887324188604578545233232040760.html>

Even an effort by Mr. Obama to lead from behind would be better than this abdication. The President's mistake seems to be a combination of moral afflatus—how could anyone possibly imagine that he would abuse government power?—and treating the current furor as a law school seminar. The political danger is a lot greater than that. A real and growing risk is that Congress will move in a way that limits the war powers of the Commander in Chief and endangers national security. To take one example, support seems to be growing for Senate legislation from Democrats Ron Wyden and Jeff Merkley of Oregon and Republican Mike Lee of Utah that would require the declassification of certain legal opinions from the oversight court under the Foreign Intelligence Surveillance Act, or FISA. This infringes on executive power because the President has traditionally defined what is secret, especially in times of war.

#### 7. Limits on prez powers solve global nuclear war

Sloane 08

[Robert, Associate Professor of Law, Boston University School of Law, THE SCOPE OF EXECUTIVE POWER IN THE TWENTYFIRST CENTURY: AN INTRODUCTION, 2008, <http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/SLOANE.pdf>]

There is a great deal more constitutional history that arguably bears on the scope of the executive power in the twenty-first century. But it is vital to appreciate that the scope of the executive power, particularly in the twenty-first century, is not only a constitutional or historical issue. As an international lawyer rather than a constitutionalist, I want to stress briefly that these debates and their concrete manifestations in U.S. law and policy potentially exert a profound effect on the shape of international law. Justice Sutherland’s sweeping dicta in United States v. Curtiss-Wright Export Corp., that the President enjoys a “very delicate, plenary and exclusive power . . . as the sole organ of the federal government in the field of international relations – a power which does not require as a basis for its exercise an act of Congress,”52 has been (correctly, in my view) criticized on a host of grounds.53 But in practice, in part for institutional and structural reasons,54 it accurately reflects the general preeminence of the President in the realm of U.S. foreign affairs. Because of the nature of the international legal and political system, what U.S. Presidents do and say often establish precedents that strongly influence what other states do and say – with potentially dramatic consequences for the shape of customary international law. The paradigmatic example is the establishment of customary international law on the continental shelf following the Truman Proclamation of September 28, 1945,55 which produced an echo of similar claims and counterclaims, culminating in a whole new corpus of the international law of the sea for what had previously been understood only as a geological term of art.56 Many states took note, for example, when in the 2002 National Security Strategy of the United States (“NSS”), President Bush asserted that the United States had the right under international law to engage in preventive wars of self-defense.57 While, contrary to popular belief, the United States never in fact formally relied on that doctrine in practice, many would argue that President Bush de facto exercised this purported right when he initiated an armed conflict with Iraq based on claims, which have since proved unfounded, about its incipient programs to develop catastrophic weapons. The 2006 NSS notably retreats from the 2002 NSS’s robust claims of a right to engage in preventive wars of self-defense.58 Yet even within this brief, four-year period, an astonishing number of other states have asserted a comparable right to engage in preventive self-defense. These include not only states that the United States has described as “rogue states,” such as North Korea and Iran, but Australia, Japan, the United Kingdom, China, India, Iran, Israel, Russia, and (though technically not a state) Taiwan.59 I doubt we will welcome the consequences of this pattern for the evolving jus ad bellum of the twenty-first century. Equally, after President Bush's decision to declare a global war on terror or terrorism - rather than, for example, the Taliban, al-Qaeda, and their immediate allies - virtually every insurgency or disaffected minority around the world, including peoples suffering under repressive regimes and seeking to assert legitimate rights to liberty and self-determination, has been recharacterized by opportunistic state elites as part of the enemy in this global war. n60 The techniques employed and justified by the United States, including the resurrection of rationalized torture as an "enhanced interrogation technique," n61 likewise have emerged - and will continue to emerge - in the [\*351] practice of other states. Because of customary international law's acute sensitivity to authoritative assertions of power, the widespread repetition of claims and practices initiated by the U.S. executive may well shape international law in ways the United States ultimately finds disagreeable in the future. So as we debate the scope of the executive power in the twenty-first century, the stakes, as several panelists point out, could not be higher. They include more than national issues such as the potential for executive branch officials to be prosecuted or impeached for exceeding the legal scope of their authority or violating valid statutes. n62 They also include international issues like the potential use of catastrophic weapons by a **rogue regime asserting a right to engage in preventive war;** **the deterioration of international human rights norms against practices like torture**, norms which took years to establish; and the atrophy of genuine U.S. power in the international arena, which, as diplomats, statesmen, and international relations theorists of all political persuasions appreciate, demands far more than the largest and most technologically advanced military arsenal. In short, what Presidents do, internationally as well as domestically - the precedents they establish - may affect not only the technical scope of the executive power, as a matter of constitutional law, but **the practical ability of future Presidents to exercise that power** both at home and abroad. We should candidly debate whether terrorism or other perceived crises require an expanded scope of executive power in the twenty-first century. But it is dangerous to cloak the true stakes of that debate with the expedient of a new - and, in the view of most, indefensible - "monarchical executive" theory, which claims to be coextensive with the defensible, if controversial, original Unitary Executive theory. n63 We should also weigh the costs and benefits of an expanded scope of executive power. But it is vital to appreciate that there are costs. They include not only short-term, acute consequences but long-term, systemic consequences that may not become fully apparent for years. In fact, the exorbitant exercise of broad, supposedly inherent, executive powers may well - as in the aftermath of the Nixon administration - culminate in precisely the sort of reactive statutory constraints and de facto diplomatic obstacles that proponents of a robust executive regard as misguided and a threat to U.S. national security in the twenty-first century.

#### 4. No impact – PMC’s inevitable globally

Sethi 13

[Arjun, the Guardian, Military contracting: our new era of corporate mercenaries, 1/23/13, <http://www.theguardian.com/commentisfree/2013/jan/23/military-contracting-corporate-mercenaries>]

Nearly every tool necessary to wage war can now be purchased: combat support, including the ability to conduct large-scale operations and surgical strikes; operational support, like training and intelligence gathering; and general support, like transportation services and paramedical assistance. The demand for these services, in turn, has ballooned: the gross revenue for the private military contractor industry is now in excess of $100bn a year. The privatization of conflict is no longer a trend. It's the norm. The United States relied so heavily on contractors during the recent Iraq war that no one knows with certainty how many were on the ground. In late 2010, the United Arab Emirates, fearful that the Arab uprisings might spread to the Gulf, paid Erik Prince, the founder of Blackwater Worldwide, $529m to create an elite force to safeguard the emirate. And today, Russia is openly considering forming a cadre of private military contractors to further its interests abroad.

### 1NC Afghan Stability

#### You don’t actually solve Afghan stability – it’s inev

#### -- Afghan collapse won’t spill over

Silverman 9 (Jerry Mary, Ph.D. in International Relations and Project Specialist – Ford Foundatoin, “Sturdy Dominoes”, The National Interest, 11-19, http://www.nationalinterest.org/Article.aspx?id=22512)

Many advocates of continuing or racheting up our presence in Afghanistan are cut from the same domino-theory cloth as those of the Vietnam era. They posit that losing in Afghanistan would almost certainly lead to the further “loss” of the entire South and central Asian region. Although avoiding explicit reference to “falling dominos,” recent examples include S. Frederick Starr (School of Advanced International Studies, Johns Hopkins University); Sir David Richards (the UK’s relatively new Chief of the General Staff); and, in The National Interest, Ahmed Rashid. The fear that Pakistan and central Asian governments are too weak to withstand the Taliban leads logically to the proposition—just as it did forty years ago—that only the United States can defend the region from its own extremist groups and, therefore, that any loss of faith in America will result in a net gain for pan-Islamist movements in a zero-sum global competition for power. Unfortunately, the resurrection of “falling dominos” as a metaphor for predicted consequences of an American military withdrawal reflects a profound inability to re-envision the nature of today’s global political environment and America’s place in it. The current worry is that Pakistan will revive support for the Taliban and return to its historically rooted policy of noninterference in local governance or security arrangements along the frontier. This fear is compounded by a vision of radical Islamists gaining access to Pakistan’s nuclear arsenal. Those concerns are fueled by the judgment that Pakistan’s new democratically elected civilian government is too weak to withstand pressures by its most senior military officers to keep its pro-Afghan Taliban option open. From that perspective, any sign of American “dithering” would reinforce that historically-rooted preference, even as the imperative would remain to separate the Pakistani-Taliban from the Afghan insurgents. Further, any significant increase in terrorist violence, especially within major Pakistani urban centers, would likely lead to the imposition of martial law and return to an authoritarian military regime, weakening American influence even further. At its most extreme, that scenario ends with the most frightening outcome of all—the overthrow of relatively secular senior Pakistani generals by a pro-Islamist and anti-Western group of second-tier officers with access to that country’s nuclear weapons. Beyond Pakistan, advocates of today’s domino theory point to the Taliban’s links to both the Islamic Movement of Uzbekistan and the Islamic Jihad Union, and conclude that a Taliban victory in Afghanistan would encourage similar radical Islamist movements in Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. In the face of a scenario of increasing radicalization along Russia’s relatively new, southern borders, domino theorists argue that a NATO retreat from Afghanistan would spur the projection of its own military and political power into the resulting “vacuum” there. The primary problem with the worst-case scenarios predicted by the domino theorists is that no analyst is really prescient enough to accurately predict how decisions made by the United States today will affect future outcomes in the South and central Asian region. Their forecasts might occur whether or not the United States withdraws or, alternatively, increases its forces in Afghanistan. Worse, it is entirely possible that the most dreaded consequences will occur only as the result of a decision to stay. With the benefit of hindsight, we know that the earlier domino theory falsely represented interstate and domestic political realities throughout most of Southeast Asia in 1975. Although it is true that American influence throughout much of Southeast Asia suffered for a few years following Communist victories in Cambodia, Laos and Vietnam, we now know that while we viewed the Vietnam War as part of a larger conflict, our opponent’s focus was limited to the unification of their own country. Although border disputes erupted between Vietnam and Cambodia, China and the Philippines, actual military conflicts occurred only between the supposedly fraternal Communist governments of Vietnam, China and Cambodia. Neither of the two competing Communist regimes in Cambodia survived. Further, no serious threats to install Communist regimes were initiated outside of Indochina, and, most importantly, the current political situation in Southeast Asia now conforms closely to what Washington had hoped to achieve in the first place. It is, of course, unfortunate that the transition from military conflict in Vietnam to the welcome situation in Southeast Asia today was initially violent, messy, bloody, and fraught with revenge and violations of human rights. But as the perpetrators, magnitude, and victims of violence changed, the level of violence eventually declined.

#### -- Afghan stability resilient

Robichaud 7 (Carl, Program Officer – The Century Foundation, “Buying Time in Afghanistan”, World Policy Journal, 11-8, http://www.tcf.org/publications/internationalaffairs/RobichaudWPJ.pdf)

Afghanistan is increasingly seen as Iraq in slow motion. It is not. The headlines of car bombs and casualty tolls echo each other, but mask deep differences in each society and in the dynamics of each insurgency. As Iraq has descended into civil war, Afghanistan’s center has held. The government remains weak, but power holders and the public show no appetite for a return to internecine fighting. The insurgency remains solvent because of safe havens across the border in Pakistan, but has been unable to expand upon its toehold in Afghanistan or offer a compelling alternative to the status quo. In the short-run, the only way Afghanistan could capsize is if the ballast of international support is withdrawn. Unfortunately, this scenario seems increasingly likely. The Taliban are fond of saying that “the Americans have watches, but we have time.”1 A quarter of the United States public now favors a pullout from Afghanistan in the next year if things do not improve, and an additional 40 percent believes troops should be withdrawn “as quickly as possible,” if a basic level of stability is achieved. Polls in Canada, Britain, and the Netherlands— the NATO countries which are shouldering the alliance’s military burden in the volatile South—suggest about half of those surveyed want troops withdrawn within a year.2 In Germany, two thirds of the public now opposes its military contribution, and in February a dispute over Afghanistan collapsed the center-left Prodi government in Italy. National leaders continue to assert that “we cannot afford to lose” in Afghanistan, but many of their constituents believe they already have.

## Court Ptx

### Thumper – 2AC

#### Schuette decision coming now – saps capital

Feder 9/2

[Jody, Legislative Attorney, Banning the Use of Racial Preferences in Higher Education: A Legal Analysis of Schuette v. Coalition to Defend Affirmative Action, 9/2/13, <http://www.fas.org/sgp/crs/misc/R43205.pdf>]

In the more than three decades since the Supreme Court’s ruling in Regents of the University of California v. Bakke affirmed the constitutionality of affirmative action in public colleges and universities, many institutions of higher education have implemented race-conscious admissions programs in order to achieve a racially and ethnically diverse student body or faculty. Nevertheless, the pursuit of diversity in higher education remains controversial, and legal challenges to such admissions programs routinely continue to occur. Currently, the Court is poised to consider a novel question involving affirmative action in higher education during its upcoming 2013-2014 term. Unlike earlier rulings, in which the Court considered whether it is constitutional for a state to use racial preferences in higher education, the new case, Schuette v. Coalition to Defend Affirmative Action, raises the question of whether it is constitutional for a state to ban such preferences in higher education. Schuette arose in the wake of a pair of cases involving admissions to the University of Michigan’s law school and undergraduate programs. Although the Court struck down the undergraduate admissions program, it upheld the law school’s program in a decision that affirmed the constitutionality of the limited use of race-conscious admissions programs in public higher education. In the wake of the University of Michigan cases, opponents of affirmative action in Michigan successfully lobbied for the passage of Proposal 2, which amended the Michigan state constitution to prohibit preferential treatment on the basis of race, sex, color, ethnicity, or national origin in public employment, public education, or public contracting. Opponents of Proposal 2 sued, and a federal appeals court ruled that Proposal 2’s ban on racial preferences in public education violates the equal protection clause of the United States Constitution. This decision was subsequently upheld in a divided ruling by the full court of appeals, sitting en banc, and the Supreme Court will review the case during the upcoming term.

### Court Politics DA – 2AC

#### No warrant in uq - -we don’t affect libertarians

#### 1. [Insert won’t pass/Controversy inevitable]

#### 2. Kennedy’s down for the environment – he’s the swing vote

Blumm 07

[Michael, Lewis & Clark College, Justice Kennedy and the Environment: Property, States' Rights, and the Search For Nexus, 2007, <http://works.bepress.com/michael_blumm/2/>]

Justice Anthony Kennedy, now clearly the pivot of the Roberts Court, is the Court’s crucial voice in environmental and natural resources law cases. Kennedy’s central role was never more evident than in the two most celebrated environmental and natural resources law cases of 2006: Kelo v. New London and Rapanos v. U.S., since he supplied the critical vote in both: upholding local use of the condemnation power for economic development under certain circumstances, and affirming federal regulatory authority over wetlands which have a significant nexus to navigable waters. In each case Kennedy’s sole concurrence was outcome determinative. Justice Kennedy has in fact been the needle of the Supreme Court’s environmental and natural resources law compass since his nomination to the Court in 1988. Although Kennedy wrote surprisingly few environmental and natural resources law opinions during his tenure on the Rehnquist Court, over his first eighteen years on the Court, he was in the majority an astonishing 96 percent of the time in environmental and natural resources law cases—as compared to his generic record of being in the majority slightly over 60 percent of the time. And Kennedy now appears quite prepared to assume a considerably more prominent role on the Roberts Court in the environmental and natural resources law field. This article examines Kennedy’s environmental and natural resources law record over his first eighteen years on the Supreme Court and also on of the Ninth Circuit in the thirteen years before that. The article evaluates all of the environmental law and natural resources law cases in which he wrote an opinion over those three decades, and it catalogues his voting record in all of the cases in which he participated on the Supreme Court in an appendix. One striking measure of Justice Kennedy’s influence is that, after eighteen years on the Court, he has written **just one environmental dissent**—and that on states’ rights grounds, which is one of his chief priorities. The article maintains that Kennedy is considerably more interested in allowing trial judges to resolve cases on the basis of context than he is in establishing broadly applicable doctrine: Kennedy is a doctrinal minimalist. By consistently demanding a demonstrated “nexus” between doctrine and facts, he has shown that he will not tolerate elevating abstract philosophy over concrete justice. For example, he is interested in granting standing to property owners alleging regulatory takings, but he is quite skeptical about the substance of their claims. Another example of his nuanced approach concerns his devotion to states’ rights—which is unassailable—yet he has been quite willing to find federal preemption when it serves deregulation purposes. On the other hand, as his opinion in Rapanos reflects, Kennedy is far from an anti-regulatory zealot. But he does seem to prefer only one level of governmental regulation. At what might be close to the mid-point in his Court career—and with his power perhaps at its zenith—Justice Kennedy is clearly not someone any litigant can ignore. By examining every judicial opinion he has written in the environmental and natural resources law field, this article hopes to give both those litigants and academics a fertile resource to till. Although Kennedy has been purposefully difficult to interpret in this field (writing very few opinions until lately), his record suggests that he may be receptive to environmental and natural resources claims if they are factually well-grounded and do not conflict with Kennedy’s overriding notions of states’ rights. The article concludes with some comparisons between Justice Kennedy and Justice Holmes.

#### 3. Not intrninsic – the supreme court can rule for the plan and \_\_\_ - key to effective decisionmaking

#### 4. Ideology outweighs on controversies

Feldman 08

[Stephen, Jerry W. Housel/Carl F. Arnold Distinguished Professor of Law and Adjunct Professor of Political Science, University of Wyoming, Southern California Interdisciplinary Law Journal, Fall 2008, L/N]

So, did Roberts and Alito lie during their confirmation hearings? n4 Did they duplicitously proclaim dedication to the rule of law while secretly planning to implement their political agendas? While I disagree with the justices' votes in practically every controversial case, Roberts and Alito most likely answered senators' questions sincerely, and the justices have probably applied the rule of law in good faith during their initial terms. But, one might ask, how is this possible when they repeatedly vote for the conservative judicial outcome? Most simply, law and politics are not opposites. Roberts, Alito, and the other justices do not necessarily disregard the law merely because they vote to decide cases con**sistent with their respective political ideologies.** As a general matter, Supreme Court justices can decide legal disputes in accordance with law while simultaneously following their political preferences. [\*18] I elaborate this thesis by critiquing the theories of Judge Richard Posner n5 and Professor Ronald Dworkin, n6 two of the most prominent jurisprudents of this era. Embattled opponents, Posner and Dworkin have, for years, relentlessly attacked each other while developing strikingly different depictions of law and adjudication. n7 Despite their opposition, however, Posner and Dworkin together challenge a primary assumption of traditional jurisprudence - an assumption featured during Roberts's and Alito's Senate confirmation hearings. Most senators, jurists, and legal scholars assume that legal interpretation and judicial decision making can be separated from politics, that a judge or justice who decides according to political ideology skews or corrupts the judicial process. n8 Posner and Dworkin reject this traditional approach, particularly for hard cases at the level of the Supreme Court. Each in his own way asserts and explains the power of politics in adjudication: the justices self-consciously vote and thus decide cases according to their political ideologies. Posner and Dworkin agree that the justices do not, and should not, decide hard cases by applying an ostensibly clear rule of law in a mechanical fashion. The justices must be political in an open and expansive manner. n9 Supreme Court adjudication is, in other words, politics writ large. The conflicts between Posner and Dworkin stem from their distinct views of politics. Posner views politics as a pluralist battle among self-interested individuals and groups. He therefore argues that Supreme Court adjudication, manifesting politics writ large, should (and in fact does) entail a pragmatic focus on consequences. The justices should resolve cases by looking to the future and by aiming to do what is best in both the short and long term. n10 Dworkin, repudiating a pragmatic politics of self-interest, favors instead a politics of principles. Thus, according to Dworkin, the justices should resolve hard cases by applying law as integrity. They should theorize about the political-moral principles that fit the doctrinal history - including [\*19] case precedents and constitutional provisions - and that cast the history in its best moral light. n11 Consequently, although Posner and Dworkin both describe the Supreme Court as a political institution - as engaging in politics writ large - their theories otherwise clash tumultuously. Posner sees an adjudicative politics of interest and unmitigated practicality, while Dworkin sees an adjudicative politics of principles and coherent theory. Unfortunately, both Posner and Dworkin - like Roberts, Alito, and the senators who questioned them - remain stuck within the magnetic field of the traditional law-politics dichotomy. While most jurists, legal scholars, and senators are pulled to the law pole - maintaining that law mandates case results - Posner and Dworkin are pulled to the opposite pole. If politics matter to adjudication, they seem to say, then politics must become the overriding determinant of judicial outcomes. Supreme Court adjudication must be politics writ large. If their view is true, then Supreme Court nominees who declare their fidelity to the rule of law do, in fact, lie: current and future justices decide cases by hewing to their political ideologies, not to legal doctrines and precedents. But in their struggle against the forces of the law-politics dichotomy, Posner and Dworkin overcompensate. They neglect another possibility: namely, that Supreme Court adjudication is politics writ small. As Posner and Dworkin emphasize, the Court is a political institution: the justices' political ideologies always and inevitably influence their votes and decisions. But usually the justices do not self-consciously attempt to impose their politics in an expansive manner. To the contrary, the justices sincerely interpret and apply the law. Yet, because legal interpretation is never mechanical, the justices' political ideologies necessarily shape how they understand the relevant legal texts, whether in constitutional or other cases.

#### 5. No spillover --- there’s no reason \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ would be picked for make-up. The Court would choose another case that requires capital.

#### 5. Capital is compartmentalized

Redish 87 (Martin H., Professor of Law – Northwestern University, and Karen L. Drizin, Clerk – Illinois State Supreme Court, New York University Law Review, April, Lexis)

a. The fallacy of the concept of fungible institutional capital. The basis for Dean Choper's suggested judicial abstention on issues of federalism [143](http://www.lexis.com/research/retrieve?_m=11c71424f02a19dd3fddea3d6d214ae5&docnum=9&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=29cb5075b93d84858cb8ef752799c5b9&focBudTerms=supreme%20court%20w/35%20political%20capital%20or%20institutional%20capital%20w/35%20strong%20or%20strength%20or%20increas%21%20or%20abundan%21&focBudSel=all#n143) is the desire "to ease the commendable and crucial task of judicial review in cases of individual consitutional liberties. It is in the latter that the Court's participation is both vitally required and highly provocative." [144](http://www.lexis.com/research/retrieve?_m=11c71424f02a19dd3fddea3d6d214ae5&docnum=9&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=29cb5075b93d84858cb8ef752799c5b9&focBudTerms=supreme%20court%20w/35%20political%20capital%20or%20institutional%20capital%20w/35%20strong%20or%20strength%20or%20increas%21%20or%20abundan%21&focBudSel=all#n144) Judicial efforts in the federalism area, he asserts, "have expended large sums of institutional capital. This is prestige desperately needed elsewhere." [145](http://www.lexis.com/research/retrieve?_m=11c71424f02a19dd3fddea3d6d214ae5&docnum=9&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=29cb5075b93d84858cb8ef752799c5b9&focBudTerms=supreme%20court%20w/35%20political%20capital%20or%20institutional%20capital%20w/35%20strong%20or%20strength%20or%20increas%21%20or%20abundan%21&focBudSel=all#n145) Dean Choper's fundamental assumption, then, is that Supreme Court abstention on issues of constitutional federalism would somehow increase, or at least curtail loss of, limited capital for the more vital area of individual liberty. However, even if one were to concede that judicial review is more fundamental to our constitutional scheme in the area of individual liberty than in matters of federalism, acceptance of Dean Choper's proposal would not necessarily follow. The problem is that it is neither intuitively nor empirically clear that the Court's so-called capital is transferable from one area of constitutional law to another. As one of the current authors has previously argued: It is difficult to imagine . . . that the widespread negative public reactions to Miranda v. Arizona, Engle v. Vitale, or Roe v. Wade would  [\*37]  have been affected at all by the Court's practices on issues of separation of powers and federalism. Rather, public reaction in each seems to have focused on the specific, highly charged issues of rights for criminals, prayer in public schools, and abortions. It is doubtful that the Court would have had an easier time if it had chosen to stay out of interbranch and intersystemic conflicts. [146](http://www.lexis.com/research/retrieve?_m=11c71424f02a19dd3fddea3d6d214ae5&docnum=9&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=29cb5075b93d84858cb8ef752799c5b9&focBudTerms=supreme%20court%20w/35%20political%20capital%20or%20institutional%20capital%20w/35%20strong%20or%20strength%20or%20increas%21%20or%20abundan%21&focBudSel=all#n146)

#### 6. Fiat solves --- normal means is plan’s announced at the same time as the other decision, so it wouldn’t affect capital

#### 7. Capital resilient

Chemerinsky 99 (Erwin, Professor of Law – USC, South Texas Law Review, Fall, 40 S. Tex. L. Rev. 943, Lexis)

Interestingly, though, the Supreme Court has been immune from that cynicism. At a time when other government institutions are often held in disrepute, the Court's credibility is high. Professors John M. Scheb and Williams Lyons set out to measure and determine this. [2](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n2) They conducted a survey to answer the question: "How do the American people regard the U.S. Supreme Court?" [3](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n3) Their conclusion is important: According to the survey data, Americans render a relatively positive assessment of the U.S. Supreme Court. Not surprisingly, the Court fares considerably better in public opinion than does Congress. The respondents are almost twice as likely to rate the Court's performance as "good' or "excellent'  [\*945]  as they are to give these ratings to Congress. By the same token, they are more than twice as likely to rate Congress' performance as "poor.' [4](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n4) This survey was done in 1994, [5](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n5) before the recent events that likely further damaged Congress' public image. Strikingly, Scheb and Lyons found that the "Court is fairly well-regarded across the lines that usually divide Americans." [6](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n6) For example, there are no significant differences between how Democrats and Republicans rate the Court's performance. In short, the Court is a relatively highly regarded institution, more so certainly than Congress or the presidency. [7](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n7) This is not a new phenomena. Throughout this century, the Court has handed down controversial rulings. Yet the Court has retained its legitimacy and its rulings have not been disregarded. Judge John Gibbons remarked that the "historical record suggests that far from being the fragile popular institution that scholars like Professor Choper... and Alexander Bickel have perceived it to be, judicial review is in fact quite robust." [8](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n8) In fact, even at the times of the most intense criticism of the Supreme Court, the institution has retained its credibility. For example, opposition to the Court was probably at its height in the mid-1930s. In the midst of a depression, the Court was striking down statutes thought to be necessary for economic recovery. In an attempt to change the Court's ideology, President Franklin D. Roosevelt - fresh from a landslide reelection - proposed changing the size of the Court. This "Court packing" plan received little public support. The Senate Judiciary Committee, controlled by Democrats, rejected the proposal and strongly reaffirmed the need for an independent judiciary: Let us now set a salutary precedent that will never be violated. Let us, of the Seventy-fifth Congress,... declare that we would rather have an independent Court, a fearless Court, a Court that will dare to announce its honest opinions in what it believes to be the defense of the liberties of the people, than a Court that, out of fear or sense of obligation to the appointing power, or  [\*946]  factional passion, approves any measure we may enact. [9](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n9) This is a telling quotation and a powerful example because if anything should have undermined the Court's legitimacy, it was an unpopular Court striking down popular laws enacted by a popular administration in a time of crisis. Public opinion surveys reflect that this Committee report reflected general support for the Supreme Court, despite the unpopularity of its rulings. In 1935 and 1936, most respondents, 53% and 59% respectively, did not favor limiting the power of the Supreme Court in declaring laws unconstitutional. [10](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n10) Indeed, the Court's high regard, described by Professors Scheb and Lyons, has been remarkably constant over time. [11](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n11) Professor Roger Handberg studied public attitudes about the Supreme Court over several decades and concluded that public support for the institution has not changed significantly and that the "Court has a basic core of support which seems to endure despite severe shocks." [12](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n12) Professor John Hart Ely noted this and observed: The possibility of judicial emasculation by way of popular reaction against constitutional review by the courts has not in fact materialized in more than a century and a half of American experience. The warnings probably reached their peak during the Warren years; they were not notably heeded; yet nothing resembling destruction materialized. In fact, the Court's power continued to grow and probably never has been greater than it has been over the past two decades. [13](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n13) Why has the Court maintained its legitimacy even when issuing highly controversial rulings? Social science theories of legitimacy offer some explanation. The renowned sociologist Max Weber wrote that there are three major bases for an institution's legitimacy: tradition, rationality and affective ties. [14](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n14) That which historically has existed tends to be accepted as legitimate. Therefore, 200 years of  [\*947]  judicial review grants the Court enormous credibility. Additionally, that which is rational is likely to be regarded as legitimate. The judiciary's method of giving detailed reasons for its conclusions thus helps to provide it credibility. Finally, that which is charismatic, things to which people have strong affective ties, are accorded legitimacy. It has long been demonstrated that people feel great loyalty to the Constitution. The Court's relationship to the document and its role in interpreting it likely also enhances its legitimacy. More specifically, I suggest that the Court's robust public image is a result of its processes and its producing largely acceptable decisions over a long period of time. The Court is rightly perceived as free from direct political pressure and lobbying, bound by the convention of reaching rational decisions that are justified in opinions, and capable of protecting people from arbitrary government. Social scientists have shown that an institution receives legitimacy from following established procedures. The Court's legitimacy, in part, is based on the perception and reality that it does not decide cases based on the personal interests of the Justices or based on external lobbying and pressures. In a recent book highly critical of the Court, Edward Lazarus lambastes the current Justices, yet he never even suggests a single instance of improper influence or conflict of interest. [15](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n15) The Court's credibility is a product of the correct perception that it decides cases based on a formalized procedure: it reads briefs, hears arguments, deliberates, and writes opinions. Indeed, the very process of opinion writing, regardless of their content, is crucial because it makes the Court's decisions seem a product of reason, not simply acts of will. Although the Court's high credibility is a result of this process, I believe that this is necessary for its institutional legitimacy, but not sufficient. The Court also has produced a large body of decisions, that over a long period of time, have generally been accepted by the public. If the Court were to produce a large number of intensely unpopular rulings over a long period of time, its credibility would suffer. In the short-term, its processes ensure its continued legitimacy; in the long-term, overall acceptability of its decisions is sufficient to preserve this credibility. Recognition of the Court's robust legitimacy is important in the on-going debate over judicial review. Many, including those as  [\*948]  prominent as Felix Frankfurter, Alexander Bickel, and Jesse Choper, have proclaimed a need for judicial restraint so as to preserve the Court's fragile institutional legitimacy. [16](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n16) They argue that the Court must depend on voluntary compliance with its rulings from the other branches of government and that this will not occur unless the Court preserves its fragile legitimacy. Justice Frankfurter dissented in Baker v. Carr, the Supreme Court's landmark decision holding that challenges to malapportionment were justiciable, arguing that the Court was putting its fragile legitimacy at risk. [17](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n17) Frankfurter urged restraint, stating: "The Court's authority - possessed of neither the purse nor the sword - ultimately rests on public confidence in its moral sanction." [18](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n18) Choper, for example, concludes from this premise that the Court should not rule on federalism or separation of powers issues so as to not squander its political capital in these areas that he sees as less important than individual rights cases. Bickel argued that the Court should practice the "passive virtues" and use justiciability doctrines to avoid highly controversial matters so as to preserve its political capital. [19](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n19) Other scholars reason from the same assumption. Daniel Conkle, for example, speaks of the "fragile legitimacy that attaches to Supreme Court pronouncements of constitutional law." [20](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n20) I am convinced that these scholars are wrong and that the public image of the Court is not easily tarnished, and preserving it need not be a preoccupation of the Court or constitutional theorists. There is no evidence to support their assertion of fragile public legitimacy and almost 200 years of judicial review refute it.

#### 8. Normal means is courts will announce their decision at the end of the term and that solves the link

Mondak 92 [Jeffery J., assistant professor of political science @ the University of Pittsburgh. “Institutional legitimacy, policy legitimacy, and the Supreme Court.” American Politics Quarterly, Vol. 20, No. 4, Lexis]

The process described by the political capital hypothesis acts as expected in the laboratory, and the logic of the link between institutional and policy legitimacy has thus gained strong empirical corroboration. However, the dynamic's pervasiveness defies precise estimation due to the limitations of available public opinion data. Still, the results reported here are provocative. First, this view of legitimation may apply to institutions beyond the Supreme Court. Consequently, efforts to use this theory in the study of other institutions may yield evidence supportive of a general process. A second concern is how the Court responds to its institutional limits. Specifically, strategy within the Court can be considered from the context of legitimacy. For example, what tactics may the Court employ to reduce the erosion of political capital? By releasing controversial rulings at the end of a term, for instance, the Court may afford itself a healing period, a time to repair damaged credibility prior to the next round of efforts at conferring policy legitimacy. This suggests a third issue, the manner in which institutional approval is replenished. Does institutional support return to some equilibrium once dispute surrounding a particular ruling fades, or must the Court release popular edicts to offset the effects of its controversial actions?

#### 9. Winners win --- plan boosts capital

Little 00 (Laura, Professor of Law – Temple University, Beasley School of Law, November, 52 Hastings L.J. 47, Lexis)

Other scholars bolster Redish's position by pointing out that judicial review of both federalism and separation of powers questions presents something of a self-fulfilling prophesy. Through review of these sensitive issues of power, the judiciary bolsters its own position or amasses "political capital" and, thereby, legitimates its own power to engage in such review . 237 The judiciary has therefore established  [\*98]  itself as an effective watchdog to ensure that governmental structures are functioning appropriately. n237. Perry, supra note 11, at 57 (Supreme Court has "amassed a great deal of the political capital it now enjoys ... precisely by resolving problems arising under the doctrines of federalism and of the separation-of-powers "); see also Archibald Cox, The Role of the Supreme Court in American Government 30 (1972) (explaining that "history legitimated the power [of judicial review], and then habit took over to guide men's actions so long as the system worked well enough").

#### 10. Controversial decisions don’t affect capital – Bush v. Gore proves

Balkin 01

[Jack, Knight Professor of Constitutional Law and the First Amendment, Yale Law School, Bush v. Gore and the Boundary Between Law and Politics, June 2001, L/N]

The Court's legitimacy is often described in terms of its "political capital." n143 The term "political capital" is generally not defined. It is likely that it has many facets. One element of political capital might be the likelihood that people will follow the Court's decisions and treat them as binding law, especially in controversial cases. Yet if the question is merely whether the Court's decisions will be obeyed, it seems clear that its capital was hardly damaged at all. No one doubted for a second that Al Gore would obey the Court's order, or that the Florida Supreme Court would cease the recounts immediately. The Court's ability to command obedience remains largely unaffected by Bush v. Gore. There is little doubt that people will continue to follow the Supreme Court's decisions. Lawyers will continue to cite them, and lower courts and legal officials will continue to apply them as before. Thus, if legitimacy or political capital means only brute [\*1451] acceptance of the Court and its decisions as a going concern, **the Court will not lose any legitimacy as a result of its decision in Bush v. Gore**. If the Court's political capital is judged by whether politicians are well-or ill-disposed toward the Supreme Court, then the Supreme Court may well have increased its political capital in the short term by halting the recounts. n144 After all, there is now a Republican president, and Republicans control both houses of Congress. They are no doubt delighted with the Supreme Court's exercise of judicial review, for it guarantees them a period of one-party rule. As a result, they are probably much more favorably disposed to granting the Justices the pay raise that Chief Justice Rehnquist has been requesting for several years. n145 Judged in raw political terms, the Supreme Court made much more powerful friends than enemies when it decided Bush v. Gore. n146 Nevertheless, legitimacy might mean something more than the two senses of "political capital" that I have just described. When people speak of "legitimacy" - not in a rigorously philosophical sense but in an everyday sense of the word - they are often referring to basic questions of trust and confidence in public officials: Do people believe that public officials are honest and trustworthy, and do they have confidence that public officials will act in the public interest and not for purely partisan or selfish reasons? These forms of legitimacy are crucial to the courts because the courts rely so heavily on the appearance of fairness and reasonableness. To be sure, sometimes people speak of "moral legitimacy" - whether what government officials do is in fact just and fair - and "procedural legitimacy" - whether government officials have employed fair procedures. But often people do not know what government officials are doing - for example, most people do not read judicial opinions - and even then what is actually just and fair is often difficult to determine. So in practice when [\*1452] people speak of a court's "moral legitimacy" or "procedural legitimacy," they may not mean whether courts actually are fair and just but whether people believe that they are fair and just. According to this analysis, moral and procedural legitimacy are elements of trust and confidence in public officials - in this case, trust and confidence that these officials are upright and honest and will do the right thing. Understood in this broader sense, the question of the Court's legitimacy concerns whether people will continue to have faith in the Court as a fair-minded arbiter of constitutional questions, whether they trust the Court, whether they have confidence in its decisions, and whether they believe its decisions are principled and above mere partisan politics. That sort of confidence and trust probably has been shaken, particularly among lawyers and legal academics, but also in portions of the public at large. Even so, the effects of Bush v. Gore on the Court's legitimacy may differ markedly for different populations and social groups. Perhaps trust and confidence have been damaged among Democratic voters - who are a sizeable proportion of the population - and within the legal academy, which tends to be liberal. But in other groups, the evidence of a loss of faith is quite mixed. Republican politicians like Tom DeLay and Trent Lott probably now have renewed confidence in the Court. After Bush v. Gore, they know that they can rely on the Court to do the right thing (in all the different senses of the word "right"). Although liberal legal academics have been badly shaken by the decision, conservative legal academics have come to the Court's defense, and one expects that we will see more spirited endorsements in the future. n147 Finally, most Americans are not privy to the niceties of constitutional argument and so may not be able to judge whether the Court has played fast and loose with the law. Indeed, the polling data do not seem to suggest a sharp drop off in the Court's approval ratings. A Gallup Poll conducted from January 10 to 14, 2001, indicated that 59% of those surveyed approved of how the Court was handling its job while 34% disapproved, only a three percentage point drop from its 62% approval rating in a similar poll taken from August 29 to September 5, 2000, long before the Florida controversy occurred. n148 Make no mistake: Many people are very, very angry at the Supreme Court, and the Court probably has lost their trust and confidence. But these citizens may not constitute a majority [\*1453] of all Americans. Perhaps more importantly, the persons who are currently in power like what the Court is doing just fine. In any case, there is no doubt in my mind that the Supreme Court will eventually regain whatever trust and confidence among the American public that it lost in Bush v. Gore. The Supreme Court has often misbehaved and squandered its political capital foolishly. It has done some very unjust and wicked things in the course of its history, and yet people still continue to respect and admire it. If the Court survived Dred Scott v. Sandford, it can certainly survive this.

#### 11. Strong public support for the plan

ENS 01

[Environmental News Service , U.S. Military Under Attack on Environmental Grounds, 6/25/01, <http://www.ens-newswire.com/ens/jun2001/2001-06-25-03.asp>]

A coalition of citizen’s organizations is challenging the U.S. Armed Forces, alleging that the health and safety of communities across the country is under assault from past and current polluting military operations. In a new national campaign, citizens impacted by military operations **from Hooper Bay, Alaska to Vieques, Puerto Rico** are participating in the Military Toxics Project�s effort to hold the U.S. military accountable to the same laws that apply to all other sectors of society. The military is not subject to most laws that protect communities and workers, either because it is completely exempt or because the Environmental Protection Agency has no enforcement authority, says Steve Taylor, national coordinator for the Maine based Military Toxics Project. The campaign is timed to support the introduction of a bill by Congressman Bob Filner, a California Democrat, who represents San Diego, home to a large contingent of U.S. Navy ships in the Pacific Fleet, the Space and Naval Warfare Systems Center, and the Naval Air Force. On June 13, Filner introduced the Military Environmental Responsibility Act, which seeks to remove all military exemptions from existing environmental, worker and public safety laws and regulations. To back up the new bill, the Military Toxics Project (MTP) released to Congress a report entitled "Defend Our Health: The U.S. Military�s Environmental Assault On Communities." Prepared by MTP and Environmental Health Coalition, an environmental justice organization based in San Diego, the report shows how military exemptions from laws and lax enforcement by regulatory agencies have contributed to the existence of more than 27,000 toxic hot spots on 8,500 military properties across the country. Based on the findings of this report, the citizens' groups charge that military activities like legal and illegal toxic dumping, testing and use of munitions, manufacture and use of depleted uranium ammunition, hazardous waste generation, nuclear propulsion, toxic air emissions have created "an environmental catastrophe.

#### Public key to the court

Hoeksta 3 (Valerie, Arizona State U., Public Reaction to Supreme Court Decisions, Cambridge U. Press)

In some respects, comparisons with Congress or the presidency are neither appropriate nor fair. Unlike its democratically selected and accountable counterparts, the Supreme Court appears relatively isolated from and unconstrained by public opinion. Its members do not run for election, and once in office, they essentially serve for life. While this certainly places them in an enviable position, the justices must rely on public support for the implementation of their policies since they possess “neither the purse nor the sword.” The Court’s lack of many enforcement mechanisms makes public support even more essential to the Court than it is to other institutions. This public support may generate an important source of political capital for the Court (Choper 1980).

# 4 vs. Wake CH

## 2AC

## T

### T – Armed Forces – 2AC

#### 1. We meet- plan text says introduction of armed forced into hostilities- CX says no bases

#### 2. We meet – plan prevents introduction of humans into conflict

#### At worst – the plan is topical but indirectly solves – restricting armed forces also restricts their weapons use

Jensen 3 (Major Eric Talbot – Professor, International and Operational Law Department, The Judge Advocate General's School, U.S. Army, “Unexpected Consequences From Knock-On Effects: A Different Standard for Computer Network Operations?”, 2003, 18 Am. U. Int'l L. Rev. 1145, lexis)

n30. See id. art. 52, para. 2, 1125 U.N.T.S. at 27 (explaining in the Commentary that the "nature" aspect of the test is defined as "all objects directly used by the armed forces: weapons, equipment, transports, fortifications, depots, buildings occupied by armed forces, staff headquarters, communications centers etc"); Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 1949, para. 2020 (Y. Sandoz, et al. eds., 1998) [hereinafter GPI Commentary]. "Location" may turn a civilian object into a military object if, for example, it is a bridge or other construction, or ... a site which is of special importance for military operations in view of its location, either because it is a site that must be seized or because it is important to prevent the enemy from seizing it, or otherwise because it is a matter of forcing the enemy to retreat from it. Id. para. 2021. "The criterion of "purpose' is concerned with the intended future use of an object, while that of "use' is concerned with its present function. Id. para. 2022.

#### 3. C/I Armed forces includes all components of the military – it’s their definition

DLA 13 (Defense Logistics Agency Manual – US Military, “Defense Logistics Agency

MANUAL”, 1/4, http://www.dla.mil/issuances/Documents\_1/m5025%2001%20DLA\_Writing\_Style\_Guide.pdf)

Armed Forces ; Armed Forces of the United States Use “ Military Services ” for consistency throughout DLA issuances . All three terms denote collectively all components of the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

#### 4. Especially in the context of hostilities

Phelps 96 (Lieutenant Colonel Richard – Chief, Environmental Law, Headquarters United States Air Forces in Europe, Ramstein Air Base, J.D., Oklahoma City University School of Law, “Environmental Law for Overseas Installations”, 1996, 40 A.F. L. Rev. 49, lexis)

[Comments]

n98 Id. at encl. 2, para. C.3.a.(3). The term armed conflict refers to: hostilities for which Congress has declared war or enacted a specific authorization for the use of armed forces; hostilities or situations for which a report is prescribed by section 4(a)(1) of the War Powers Resolution, 50 U.S.C.A. Section 1543(a)(1) (Supp. 1978); and other actions by the armed forces that involve defensive use or introduction of weapons in situations where hostilities occur or are expected. This exemption applies as long as the armed conflict continues.

#### 5. Prefer our interpretation

#### A. Overlimits – no part of limiting armed forces just limits humans – they exclude things guns that the humans use

#### B. Ground –weapons aff are critical to aff flexibility that prevents a stale topic

#### C. Education – weapons are a core part of the literature

#### 7. Function limits check – Agent cp’s solve their runaway weapons claims

#### 8. Reasonability is good – prevents a race to the bottom and arbitrary counter interpretations that exclude the aff

### Other T

We meet – we prohibit the President fron taking military action if it violates military statutes

### T – Presidential Authority – 2AC

#### 1. We meet – war powers restrictions include limits on weapons, forces and rules

Lobel 8 (Jules – Professor of Law, University of Pittsburgh Law School, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War”, 2008, Ohio State Law Journal, 69 Ohio St. L.J. 391, lexis)

More generally, the Court held that Congress has the power to authorize limited, undeclared war in which the President's power as Commander in Chief would be restricted. In such wars, the Commander in Chief's power would extend no further than Congress had authorized. As President Adams recognized, Congress had as a functional matter "declared war within the meaning of the Constitution" against France, but "under certain restrictions and limitations." n123 Under this generally accepted principle in our early constitutional history, Congress could limit the type of armed forces used, the number of such forces available, the weapons that could be utilized, the theaters of actions, and the rules of combat. In short, it could dramatically restrict the President's power to conduct the war.

#### 2. Authority means the power to make discretionary policy judgments

**Spector, 90** (Arthur, US Bankruptcy Judge, In re Premo, UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF MICHIGAN, NORTHERN DIVISION, 116 B.R. 515; 1990 Bankr. LEXIS 1471; Bankr. L. Rep. (CCH) P73,555; 90-2 U.S. Tax Cas. (CCH) P50,396;71A A.F.T.R.2d (RIA) 4677, lexis)

The word "authority", on the other hand, is defined as the "power to influence or command thought, opinion, or behavior." Id. These definitions suggest that the terms "duty" and "authority" are not synonymous. The notion of a duty implies an affirmative obligation to perform specific acts, whereas "**authority" is by its nature discretionary**. A high-level corporate officer, for example, may have the authority to "command" that any number of actions be taken, but that does not mean that he or she is obliged or required to do so. Decreasing authority requires reducing the permission to act, not the ability to act.\

#### We meet – we limit the ability for the president to make discretionary decisions

#### 3. Prefer our interpretation

#### A) Aff ground – § Marked 19:22 § only our interpretation allows for a diversity of aff’s that don’t lose to process generics

#### B) Education – all the literature on the topic is a discussion of the ability for the president to make unilateral judgments

#### 4. Function limits check – Agent cp’s solve their runaway weapons claims

#### 5. Reasonability is good – prevents a race to the bottom and arbitrary counter interpretations that exclude the aff

### T – Restriction =Prohibit– 2AC

#### 1. We meet – plan prevents the use of armed forces if their use violates environmental statutes – that’s a restriction

Lobel 8 (Jules – Professor of Law, University of Pittsburgh Law School, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War”, 2008, Ohio State Law Journal, 69 Ohio St. L.J. 391, lexis)

More generally, the Court held that Congress has the power to authorize limited, undeclared war in which the President's power as Commander in Chief would be restricted. In such wars, the Commander in Chief's power would extend no further than Congress had authorized. As President Adams recognized, Congress had as a functional matter "declared war within the meaning of the Constitution" against France, but "under certain restrictions and limitations." n123 Under this generally accepted principle in our early constitutional history, Congress could limit the type of armed forces used, the number of such forces available, the weapons that could be utilized, the theaters of actions, and the rules of combat. In short, it could dramatically restrict the President's power to conduct the war.

#### 2. Judicial restriction means regulation

**Kerrigan** **73** (Frank, Judge @ Court of Appeal of California, Fourth Appellate District, Division Two, 29 Cal. App. 3d 815; 105 Cal. Rptr. 873; 1973 Cal. App. LEXIS 1235, SUN COMPANY OF SAN BERNARDINO, CALIFORNIA, Petitioner, v. THE SUPERIOR COURT OF SAN BERNARDINO COUNTY, Respondent; THE PEOPLE et al., Real Parties in Interest. PROGRESS-BULLETIN PUBLISHING COMPANY, Petitioner, v. THE SUPERIOR COURT OF SAN BERNARDINO COUNTY, Respondent; THE PEOPLE et al., Real Parties in Interest. (Consolidated Cases.), lexis)

While the studies were in progress, the United States Supreme Court found the impact of television cameras and lights in a courtroom setting prejudicial to the conduct of a fair trial. ( Estes v. Texas (1965) 381 U.S. 532 [14 L.Ed.2d 543, 85 S.Ct. 1628].) Shortly thereafter, in Sheppard v. Maxwell (1966) 384 U.S. 333, 358 [16 L.Ed.2d 600, 618, 86 S.Ct. 1507], the defendant's conviction of his wife's murder [\*\*879] was reversed because of "[the] carnival atmosphere at trial" and pervasive publicity affecting the fairness of the hearing. In reversing Dr. Sheppard's conviction, the court stated [\*\*\*15] that: (1) the publicity surrounding a trial may become so extensive and prejudicial in nature that unless neutralized by appropriate judicial procedures, a resultant conviction may not stand; (2) the trial court has the duty of so insulating the trial from publicity as to insure its fairness; (3) a free press plays a vital role in the effective and fair administration of justice. But the court did not set down any fixed rules to guide trial courts, law enforcement officers or media as to what could or could not be printed. Instead, the majority suggested that judicial restrictions on speech might sometimes be appropriate in the following dicta: "The courts [\*823] must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences. Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures. [\*\*\*16] " (Ibid., p. 363 [16 L.Ed.2d p. 620].)

#### 3. **Restrictions” means “regulations”**

Davies 30 (Major George, “CLAUSE 1.—(Scheme regulating production, supply and sale of coal.),” February, vol 235 cc2453-558, http://hansard.millbanksystems.com/commons/1930/feb/27/clause-1-scheme-regulating-production)

Major GEORGE DAVIES The hon. Member says he has heard no reason advanced for this Amendment. I am willing to give him one, and I will tell him that the reason why the benches are not full, as they were a short time ago, is that man cannot live by bread alone and, as there is a rule against the introduction of newspapers and foodstuffs, it is necessary for some of us to refresh ourselves after a late Division. I am not going to transgress the ruling of the Chair, as we have been given very great latitude, but I want to confine myself to the point at issue, which is the regulation of sale. I have had experience in the past of efforts to regulate the sale of sugar. Like the coal industry to-day, there has been in the past an over-production of many of the fundamental articles of the life of a nation. I will not dwell on the case of rubber, but the sugar situation was entirely on all fours with this situation, as it was a question of the regulation of sale. Facing a situation very similar in kind and not dissimilar in degree to the problem now before us, those connected with that particular industry in certain countries thought it an advantage to control and regulate the sale. As soon as you use the word "regulation" in this connection it is idle to suggest that it does not mean restriction. Obviously, that is the point—to restrict—and, while 2541 it is true the word "restrict" is not in this particular Clause, and cannot be argued in connection with this Amendment, yet behind the word "regulate" is the word "restrict," in other words, controlling what has been uncontrolled, production thrown on markets not able to receive it.

#### 3. Prefer it –

#### A) Overlimits - the most common forms of restrictions are regulations on military activity – not a ban on any one category - they make it impossible to be aff

#### B) Education – regulations are a core discussion of the topic

#### 4. Function limits check – Agent cp’s solve their runaway weapons claims

#### 5. Reasonability is good – prevents a race to the bottom and arbitrary counter interpretations that exclude the aff

#### 6. Competing interpretations are bad – causes a race to the bottom – they will always find a way to exclude the aff. Default to reasonability – we don’t make the topic unmanageable

## K

### Agamben K 2ac

#### 1. Framework- the role of the ballot is to weigh the plan against a competitive policy option

#### Net benefits-

#### First- Fairness- they moot the entirety of the 1ac, makes it impossible to be affirmative

#### Second – Education- Policy education is good- it teaches future decisionmaking

#### 2. K doesn’t come first

**Owens 2002** (David – professor of social and political philosophy at the University of Southampton, Re-orienting International Relations: On Pragmatism, Pluralism and Practical Reasoning, Millenium, p. 655-657)

Commenting on the ‘philosophical turn’ in IR, Wæver remarks that ‘[a] frenzy for words like “epistemology” and “ontology” often signals this philosophical turn’, although he goes on to comment that these terms are often used loosely.4 However, loosely deployed or not, it is clear that debates concerning ontology and epistemology play a central role in the contemporary IR theory wars. In one respect, this is unsurprising since it is a characteristic feature of the social sciences that periods of disciplinary disorientation involve recourse to reflection on the philosophical commitments of different theoretical approaches, and there is no doubt that such reflection can play a valuable role in making explicit the commitments that characterise (and help individuate) diverse theoretical positions. Yet, such a philosophical turn is not without its dangers and I will briefly mention three before turning to consider a confusion that has, I will suggest, helped to promote the IR theory wars by motivating this philosophical turn. The first danger with the philosophical turn is that it has an inbuilt tendency to prioritise issues of ontology and epistemology **over explanatory** and/or interpretive **power** as if the latter two were merely a **simple function** of the former. But while the explanatory and/or interpretive power of a theoretical account is not wholly independent of its ontological and/or epistemological commitments (otherwise criticism of these features would not be a criticism that had any value), **it is by no means clear that it is**, in contrast, wholly dependent **on these philosophical commitments**. Thus, for example, one need not be sympathetic to rational choice theory to recognise that it can provide powerful accounts of certain kinds of problems, such as the tragedy of the commons in which dilemmas of collective action are foregrounded. It may, of course, be the case that the advocates of rational choice theory cannot give a good account of why this type of theory is powerful in accounting for this class of problems (i.e., how it is that the relevant actors come to exhibit features in these circumstances that approximate the assumptions of rational choice theory) and, if this is the case, it is a philosophical weakness—but **this does not undermine** the point that, for a certain class of problems, rational choice theory may provide the best account available to us. In other words, while the critical judgement of theoretical accounts in terms of their ontological and/or epistemological sophistication is one kind of critical judgement, **it is not the only or even necessarily the** most important kind. The second danger run by the philosophical turn is that because prioritisation of ontology and epistemology promotes theory-construction from philosophical first principles, it cultivates a theory-driven rather than problem-driven approach to IR. Paraphrasing Ian Shapiro, the point can be put like this: since it is the case that there is always a plurality of possible true descriptions of a given action, event or phenomenon, the challenge is to decide which is the most apt in terms of getting a perspicuous grip on the action, event or phenomenon in question given the purposes of the inquiry; yet, from this standpoint, ‘theory-driven work is part of a reductionist program’ in that it ‘dictates always opting for the description that calls for the explanation that flows from the preferred model or theory’.5 The justification offered for this strategy rests on the mistaken belief that it is necessary for social science because general explanations are required to characterise the classes of phenomena studied in similar terms. However, as Shapiro points out, this is to misunderstand the enterprise of science since ‘whether there are general explanations for classes of phenomena is a **question for social-scientific inquiry**, not to be prejudged before conducting that inquiry’.6 Moreover, this strategy easily slips into the promotion of the pursuit of generality over that of empirical validity. The third danger is that the preceding two combine to encourage the formation of a particular image of disciplinary debate in IR—what might be called (only slightly tongue in cheek) ‘the Highlander view’—namely, an image of warring theoretical approaches with each, despite occasional temporary tactical alliances, dedicated to the strategic achievement of sovereignty over the disciplinary field. It encourages this view because the turn to, and prioritisation of, ontology and epistemology stimulates the idea that there can only be one **theoretical approach which gets things right**, namely, the theoretical approach that gets its ontology and epistemology right. This image feeds back into IR exacerbating the first and second dangers, and so a potentially vicious circle arises.

#### 3. Extinction outweighs

Bok 88

(Sissela, Professor of Philosophy at Brandeis, Applied Ethics and Ethical Theory, Rosenthal and Shehadi, Ed.)

The same argument can be made for Kant’s other formulations of the Categorical Imperative: “So act as to use humanity, both in your own person and in the person of every other, always at the same time as an end, never simply as a means”; and “So act as if you were always through your actions a law-making member in a universal Kingdom of Ends.” No one with a concern for humanity could consistently will to risk eliminating humanity in the person of himself and every other or to risk the death of all members in a universal Kingdom of Ends for the sake of justice. To risk their collective death for the sake of following one’s conscience would be, as Rawls said, “irrational, crazy.” And to say that one did not intend such a catastrophe, but that one merely failed to stop other persons from bringing it about would be beside the point when the end of the world was at stake. For although it is true that we cannot be held responsible for most of the wrongs that others commit, the Latin maxim presents a case where we would have to take such responsibility seriously – perhaps to the point of deceiving, bribing, even killing an innocent person, in order that the world not perish. To avoid self-contradiction, the Categorical Imperative would, therefore, have to rule against the Latin maxim on account of its cavalier attitude toward the survival of mankind. But the ruling would then produce a rift in the application of the Categorical Imperative. Most often the Imperative would ask us to disregard all unintended but foreseeable consequences, such as the death of innocent persons, whenever concern for such consequences conflicts with concern for acting according to duty. But, in the extreme case, we might have to go against even the strictest moral duty precisely because of the consequences. Acknowledging such a rift would post a strong challenge to the unity and simplicity of Kant’s moral theory.

#### -- Perm – do both – you can do the plan and imagine whatever being – solves the links, avoids short-term case impacts. Double-bind – if alt overcomes status quo links, it solves – if it doesn’t, alt fails.

#### War kills alt solvency

**Linklater 90** (Andrew, Senior Lecturer in Politics – Monash University, Beyond Realism and Marxism: Critical Theory and International Relations, p. 32)

These theoretical disagreements with Marxism generate major differences at the practical level. It is necessary to conclude that a post-Marxist critical theory of international relations must concede that technical and practical orientations to foreign policy are inescapable at least at this juncture. Such an approach must appreciate the need for classical realist methods of protecting the state under conditions of insecurity and distrust, and recognise the importance of the rationalist defence of order and legitimacy in the context of anarchy. It is important to take account of the rationalist claim that order is unlikely to survive if the major powers cannot reconcile their different national security interests. In a similar vein, a critical approach to international relations is obliged to conclude that the project of emancipation will not make significant progress if international order is in decline. One of its principal tasks would then be to understand how the community of states can be expanded so that it approximates a condition which maximises the importance of freedom and universality. In this case, a critical theory of international relations which recognises the strengths of realism and Marxism must aim for a political practice which deals concurrently with the problem of power, the need for order and the possibility of emancipation through the extension of human community

#### -- Alt fails – wishful calls for revamping sovereignty do nothing – simultaneous political action is vital to prevent short-term threats to survival

**Lombardi 96** (Mark Owen, Associate Professor of Political Science – Tampa, Perspectives on Third-World Sovereignty, p. 161)

Sovereignty is in our collective minds. What we look at, the way we look at it and what we expect to see must be altered. This is the call for international scholars and actors. The assumptions of the paradigm will dictate the solution and approaches considered. Yet, a mere call to change this structure of the system does little except activate reactionary impulses and intellectual retrenchment. Questioning the very precepts of sovereignty, as has been done in many instances, does not in and of itself address the problems and issues so critical to transnational relations. That is why theoretical changes and paradigm shifts must be coterminous with applicative studies. One does not and should not precede the other. We cannot wait until we have a neat self-contained and accurate theory of transnational relations before we launch into studies of Third-World issues and problem-solving. If we wait we will never address the latter and arguably most important issue-area: the welfare and quality of life for the human race.

#### -- Doesn’t solve the case – impact is short-term extinction – they’re too slow

#### -- Bare life isn’t the root of everything – ignores specificity, far too general, and empirically false

#### -- Alt fails – they view power as top-down – makes resistance impossible

**Hardt 00** (Michael Hardt, Literature @ Duke, 2000, Theory and Event, 4.3, p Muse)

But still none of that addresses the passivity you refer to. For that we have to look instead at Agamben’s notions of life and biopower. Agamben uses the term “naked life” to name that limit of humanity, the bare minimum of existence that is exposed in the concentration camp. In the final analysis, he explains, modem sovereignty rules over naked life and biopower is this power to rule over life itself What results from this analysis is not so much passivity, I would say, but powerlessness. There is no figure that can challenge and contest sovereignty. Our critique of Agamben’s (and also Foucault’s) notion of biopower is that it is conceived only from above and we attempt to formulate instead a notion of biopower from below, that is, a power by which the multitude itself rules over life. (In this sense, the notion of biopower one finds in some veins of ecofeminism such as the work of Vandana Shiva, although cast on a very different register, is closer to our notion of a biopower from below.) What we are interested in finally is a new biopolitics that reveals the struggles over forms of life.

#### -- Can’t advocate the plan – steals all the Aff crushing ground, allows tiny impossible to beat PICs and proves the Aff true

#### -- Turn – political vacuum – abandoning state reforms causes worse forces to fill-in

**Barbrook 97** (Dr. Richard, School of Westminster, Nettime, “More Provocations”, 6-5,

http://www.nettime.org/Lists-Archives/nettime-l-9706/msg00034.html)

I thought that this position is clear from my remarks about the ultra-left posturing of the 'zero-work' demand. In Europe, we have real social problems of deprivation and poverty which, in part, can **only be solved by state action**. This does not make me a statist, but rather an anti-anti-statist. By opposing such intervention because they are carried out by the state, anarchists are **tacitly lining up with the neo-liberals**. Even worse, refusing even to vote for the left, they acquiese to rule by neo-liberal parties. I deeply admire direct action movements. I was a radio pirate and we provide server space for anti-roads and environmental movements. However, this doesn't mean that I support political abstentionism or, even worse, the mystical nonsense produced by Hakim Bey. It is great for artists and others to adopt a marginality as a life style choice, but most of the people who are economically and socially marginalised were never given any choice. They are excluded from society as a result of deliberate policies of deregulation, privatisation and welfare cutbacks carried out by neo-liberal governments. During the '70s, I was a pro-situ punk rocker until Thatcher got elected. Then we learnt the hard way that voting did change things and **lots of people suffered** if state power was withdrawn from certain areas of our life, such as welfare and employment. Anarchism can be a fun artistic pose. However, human suffering is not.

#### -- Conditionality is a voter – creates time and strategy skews, argumentative irresponsibility, and dispo solves

#### -- No impact

**Dickinson 4** (Dr. Edward Ross, Professor of History – University of Cincinnati, “Biopolitics, Fascism, Democracy: Some Reflections on Our Discourse About ‘Modernity’”, Central European History, 37(1), p. 18-19)

In an important programmatic statement of 1996 Geoff Eley celebrated the fact that Foucault’s ideas have “fundamentally directed attention away from institutionally centered conceptions of government and the state . . . and toward a dispersed and decentered notion of power and its ‘microphysics.’”48 The “broader, deeper, and less visible ideological consensus” on “technocratic reason and the ethical unboundedness of science” was the focus of his interest.49 But the “power-producing effects in Foucault’s ‘microphysical’ sense” (Eley) of the construction of social bureaucracies and social knowledge, of “an entire institutional apparatus and system of practice” ( Jean Quataert), simply do not explain Nazi policy.50 The destructive dynamic of Nazism was a product not so much of a particular modern set of ideas as of a particular modern political structure, one that could realize the disastrous potential of those ideas. What was critical was not the expansion of the instruments and disciplines of biopolitics, which occurred everywhere in Europe. Instead, it was the principles that guided how those instruments and disciplines were organized and used, and the external constraints on them. In National Socialism, biopolitics was shaped by a totalitarian conception of social management focused on the power and ubiquity of the völkisch state. In democratic societies, biopolitics has historically been **constrained** by a rights-based strategy of social management. This is a point to which I will return shortly. For now, the point is that what was decisive was actually politics at the level of the state. A comparative framework can help us to clarify this point. Other states passed compulsory sterilization laws in the 1930s — indeed, individual states in the United States had already begun doing so in 1907. Yet they **did not proceed** tothe next steps adopted by National Socialism — mass sterilization, mass “eugenic” abortion and murder of the “defective.” Individual figures in, for example, the U.S. did make such suggestions. But **neither** the **political structures** of democratic states **nor** their **legal and political principles** **permitted** such policies actually being enacted. Nor did the scale of forcible sterilization in other countries match that of the Nazi program. I do not mean to suggest that such programs were not horrible; but in a **democratic** political **context** they did not develop the dynamic of constant radicalization and escalation that characterized Nazi policies.

#### -- Turn – demanding limitations on war powers reverses power relations and encourages resistance to the state

**Campbell 98** (David, Professor of International Relations – University of Newcastle, Writing Security: United States Foreign Policy and the Politics of Identity, p. 203-205)

Recognizing the possibility of rearticulating danger leads us to a final question: what modes of being and forms of life could we or should we adopt? To be sure, a comprehensive attempt to answer such a question is beyond the ambit of this book. But it is important to note that asking the question in this way mistakenly implies that such possibilities exist only in the future. Indeed, the extensive and inten­sive nature of the relations of power associated with the society of security means that there has been and remains a not inconsiderable freedom to explore alternative possibilities. While traditional analy­ses of power are often economistic and negative, Foucault’s under­standing of power emphasizes its productive and enabling nature. Even more important, his understanding of power emphasizes the ontology of freedom presupposed by the existence of disciplinary and normalizing practices. Put simply, there cannot be relations of power unless subjects are in the first instance free: the need to institute negative and constraining power practices comes about only because without them freedom would abound. Were there no possibility of freedom, subjects would not act in ways that required containment so as to effect order.37 Freedom, though, is not the absence of power. On the contrary, because it is only through power that subjects exercise their agency, freedom and power cannot be separated. As Foucualt maintains: At the very heart of the power relationship, and constantly provok­ing it, are the recalcitrance of the will and the intransigence of free­dom. Rather than speaking of an essential freedom, it would be better to speak of an “agonism” — of a relationship which is at the same time reciprocal incitation and struggle; less of a face-to-face confronta­tion which paralyzes both sides than a permanent provocation.38 The political possibilities enabled by this permanent provocation of power and freedom can be specified in more detail by thinking in terms of the predominance of the “bio-power” discussed above. In this sense, because the governmental practices of biopolitics in Western nations have been increasingly directed towards modes of being and forms of life—such that sexual conduct has become an object of concern, individual health has been figured as a domain of discipline, and the family has been transformed into an instrument of government—the ongoing agonism between those pratices and the freedom they seek to contain means that individuals have articulataed a series of counterdemands drawn from those new fields of concern. For example, as the state continues to prosecute people according to sexual orientation, human rights activists have proclaimed the right of gays to enter into formal marriages, adopt children, and receive the same health and insurance benefits granted to their straight coun­terparts. These claims are a consequence of the permanent provoca­tion of power and freedom in biopolitics, and stand as testament to the **“strategic reversibility”** **of power relations**: if the terms of governmental practices can be made into focal points for resistances, then the “history of government as the ‘conduct of conduct’ is interwoven with the history of dissenting ‘counterconducts,’” Indeed, the emergence of the state as the major articulation of “the political” has involved an **unceasing agonism** between those in office and those they rule. State intervention in everyday life has long incited popular collective action, **the result** of which **has been** both **resistance to the state** and new claims upon the state. In particular, “the core of what we now call ‘citizenship’ . . .consists of multiple bargains hammered out by rulers and ruled in the course of their struggles over the means of state action, especially the making of war.” **In** more **recent times, constituencies associated with** women’s, youth, ecological, and peace movements (among others) **have** also **issued claims on society**.

#### -- Judge choice: representations are potential, not mandatory. Vote Aff for non-security reasons – avoids the link. Its logical and anything else causes reactionary conservativism.

#### -- Alt collapses

**Milbrath 96** (Lester W., Professor Emeritus of Political Science and Sociology – SUNY Buffalo, Building Sustainable Societies, Ed. Pirages, p. 289)

In some respects personal change cannot be separated from societal change. Societal transformation will not be successful without change at the personal level; such change is a necessary but not sufficient step on the route to sustainability. People hoping to live sustainably must adopt new beliefs, new values, new lifestyles, and new worldview. But **lasting** personal change is unlikely without simultaneous transformation of the socioeconomic/political system in which people function. Persons may solemnly resolve to change, but that resolve is **likely to weaken** as they perform day-today within a system reinforcing different beliefs and values. Change agents typically are met with denial and great resistance. Reluctance to challenge mainstream society is the major reason most efforts emphasizing education to bring about change are ineffective. If societal transformation must be speedy, and most of us believe it must, pleading with individuals to change is **not** **likely to be** **effective**.

#### -- Turn – the Messiah –

#### They cause Messianic politics – causes the worst violence

**Kohn 6** [Margaret, Asst. Prof. Poli Sci @ Florida, “Bare Life and the Limits of the Law,”.Theory and Event, 9:2, <http://muse.jhu.edu/journals/theory_and_event/v009/9.2kohn.html>, Retrieved 9-26-06//]

Is there an alternative to this nexus of anomie and nomos produced by the state of exception? Agamben invokes genealogy and politics as two interrelated avenues of struggle. According to Agamben, "To show law in its nonrelation to life and life in its nonrelation to law means to open a space between them for human action, which once claimed for itself the name of 'politics'." (88) In a move reminiscent of Foucault, Agamben suggests that breaking the discursive lock on dominant ways of seeing, or more precisely not seeing, sovereign power is the only way to disrupt its hegemonic effects. **Agamben** clearly **hopes that his theoretical analysis could contribute to the political struggle against authoritarianism, yet** he only offers tantalizingly abstract hints about how this might work. Beyond the typical academic conceit that theoretical work is a decisive element of political struggle, Agamben **seems to embrace a utopianism that provides little guidance for political action**. He imagines, "One day humanity will play with law just as children play with disused objects, not in order to restore them to their canonical use but to free them from it for good." (64) **More troubling is his messianic suggestion that "this studious play" will usher in a form of justice that cannot be made juridical**. Agamben might do well to consider Hannah Arendt's warning that the **belief in justice unmediated by law was one of the characteristics of totalitarianism**. It might seem unfair to focus too much attention on Agamben's fairly brief discussion of alternatives to the sovereignty-exception-law nexus, but it is precisely those sections that reveal the flaws in his analysis. It also brings us back to our original question about how to resist the authoritarian implications of the state of exception without falling into the liberal trap of calling for more law. For Agamben, the problem with the "rule of law" response to the war on terrorism is that it ignores the way that the law is fundamentally implicated in the project of sovereignty with its corollary logic of exception. Yet **the solution that he endorses reflects a similar blindness**. Writing in his utopian-mystical mode, he insists, "the only truly political action, however, is that which severs the nexus between violence and law."(88) Thus Agamben, in spite of all of his theoretical sophistication, ultimately falls into the trap of **hoping that politics can be liberated from law**, at least the law tied to violence and the demarcating project of sovereignty.

#### The impact is massive extermination

**Joines 99** (Richard E., Professor of English – Auburn University, “Contretemps: Derrida's Ante and the Call of Marxist Political Philosophy”, Cultural Logic, 3(1), Fall, http://clogic.eserver.org/3-1&2/joines.html)

29. Marxists argue that we are unable to imagine communism before its arrival, but "the someone or something" that follows hard upon the messianic event Derrida speaks of will usher in an opposite unimaginable concept of the political and establish the *rangordnung* of Nietzsche's ancient desires. Derrida's "appeal for an International whose essential basis or motivating force [is] not class, citizenship, or party" ("MS," p. 252) should be read and understood as a threat to any potential international organized around such concepts. Marxists witnessed the actualization of a similar, yet philosophically inadequate, threat in the twentieth century,17 but the new Messiah waited for (without waiting) will **make Hitler and Mussolini look like rank amateurs**. Marxists have the ability to recognize the content of this messianicity, yet they stubbornly persist in the delusion that Derrida is speaking of "something familiar," and that he is not a "class enemy." Certainly, he is not. He is **worse**, and we call him "comrade" at great risk to creating a communist future.

#### -- Alternative fails – critical theory has no mechanism to translate theory into practice

**Jones 99** (Richard Wyn, Lecturer in the Department of International Politics – University of Wales, Security, Strategy, and Critical Theory, CIAO, http://www.ciaonet.org/book/wynjones/wynjones06.html)

Because emancipatory political practice is central to the claims of critical theory, one might expect that proponents of a critical approach to the study of international relations would be reflexive about the relationship between theory and practice. Yet their thinking on this issue thus far does not seem to have progressed much beyond **grandiose statements of intent**. There have been no systematic considerations of how critical international theory can help generate, support, or sustain emancipatory politics beyond the seminar room or conference hotel. Robert Cox, for example, has described the task of critical theorists as providing “a guide to strategic action for bringing about an alternative order” (R. Cox 1981: 130). Although he has also gone on to identify possible agents for change and has outlined the nature and structure of some feasible alternative orders, he has not explicitly indicated whom he regards as the addressee of critical theory (i.e., who is being guided) and thus how the theory can hope to become a part of the political process (see R. Cox 1981, 1983, 1996). Similarly, Andrew Linklater has argued that “a critical theory of international relations must regard the practical project of extending community beyond the nation–state as its most important problem” (Linklater 1990b: 171). However, he has little to say about the role of theory in the realization of this “practical project.” Indeed, his main point is to suggest that the role of critical theory “is not to offer instructions on how to act but to reveal the existence of unrealised possibilities” (Linklater 1990b: 172). But the question still remains, reveal to whom? Is the audience enlightened politicians? Particular social classes? Particular social movements? Or particular (and presumably particularized) communities? In light of Linklater’s primary concern with emancipation, one might expect more guidance as to whom he believes might do the emancipating and how critical theory can impinge upon the emancipatory process. There is, likewise, little enlightenment to be gleaned from Mark Hoffman’s otherwise important contribution. He argues that critical international theory seeks not simply to reproduce society via description, but to understand society and change it. It is both descriptive and constructive in its theoretical intent: it is both an intellectual and a social act. It is not merely an expression of the concrete realities of the historical situation, but also a force for change within those conditions. (M. Hoffman 1987: 233) Despite this very ambitious declaration, once again, Hoffman gives no suggestion as to how this “force for change” should be operationalized and what concrete role critical theorizing might play in changing society. Thus, although the critical international theorists’ critique of the role that more conventional approaches to the study of world politics play in reproducing the contemporary world order may be persuasive, their account of the relationship between their own work and emancipatory political practice is unconvincing. Given the centrality of practice to the claims of critical theory, this is a very significant weakness. Without some plausible account of the **mechanisms** by which they hope to aid in the achievement of their emancipatory goals, proponents of critical international theory are hardly in a position to justify the assertion that “it represents the next stage in the development of International Relations theory” (M. Hoffman 1987: 244). Indeed, without a more convincing conceptualization of the theory–practice nexus, one can argue that critical international theory, by its own terms, has no way of redeeming some of its central epistemological and methodological claims and thus that it is a **fatally flawed** enterprise.

## CP

### Stuff

#### Actually not the right CP text -- says they "exercise the power of executive review" of armed forces, then conclude those violate stuff -- doesn't make NEPA extraterritorial -- Congress won't do the plan without initiative

### Executive CP – 2AC

#### 1. Perm do both – solves the net benefits - -strengthen the President

#### 2. Can’t solve the case –

#### A) Overseas application

#### Executive order aren’t applied extraterritorially

Hilbert 12 (Sarah – J.D. Candidate, William & Mary Law School, “A Legislative Solution to Environmental Protection in Military Action Overseas”, 2012, 37 Wm. & Mary Envtl. L. & Pol'y Rev. 263, lexis)

III. Solution A. Executive Orders It has been suggested that the solution to the inadequate DoD environmental regulation is an executive order. n119 Executive orders have been proposed because of the power of the executive branch and its ability to produce change. n120 Laporte points to President Carter's executive order as a successful way to promote NEPA's ideals overseas and cites DoD action prompted by President Carter's executive order as an indication that the executive order was successful. n121 Although Laporte acknowledges the downfalls of the DoD's response to President Carter's executive order, she attributes the response to "exemptions or ambiguities in the Order itself," rather than the DoD's response to the Order. n122 Executive orders, however, are not the best answer. It is true that executive orders can affect the extraterritorial application of environmental principles as President Carter's executive order furthered the goals of NEPA, n123 but this benefit is limited. n124 President Carter's executive order's purpose was to further the goals of NEPA, n125 but it did not have the power to override the presumption that NEPA could not apply extraterritorially. n126 The executive order may be able to capture general [\*278] ideals or priorities of the executive, but President Carter's executive order illustrated that those ideals and priorities can be implemented very differently after the DoD interprets the meaning of the executive order. n127 Laporte assumes that the executive branch has the expertise and time to draft an executive order that has the perfect amount of specificity, flexibility, and practicality, n128 but this is not realistic. Creating standards for the DoD in the way that Laporte describes the ideal executive order n129 is not a job for the executive branch.

#### And that’s key to solve public concerns about the military ducking responsibility – that’s **Chanbonpin**

#### B) Secrecy - Executive regulation allows the military to exempt itself from environmental laws– internal secrecy means they will be noncompliant – that’s Babcock

#### C) Compliance - executive orders enforcing NEPA in the past were not implemented because of a lack of judicial review – the military chose not to comply as a result – that’s Schwabach

#### D) Liability - Weyand indicates holding the military legally accountable key to solve backlash

#### E) Certainty – Legal decision key

Pildes 13 (Rick, udler Family Professor of Constitutional Law and Co-Faculty Director for the Program on Law and Security at NYU School of Law, "Does Judicial Review of National-Security Policies Constrain or Enable the Government?," 8/5, <http://www.lawfareblog.com/2013/08/does-judicial-review-of-national-security-policies-constrain-or-enable-the-government/>)

First, government actors have a need for legal clarity, particularly in national-security areas where the legal questions are novel and the stakes of guessing wrong particularly high. In the absence of more definitive court guidance, government lawyers and policymakers have spent a staggering number of hours trying to anticipate what courts might conclude is the valid scope of the government’s power to detain, or to use military trials, and similar questions. In many contexts, a significant element in what government actors need is simply legal clarity; knowledge of where the lines lie between the permitted and the forbidden can help government actors figure out how best to reach their legitimate goals. Surely there is something not fully functional about a system that requires a decade’s worth of guesswork, and all the resources involved, about exactly where the legal boundaries lie.

#### 3. Congress will roll back the counterplan during a conflict – kills solvency

Tisler **11**

[Tiffany, J.D. Candidate, University of Toledo, 2011., FEDERAL ENVIRONMENTAL LAW WAIVERS AND HOMELAND SECURITY: ASSESSING WAIVER APPLICATION IN HOMELAND SECURITY SETTINGS AT THE SOUTHERN BORDER IN COMPARISON TO NATIONAL SECURITY SETTINGS INVOLVING THE MILITARY, Spring, 2011 The University of Toledo Law Review, L/N]

In times of war, the conflict between national-security goals and environmental laws tends to come out in favor of national security, n54 and shortly after 9/11 the United States was at war. As it was, the U.S. military never particularly liked the pre-9/11 waiver system, finding the scope of waivers too narrow and the time limits incompatible with long-term activities. n55 Thus, sensing the time to strike, the military began lobbying for changes to environmental-waiver provisions in the aftermath of 9/11. n56 The military has since actively and successfully sought changes to the waiver system, giving them much broader authority to disregard environmental laws, especially for reasons of "military readiness." n57 First, the military convinced Congress to attach riders to the 2004 and 2005 Defense Appropriations Acts exempting them from provisions of the Marine Mammal Protection Act ("MMPA"), some provisions of the ESA, and the entire Migratory [\*784] Bird Treaty Act. n58 Not only did the military successfully change the application of various sections of statute, it also changed the waiver structure for the MMPA, giving the Secretary of Defense the authority to grant waivers in addition to the President. n59 Though not always successful, military lobbying efforts have removed many external checks on military activities that impact the environment, creating a dim future for the environment. n60

#### 4. Counterplan is a voter

#### A) Topic education – shifts the focus of the debate from whether the president should have the authority and to whether the president should be the person to stop it – causes stale debate about process

#### B) Fairness- steals the entirety off the aff and makes it impossible to generate offense

#### C) Object fiat – fiats the object of the resolution which makes clash impossible- no way to have a stable source of aff offense

#### 5. **XO’s are misconstrued – military avoids change**

Hilbert 12 (Sarah – J.D. Candidate, William & Mary Law School, “A Legislative Solution to Environmental Protection in Military Action Overseas”, 2012, 37 Wm. & Mary Envtl. L. & Pol'y Rev. 263, lexis)

IV. Call to Action Judicial action through liability for the government and government contractors in the courts is not a viable solution for the environmental degradation and human health problems that result from military action overseas because the burdens that plaintiffs must overcome are too heavy to result in consistent decisions, or in any decisions at all. n180 Executive action through an executive order would not cause the kind of change in military behavior that is needed at this point, and Executive Orders have been ineffective in the past because the DoD was able to [\*287] misconstrue each Order through its own interpretations. n181 Legislative action provides the best option for a long-term solution that will apply to all military action, will have the intent of many federal statutes that already apply within United States borders, will hold military leaders accountable to a rigid set of procedures and standards, and will effectuate the change our country needs. n182

#### Takes out solvency - Empirically proven

Hilbert 12 (Sarah – J.D. Candidate, William & Mary Law School, “A Legislative Solution to Environmental Protection in Military Action Overseas”, 2012, 37 Wm. & Mary Envtl. L. & Pol'y Rev. 263, lexis)

II. Current Government Direction The current environmental protection plan for military efforts overseas has allowed burn pits to continue to cause health and environmental problems. Through an Executive Order, President Carter first emphasized the importance of government actors considering the environmental effects of proposed actions, n60 but the DoD interpreted the key parts of the Executive Order n61 and created the environmental protection plan it currently follows. Allowing the DoD to essentially create their own regulatory regime is contrary to environmental interests and poses a classic "fox guarding the hen house" problem. A. Executive Order 12,114 President Carter issued Executive Order 12,114-Environmental Effects Abroad of Major Federal Actions ("Executive Order 12,114") on January 4, 1979. n62 Executive Order 12,114 required officials of Federal Agencies to examine environmental effects of proposed actions and consider these effects in making decisions about actions. n63 The Executive Order mandated an information exchange between the Department of State, the Council on Environmental Quality, and any other interested agency or nation to provide information to decisionmakers through the use of environmental impact statements, bilateral or multilateral environmental studies, or concise reviews of environmental issues. n64 The Executive Order sought to further the goals of the National Environmental Policy Act ("NEPA") n65 which required environmental [\*271] assessment for governmental actions having environmental effects within the United States. n66 Executive Order 12,114 forced federal agencies to consider the environmental effect of their actions abroad, but it provided no substantive requirements or procedure for ensuring that protocol was followed. n67 The Executive Order was a start down the long road of a comprehensive environmental protection plan for the United States military, yet it was hardly a binding plan for the military to live by. Because President Carter's Executive Order lacked any substantial guidance but still mandated the military to consider the environmental effects of proposed actions, the DoD was left to interpret what the Executive Order required of it. B. Department of Defense Directive 6050.7 The DoD issued Directive 6050.7 soon after President Carter issued Executive Order 12,114 to define key terms of Executive Order 12,114 and elaborate as to what the DoD must consider when approving "major actions." n68 Because Executive Order 12,114 was not specific, the DoD granted ample discretion to commanders reviewing proposed actions. n69 The DoD interpreted "major action" to mean actions "of considerable importance involving substantial expenditures of time, money, and resources, that affect[] the environment on a large geographic scale or has substantial environmental effects on a more limited geographical area," and it sought to establish procedures for review of these actions. n70 Beyond establishing what is meant by "major action," the DoD does not define any other standard for determining when an environmental assessment is necessary. There is no definition of "substantial expenditures" or an elaboration on the geographic area requirements. n71 [\*272] The DoD also defined exceptions. Included in the list of exceptions are actions taken by the President, actions taken at the direction of the President or a cabinet officer in the course of armed conflict or when a national security risk is involved, activities of intelligence components, actions of the Office of the Assistant Secretary of Defense or the Defense Security Assistance Agency, and actions relating to nuclear activities and nuclear material except actions providing to a foreign nation a nuclear production or utilization facility. n72 The DoD's interpretation of what is required from President Carter's Executive Order weighs in the favor of the DoD. The amount of discretion given to reviewing officers allows an officer to decide that a project does not require an environmental review simply by finding that it is not a major action, which, according to DoD's interpretation of a "major action," would be easy for an officer to find. n73

#### 6. Perm do the CP – its an example of the president complying with the plans’ restriction

#### 7. Court has unique symbolic effect --- key to foreign perception of the plan

Fontana 8 (David, Associate Professor of Law – George Washington University Law School, “The Supreme Court: Missing in Action”, Dissent Magazine, Spring, http://www.dissentmagazine.org/article/?article=1165)

*The Results of Inaction*
What is the problem with this approach? The answer, simply put, is that it legitimates and even catalyzes political activity by Congress and the president, but it does so without including in this political activity the critically influential background voice of the Supreme Court on issues related to individual rights. The Court has two main powers: one has to do with law and compulsion, the other has to do with political debate. The Court can legally compel other branches of government to do something. When it told states and the federal government in Roe v. Wade that they could not criminalize all abortions, for example, the Court’s decision was a binding legal order. But the Supreme Court also plays a role in political debate, even when it does not order anyone to do anything. If the Justices discuss the potential problems for individual rights of a governmental action, even if they don’t contravene the action, their decision still has enormous import. This is because other actors (members of Congress, lawyers, newspaper editorial writers, college teachers, and many others) can now recite the Court’s language in support of their cause. Supreme Court phrases such as “one person, one vote” have enormous symbolic effect and practical influence. If there had been a case about torture, for example, and some of the justices had written in detail about its evils, then Senator Patrick Leahy (senior Democrat on the Judiciary Committee) could have used the Justices’ arguments to criticize attorney general nominee Michael Mukasey during his confirmation hearings. Attorneys for those being detained at Guantánamo could have made appearances on CNN and (even) Fox News reciting the evils of torture as described by the Court. Concerns about rights could have been presented far more effectively than if, as actually happened, the Court refused to speak to these issues. The Supreme Court’s discussion of constitutional questions is particularly important for two reasons. First, the justices view these questions from a distinct standpoint. While members of Congress and the president have to focus more on short-term and tangible goods, members of the Court (regardless of which president appointed them) focus more on the long term and on abstract values. The Court offers a perspective that the other branches simply cannot offer. Second, when the Supreme Court presents this perspective, people listen. It is and has been for some time the most popular branch of American government. Although there is some debate about terminology and measurement, most scholars agree that the Court enjoys “diffuse” rather than “specific” support. Thus, even when Americans don’t like a specific decision, they still support the Court. By contrast, when the president or Congress does something Americans don’t like, their support drops substantially. AMERICANS BECOME more aware of the Court the more it involves itself in controversies. This is because of what political scientists call “positivity bias.” The legitimating symbols of the Court (the robes, the appearance of detachment, the sophisticated legal opinions) help to separate it from other political institutions—and in a good way for the Court. If the Justices had drawn attention to violations of individual rights, most of America would have listened and possibly agreed. As it is, our politics has been devoid of a voice—and an authoritative voice—on individual rights. For most of the time since September 11, few major political figures have been willing to stand up and speak in support of these rights. Recall that the Patriot Act was passed in 2001 by a vote of ninety-eight to one in the Senate, with very little debate. Congress overwhelmingly passed the Detainee Treatment Act (DTA) of 2005, which barred many of those complaining of torture from access to a U.S. court. Congress also overwhelmingly passed the Military Commissions Act (MCA) of 2006, which prevented aliens detained by the government from challenging their detention—and barred them from looking to the Geneva Conventions as a source of a legal claim.

#### 8. Perm do the counterplan then the plan – shields the link to the net benefit because it looks like the court enforcing the XO

#### 9. Executive fails – external regulation key

Yap 05

[Julie, J.D. Candidate, 2005, Fordham University School of Law, Fordham Law Review, JUST KEEP SWIMMING: GUIDING ENVIRONMENTAL STEWARDSHIP OUT OF THE RIPTIDE OF NATIONAL SECURITY, L/N]

Environmental self-regulation solely by the executive branch is not a serious proposal. n331 **The military should not be the sole regulator of its own environmental stewardship.** The role of the military is "to fight and win the nation's wars." n332 An important part of this role is preparation and realistic training; the DOD consistently reiterates the concept that ""we need to train as we fight, but the reality is we fight as we train.'" n333 It is naive to think that military leaders and soldiers, no matter how much training in considering environmental damages that may result from their action, will place a **top level priority on environmental concerns when the job of the military is to prepare for, fight, and win wars.** The military also has a poor track record of environmental stewardship. Military readiness and preparation to protect the country's national security during the Cold War "left a legacy of hazardous waste, nuclear contamination, polluted air, water and soil, [\*1333] and resulted in the destruction of natural and cultural resources." n334 With the advent of new technology and highly advanced methods of warfare, the potential environmental dangers have become even more devastating. The military manages "unexploded and surplus ordnance, millions of gallons of liquid waste that is both extremely corrosive and highly radioactive, chemical weapons, excess nuclear warheads and weapons-grade plutonium, and defoliant production residues ... ." ,FN='335'> Given the enormous responsibilities that come with the handling of these substances, coupled with a poor history of proper environmental consideration, the military needs external regulation in order to ensure that decisions that represent all of society's values are being made. Another problem with regulation of defense activities by the executive branch alone is the unitary executive policy of the Department of Justice. n336 This policy **prevents the EPA "from issuing administrative compliance orders or filing suit against other federal agencies for violations"** n337 "without the President's [approval], if at all." n338 Under most environmental statutes, the EPA cannot levy a penalty against other agencies. n339 The principles behind the unitary executive theory have merit, "implicating very real executive branch management and separation of powers issues." n340 Regardless, the unitary executive approach eliminates another method of regulation that helps ensure environmental compliance of private entities. The military has made major improvements to its environmental policy over the past fifteen years. The DOD has created an environmental program that centers on the "four pillars" of [\*1334] restoration, compliance, pollution prevention, and conservation. n341 Environmental planning is a component to each of these four pillars and is included in DOD manuals for proposed actions. n342 Military commanders and soldiers operate under new statements of mission that include "stewardship of the land, air, water and natural ... resources." n343 The incorporation of environmental responsibility in the mission and culture of the military is an important step that should be encouraged in the future. It is not, however, a large enough step to validate internal regulation of environmental stewardship.

### Oil Spills Add- On – 2AC

#### Citizen suits solve pipeline safety and oil spills

**Geis 11** (Stacey P. Geis is an Assistant United States Attorney at the United States Attorney's Office in San

Francisco and is the office's Environmental Crimes Coordinator, “An Accident Waiting to Happen? Prosecuting Negligence-Based Environmental Crimes,” United States Attorneys' Bulletin July 2011, <http://www.justice.gov/usao/eousa/foia_reading_room/usab5904.pdf>)

Undertaking a criminal investigation in a large **environmental disaster** (or any disaster that may have resulted in casualties or invokes a federal interest) is no easy endeavor. Numerous parties will be interested in the matter, including federal, state, and local law enforcement agencies; federal, state, and local regulators; federal safety boards charged with immediately investigating such disasters; local and state governments; federal, state, and local politicians; local citizens; and, of course, the press. It will be imperative **to navigate** through the obstacles presented by so many interested parties. It also will be imperative to coordinate and work with these parties, especially the relevant law enforcement agencies, safety boards, and regulators. While a separate article can be written on issues that arise while investigating a disaster such as an **oil spill** or **pipeline explosion**, a few points may be made. First, a prosecutor will need to decide whether to open a criminal investigation immediately or wait until other agencies, such as a federal safety board, conduct a separate investigation. There are pros and cons to both approaches and legal and policy issues to consider, all of which can be the subject of a separate article. Suffice it to say, if a prosecutor is faced with such a decision, he should discuss the matter with his management and consider reaching out to Main Justice or other districts to assess the appropriate route to take in a specific investigation. Second, coordination with state and local law enforcement and regulatory agencies is key. At some point, if potential violations of more than just federal statutes have occurred, a decision will need to be made regarding who takes the lead and moves forward with the investigation. For many reasons, including the high profile nature of the disaster, turf issues may arise. If, however, a strong relationship has been developed among federal, state, and local authorities, the issues surrounding who moves forward and in what manner can be minimized. Third, investigating these types of cases can take a **vast amount of resources**. Therefore, a prosecutor should seek to include resources from as many agencies as are willing to assist. EPA's Criminal Investigation Division will have an interest if it is a pollution case. The U.S. Fish and Wildlife Service will also have an interest if wildlife was harmed. The U.S. Coast Guard will have an interest if it involves a large oil spill in maritime waters. The FBI may assist, especially if fraud was involved or if lives were lost. Local and state law enforcement may also have a role here because they typically regulate and enforce the applicable state laws. Several of these agencies have specific expertise that may be used throughout the course of the investigation. Cross-designation of state and local law enforcement may be useful. Assistance from Main Justice is also a highly recommended option. DOJ's Environmental Crimes Section has highly competent, well-trained trial attorneys whose job is to provide assistance to the ninety-four districts in prosecuting environmental crimes. In addition to bringing specialized knowledge, they may also bring other resources to the investigation, such as additional attorneys, paralegals, or other agency assistance. Disasters happen—often with terrible consequences to the environment and surrounding community. Many of these disasters are unforeseeable and unavoidable, such as those caused by acts of God, including earthquakes or hurricanes. Other times they are not. In these latter instances, prosecutors will need to determine whether the disaster was caused by negligent behavior and, if so, whether the negligent behavior rises to a level warranting criminal prosecution as opposed to relying on a civil or administrative enforcement action as an appropriate remedy. Given a prosecutor's ability to prosecute ordinary negligence, **the sound exercise of prosecutorial discretion in these instances is key to ensuring just and proper resolutions**. Prosecuting negligence-based **environmental crimes** should only be done when the circumstances warrant it. There will be times, however, when a non-criminal remedy is simply not adequate to address or deter the offending behavior. In those instances, the prosecutor should consider whether a CWA negligence charge is appropriate. Such prosecutions, although relatively rare in the scheme of environmental crime prosecutions, not only result in specific deterrence but also **general deterrence**. It is not uncommon to see convictions in environmental cases change the behavior of not only the convicted defendant, but **entire industries**. Accidents happen, but sometimes human or corporate behavior creates an accident waiting to happen. When that is the case, prosecution of those responsible may help **reduce the likelihood** that a similar disaster happens again.

#### Extinction

Craig 11—Associate Dean for Environmental Programs @ Florida State University [Robin Kundis Craig, “Legal Remedies for Deep Marine Oil Spills and Long-Term Ecological Resilience: A Match Made in Hell,” Brigham Young University Law Review, 2011, 2011 B.Y.U.L. Rev. 1863

Systemic risk is as important as individual risk. Notwithstanding the National Environmental Policy Act's requirement that federal permitting agencies consider cumulative impacts to the environment, [n188](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1348065909828&returnToKey=20_T15563238106&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.735297.7128077165#n188) we currently evaluate the risks of offshore oil drilling primarily with respect to individual oil drilling operations in connection with individual permits and leases. As the Deepwater Horizon Commission recognized, however, the larger systemic context of such drilling is also important, and perhaps arguably more so. From a resilience perspective, a drilling operation that uses the only oil rig in a pristine marine environment is an inherently different risk problem than the Deepwater Horizon's situation of being one of thousands of similar rigs in a pervasively and multiply stressed Gulf. As Clark, Jones, and Holling have suggested, our trial-and-error experiments with Nature in our first-sense resilience [\*1895] dependence mode "now threaten errors larger and more costly than society can afford." [n189](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1348065909828&returnToKey=20_T15563238106&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.735297.7128077165#n189) Resilience thinking should more forcibly insist on multilayered systemic awareness, promoting limits on how much exploitation should be occurring simultaneously and encouraging more gradual resource development over longer periods of time. . Risk to the environment should be presumed, even when all actors follow all best practices. Our current first-sense resilience dependency produces laws that assume that ecosystems can be fixed—and, perhaps more importantly, as embodied in the OPA natural resource damages regulations, that natural processes will often be able to restore themselves without human effort. Resilience thinking, in contrast, effectively assumes that ecosystems could suddenly shift to a new regime at any time for any number of reasons that we do not understand and may not even be able to anticipate—the combined potential of the second and third conceptions of resilience. In the words of Clark, Jones, and Holling, "if a system has multiple regions of stability, then Nature can seem to play the practical joker rather than the forgiving benefactor." [n190](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1348065909828&returnToKey=20_T15563238106&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.735297.7128077165#n190) To exaggerate the differences in outlook just a bit, our current paradigm presumes that most ecosystems can cope with most human activities, while resilience thinking presumes that all changes to an ecosystem are at least potentially completely destabilizing—i.e., inherently risky, with the outer limits of that risk being potentially massive. To translate this change in presumption into legalese, full resilience thinking promotes a policy framework where most human activities in the environment could be—and perhaps should be—considered inherently dangerous activities. [\*1896] As every first-year law student learns, engaging in inherently dangerous activities tends to subject the actor to strict and fairly absolute liability for the kinds of harm that made the activity inherently dangerous. [n191](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1348065909828&returnToKey=20_T15563238106&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.735297.7128077165#n191) Under resilience thinking, those kinds of harm would include all of the unpredictable and unexpected changes to the ecosystem that might occur as a result of a disaster like the Deepwater Horizon oil spill, up to and including a substantial shift in ecosystem regime or ecosystem collapse. While full implementation of an "inherently dangerous activity" legal regime for all marine activities is unlikely, the case is fairly strong for deep sea oil exploration and drilling. It is at least worth pondering what such a consequence of resilience thinking might mean for risk assessment and behavioral incentives in this context. If nothing else, one would predict under such a new view of potential liability that oil companies' insurers might begin charging premiums that more accurately reflect the potentially catastrophic liability that resilience-minded regulations and policies would make legally cognizant—and might insist on the much more precautionary and safety-minded approach to offshore oil drilling that a multitude of commentators and the Deepwater Horizon Commission have sought in the wake of the Deepwater Horizon disaster. V. Conclusion The second and third senses of resilience, and the socio-ecological risks for humans that they underscore, should not be foreign concepts in the regulation of the marine environment, including (and perhaps especially) when it comes to regulating the offshore oil and gas exploration and drilling taking place at ever-increasing depths. Nor should the possibility that the cumulative stresses to the Gulf of Mexico have pushed its ecosystems to the brink of ecosystem thresholds be ignored in our regulatory regimes. By acknowledging that ecosystems are dynamic and subject to sudden and fairly catastrophic (at least from a human perspective) changes, full resilience thinking provides a path away from the trap of first-sense resilience dependence. Specifically, full resilience thinking recognizes that exploitative activities that affect the Gulf—not just deep sea oil drilling but also fishing and farming up the Mississippi River—put all of the human beings who depend on the ecosystem services, as well as the ecosystems themselves, at collective risk of catastrophic ecosystem collapse. A liability regime based on these unavoidable and potentially massive environmental risks would likely protect the Gulf of Mexico better than our current regime of natural resource damages, especially when injury occurs in the Gulf's murky depths.

#### And Says it solves natural gas explosions – o/w nuke war

**Lovins and Lovins 01**

[Amory Lovins- Co-Founder of Rocky Mountain Institute and six honorary doctorates and numerous major awards, including a 1997 Heinz Award, a 1993 MacArthur Fellowship, and the Onassis Foundation’s first Delphi Prize in 1989, and with Hunter Lovins he has shared a 1999 Lindbergh Award, a 1993 Nissan Prize, a 1983 Right Livelihood Award , Hunter Lovins- a former co-CEO of Rocky Mountain Institute, a Colorado-based nonprofit resource policy think tank. She holds a BA from Pitzer College, a JD from Loyola University School of Law with the Alumni Award for Outstanding Service to the School, and an honorary LHD from the University of Maine. “Brittle Power”- 2001 update and re-release of 1982 book. Pg 87-88]

LNG is less than half as dense as water, so a cubic meter of LNG (the usual unit of measure) weighs just over half a ton.1 LNG contains about thirty per- cent less energy per cubic meter than oil, but is potentially far more hazardous.2 Burning oil cannot spread very far on land or water, but a cubic meter of spilled LNG rapidly boils into about six hundred twenty cubic meters of pure natural gas, which in turn mixes with surrounding air. Mixtures of between about five and fourteen percent natural gas in air are flammable. Thus a single cubic meter of spilled LNG can make up to twelve thousand four hundred cubic meters of flammable gas-air mixture. A single modern LNG tanker typically holds one hundred twenty-five thousand cubic meters of LNG, equivalent to twenty-seven hundred million cubic feet of natural gas. That gas can form between about twenty and fifty billion cubic feet of flammable gas-air mixture—several hundred times the volume of the Great Pyramid of Cheops. About nine percent of such a tankerload of LNG will probably, if spilled onto water, boil to gas in about five minutes.3 (It does not matter how cold the water is; it will be at least two hundred twenty-eight Fahrenheit degrees hotter than the LNG, which it will therefore cause to boil violently.) The resulting gas, however, will be so cold that it will still be denser than air. It will therefore flow in a cloud or plume along the surface until it reaches an ignition source. Such a plume might extend at least three miles downwind from a large tanker spill within ten to twenty minutes.4 It might ultimately reach much farther—perhaps six to twelve miles.5 If not ignited, the gas is asphyxiating. If ignited, it will burn to completion with a turbulent diffusion flame reminiscent of the 1937 Hindenberg disaster but about a hundred times as big. Such a fireball would burn everything within it, and by its radiant heat would cause third-degree burns and start fires a mile or two away.6 An LNG fireball can blow through a city, creating “a very large number of ignitions and explosions across a wide area. No present or foreseeable equipment can put out a very large [LNG]... fire.”7 The energy content of a single standard LNG tanker (one hundred twenty-five thousand cubic meters) is equivalent to seven-tenths of a megaton of TNT, or about fifty-five Hiroshima bombs.

### SoPo Add-On – Ikenberry !’s

#### Coop and soft power solve a number of issues – that’s Ikenberry – we’ll impact each –

#### Disease

**Greger 8** (M.D., is Director of Public Health and Animal Agriculture at The Humane Society of the United States (Michael Greger, , Bird Flu: A Virus of Our Own Hatching, <http://birdflubook.com/a.php?id=111>)

Senate Majority Leader Frist describes the recent slew of emerging diseases in almost biblical terms: “All of these [new diseases] were advance patrols of a great army that is preparing way out of sight.”3146 Scientists like Joshua Lederberg don’t think this is mere rhetoric. He should know. Lederberg won the Nobel Prize in medicine at age 33 for his discoveries in bacterial evolution. Lederberg went on to become president of Rockefeller University. “Some people think I am being hysterical,” he said, referring to pandemic influenza, “but there are catastrophes ahead. We live in evolutionary competition with microbes—bacteria and viruses. There is no guarantee that we will be the survivors.”3147 There is a concept in host-parasite evolutionary dynamics called the Red Queen hypothesis, which attempts to describe the unremitting struggle between immune systems and the pathogens against which they fight, each constantly evolving to try to outsmart the other.3148 The name is taken from Lewis Carroll’s Through the Looking Glass in which the Red Queen instructs Alice, “Now, here, you see, it takes all the running you can do to keep in the same place.”3149 Because the pathogens keep evolving, our immune systems have to keep adapting as well just to keep up. According to the theory, animals who “stop running” go extinct. So far our immune systems have largely retained the upper hand, but the fear is that given the current rate of disease emergence, the human race is losing the race.3150 In a Scientific American article titled, “Will We Survive?,” one of the world’s leading immunologists writes: Has the immune system, then, reached its apogee after the few hundred million years it had taken to develop? Can it respond in time to the new evolutionary challenges? These perfectly proper questions lack sure answers because we are in an utterly unprecedented situation [given the number of newly emerging infections].3151 The research team who wrote Beasts of the Earth conclude, “Considering that bacteria, viruses, and protozoa had a more than two-billion-year head start in this war, a victory by recently arrived Homo sapiens would be remarkable.”3152 Lederberg ardently believes that emerging viruses may imperil human society itself. Says NIH medical epidemiologist David Morens, When you look at the relationship between bugs and humans, the more important thing to look at is the bug. When an enterovirus like polio goes through the human gastrointestinal tract in three days, its genome mutates about two percent. That level of mutation—two percent of the genome—has taken the human species eight million years to accomplish. So who’s going to adapt to whom? Pitted against that kind of competition, Lederberg concludes that the human evolutionary capacity to keep up “may be dismissed as almost totally inconsequential.”3153 To help prevent the evolution of viruses as threatening as H5N1, the least we can do is take away a few billion feathered test tubes in which viruses can experiment, a few billion fewer spins at pandemic roulette. The human species has existed in something like our present form for approximately 200,000 years. “Such a long run should itself give us confidence that our species will continue to survive, at least insofar as the microbial world is concerned. Yet such optimism,” wrote the Ehrlich prize-winning former chair of zoology at the University College of London, “might easily transmute into a tune whistled whilst passing a graveyard.”3154

#### **Food shortages**

Cribb 10 (Julian, the principal of Julian Cribb & Associates, specialists in science communication, 1996-2002 he was Director, National Awareness, for Australia’s national science agency, CSIRO, has received 32 awards for journalism including the Order of Australia Association Media Prize, fellow of the Australian Academy of Technological Sciences and Engineering. The Coming Famine: The Global Food Crisis and what we can do to avoid it, University of California Press, 2010, p. 20)

The threat of conflict over food, land, and water is not, however, confined to the marginal world. Increasingly it imperils the economic powerhouses of the global economy in the early twenty-first century. In 2001 the Australian strategic analyst Alan Dupont predicted, “Food is destined to have greater strategic weight and import in an era of environmental scarcity. While optimists maintain that the world is perfectly capable of meeting the anticipated increases in demand for essential foodstuffs, there are enough imponderables to suggest that prudent governments would not want to rely on such a felicitous outcome." Anticipating the food crisis of 2007-8 by several years, he presciently added, "East Asia's rising demand for food and diminishing capacity to feed itself adds an unpredictable new element to the global food equation for several reasons. The gap between production and consumption of key foodstuffs globally is narrowing dangerously and needs to be reversed." Bearing out his words, Singapore president Lee Hsieng Loong told a 2008 international defense conference, "In the longer term, the trends towards tighter supplies and higher prices will likely reassert themselves. This has serious security implications. The impact of a chronic food shortage will be felt especially by the poor countries. The stresses from hunger and famine can easily result in social upheaval and civil strife, exacerbating conditions that lead to failed states. Between countries, competition for food supplies and displacement of people across borders could deepen tensions and provoke conflict and wars."15

#### Oil conflict escalate

**Klare 2002** (Michael – board of directors of the Arms Control Association, the National Council of the Federation of American Scientists, and the advisory board of the Arms Division of Human Rights Watch, Resource Wars: The New Landscape of Global Conflict, p. 27-29)

Of all the resources discussed in this book, none is more likely to provoke conflict between states in the twenty-first century than oil. Petroleum stands out from other materials-water, minerals, timber, and so on-because of its pivotal role in the global economy and its capacity to ignite large-scale combat. No highly industrialized society can survive at present without substantial supplies of oil, and so any significant threat to the continued availability of this resource will prove a cause of crisis and, in extreme cases, provoke the use of military force. Action of this sort could occur in any of the major oil-producing areas, including the Middle East and the Caspian basin. Lesser conflicts over petroleum are also likely, as states fight to gain or retain control over resource-rich border areas and offshore economic zones. Big or small, conflicts over oil will constitute a significant feature of the global security environment in the decades to come. Petroleum has, of course, been a recurring source of conflict in the past. Many of the key battles of World War II, for example, were triggered by the Axis Powers' attempts to gain control over petroleum supplies located in areas controlled by their adversaries. The pursuit of greater oil revenues also prompted Iraq's 1990 invasion of Kuwait, and this, in turn, provoked a massive American military response. But combat over petroleum is not simply a phenomenon of the past; given the world's ever-increasing demand for energy and the continuing possibility of supply interruptions, the outbreak of a conflict over oil is just as likely to occur in the future. The likelihood of future combat over oil is suggested, first of all, by the growing buildup of military forces in the Middle East and other oil-producing areas. Until recently, the greatest concentration of military power was to found along the East-West divide in Europe and at other sites of superpower competition. Since 1990, however, these concentrations have largely disappeared, while troop levels in the major oil zones have been increased. The United States, for example, has established a permanent military infrastructure in the Persian Gulf area and has "prepositioned" sufficient war materiel there to sustain a major campaign. Russia, meanwhile, has shifted more of its forces to the North Caucasus and the Caspian Sea basin, while China has expanded its naval presence in the South China Sea. Other countries have also bolstered their presence in these areas and other sites of possible conflict over oil. Geology and geography also add to the risk of conflict. While relatively abundant at present, natural petroleum does not exist in unlimited quantities; it is a finite, nonrenewable substance. At some point in the future, available supplies will prove inadequate to satisfy soaring demand, and the world will encounter significant shortages. Unless some plentiful new source of energy has been discovered by that point, competition over the remaining supplies of petroleum will prove increasingly fierce. In such circumstances, any prolonged interruption in the global flow of oil will be viewed by import- dependent states as a mortal threat to their security-and thus as a matter that may legitimately be resolved through the use of military force. Growing scarcity will also result in higher prices for oil, producing enormous hardship for those without the means to absorb added costs; in consequence, widespread internal disorder may occur. Geography enters the picture because many of the world's leading sources of oil are located in contested border zones or in areas of recurring crisis and violence. The distribution of petroleum is more concentrated than other raw materials, with the bulk of global sup- plies found in a few key producing areas. Some of these areas-the North Slope of Alaska and the American Southwest, for example- are located within the borders of a single country and are relatively free of disorder; others, however, are spread across several coun- tries-which may or may not agree on their common borders-and/ or are located in areas of perennial unrest. To reach global markets, moreover, petroleum must often travel (by ship or by pipeline) through other areas of instability. Because turmoil in these areas can easily disrupt the global flow of oil, any outbreak of conflict, however minor, will automatically generate a risk of outside intervention.

#### **Terror**

Ayson 10 (Robert, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand – Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects”, Studies in Conflict & Terrorism, 33(7), July)

*A Catalytic Response: Dragging in the Major Nuclear Powers*

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today's and tomorrow's terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,[40](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928" \l "EN0040) and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”[41](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0041) Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington's relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington's early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country's armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abetters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents' … long-standing interest in all things nuclear.”[42](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0042) American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide.

#### Economic collapse

Merlini 11

[Cesare Merlini, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs (IAI) in Rome. He served as IAI president from 1979 to 2001. Until 2009, he also occupied the position of executive vice chairman of the Council for the United States and Italy, which he co-founded in 1983. His areas of expertise include transatlantic relations, European integration and nuclear non-proliferation, with particular focus on nuclear science and technology. A Post-Secular World? DOI: 10.1080/00396338.2011.571015 Article Requests: Order Reprints : Request Permissions Published in: journal Survival, Volume 53, Issue 2 April 2011 , pages 117 - 130 Publication Frequency: 6 issues per year Download PDF Download PDF (357 KB) View Related Articles To cite this Article: Merlini, Cesare 'A Post-Secular World?', Survival, 53:2, 117 – 130]

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even **involving the use of nuclear weapons**. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular **rational approach would be sidestepped** by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism.

## DA’s

### Stuff

#### We solve alliances better – that’s Weyand – allows for basing and deterrence

### Armed Forces Thumper – 2AC

#### Obama will continue to consult for military actions – takes out the link

Rothkopf 13

[David, CEO and editor at large of Foreign Policy, The Gamble, 8/31/13, <http://www.foreignpolicy.com/articles/2013/08/31/the_gamble?page=0,1>]

Whatever happens with regard to Syria, the larger consequence of the president's action will resonate for years. The president has made it highly unlikely that at any time during the remainder of his term he will be able to initiate military action without seeking congressional approval. It is understandable that many who have opposed actions (see: Libya) taken by the president without congressional approval under the War Powers Act would welcome Obama's newly consultative approach. It certainly appears to be more in keeping with the kind of executive-legislative collaboration envisioned in the Constitution. While America hasn't actually required a congressional declaration of war to use military force since the World War II era, the bad decisions of past presidents make Obama's move appealing to the war-weary and the war-wary. But whether you agree with the move or not, it must be acknowledged that now that Obama has set this kind of precedent -- and for a military action that is exceptionally limited by any standard (a couple of days, no boots on the ground, perhaps 100 cruise missiles fired against a limited number of military targets) -- it will be very hard for him to do anything comparable or greater without again returning to the Congress for support. And that's true whether or not the upcoming vote goes his way. 4. This president just dialed back the power of his own office. Obama has reversed decades of precedent regarding the nature of presidential war powers -- and whether you prefer this change in the balance of power or not, as a matter of quantifiable fact he is transferring greater responsibility for U.S. foreign policy to a Congress that is more divided, more incapable of reasoned debate or action, and more dysfunctional than any in modern American history. Just wait for the Rand Paul filibuster or similar congressional gamesmanship. The president's own action in Libya was undertaken without such approval. So, too, was his expansion of America's drone and cyber programs. Will future offensive actions require Congress to weigh in? How will Congress react if the president tries to pick and choose when this precedent should be applied? At best, the door is open to further acrimony. At worst, the paralysis of the U.S. Congress that has given us the current budget crisis and almost no meaningful recent legislation will soon be coming to a foreign policy decision near you. Consider that John Boehner was instantly more clear about setting the timing for any potential action against Syria with his statement that Congress will not reconvene before its scheduled September 9 return to Washington than anyone in the administration has been thus far. Perhaps more importantly, what will future Congresses expect of future presidents? If Obama abides by this new approach for the next three years, will his successors lack the ability to act quickly and on their own? While past presidents have no doubt abused their War Powers authority to take action and ask for congressional approval within 60 days, we live in a volatile world; sometimes security requires swift action. The president still legally has that right, but Obama's decision may have done more -- for better or worse -- to **dial back the imperial presidency than anything his predecessors or Congress have done for decades.**

#### AND the decision to consult on Syria killed resolve

Gaouette 13

[Nicole, Bloomberg/Businessweek, Obama’s Decision Stirs Doubts About America’s Resolve, 3/1/13, <http://www.businessweek.com/news/2013-09-01/obama-s-decision-reverberates-as-global-critics-sense-weakness>]

President Barack Obama’s decision to seek congressional authority to attack Syria for alleged chemical weapons use has dismayed friends, delighted foes and prompted criticism that he’s undermined U.S. credibility. In Syria, where President Bashar al-Assad learned the tactics of brute force from his father, Hafez, state-controlled media hailed the start of a “historic American retreat.” Syrian deputy foreign minister Fayssal Mekdad told reporters in Damascus yesterday that, “The hesitation and the disappointment is so obvious in the words of President Obama yesterday. The confusion was clear, as well.” “The regime people are taking great comfort from this,” said Joshua Landis, director of the Center for Middle East Studies at Oklahoma University in Norman, Oklahoma. “They see it as a sign of Obama’s weakness, that he doesn’t really want to hurt them or get involved.” In 1982, the elder Assad killed as many as 30,000 people in the city of Hama to squelch a Muslim Brotherhood uprising. His brutality gave rise to a Syrian joke about the Angel of Death bringing judgment to Hafez al-Assad, only to have Syria’s secret police return him to God battered, bruised and empty-handed. Now one possible immediate, unintended consequence of Obama’s move to Congress is that Assad “retaliates with an even more brutal crackdown in civilian areas where the opposition is operating,” said Sean Kay, director of the international relations program at Ohio Wesleyan University in Delaware, Ohio. “The red line has been chemical weapons; he might see that as a green light for conventional weapons.” Democracy Example Still Kay and Landis were among analysts who defended Obama’s decision, even if it’s perceived as indecisive in the Middle East and among Obama’s domestic critics. “Critics will say this signals weakness, that America doesn’t have resolve,” Kay said. “It’s a pretty important thing for the U.S. to demonstrate to the region respect for democratic procedures.”

### War Powers Thumper – 2AC

#### Fisa thumps the DA

WSJ 13 – Wall Street Journal, “The Absent Commander in Chief”, 6/16/13 <http://online.wsj.com/article/SB10001424127887324188604578545233232040760.html>

Even an effort by Mr. Obama to lead from behind would be better than this abdication. The President's mistake seems to be a combination of moral afflatus—how could anyone possibly imagine that he would abuse government power?—and treating the current furor as a law school seminar. The political danger is a lot greater than that. A real and growing risk is that Congress will move in a way that limits the war powers of the Commander in Chief and endangers national security. To take one example, support seems to be growing for Senate legislation from Democrats Ron Wyden and Jeff Merkley of Oregon and Republican Mike Lee of Utah that would require the declassification of certain legal opinions from the oversight court under the Foreign Intelligence Surveillance Act, or FISA. This infringes on executive power because the President has traditionally defined what is secret, especially in times of war.

### Prez Powers (General) DA – 2AC

#### 1. Plan doesn’t affect all power – the president will do what he wants absent direct prohibition

Marshall 08

[William, Kenan Professor of Law, University of North Carolina, Eleven Reasons Presidential Power Inevitably Expands and Why It Matters, 2008,

<http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf>]

The first and perhaps overarching reason underlying the growth of presidential power is that the constitutional text on the subject is notoriously unspecific, allowing as one writer maintains, for the office “to grow with the developing nation.”19 Unlike Article I, which sets forth the specific powers granted to Congress,20 the key provisions of Article II that grant authority to the President are written in indeterminate terms such as “executive power,”21 or the duty “to take care that the laws be faithfully executed.”22 Moreover, unlike the other branches, the Presidency has consistently been deemed to possess significant inherent powers.23 Thus, many of the President’s recognized powers, such as the authority to act in times of national emergency24 or the right to keep advice from subordinates confidential,25 are nowhere mentioned in the Constitution itself. In addition, case law on presidential power is underdeveloped. Unlike the many precedents addressing Congressional26 or federal judicial27 power, there are remarkably few Supreme Court cases analyzing presidential power. And the leading case on the subject, Youngstown Sheet & Tube Co. v. Sawyer, 28 is known less for its majority opinion than for its concurrence by Justice Jackson, an opinion primarily celebrated for its rather less-than-definitive announcement that much of presidential power exists in a “zone of twilight.”29 Accordingly, the question whether a President has exceeded her authority is seldom immediately obvious because the powers of the office are so openended.30 This fluidity in definition, in turn, allows presidential power to readily expand when factors such as national crisis, military action, or other matters of expedience call for its exercise.31 Additionally, such fluidity allows political expectations to affect public perceptions of the presidential office in a manner that can lead to expanded notions of the office’s power.32 This perception of expanded powers, in turn, can then lead to the perceived legitimacy of the President actually exercising those powers. Without direct prohibitions to the contrary, expectations easily translate into political reality.33

#### 2. Court rules against executive now

Wong 13 -- PhD dissertation in Government to Georgetown University (U Jin, 4/22/2013, "THE BLANK CHECK: SUPREME COURT DECISION - MAKING IN NATIONAL SECURITY CLAIMS AND DURING WARTIME," http://repository.library.georgetown.edu/bitstream/handle/10822/558286/Wong\_georgetown\_0076D\_12276.pdf?sequence=1)

This study started out with two questions. The first was: ?Does war influence judicial decision - making?? The second was: ?Do **national security** claims influence judicial decision - making?? The answer to the first question is: In a general hypothetical s ignificant war, there is a **statistically significant finding** of voting against the government. In the models run using the Spaeth database where the government is a party, the influence of all significant wars on judicial decision - making generally was to vote against the government. Presidential approval ratings are statistically significant only in wartime, but with a positive coefficient. Outside of wartime, presidential approval ratings are not statistically likely to influence Supreme Court behavior. This result suggests that while Courts vote strategically and support a popular president, they are still statistically likely to find against the government in a significant war. These findings altogether suggest that that the Supreme Court votes strat egically with an eye towards the popularity of the president, but revert to skepticism of government‘s wartime claims as the war progresses. The answer to the second question is: National security claims brought by the government achieve a **statistically significant likelihood** that the Supreme Court will vote against the government. National security claims were statistically significant with a negative signifier. **This finding is consistent across all the major wars as well as peacetime**. It also suggest s that the Supreme Court generally is not predisposed to defer to the executive branch‘s arguments when it comes to national security claims

#### . Plan allows for better executive decision making

Wells 04(Christina, Prof of law @ U of Missouri – Columbia, Missouri Law Review, Fall)

The psychology of accountability further suggests that opponents of deference are correct to push for more rigorous judicial review. Psychologists describe the phenomenon of accountability as the expectation that one may have to justify one's actions as sufficiently compelling or face negative consequences. Research shows that people who know they will be accountable reach better-reasoned decisions and avoid many of the problems that lead to skewed risk assessment. **Judicial review**, with its requirement that officials explain and justify their infringement of civil liberties, **can serve as a mechanism of accountability**, **thus improving executive branch decision making in times of crisis**. Furthermore, the contextual nature of civil liberties cases suggests that judicial review may be a necessary aspect of executive accountability.

#### 5. No link – plan only affects one issue that is not central to Obama’s presidential powers – make them read a card that says the plan prevents Obama from using executive power in other instances

#### 6. Alt cause – informal checks

Mansfield 11

[Harvey, NYT, Is the Imperial Presidency Inevitable?, 3/11/11, <http://www.nytimes.com/2011/03/13/books/review/book-review-the-executive-unbound-by-eric-a-posner-and-adrian-vermeule.html?pagewanted=all&_r=0>]

But as Posner and Vermeule develop their argument, Schmitt fades away, and is replaced by an incongruous reliance on the rational actors of game theory. The two authors mean to show that although the formal separation of powers no longer has effect, the president as a rational actor is still constrained through public opinion and politics; even a strong executive needs to appear bipartisan and to worry about popularity ratings. So there is no solid reason to fear executive tyranny, and we should feel free to enjoy the benefits of the administrative state. Posner and Vermeule rest their argument on necessity, on what could not be otherwise. History and social science, they say, prove that under modern conditions the administrative state is the only way for the nation to meet the challenges it faces. But their analysis also shows that informal checks remain necessary: the calculations and political maneuvering presidents engage in to retain their credibility replace the formal checks Madison described. Thus the Constitution is false but works anyway.

#### 7. Limits on prez powers solve global nuclear war

Sloane 08

[Robert, Associate Professor of Law, Boston University School of Law, THE SCOPE OF EXECUTIVE POWER IN THE TWENTYFIRST CENTURY: AN INTRODUCTION, 2008, <http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/SLOANE.pdf>]

There is a great deal more constitutional history that arguably bears on the scope of the executive power in the twenty-first century. But it is vital to appreciate that the scope of the executive power, particularly in the twenty-first century, is not only a constitutional or historical issue. As an international lawyer rather than a constitutionalist, I want to stress briefly that these debates and their concrete manifestations in U.S. law and policy potentially exert a profound effect on the shape of international law. Justice Sutherland’s sweeping dicta in United States v. Curtiss-Wright Export Corp., that the President enjoys a “very delicate, plenary and exclusive power . . . as the sole organ of the federal government in the field of international relations – a power which does not require as a basis for its exercise an act of Congress,”52 has been (correctly, in my view) criticized on a host of grounds.53 But in practice, in part for institutional and structural reasons,54 it accurately reflects the general preeminence of the President in the realm of U.S. foreign affairs. Because of the nature of the international legal and political system, what U.S. Presidents do and say often establish precedents that strongly influence what other states do and say – with potentially dramatic consequences for the shape of customary international law. The paradigmatic example is the establishment of customary international law on the continental shelf following the Truman Proclamation of September 28, 1945,55 which produced an echo of similar claims and counterclaims, culminating in a whole new corpus of the international law of the sea for what had previously been understood only as a geological term of art.56 Many states took note, for example, when in the 2002 National Security Strategy of the United States (“NSS”), President Bush asserted that the United States had the right under international law to engage in preventive wars of self-defense.57 While, contrary to popular belief, the United States never in fact formally relied on that doctrine in practice, many would argue that President Bush de facto exercised this purported right when he initiated an armed conflict with Iraq based on claims, which have since proved unfounded, about its incipient programs to develop catastrophic weapons. The 2006 NSS notably retreats from the 2002 NSS’s robust claims of a right to engage in preventive wars of self-defense.58 Yet even within this brief, four-year period, an astonishing number of other states have asserted a comparable right to engage in preventive self-defense. These include not only states that the United States has described as “rogue states,” such as North Korea and Iran, but Australia, Japan, the United Kingdom, China, India, Iran, Israel, Russia, and (though technically not a state) Taiwan.59 I doubt we will welcome the consequences of this pattern for the evolving jus ad bellum of the twenty-first century. Equally, after President Bush's decision to declare a global war on terror or terrorism - rather than, for example, the Taliban, al-Qaeda, and their immediate allies - virtually every insurgency or disaffected minority around the world, including peoples suffering under repressive regimes and seeking to assert legitimate rights to liberty and self-determination, has been recharacterized by opportunistic state elites as part of the enemy in this global war. n60 The techniques employed and justified by the United States, including the resurrection of rationalized torture as an "enhanced interrogation technique," n61 likewise have emerged - and will continue to emerge - in the [\*351] practice of other states. Because of customary international law's acute sensitivity to authoritative assertions of power, the widespread repetition of claims and practices initiated by the U.S. executive may well shape international law in ways the United States ultimately finds disagreeable in the future. So as we debate the scope of the executive power in the twenty-first century, the stakes, as several panelists point out, could not be higher. They include more than national issues such as the potential for executive branch officials to be prosecuted or impeached for exceeding the legal scope of their authority or violating valid statutes. n62 They also include international issues like the potential use of catastrophic weapons by a **rogue regime asserting a right to engage in preventive war;** **the deterioration of international human rights norms against practices like torture**, norms which took years to establish; and the atrophy of genuine U.S. power in the international arena, which, as diplomats, statesmen, and international relations theorists of all political persuasions appreciate, demands far more than the largest and most technologically advanced military arsenal. In short, what Presidents do, internationally as well as domestically - the precedents they establish - may affect not only the technical scope of the executive power, as a matter of constitutional law, but **the practical ability of future Presidents to exercise that power** both at home and abroad. We should candidly debate whether terrorism or other perceived crises require an expanded scope of executive power in the twenty-first century. But it is dangerous to cloak the true stakes of that debate with the expedient of a new - and, in the view of most, indefensible - "monarchical executive" theory, which claims to be coextensive with the defensible, if controversial, original Unitary Executive theory. n63 We should also weigh the costs and benefits of an expanded scope of executive power. But it is vital to appreciate that there are costs. They include not only short-term, acute consequences but long-term, systemic consequences that may not become fully apparent for years. In fact, the exorbitant exercise of broad, supposedly inherent, executive powers may well - as in the aftermath of the Nixon administration - culminate in precisely the sort of reactive statutory constraints and de facto diplomatic obstacles that proponents of a robust executive regard as misguided and a threat to U.S. national security in the twenty-first century.

#### 8. Obama’s gaining power in non- war power areas

Romano and Klaidman 12

[Andrew and Daniel, The Daily Beast, President Obama’s Executive Power Grab, 10/22/12, <http://www.thedailybeast.com/newsweek/2012/10/21/president-obama-s-executive-power-grab.html>]

Barack Obama’s decision to reverse himself on the DREAM Act was not an isolated incident. Instead, it was the culmination of a dramatic and very deliberate makeover that was set in motion that night with Boehner; that continues to this day; and that is poised to play a significant part in a potential second term, according to his advisers. “The president’s hope is that he and Congress get another opportunity to work together, and they see the folly in their efforts to date,” says Dan Pfeiffer, the White House communications director. “But what he’s not going to do, if Congress refuses to act, is sit on the sidelines and do nothing. That’s the path he’s taken.” It is a transformation that could forever alter the way Washington works. Since the summer of 2011, Obama’s relationship with Congress, and with his own power, has undergone a fundamental shift. As a candidate, Obama decried George W. Bush’s “my way or the highway” approach to governing. But while Obama has dialed back many of Bush’s overseas excesses, the record level of congressional obstruction at home has compelled the president to expand his domestic authority in ways that his predecessor never did. In February 2011, Obama announced that his administration would stop defending the Defense of Marriage Act in court, sparking controversy about whether he was shirking his duty to faithfully execute the laws passed by Congress. The following spring, the president effectively implemented greenhouse-gas regulations stalled in the Senate by allowing the EPA to interpret existing law more broadly. In September, Obama issued waivers that released states from the onerous requirements of No Child Left Behind but bound them to the administration’s own education policies, which Congress had not passed. A similar set of welfare waivers soon followed. And in early 2012 the president bypassed the usual confirmation process to make four recess appointments even though the Senate had been holding pro forma sessions to block them. “This isn’t just pushing the envelope,” says Charles Tiefer, a former lawyer for the House of Representatives who now teaches constitutional law at the University of Baltimore, “but in effect breaking out of the envelope.” Like everything else in Washington, D.C., Obama’s power play is a polarizing topic. Conservatives have charged the president with “reject[ing] the patience of politics required by the Constitution he has sworn to uphold” (George Will) and succumbing to the sort “naked lawlessness” that is the “very definition of executive overreach” (Charles Krauthammer). Liberals, meanwhile, have cheered Obama on. “President Obama devoted a great deal of effort to finding compromises with Congressional Republicans. That was futile,” wrote Andrew Rosenthal of The New York Times. “Government by executive order is not sustainable ... But in this particular case, there may be no alternative.” Taken individually, none of Obama’s unilateral maneuvers are particularly outrageous; presidents have been making similar moves for decades now. And yet together they represent a break from the past. Unlike most his predecessors—think FDR inventing the modern administrative state during the Great Depression, or Bush pushing the limits of torture and surveillance after Sept. 11—**Obama is not expanding executive power to meet the demands of an external crisis.** Instead, he is counteracting a new pattern of partisan behavior—nonstop congressional obstruction—with a new, partisan pattern of his own. The result is an extraconstitutional arms race of sorts: a new normal that habitually circumvents the legislative process envisioned by the Framers. On one side of the aisle, Republicans are providing a blueprint for minority parties to come, demonstrating how it is possible, and politically advantageous, to use procedural tricks to incapacitate a president they oppose. On the other side of the aisle, Obama is drafting a playbook for future presidents to deploy in response: How to Get What You Want Even If Congress Won’t Give It to You. “Obama is the first president to use his unilateral powers so routinely, especially in the domestic sphere,” says University of Virginia presidential scholar Sidney Milkis, a self-described moderate Democrat. “And in some ways, that may be more insidious than what came before.” And so the question now is not whether the presidency has changed Obama. It’s whether Obama is changing the presidency.

### AT Flez

#### 2. Plan doesn’t affect all power – the president will do what he wants absent direct prohibition

Marshall 08

[William, Kenan Professor of Law, University of North Carolina, Eleven Reasons Presidential Power Inevitably Expands and Why It Matters, 2008,

<http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf>]

The first and perhaps overarching reason underlying the growth of presidential power is that the constitutional text on the subject is notoriously unspecific, allowing as one writer maintains, for the office “to grow with the developing nation.”19 Unlike Article I, which sets forth the specific powers granted to Congress,20 the key provisions of Article II that grant authority to the President are written in indeterminate terms such as “executive power,”21 or the duty “to take care that the laws be faithfully executed.”22 Moreover, unlike the other branches, the Presidency has consistently been deemed to possess significant inherent powers.23 Thus, many of the President’s recognized powers, such as the authority to act in times of national emergency24 or the right to keep advice from subordinates confidential,25 are nowhere mentioned in the Constitution itself. In addition, case law on presidential power is underdeveloped. Unlike the many precedents addressing Congressional26 or federal judicial27 power, there are remarkably few Supreme Court cases analyzing presidential power. And the leading case on the subject, Youngstown Sheet & Tube Co. v. Sawyer, 28 is known less for its majority opinion than for its concurrence by Justice Jackson, an opinion primarily celebrated for its rather less-than-definitive announcement that much of presidential power exists in a “zone of twilight.”29 Accordingly, the question whether a President has exceeded her authority is seldom immediately obvious because the powers of the office are so openended.30 This fluidity in definition, in turn, allows presidential power to readily expand when factors such as national crisis, military action, or other matters of expedience call for its exercise.31 Additionally, such fluidity allows political expectations to affect public perceptions of the presidential office in a manner that can lead to expanded notions of the office’s power.32 This perception of expanded powers, in turn, can then lead to the perceived legitimacy of the President actually exercising those powers. Without direct prohibitions to the contrary, expectations easily translate into political reality.33

#### 6. **Rules during crises don’t hurt flexibility**

Holmes 9 -- Walter E. Meyer Professor of Law, New York University School of Law (Stephen, 4/30/2009, "In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror," http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1140&context=californialawreview)

Thus, it also illustrates the truism, profoundly relevant to the war on terror, that limiting options available during emergencies can be good or bad, depending on what emergency responders, who may be tempted by sheer exhaustion to take hazardous shortcuts, will do with the latitudes they seize or receive. Campaigners for executive discretion routinely invoke the imperative need for "**flexibility**" to explain why counterterrorism cannot be successfully conducted within the Constitution and the rule of law. But general rules and situation-specific improvisation, far from being mutually exclusive, are perfectly compatible. 1 8 There is no reason why mechanically following protocols designed to prevent harried nurses from negligently administering the wrong blood type should preclude the same nurses from improvising unique solutions to the unique problems of a particular trauma patient. Drilled-in emergency protocols provide a **psychologically stabilizing floor**, shared by co- workers, on the basis of which **untried solutions can then be improvised**. 9 In other words, there is no reason to assert, at least not as a matter of general validity, that the importance of flexibility excludes reliance on rules during emergencies, including national-security emergencies. The emergency-room example can also deepen our understanding of national-security crises by bringing into focus an important but sometimes neglected distinction between threats that are novel and threats that are urgent. **Dangers may be unprecedented without demanding a split-second response**. Contrariwise, urgent threats that have appeared repeatedly in the past can be managed according to protocols that have become automatic and routine. Emergency-room emergencies are urgent even when they are perfectly familiar. Terrorists with access to weapons of mass destruction ("WMD"), by contrast, present a novel threat that is destined to endure for decades, if not longer. **Such a threat is not an "emergency"** in the sense of a sudden event, such as a house on fire, **requiring genuinely split-second decision making**, with no opportunity for serious consultation or debate. **Managing the risks of nuclear terrorism requires sustained policies, not short-term measures**. This is feasible precisely because, in such an enduring crisis, national-security personnel have **ample time to think and rethink, to plan ahead and revise their plans**. In depicting today's terrorist threat as "an emergency," executive-discretion advocates almost always blur together urgency and novelty. This is a consequential intellectual fallacy. But it also provides an opportunity for critics of executive discretion in times of crisis. If classical emergencies, in the house- on-fire or emergency-room sense, turn out to invite and require rule-governed responses, then the justification for dispensing with rules in the war on terror seems that much more tenuous and open to question. In crises where "time is of the essence" 2 1 and serious consultation is difficult or impossible, it is imperative for emergency responders to follow previously crafted first-order rules (or behavioral commands) to enable prompt remedial action and coordination. In crises that are not sudden and transient but, instead, endure over time and that therefore allow for extensive consultation with knowledgeable parties, it is essential to rely on previously crafted second-order rules (or decision-making procedures) designed to **encourage decision makers to consider the costs and benefits of, and feasible alternatives to, proposed action plans**. In medicine, a typical first-order rule is "always wash your hands before inserting a stent," and a typical second-order rule is "always get a second opinion before undertaking major surgery."

#### 7. No impact to flexibility –

#### A) Obama’s already constrained by congress – countries would have already perceived him as weak

#### B) Bases around the world provide a deterrent value which solves – only the aff gives us that access

#### 8. Court expertise is sufficient—their link is blown out of proportion

Knowles 9 [Spring, 2009, Robert Knowles is a Acting Assistant Professor, New York University School of Law, “American Hegemony and the Foreign Affairs Constitution”, ARIZONA STATE LAW JOURNAL, 41 Ariz. St. L.J. 87]

A common justification for deference is that the President possesses superior competence due to expertise, information gathering, and political savvy in foreign affairs. These conclusions flow from the realist tenet that the external context is fundamentally distinct from the domestic context. The domestic realm is hierarchical and legal; the outside world is anarchical and political. The international realm is thus far more complex and fluid than the domestic realm. The executive is a political branch, popularly-elected and far more attuned to politics than are the courts. n258 Judges are, for the most part, generalists who possess no special expertise in foreign affairs. n259 Courts can only receive the information presented to them and cannot look beyond the record. n260 The President has a vast foreign relations bureaucracy to obtain and process information from around the world. Executive agencies such as the State Department and the military better understand the nature of foreign countries - their institutions and culture - and can predict responses in ways that courts cannot. n261 In the context of the political question doctrine, this rationale often appears when courts conclude that an issue lacks "judicially discoverable and manageable standards." n262 A stronger, related rationale is that the political branches are better suited for tracking dynamic and evolving norms in the anarchic international environment. n263 The meaning of international law changes over time and nations do not agree today on its meaning. Moreover, the relationships among nations in many instances will be governed by informal norms that do not correspond to international law. n264 In addition, many foreign affairs provisions in the Constitution had fixed meanings under international law in the Eighteenth Century - what it meant, for example, to "declare war" or to issue "letters of marquee and [\*129] reprisal" - but subsequent practice has substantially altered their meaning or rendered them irrelevant. n265 Courts are not adept at tracking these shifts. As many critics have observed, the "lack of judicially-manageable standards" argument is weak. Courts create rules to govern disputes regarding vague constitutional provisions such as the Due Process Clause. n266 Furthermore, if courts were to adjudicate foreign affairs disputes more often, they would have the opportunity to create clearer standards, making them more manageable. n267 Thus the lack-of-standards argument does not alone explain why foreign affairs should be off-limits. The argument regarding courts' limited access to information and lack of expertise seem persuasive at first, but it loses its force upon deeper inspection. For instance, expertise is also a rationale for Chevron deference in the domestic context. n268 Generalist judges handle cases involving highly complex and obscure non-foreign affairs issues while giving appropriate deference to interpretations of agencies charged with administering statutory schemes. n269 What makes foreign affairs issues so different that they justify even greater deference? n270 Perhaps foreign affairs issues are just an order of magnitude more complex than even the most complex domestic issues. However, this line of thinking very quickly leads to boundary problems. Economic globalization, rapid global information flow, and increased transborder movement have "radically increased the number of cases that directly implicate foreign relations" and have made foreign parties and conduct, as well as international law questions, increasingly [\*130] common in U.S. litigation. n271 If courts were to cabin off all matters touching on foreign relations as beyond their expertise, it would result in an ever-increasing abdication of their role. The political norm-tracking argument reveals the second major problem with using anarchy as a basis for special deference: it fails to account for the degree of deference that should be afforded to the President. Under the anarchy-based argument, the meaning of treaties and other concepts in foreign affairs depend entirely on politics and power dynamics, which the President is especially competent (and the courts especially incompetent) in tracking. If this is so, the courts must give total deference to the executive branch. If one does not wish to take the position that the courts should butt out altogether in foreign affairs, there must be other reasons for the courts' involvement. Even proponents of special deference generally acknowledge that some of the courts' strengths lie in protecting individual rights and "democracy-forcing." n272 But what is the correct balance to strike between competing functional goals of the separation of powers?

#### 9. The plan doesn’t hurt warfighting – no link

Lindemann 03

[Ingrid, Councilmember, Aurora, Colorado on behalf of National League of Cities Advisory Council Impact of military training on the environment, 4/2/03, <http://www.epw.senate.gov/hearing_statements.cfm?id=213705>]

Exclusion of military facilities and contractors from the requirements of RCRA and CERCLA will negate the positive economic impact of hosting a military installation. No community would welcome even the short-term economic benefit of having a military facility knowing that the military has carte blanche to contaminate and pollute and no responsibility - now, or in the future – for mitigating, remediating or even controlling such activities. We also believe the amendments proposed by the Department of Defense to the federal environmental statutes in question are unnecessary. As Assistant Secretary of Defense Paul Wolfowitz indicated in a March 7, 2003 memorandum to the Secretaries of the Army, Navy and Air Force, “In the vast majority of cases, we have demonstrated that we are able both to comply with environmental requirements and to **conduct necessary military training and testing**.” Exemptions are broadly available - and have been granted - when the president determines such exemptions to be in the “paramount interest of the United States.” Furthermore, in recent testimony before this committee, EPA Administrator Christine Todd Whitman said she was unaware of any military training program that was held up because of environmental statutes. To the best of our knowledge, the Defense Department has provided no examples where environmental requirements have impeded its activities. There appears to be no demonstrable problem with environmental laws adversely affecting military training and testing activities and if there is, the statutes provide adequate and prompt relief. If the issue is that the process for obtaining exemptions is cumbersome - and there appears to be no evidence that this is the case either - then the appropriate response would be to amend or adjust the process. We concur with the March 19 statement of the Attorneys General before the House Armed Service Committee that a case-by-case approach to resolving any future potential conflicts between readiness and the requirements of RCRA, CERCLA and the Clean Air Act is preferable to sweeping statutory exemptions because the case-by-case approach provides accountability.

## 1AR

### Increase

#### We meet – there are pre-existing environmental restrictions – we just apply them to the military

#### “Increase” means net increase

Words and Phrases 8(v. 20a, p. 264-265)

Cal.App.2 Dist. 1991. Term “increase,” as used in statute giving the Energy Commission modification jurisdiction over any alteration, replacement, or improvement of equipment that results in “increase” of 50 megawatts or more in electric generating capacity of existing thermal power plant, refers to “net increase” in power plant’s total generating capacity; in deciding whether there has been the requisite 50-megawatt increase as a result of new units being incorporated into a plant, Energy Commission cannot ignore decreases in capacity caused by retirement or deactivation of other units at plant. West’s Ann.Cal.Pub.Res.Code § 25123.

#### “Increase” means to become larger or greater in quantity

Encarta 6 – Encarta Online Dictionary. 2006. ("Increase" http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861620741)

in·crease [ in krss ]
transitive and intransitive verb  (*past and past participle* in·creased, *present participle* in·creas·ing, *3rd person present singular* in·creas·es)Definition**:**make or become larger or greater: to become, or make something become, larger in number, quantity, or degree
noun  (*plural* in·creas·es)

#### This interp is best – affs MUST have a new restriction or the squo solves

### AT Agemben

#### \*\*\*The description of politics is overly simplistic – focusing on sovereignty and bare life means we always come to the same conclusions and can’t ever theorize possibilities of resistance. Prefer the Aff’s more detailed and layered approach.

Butler 7 (Judith, Who Sings the Nation State? Language, Politics, Belonging, Co-written with Gayatri Chakravorty Spivak, p. 38-43)

It may be the case that one crucial and central operation of sovereign power is the capacity to suspend the rights of individuals or groups or to cast them out of a polity. When cast out, one is cast out into a space or a condition of bare life, and the bios of the person is no longer linked to its political status. By "political" here is meant membership in the ranks of citizenship. But does this move not precisely place an unacceptable juridical restriction on the political? After all, if to be "bare life" is to be exposed to power, then power is still on the outside of that life, however brutally it imposes itself, and life is metaphysically still secured from the domain of the political. We can argue that the very problem is that life has become separated from the political (i.e. conditions of citizenship), but that formulation presumes that politics and life join only and always on the question of citizenship and, so, restricts the entire domain of bio-power in which questions of life and death are determined by other means. But the most important point here is that we understand the jettisoned life, the one both expelled and contained, as saturated with power precisely at the moment in which it is deprived of citizenship. To describe this doubled sense of the "state" through recourse to a notion of "power" that includes and exceeds the matter of the rights of citizens, and to see how state power instrumentalizes the criteria of citizenship to produce and paralyze a population in its dispossession. This can happen through complex modes of governmentality in ways that are not easily reducible to sovereign acts, and they can happen through modes of instrumentality that are not necessarily initiated or sustained by a sovereign subject. Of course, it is counterintuitive, even exhilarating, to show how sovereignty insists itself in the midst of constitutionalism and at its expense, but it would surely be a mistake if this important way of tracing contemporary power ended up romancing the subject once again. It is one thing to trace the logic of how constitutionalism secures the rights of the sovereign to suspend constitutional protections, but it is quite another to install this logic as the exclusive way in which to apprehend the workings of contemporary power. If our attention is captured by the lure of the arbitrary decisionism of the sovereign, then we risk inscribing that logic as necessary and forgetting what prompted this inquiry to begin with: the massive problem of statelessness and the demand to find post-national forms of political opposition that might begin to address the problem with some efficacy. The focus on the theoretical apparatus of sovereignty risks impoverishing our conceptual framework and vocabulary so that we become unable to take on the representational challenge of saying what life is like for the deported, what life is like for those who fear deportation, who are deported, what life is like for those who live as gastarbeiters in Germany, what life is like for Palestinians who are living under occupation. These are not undifferentiated instances of "bare life" but highly juridified states of dispossession. We need more complex ways of understanding the multivalence and tactics of power to understand forms of resistance, agency, and counter-mobilization that elude or stall state power. I think we must describe destitution and, indeed, we ought to, but if the language by which we describe that destitution presumes, time and again, that the key terms are sovereignty and bare life, we deprive ourselves of the lexicon we need to understand the other networks of power to which it belongs, or how power is recast in that place or even saturated in that place. It seems to me that we've actually subscribed to a heuristic that only lets us make the same description time and again, which ends up taking on the perspective of sovereignty and reiterating its terms and, frankly, I think nothing could be worse.

#### And president will abide by the plan – takes out the impact

Bradley and Morrison 13

[Curtis, William Van Alstyne Professor of Law, Duke Law School. and Trevor, Liviu Librescu Professor of Law, Columbia Law School, Presidential Power, Historical Practice, And Legal Constraint, 2013 Directors of The Columbia Law Review Association, Inc. Columbia Law Review May, 2013, L/N]

Insisting on a sharp distinction between the law governing presidential authority that is subject to judicial review and the law that is not also takes for granted a phenomenon that merits attention - that Presidents follow judicial decisions. n118 That assumption is generally accurate in the United States today. To take one relatively recent example, despite disagreeing with the Supreme Court's determination in Hamdan v. Rumsfeld that Common Article 3 of the Geneva Conventions applies to the war on terror, the Bush Administration quickly accepted it. n119 But the reason why Presidents abide by court decisions has a connection to the broader issue [\*1131] of the constraining effect of law. An executive obligation to comply with judicial decisions is itself part of the practice-based constitutional law of the United States, so presidential compliance with this obligation may demonstrate that such law can in fact constrain the President. This is true, as we explain further in Part III, even if the effect on presidential behavior is motivated by concerns about external political perceptions rather than an internal sense of fidelity to law (or judicial review). n120

### A2: No VTL

#### Life always has value – even if its reduced, people have some worth – they have families and relationships and hobbies and fun – which should be preserved

Coontz 1 (Phyllis D., School of Public and International Affairs – University of Pittburgh, “Transcending the Suffering of AIDS”, Journal of Community Health Nursing, 18(4), December)

In the 1950s, psychiatrist and theorist Viktor Frankl (1963) described an existentia l theory of purpose and meaning in life. Frankl, a long-time prisoner in a concentration camp, related several instances of transcendent states that he experienced in the midst of that terrible suffering using his own experiences and observations. He believed that these experiences allowed him and others to maintain their sense of dignity and self-worth. Frankl (1969) claimed that transcendence occurs by giving to others, being open to others and the environment, and coming to accept the reality that some situations are unchangeable. He hypothesized that life always has meaning for the individual; a person can always decide how to face adversity. Therefore, self-transcendence provides meaning and enables the discovery of meaning for a person (Frankl, 1963). Expanding Frankl’s work, Reed (1991b) linked self-transcendence with mental health. Through a developmental process individuals gain an increasing understanding of who they are and are able to move out beyond themselves despite the fact that they are experiencing physical and mental pain. This expansion beyond the self occurs through introspection, concern about others and their well-being, and integration of the past and future to strengthen one’s present life (Reed, 1991b).

### AT Structural Violence

#### Structural violence is an obscure metaphor. Its use cannot lead to positive changes because it conflates distinct and generally unrelated problems of violence and poverty.

**Boulding ’77** (Kenneth, Faculty – U. Colorado Boulder, Former Pres. American Economic Association, Society for General Systems Research, and American Association for the Advancement of Science, Journal of Peace Research, “Twelve Friendly Quarrels with Johan Galtung”, 14:1, JSTOR)

Finally, we come to the great Galtung metaphors of 'structural violence' 'and 'posi- tive peace'. They are metaphors rather than models, and for that very reason are suspect. Metaphors always imply models and meta- phors have much more persuasive power than models do, for models tend to be the preserve of the specialist. But when a meta- phor implies a bad model it can be very dangerous, for it is both persuasive and wrong. The metaphor of structural violence I would argue falls right into this category. The metaphor is that poverty, deprivation, ill health, low expectations of life, a condi- tion in which more than half the human race lives, is 'like' a thug beating up the victim and 'taking his money away from him in the street, or it is 'like' a conqueror stealing the land of the people and reducing them to slavery. The implication is that poverty and its associated ills are the fault of the thug or the conqueror and the solution is to do away with thugs and conquerors. While there is some truth in the metaphor, in the modern world at least there is not very much. Vio- lence, whether of the streets and the home, or of the guerilla, of the police, or of the armed forces, is a **very different phenome- non from poverty**. **The processes which create and sustain poverty are not at all like the processes which create and sustain violence**, § Marked 19:54 § although like everything else in 'the world, everything is somewhat related to every- thing else. There is a very real problem of the struc- tures which lead to violence, but unfortu- nately Galitung's metaphor of structural vio- lence as he has used it has diverted atten- tion from this problem. Violence in the be- havioral sense, that is, somebody actually doing damage to somebody else and trying to make them worse off, is a 'threshold' phenomenon, rather like the boiling over of a pot. The temperature under a pot can rise for a long time without its boiling over, but at some 'threshold boiling over will take place. The study of the structures which un- derlie violence are a very important and much neglected part of peace research and indeed of social science in general. Thresh- old phenomena like violence are difficult to study because they represent 'breaks' in the systenm rather than uniformities. Violence, whether between persons or organizations, occurs when the 'strain' on a system is too great for its 'strength'. The metaphor here is that violence is like what happens when we break a piece of chalk. Strength and strain, however, especially in social systems, are so interwoven historically that it is very difficult to separate them. The diminution of violence involves two possible strategies, or a mixture of the two; one is Ithe increase in the strength of the sys- tem, 'the other is the diminution of the strain. The strength of systems involves habit, cul- ture, taboos, and sanctions, all these 'things which enable a system to stand lincreasing strain without breaking down into violence. The strains on the system 'are largely dy- namic in character, such as arms races, mu- tually stimulated hostility, changes in rela- tive economic position or political power, which are often hard to identify. Conflicts of interest 'are only part 'of the strain on a sys- tem, and not always the most important part. It is very hard for people ito know their in- terests, and misperceptions of 'interest take place mainly through the dynamic processes, not through the structural ones. It is only perceptions of interest which affect people's behavior, not the 'real' interests, whatever these may be, and the gap between percep- ti'on and reality can be very large and re- sistant to change. However, what Galitung calls structural violence (which has been defined 'by one un- kind commenltator as anything that Galitung doesn't like) was originally defined as any unnecessarily low expectation of life, on that assumption that anybody who dies before the allotted span has been killed, however unintentionally and unknowingly, by some- body else. The concept has been expanded to include all 'the problems of poverty, desti- tution, deprivation, and misery. These are enormously real and are a very high priority for research and action, but they belong to systems which are only peripherally related to 'the structures whi'ch produce violence. This is not to say that the cultures of vio- lence and the cultures of poverty are not sometimes related, though not all poverty cultures are cultures of violence, and cer- tainly not all cultures of violence are pover- ty cultures. But **the dynamics lof poverty and the success or failure to rise out of it are of a complexity far beyond anything which the metaphor of structural violence can offer**. While **the metaphor of structural violence** performed a service in calling attention to a problem, it **may have done a disservice in preventing us from finding the answer**.

# 5 vs. Kentucky GR

## 2AC

## T

### T – Hostilities – 2AC

#### 1. We meet – plan restricts on whatever they define hostilities as – we say it in the plan text

#### 2. Hostilities a state of confrontation

Hardy 84 (William H, Pacific Law Journal Issue 265, Tug of War: The War Powers Resolution and the Meaning of Hostilities, P 281-282)

The House Foreign Affairs Committee (hereinafter H.F.A.C) has adopted its own deﬁnition of hostilities. The H.F.A.C. Report discusses the background, constitutional context, and intent of the WPR. The section-by-section analysis of the H.F.A.C. Report is the clearest statement of the definition of hostilities to be found: The word hostilities was substituted for the phrase armed conﬂict during the subcommittee drafting process because it was considered to be somewhat broader in scope. In addition to a situation in which ﬁghting actually has begun, hostilities also encompasses a state of confrontation in which no shots have been fired but where there is a clear and present danger of armed conflict. Imminent hostilities denotes a situation in which there is a clear potential either for such a state of confrontation or for actual armed conflict. Hearings were held during the Ford Administration in which Chair- man Zablocki used the definition as a benchmark in questioning legal advisors to the President)” The use of this deﬁnition by Zablocki supports a broad interpretation of hostilities because **as long as a clear and present danger of armed conﬂict exists**, even though no shots have been ﬁred, hostilities are present.United States forces are not required to accompany foreign forces in combat or on operational patrols. The President, however, has persisted in defining hostilities more narrowly than Congress apparently intended. The Ford and Reagan Administrations have both adopted a narrow deﬁnition of hostilities that conﬂicts with the H.F.A.C. deﬁnition.

#### 3. Prefer our interpretation

#### A) Overlimits – limiting to just \_\_ means that it avoids states of confrontation the president could introduce the U.S. into that are core aff ground

#### B) Education - Broad definitions are key to topic education

Hardy 84 (William H, Pacific Law Journal Issue 265, Tug of War: The War Powers Resolution and the Meaning of Hostilities, P 277-278)

The determination that “hostilities” is an ambiguous term and therefore, susceptible to different meanings, is supported by selected provisions from congressional hearings. In general, opposition to deﬁning hostilities precisely or too narrowly was evidenced throughout congressional hearing records. The idea of making a “laundry list” or spelling out the circumstances in which the President may involve the military in the absence of a declaration of war was rejected.'°’ Rather than attempting to codify the circumstances that define hostilities, Professor Bickel, a noted constitutional law expert and Professor of Law at Yale University, stated that the preferable mode was a good faith understanding of the term and an assumption that Presidents would act in good faith to discharge their duties.“ Senator Javits, one of the chief sponsors of the WPR, acknowledged that the resolu- tion did not endeavor to spell out a definition of hostilities, but adopted the term as a word of basic understanding)" Members of Congress recognized the peril in trying to be too exact with defini- tions because of the difficulties in achieving a terminology that could anticipate all the emergencies which might arise. By choosing a general approach, rather than trying to be too exact in deﬁnitions, something was “left to judgment, the intelligence, [and] the wisdom” of members of Congress and the President.'" Based on the hearings, some evidence also exists that hostilities was deliberately left undefined and ambiguous so that the meaning of the word could be clariﬁed or gradually spelled out by experience.

#### 4. Function limits check – Agent cp’s solve their runaway weapons claims

#### 5. Reasonability is good – prevents a race to the bottom and arbitrary counter interpretations that exclude the aff

### T – Restriction =Prohibit– 2AC

#### 1. We meet – plan prevents the use of armed forces if their use violates environmental statutes – that’s a restriction

Lobel 8 (Jules – Professor of Law, University of Pittsburgh Law School, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War”, 2008, Ohio State Law Journal, 69 Ohio St. L.J. 391, lexis)

More generally, the Court held that Congress has the power to authorize limited, undeclared war in which the President's power as Commander in Chief would be restricted. In such wars, the Commander in Chief's power would extend no further than Congress had authorized. As President Adams recognized, Congress had as a functional matter "declared war within the meaning of the Constitution" against France, but "under certain restrictions and limitations." n123 Under this generally accepted principle in our early constitutional history, Congress could limit the type of armed forces used, the number of such forces available, the weapons that could be utilized, the theaters of actions, and the rules of combat. In short, it could dramatically restrict the President's power to conduct the war.

#### 2. Judicial restriction means regulation

**Kerrigan** **73** (Frank, Judge @ Court of Appeal of California, Fourth Appellate District, Division Two, 29 Cal. App. 3d 815; 105 Cal. Rptr. 873; 1973 Cal. App. LEXIS 1235, SUN COMPANY OF SAN BERNARDINO, CALIFORNIA, Petitioner, v. THE SUPERIOR COURT OF SAN BERNARDINO COUNTY, Respondent; THE PEOPLE et al., Real Parties in Interest. PROGRESS-BULLETIN PUBLISHING COMPANY, Petitioner, v. THE SUPERIOR COURT OF SAN BERNARDINO COUNTY, Respondent; THE PEOPLE et al., Real Parties in Interest. (Consolidated Cases.), lexis)

While the studies were in progress, the United States Supreme Court found the impact of television cameras and lights in a courtroom setting prejudicial to the conduct of a fair trial. ( Estes v. Texas (1965) 381 U.S. 532 [14 L.Ed.2d 543, 85 S.Ct. 1628].) Shortly thereafter, in Sheppard v. Maxwell (1966) 384 U.S. 333, 358 [16 L.Ed.2d 600, 618, 86 S.Ct. 1507], the defendant's conviction of his wife's murder [\*\*879] was reversed because of "[the] carnival atmosphere at trial" and pervasive publicity affecting the fairness of the hearing. In reversing Dr. Sheppard's conviction, the court stated [\*\*\*15] that: (1) the publicity surrounding a trial may become so extensive and prejudicial in nature that unless neutralized by appropriate judicial procedures, a resultant conviction may not stand; (2) the trial court has the duty of so insulating the trial from publicity as to insure its fairness; (3) a free press plays a vital role in the effective and fair administration of justice. But the court did not set down any fixed rules to guide trial courts, law enforcement officers or media as to what could or could not be printed. Instead, the majority suggested that judicial restrictions on speech might sometimes be appropriate in the following dicta: "The courts [\*823] must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences. Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures. [\*\*\*16] " (Ibid., p. 363 [16 L.Ed.2d p. 620].)

#### 3. **Restrictions” means “regulations”**

Davies 30 (Major George, “CLAUSE 1.—(Scheme regulating production, supply and sale of coal.),” February, vol 235 cc2453-558, http://hansard.millbanksystems.com/commons/1930/feb/27/clause-1-scheme-regulating-production)

Major GEORGE DAVIES The hon. Member says he has heard no reason advanced for this Amendment. I am willing to give him one, and I will tell him that the reason why the benches are not full, as they were a short time ago, is that man cannot live by bread alone and, as there is a rule against the introduction of newspapers and foodstuffs, it is necessary for some of us to refresh ourselves after a late Division. I am not going to transgress the ruling of the Chair, as we have been given very great latitude, but I want to confine myself to the point at issue, which is the regulation of sale. I have had experience in the past of efforts to regulate the sale of sugar. Like the coal industry to-day, there has been in the past an over-production of many of the fundamental articles of the life of a nation. I will not dwell on the case of rubber, but the sugar situation was entirely on all fours with this situation, as it was a question of the regulation of sale. Facing a situation very similar in kind and not dissimilar in degree to the problem now before us, those connected with that particular industry in certain countries thought it an advantage to control and regulate the sale. As soon as you use the word "regulation" in this connection it is idle to suggest that it does not mean restriction. Obviously, that is the point—to restrict—and, while 2541 it is true the word "restrict" is not in this particular Clause, and cannot be argued in connection with this Amendment, yet behind the word "regulate" is the word "restrict," in other words, controlling what has been uncontrolled, production thrown on markets not able to receive it.

#### 3. Prefer it –

#### A) Overlimits - the most common forms of restrictions are regulations on military activity – not a ban on any one category - they make it impossible to be aff

#### B) Education – regulations are a core discussion of the topic

#### 4. Function limits check – Agent cp’s solve their runaway weapons claims

#### 5. Reasonability is good – prevents a race to the bottom and arbitrary counter interpretations that exclude the aff

#### 6. Competing interpretations are bad – causes a race to the bottom – they will always find a way to exclude the aff. Default to reasonability – we don’t make the topic unmanageable

### Japan Deterrence – 2AC

#### Environmental problems are causing tensions over our basing agreements with Japan – causes regional instability

Province 10

[Adam G, LL.M. candidate, Southern Methodist University, 2010; J.D., Vermont Law School, 2009; B.A., Emory University, 2004. , YOU DON'T HAVE TO GO HOME BUT YOU CAN'T STAY HERE: RECENT ENVIRONMENTAL VIOLATIONS LEAD TO WEARING OUT OUR WELCOME IN JAPAN, 2010 Naval Law Review, L/N]

The United States military has a growing problem at its installations in Japan: the presence of nuclear warships is increasingly unpopular with Japanese citizens. Recently, Japan has become sensitive to all issues nuclear. n1 In the past, this sensitivity was not a problem for the United States Navy because the majority of its fleet was not nuclear-powered. n2 However, as technology became more sophisticated, n3 the Navy decided to permanently station nuclear ships in Japan, as well as decommission all non-nuclear aircraft carriers. The outcome [\*22] has produced heated debate over the presence of American forces in Japan; concern about environmental polluting is at the **core of this controversy**. n4 The Navy plays an integral role in supporting ground troops, in addition to preserving military readiness and stability at all tunes across the globe. n5 The Navy is backed by billions of federal dollars from Congress to maintain a fleet of destroyers, frigates, aircraft carriers, and submarines. n6 However, while these ships carry out an important role in national security, they have the ability to be environmental floating hazards n7 while "commanding in the commons." n8 Two recent events in Japan sparked the debate about the presence of American nuclear ships: the first when a fire broke out onboard U.S.S. George Washington while en route to Yokosuka, Japan; and the second by U.S.S. Houston when it leaked radioactive material while traveling to ports of call. Environmental mishaps such as these affect international relations with host nations and consequently have the potential of altering regional stability in Asia. n9 When environmental hazards occur, the United States military has an opportunity to work with local community leaders and host nation governments to build on improving environmental practices. Taking this opportunity would not only benefit local communities, but also improve foreign relations. The end result would allow American military installations to remain open in the host [\*23] nation, and thus strengthen regional stability for national security. n10 The Department of Defense (DoD) should embrace environmental regulations as a tool to improve relations with the host nation rather than view environmental issues as a restraint. The idea of the "global commons" should come to the forefront of the American military in protecting the environment. n11 Accordingly, the DoD should consider binding itself to environmental provisions with the Japanese government to guarantee accountability for its environmental impact.

#### Goes nuclear

Armitage et al., 2k

(Richard L. Armitage et al., 2000 Kurt M.Campbell, Michael J. Green, Joseph S. Nye et al. fmr. Dep. Secretary of State, CSIS, CFR, JFK School of Government at Harvard (also contributed to by James A. Kelly, Pacific Forum, Center for Strategic and International Studies; Edward J. Lincoln, Brookings Institution; Robert A. Manning, Council on Foreign Relations; Kevin G. Nealer, Scowcroft Group; James J. Przystup, Institute for National Strategic Studies, National Defense University; “The United States and Japan: Advancing Toward a Mature Partnership”, Institute for National Strategic Studies Special Report, October, http://www.ndu.edu/inss/strforum/SR\_01/SR\_Japan.htm)

Asia, in the throes of historic change, should carry major weight in the calculus of American political, security, economic, and other interests. Accounting for 53 percent of the world’s population, 25 percent of the global economy, and nearly $600 billion annually in two-way trade with the United States, Asia is vital to American prosperity. Politically, from Japan and Australia, to the Philippines, South Korea, Taiwan, and Indonesia, countries across the region are demonstrating the universal appeal of democratic values. China is facing momentous social and economic changes, the consequences of which are not yet clear. Major war in Europe is inconceivable for at least a generation, but the prospects for conflict in Asia are far from remote. The region features some of the world’s largest and most modern armies, nuclear-armed major powers, and several nuclear-capable states. Hostilities that could directly involve the United States in a major conflict could occur at a moment’s notice on the Korean peninsula and in the Taiwan Strait. The Indian subcontinent is a major flashpoint. In each area, war has the potential of nuclear escalation. In addition, lingering turmoil in Indonesia, the world’s fourth-largest nation, threatens stability in Southeast Asia. The United States is tied to the region by a series of bilateral security alliances that remain the region’s de facto security architecture. In this promising but also potentially dangerous setting, the U.S.-Japan bilateral relationship is more important than ever. With the world’s second-largest economy and a well- equipped and competent military, and as our democratic ally, Japan remains the keystone of the U.S. involvement in Asia. The U.S.-Japan alliance is central to America’s global security strategy.

## K

### Nonviolence K (Kentucky) – 2AC

#### 1. Framework- the role of the ballot is to weigh the plan against a competitive policy option

#### Net benefits-

#### First- Fairness- they moot the entirety of the 1ac, makes it impossible to be affirmative

#### Second – Education- Policy education is good- it teaches future decisionmaking

#### 2. K doesn’t come first

**Owens 2002** (David – professor of social and political philosophy at the University of Southampton, Re-orienting International Relations: On Pragmatism, Pluralism and Practical Reasoning, Millenium, p. 655-657)

Commenting on the ‘philosophical turn’ in IR, Wæver remarks that ‘[a] frenzy for words like “epistemology” and “ontology” often signals this philosophical turn’, although he goes on to comment that these terms are often used loosely.4 However, loosely deployed or not, it is clear that debates concerning ontology and epistemology play a central role in the contemporary IR theory wars. In one respect, this is unsurprising since it is a characteristic feature of the social sciences that periods of disciplinary disorientation involve recourse to reflection on the philosophical commitments of different theoretical approaches, and there is no doubt that such reflection can play a valuable role in making explicit the commitments that characterise (and help individuate) diverse theoretical positions. Yet, such a philosophical turn is not without its dangers and I will briefly mention three before turning to consider a confusion that has, I will suggest, helped to promote the IR theory wars by motivating this philosophical turn. The first danger with the philosophical turn is that it has an inbuilt tendency to prioritise issues of ontology and epistemology **over explanatory** and/or interpretive **power** as if the latter two were merely a **simple function** of the former. But while the explanatory and/or interpretive power of a theoretical account is not wholly independent of its ontological and/or epistemological commitments (otherwise criticism of these features would not be a criticism that had any value), **it is by no means clear that it is**, in contrast, wholly dependent **on these philosophical commitments**. Thus, for example, one need not be sympathetic to rational choice theory to recognise that it can provide powerful accounts of certain kinds of problems, such as the tragedy of the commons in which dilemmas of collective action are foregrounded. It may, of course, be the case that the advocates of rational choice theory cannot give a good account of why this type of theory is powerful in accounting for this class of problems (i.e., how it is that the relevant actors come to exhibit features in these circumstances that approximate the assumptions of rational choice theory) and, if this is the case, it is a philosophical weakness—but **this does not undermine** the point that, for a certain class of problems, rational choice theory may provide the best account available to us. In other words, while the critical judgement of theoretical accounts in terms of their ontological and/or epistemological sophistication is one kind of critical judgement, **it is not the only or even necessarily the** most important kind. The second danger run by the philosophical turn is that because prioritisation of ontology and epistemology promotes theory-construction from philosophical first principles, it cultivates a theory-driven rather than problem-driven approach to IR. Paraphrasing Ian Shapiro, the point can be put like this: since it is the case that there is always a plurality of possible true descriptions of a given action, event or phenomenon, the challenge is to decide which is the most apt in terms of getting a perspicuous grip on the action, event or phenomenon in question given the purposes of the inquiry; yet, from this standpoint, ‘theory-driven work is part of a reductionist program’ in that it ‘dictates always opting for the description that calls for the explanation that flows from the preferred model or theory’.5 The justification offered for this strategy rests on the mistaken belief that it is necessary for social science because general explanations are required to characterise the classes of phenomena studied in similar terms. However, as Shapiro points out, this is to misunderstand the enterprise of science since ‘whether there are general explanations for classes of phenomena is a **question for social-scientific inquiry**, not to be prejudged before conducting that inquiry’.6 Moreover, this strategy easily slips into the promotion of the pursuit of generality over that of empirical validity. The third danger is that the preceding two combine to encourage the formation of a particular image of disciplinary debate in IR—what might be called (only slightly tongue in cheek) ‘the Highlander view’—namely, an image of warring theoretical approaches with each, despite occasional temporary tactical alliances, dedicated to the strategic achievement of sovereignty over the disciplinary field. It encourages this view because the turn to, and prioritisation of, ontology and epistemology stimulates the idea that there can only be one **theoretical approach which gets things right**, namely, the theoretical approach that gets its ontology and epistemology right. This image feeds back into IR exacerbating the first and second dangers, and so a potentially vicious circle arises.

#### 3. Extinction outweighs

Bok 88

(Sissela, Professor of Philosophy at Brandeis, Applied Ethics and Ethical Theory, Rosenthal and Shehadi, Ed.)

The same argument can be made for Kant’s other formulations of the Categorical Imperative: “So act as to use humanity, both in your own person and in the person of every other, always at the same time as an end, never simply as a means”; and “So act as if you were always through your actions a law-making member in a universal Kingdom of Ends.” No one with a concern for humanity could consistently will to risk eliminating humanity in the person of himself and every other or to risk the death of all members in a universal Kingdom of Ends for the sake of justice. To risk their collective death for the sake of following one’s conscience would be, as Rawls said, “irrational, crazy.” And to say that one did not intend such a catastrophe, but that one merely failed to stop other persons from bringing it about would be beside the point when the end of the world was at stake. For although it is true that we cannot be held responsible for most of the wrongs that others commit, the Latin maxim presents a case where we would have to take such responsibility seriously – perhaps to the point of deceiving, bribing, even killing an innocent person, in order that the world not perish. To avoid self-contradiction, the Categorical Imperative would, therefore, have to rule against the Latin maxim on account of its cavalier attitude toward the survival of mankind. But the ruling would then produce a rift in the application of the Categorical Imperative. Most often the Imperative would ask us to disregard all unintended but foreseeable consequences, such as the death of innocent persons, whenever concern for such consequences conflicts with concern for acting according to duty. But, in the extreme case, we might have to go against even the strictest moral duty precisely because of the consequences. Acknowledging such a rift would post a strong challenge to the unity and simplicity of Kant’s moral theory.

#### 4. Case outweighs-

#### A) Environment- failure to enact hard reguluations causes environmental descruction in the world of the Alt – That’s Parsoncs

#### B) Warming – safe extraction is key and the threat is proven by multiple climate studies – that’s Light

#### 5. Security is not the root cause.

**Kydd**, Autumn **1997** (Andrew – assistant professor of political science at the University of California, Riverside, Sheep in Sheep’s clothing: Why security seekers do not fight each other, Security Studies, 7:1, p. 154)

The alternative I propose, motivational realism, argues that arms races and wars typically involve at least one genuinely greedy state, that is, states that often sacriﬁce their security in bids for power. In the case of the First World War, the four continental powers all had serious nonsecurity-related quarrels that played an indispensable role in producing the war. France was eager to regain Alsace-Lorraine, Russia sought hegemony over fellow Slavs in the Balkans when it could hardly integrate its own bloated empire, Ger- many dreamed of Weltpolitik and empire in the Levant, while Austria-Hungary was focused on its own imminent ethnic meltdown. All of these powers, had they sought just to be secure against foreign threat, could easily have conveyed that to each other and refrained from arms competition and war. Instead they engaged in competitions for power which eventually led to war. As for the Second World War, few structural realists will make a sustained case that Hitler was genuinely motivated by a rational pursuit of security for Germany and the other German statesmen would have responded in the same way to Germany’s international situation. Even Germen generals opposed Hitler’s military adventurism until 1939; it is difficult to imagine a less forceful civilian leader overruling them and leading Germany in an oath of conquest. In the case of the cold war, it is again difficult to escape the conclusion that the Soviet Union was indeed expansionist before Gorbachev and not solely motivated by security concerns. The increased emphasis within international relations scholarship on explaining the nature and origins of aggressive expansionists states reflects a growing consensus that aggressive states are at the root of conflict, not security concerns.

#### 6. Perm – do both – we can do the plan and embrace nonviolent resistance

#### 7. Realism is inevitable- perm solves

**Guzzini 1998** (Stefano – Assistant Professor at Central European Univ., Realism in International Relations and International Political Economy, p. 235)

Third, this last chapter has argued that although the evolution of realism has been mainly a disappointment as a general causal theory, we have to deal with it. On the one hand, realist assumptions and insights are used and merged in nearly all frameworks of analysis offered in International Relations or International Political Economy. One of the book's purposes was to show realism as a varied and variably rich theory, so heterogeneous that it would be better to refer to it only in plural terms. On the other hand, to dispose of realism because some of its versions have been proven empirically wrong, ahistorical, or logically incoherent, does not necessarily touch its role in the shared understandings of observers and practitioners of international affairs. Realist theories have a persisting power for constructing our understanding of the present. Their assumptions, both as theoretical constructs, and as particular lessons of the past translated from one generation of decision‑makers to another, help mobilizing certain understandings and dispositions to action. They also provide them with legitimacy. Despite realism's several deaths as a general causal theory, it can still powerfully enframe action. It exists in the minds, and is hence reflected in the actions, of many practitioners. Whether or not the world realism depicts is out there, realism is**.** Realism is not a causal theory that explains International Relations, but, as long as realism continues to be a powerful mind‑set, we need to understand realism to make sense of International Relations. In other words, realism is a still **necessary** hermeneutical bridge to the understanding of world politics. Getting rid of realism without having a deep understanding of it, not only risks unwarranted dismissal of some valuable theoretical insights that I have tried to gather in this book; it would also be futile. Indeed, it might be **the best way to** tacitly and **uncritically reproduce it**.

#### No impact – security doesn’t result in wars that escalate – Iraq disproves that it would cause extinction – case outweighs any small-scale conflict

#### Total rejection of hegemony increases imperialism. The plan’s reformation of leadership solves the impact

Christian **REUS-SMIT** IR @ Australian Nat’l **‘4** *American Power and World Order* p. 121-123

My preference here is to advocate a forward-leaning, prudential strategy of institutionally governed change. By `forward-leaning', I mean that the progressive realization of cosmopolitan values should be the measure of success­ful politics in international society. As long as gross viola­tions of basic human rights mar global social life, we, as individuals, and the states that purport to represent us, have obligations to direct what political influence we have to the improvement of the human condition, both at home and abroad. I recommend, however, that our approach be prudent rather than imprudent. Historically, the violence of inter-state warfare and the oppression of imperial rule have been deeply corrosive of basic human rights across the globe. The institutions of international society, along with their constitutive norms, such as **sover­eignty,** non-intervention, self-determination and limits on the use of force, have helped to reduce these corrosive forces dramatically. The incidence of inter-state wars has declined markedly, even though the number of states has multiplied, and imperialism and colonialism have moved from being core institutions of international society to practices beyond the pale. Prudence dictates, therefore, that we lean forward without losing our footing on valu­able institutions and norms. This means, in effect, giving priority to **institutionally governed change**, working with the rules and procedures of international society rather than against them. What does this mean in practice? In general, I take it to mean two things. First, it means recognizing the principal rules of international society, and accepting the obligations they impose on actors, including oneself. These rules fall into two broad categories: procedural and substantive. The most specific procedural rules are embodied in insti­tutions such as the United Nations Security Council, which is empowered to 'determine the existence of any threat to peace, breach of the peace or act of aggression' and the measures that will be taken 'to maintain or restore international peace and security'.28 More general, yet equally crucial, procedural rules include the cardinal principle that states are only bound by rules to which they have consented. Even customary international law, which binds states without their express consent, is based in part on the assumption of their tacit consent. The substantive rules of international society are legion, but perhaps the most important are the rules governing the use of force, both when force is permitted (jus ad bellum) and how it may be used (jus in bello). Second, working with the rules and procedures of international society also means recognizing that the principal modality of in­novation and change must be communicative. That is, establishing new rules and mechanisms for achieving cosmopolitan ends and international public goods, or modifying existing ones, should be done through persua­sion and negotiation, not ultimatum and coercion. A pre­mium must be placed, therefore, on articulating the case for change, on recognizing the concerns and interests of others as legitimate, on building upon existing rules, and on seeing genuine communication as a process of give and take, not demand and take. Giving priority to institutionally governed change may seem an overly conservative strategy, but it need not be. As explained above, the established procedural and substantive rules of international society have de­livered international public goods that actually further cosmopolitan ends, albeit in a partial and inadequate fash­ion. **Eroding these rules would only lead to increases in inter-state violence and imperialism**, and this would almost certainly produce a radical deterioration in the protection of basic human rights across the globe. Saying that we ought to preserve these rules is prudent, not con­servative. More than this, though, we have learnt that the institutions of international society have transformative potential, even if this is only now being creatively exploited.

#### Securitizing the environment is good – builds public awareness to solve

**Matthew 2**, Richard A, associate professor of international relations and environmental political at the University of California at Irvine, Summer (ECSP Report 8:109-124)

In addition, environmental security's language and findings can benefit conservation and sustainable development."' Much environmental security literature emphasizes the importance of development assistance, sustainable livelihoods, fair and reasonable access to environmental goods, and conservation practices as the vital upstream measures that in the long run will contribute to higher levels of human and state security. The Organization for Economic Cooperation and Development (OECD) and the International Union for the Conservation of Nature (IUCN) are examples of bodies that have been quick to recognize how the language of environmental security can help them. The scarcity/conflict thesis has alerted these groups to prepare for the possibility of working on environmental rescue projects in regions that are likely to exhibit high levels of related violence and conflict. These groups are also aware that an association with security can expand their acceptance and constituencies in some countries in which the military has political control, For the first time in its history; the contemporary environmental movement can regard military and intelligence agencies as potentialallies in the struggle to contain or reverse humangenerated environmental change. (In many situations, of course, the political history of the military--as well as its environmental record-raise serious concerns about the viability of this cooperation.) Similarly, the language of security has provided a basis for some fruitful discussions between environmental groups and representatives of extractive industries. In many parts of the world, mining and petroleum companies have become embroiled in conflict. These companies have been accused of destroying traditional economies, cultures, and environments; of political corruption; and of using private militaries to advance their interests. They have also been targets of violence, Work is now underway through the environmental security arm of the International Institute for Sustainable Development (IISD) to address these issues with the support of multinational corporations. Third, the general conditions outlined in much environmental security research can help organizations such as USAID, the World Bank, and IUCN identify priority cases--areas in which investments are likely to have the greatest ecological and social returns. For all these reasons, IUCN elected to integrate environmental security into its general plan at the Amman Congress in 2001. Many other environmental groups and development agencies are taking this perspective seriously (e.g. Dabelko, Lonergan& Matthew, 1999). However, for the most part these efforts remain preliminary.' Conclusions Efforts to dismiss environment and security research and policy activities on the grounds that they have been unsuccessful are premature and misguided. This negative criticism has all too often been based on an excessively simplified account of the research findings of Homer-Dixon and a few others. Homer-Dixon’s scarcity-conflict thesis has made important and highly visible contributions to the literature, but it is only a small part of a larger and very compelling theory. This broader theory has roots in antiquity and speaks to the pervasive conflicts and security implications of complex nature-society relationships. The theory places incidents of violence in larger structural and historical contexts while also specifying contemporarily significant clusters of variables. From this more generalized and inclusive perspective, violence and conflict are revealed rarely as a society’s endpoint and far more often as parts of complicated adaptation processes. The contemporary research on this classical problematic has helped to revive elements of security discourse and analysis that were marginalized during the Cold War. It has also made valuable contributions to our understanding of the requirements of human security, the diverse impacts of globalization, and the nature of contemporary transnational security threats. Finall,y environmental security research has been valuable in myriad ways to a range of academics, policymakers, and activists, although the full extent of these contributions remains uncertain, rather than look for reasons to abandon this research and policy agenda, now is the time to recognize and to build on the remarkable achievements of the entire environmental security field.

#### 7. The plan doesn’t legitimize all scenarios of security – only those in the 1ac – means they don’t have an internal link to their impact and perm do the plan in all other instances solves

#### 8. Alternative fails – critical theory has no mechanism to translate theory into practice

**Jones 99** (Richard Wyn, Lecturer in the Department of International Politics – University of Wales, Security, Strategy, and Critical Theory, CIAO, http://www.ciaonet.org/book/wynjones/wynjones06.html)

Because emancipatory political practice is central to the claims of critical theory, one might expect that proponents of a critical approach to the study of international relations would be reflexive about the relationship between theory and practice. Yet their thinking on this issue thus far does not seem to have progressed much beyond **grandiose statements of intent**. There have been no systematic considerations of how critical international theory can help generate, support, or sustain emancipatory politics beyond the seminar room or conference hotel. Robert Cox, for example, has described the task of critical theorists as providing “a guide to strategic action for bringing about an alternative order” (R. Cox 1981: 130). Although he has also gone on to identify possible agents for change and has outlined the nature and structure of some feasible alternative orders, he has not explicitly indicated whom he regards as the addressee of critical theory (i.e., who is being guided) and thus how the theory can hope to become a part of the political process (see R. Cox 1981, 1983, 1996). Similarly, Andrew Linklater has argued that “a critical theory of international relations must regard the practical project of extending community beyond the nation–state as its most important problem” (Linklater 1990b: 171). However, he has little to say about the role of theory in the realization of this “practical project.” Indeed, his main point is to suggest that the role of critical theory “is not to offer instructions on how to act but to reveal the existence of unrealised possibilities” (Linklater 1990b: 172). But the question still remains, reveal to whom? Is the audience enlightened politicians? Particular social classes? Particular social movements? Or particular (and presumably particularized) communities? In light of Linklater’s primary concern with emancipation, one might expect more guidance as to whom he believes might do the emancipating and how critical theory can impinge upon the emancipatory process. There is, likewise, little enlightenment to be gleaned from Mark Hoffman’s otherwise important contribution. He argues that critical international theory seeks not simply to reproduce society via description, but to understand society and change it. It is both descriptive and constructive in its theoretical intent: it is both an intellectual and a social act. It is not merely an expression of the concrete realities of the historical situation, but also a force for change within those conditions. (M. Hoffman 1987: 233) Despite this very ambitious declaration, once again, Hoffman gives no suggestion as to how this “force for change” should be operationalized and what concrete role critical theorizing might play in changing society. Thus, although the critical international theorists’ critique of the role that more conventional approaches to the study of world politics play in reproducing the contemporary world order may be persuasive, their account of the relationship between their own work and emancipatory political practice is unconvincing. Given the centrality of practice to the claims of critical theory, this is a very significant weakness. Without some plausible account of the **mechanisms** by which they hope to aid in the achievement of their emancipatory goals, proponents of critical international theory are hardly in a position to justify the assertion that “it represents the next stage in the development of International Relations theory” (M. Hoffman 1987: 244). Indeed, without a more convincing conceptualization of the theory–practice nexus, one can argue that critical international theory, by its own terms, has no way of redeeming some of its central epistemological and methodological claims and thus that it is a **fatally flawed** enterprise.

#### 9. Theory first kills action.

**Gunning 2007** [Jeroen, Lecturer in Int’l Politics @ U of Wales, Government and Opposition 42.3, “A Case for Critical Terrorism Studies?”]

The notion of emancipation also crystallizes the need for policy engagement. For, unless a ‘critical’ field seeks to be policy relevant, which, as Cox rightly observes, means combining ‘critical’ and ‘problem-solving’ approaches, it does not fulfil its ‘emancipatory’ potential.94 One of the temptations of ‘critical’ approaches is to remain mired in critique and deconstruction without moving beyond this to reconstruction and policy relevance. Vital as such critiques are, the challenge of a critically constituted field is also to engage with policy makers – and ‘terrorists’ – and work towards the realization of new paradigms, new practices, and a transformation, however modestly, of political structures. That, after all, is the original meaning of the notion of ‘immanent critique’ that has historically underpinned the ‘critical’ project and which, in Booth's words, involves ‘the discovery of the latent potentials in situations on which to build political and social progress’, as opposed to putting forward utopian arguments that are not realizable. Or, as Booth wryly observes, ‘this means building with one's feet firmly on the ground, not constructing castles in the air’ and asking ‘what it means for real people in real places’.96 Rather than simply critiquing the status quo, or noting the problems that come from an un-problematized acceptance of the state, a ‘critical’ approach must, in my view, also concern itself with offering concrete alternatives. Even while historicizing the state and oppositional violence, and challenging the state's role in reproducing oppositional violence, it must wrestle with the fact that ‘the concept of the modern state and sovereignty embodies a coherent response to many of the central problems of political life’, and in particular to ‘the place of violence in political life’. Even while ‘de-essentializing and deconstructing claims about security’, it must concern itself with ‘how security is to be redefined’, and in particular on what theoretical basis.97 Whether because those critical of the status quo are wary of becoming co-opted by the structures of power (and their emphasis on instrumental rationality),98 or because policy makers have, for obvious reasons (including the failure of many ‘critical’ scholars to offer policy relevant advice), a greater affinity with ‘traditional’ scholars, the role of ‘expert adviser’ is more often than not filled by ‘traditional’ scholars.99 The result is that policy makers are insufficiently challenged to question the basis of their policies and develop new policies based on immanent critiques. A notable exception is the readiness of European Union officials to enlist the services of both ‘traditional’ and ‘critical’ scholars to advise the EU on how better to understand processes of radicalization.100 But this would have been impossible if more critically oriented scholars such as Horgan and Silke had not been ready to cooperate with the EU. Striving to be policy relevant does not mean that one has to accept the validity of the term ‘terrorism’ or stop investigating the political interests behind it. Nor does it mean that each piece of research must have policy relevance or that one has to limit one's research to what is relevant for the state, since the ‘critical turn’ implies a move beyond state-centric perspectives. End-users could, and should, thus include both state and non-state actors such as the Foreign Office and the Muslim Council of Britain and Hizb ut-Tahrir; the Northern Ireland Office and the IRA and the Ulster Unionists; the Israeli government and Hamas and Fatah (as long as the overarching principle is to reduce the political use of terror, whoever the perpetrator). It does mean, though, that a critically constituted field must work hard to bring together all the fragmented voices from beyond the ‘terrorism field’, to **maximize both the field's rigour and its policy relevance**. Whether a critically constituted ‘terrorism studies’ will attract the fragmented voices from outside the field depends largely on how broadly the term ‘critical’ is defined. Those who assume ‘critical’ to mean ‘Critical Theory’ or ‘poststructuralist’ may not feel comfortable identifying with it if they do not themselves subscribe to such a narrowly defined ‘critical’ approach. Rather, to maximize its inclusiveness, I would follow Williams and Krause's approach to ‘critical security studies’, which they define simply as bringing together ‘many perspectives that have been considered outside of the mainstream of the discipline’.101 This means refraining from establishing new criteria of inclusion/exclusion beyond the (normative) expectation that scholars self-reflexively question their conceptual framework, the origins of this framework, their methodologies and dichotomies; and that they historicize both the state and ‘terrorism’, and consider the security and context of all, which implies among other things an attempt at empathy and cross-cultural understanding.102 Anything more normative would limit the ability of such a field to create a genuinely interdisciplinary, non-partisan and innovative framework, and exclude valuable insights borne of a broadly ‘critical’ approach, such as those from conflict resolution studies who, despite working within a ‘traditional’ framework, offer important insights by moving beyond a narrow military understanding of security to a broader understanding of human security and placing violence in its wider social context.103 Thus, a poststructuralist has no greater claim to be part of this ‘critical’ field than a realist who looks beyond the state at the interaction between the violent group and their wider social constituency.104

**Plan solves worst excesses of security – restraining war powers means that we prevent bad forms of war that kill the environment that burke talks about**

#### 10. War kills alt solvency

**Linklater 90** (Andrew, Senior Lecturer in Politics – Monash University, Beyond Realism and Marxism: Critical Theory and International Relations, p. 32)

These theoretical disagreements with Marxism generate major differences at the practical level. It is necessary to conclude that a post-Marxist critical theory of international relations must concede that technical and practical orientations to foreign policy are inescapable at least at this juncture. Such an approach must appreciate the need for classical realist methods of protecting the state under conditions of insecurity and distrust, and recognise the importance of the rationalist defence of order and legitimacy in the context of anarchy. It is important to take account of the rationalist claim that order is unlikely to survive if the major powers cannot reconcile their different national security interests. In a similar vein, a critical approach to international relations is obliged to conclude that the project of emancipation will not make significant progress if international order is in decline. One of its principal tasks would then be to understand how the community of states can be expanded so that it approximates a condition which maximises the importance of freedom and universality. In this case, a critical theory of international relations which recognises the strengths of realism and Marxism must aim for a political practice which deals concurrently with the problem of power, the need for order and the possibility of emancipation through the extension of human community

#### Untimely intervention fails – if we win any of our threats real claims then it proves that the alt results in extinction

#### 11. Alt cedes the political – fails

Olav. F. **Knudsen**, Prof @ Södertörn Univ College, **‘1** [*Security Dialogue* 32.3, “Post-Copenhagen Security Studies: Desecuritizing Securitization,” p. 366]

A final danger in focusing on the state is that of building the illusion that states have impenetrable walls, that they have an inside and an outside, and that nothing ever passes through. Wolfers’s billiard balls have contributed to this misconception. But the state concepts we should use **are in no need of** such an illusion. Whoever criticizes the field for such sins in the past needs to **go back to the literature**. Of course, we must continue to be open to a frank and unbiased assessment of the transnational politics which significantly in- fluence almost every issue on the domestic political agenda. The first decade of my own research was spent studying these phenomena – and I disavow none of my conclusions about the state’s limitations. Yet I am not ashamed to talk of a domestic political agenda. Anyone with a little knowledge of Euro- pean politics knows that Danish politics is not Swedish politics is not German politics is not British politics. Nor would I hesitate for a moment to talk of the role of the state in transnational politics, where it is an important actor, though only one among many other competing ones. In the world of transnational relations, the exploitation of states by interest groups – by their assumption of roles as representatives of states or by convincing state representatives to argue their case and defend their narrow interests – is a significant class of phenomena, today as much as yesterday. Towards a Renewal of the Empirical Foundation for Security Studies Fundamentally, the sum of the foregoing list of sins blamed on the Copen- hagen school amounts to a lack of attention paid to just that ‘reality’ of security which Ole Wæver consciously chose to leave aside a decade ago in order to pursue the politics of securitization instead. I cannot claim that he is void of interest in the empirical aspects of security because much of the 1997 book is devoted to empirical concerns. However, the attention to agenda-setting – confirmed in his most recent work – draws attention away from the important issues we need to work on more closely if we want to contribute to a better understanding of European **security as it is** currently developing**.** That inevitably requires a more **consistent** interest in security policy in the making – not just in the development of alternative security policies. The dan- ger here is that, as alternative policies are likely to fail grandly on the political arena, crucial decisions may be made in the ‘**traditional’ sector of security** policymaking, **unheeded by any but the most uncritical minds.**

#### 12. Threats are real

Knudsen 11 [Olav. F., Prof at Södertörn Univ College, Security Dialogue 32.3, “Post-Copenhagen Security Studies: Desecuritizing Securitization,” p. 360]

In the post-Cold War period, agenda-setting has been much easier to influence than the securitization approach assumes. That change cannot be credited to the concept; the change in security politics was already taking place in defense ministries and parliaments before the concept was first launched. Indeed, securitization in my view is more appropriate to the security politics of the Cold War years than to the post-Cold War period. Moreover, I have a problem with the underlying implication that it is unimportant whether states ‘really’ face dangers from other states or groups. In the Copenhagen school, threats are seen as coming mainly from the actors’ own fears, or from what happens when the fears of individuals turn into paranoid political action. In my view, this emphasis on the subjective is a misleading conception of threat, in that it discounts an independent existence for whatever is perceived as a threat. Granted, political life is often marked by misperceptions, mistakes, pure imaginations, ghosts, or mirages, but such phenomena do not occur simultaneously to large numbers of politicians, and hardly most of the time. During the Cold War, threats – in the sense of plausible possibilities of danger – referred to ‘real’ phenomena, and they refer to ‘real’ phenomena now. The objects referred to are often not the same, but that is a different matter. Threats have to be dealt with both in terms of perceptions and in terms of the phenomena which are perceived to be threatening. The point of Wæver’s concept of security is not the potential existence of danger somewhere but the use of the word itself by political elites. In his 1997 PhD dissertation, he writes, ‘One can view “security” as that which is in language theory called a speech act: it is not interesting as a sign referring to something more real – it is the utterance itself that is the act.’ The deliberate disregard of objective factors is even more explicitly stated in Buzan & Wæver’s joint article of the same year. As a consequence, the phenomenon of threat is reduced to a matter of pure domestic politics. It seems to me that the security dilemma, as a central notion in security studies, then loses its foundation. Yet I see that Wæver himself has no compunction about referring to the security dilemma in a recent article. This discounting of the objective aspect of threats shifts security studies to insignificant concerns. What has long made ‘threats’ and ‘threat perceptions’ important phenomena in the study of IR is the implication that urgent action may be required. Urgency, of course, is where Wæver first began his argument in favor of an alternative security conception, because a convincing sense of urgency has been the chief culprit behind the abuse of ‘security’ and the consequent ‘politics of panic’, as Wæver aptly calls it. Now, here – in the case of urgency – another baby is thrown out with the Wæverian bathwater. When real situations of urgency arise, those situations are challenges to democracy; they are actually at the core of the problematic arising with the process of making security policy in parliamentary democracy. But in Wæver’s world, threats are merely more or less persuasive, and the claim of urgency is just another argument. I hold that instead of ‘abolishing’ threatening phenomena ‘out there’ by reconceptualizing them, as Wæver does, we should continue paying attention to them, because situations with a credible claim to urgency will keep coming back and then we need to know more about how they work in the interrelations of groups and states (such as civil wars, for instance), not least to find adequate democratic procedures for dealing with them.

#### 13. Security creates value to life.

Booth 5 [Ken, visiting researcher - US Naval War College, Critical Security Studies and World Politics, p. 22]

The best starting point for conceptualizing security lies in the real conditions of insecurity suffered by people and collectivities. Look around. What is immediately striking is that some degree of insecurity, as a life-determining condition, is universal. To the extent an individual or group is insecure, to the extent their life choices and changes are taken away; this is because of the resources and energy they need to invest in seeking safety from domineering threats – whether these are the lack of food for one’s children, or organizing to resist a foreign aggressor. The corollary of the relationship between insecurity and a determined life is that a degree of security creates life possibilities. Security might therefore be conceived as synonymous with opening up space in people’s lives. This allows for individual and collective human becoming – the capacity to have some choice about living differently – consistent with the same but different search by others. Two interrelated conclusion follow from this. First, security can be understood as an instrumental value; it frees its possessors to a greater or lesser extent from life-determining constraints and so allows different life possibilities to be explored. Second, security is not synonymous simply with survival. One can survive without being secure (the experience of refugees in long-term camps in war-torn parts of the world, for example). Security is therefore more than mere animal survival (basic animal existence). It is survival-plus, the plus being the possibility to explore human becoming. As an instrumental value, security is sought because it free people(s) to some degree to do other than deal with threats to their human being. The achievement of a level of security–and security is always relative –gives to individuals and groups some time, energy, and scope to choose to be or become, other than merely surviving as human biological organisms. Security is an important dimension of the process by which the human species can reinvent itself beyond the merely biological.

#### Security is not inherently negative.

**Roe**, June **12** (Paul – Associate Professor in the Department of International Relations and European Studies at Central European University, Budapest, Is Securitization a ‘negative’ concept? Revisiting the normative debate over normal versus extraordinary politics, Security Dialogue, Vol. 43, No.3, p. Sage Publication)

Although for Aradau, the solution to security’s barred universality lies not in desecuritization – the Copenhagen School’s preferred strategy – in does lie, nevertheless, in avoiding security’s Schmittian mode of politics.24 However, as Matt McDonald (2008: 580) pertinently recognizes, avoiding securitization neglects the potential to contest its very meaning: desecuritization is made ‘normatively problematic’ inasmuch as a preference for it relies on ‘the negative designation of threat’, which ‘serves the interest of those who benefit from … exclusionary articulations of threat in contemporary international politics, further silencing voices articulating alternative visions for what security means and how it might be achieved’. That is to say, the recourse of always viewing securitization as negative must be resisted: instead, contexts should be revealed in which utterances of security can be subject to a politics of progressive change. In keeping with McDonald, Booth’s understanding of security as emancipation criticizes (security as) securitization for its essentialism in fixing the meaning of security into a state-centric, militarized and zero-sum framework. Rejecting outright securitization’s necessarily Schmittian inheritance, Booth (2007: 165) points instead to a more positive rendering: Such a static view of the [securitization] concept is all the odder because security as a speech act has historically also embraced positive, non-militarised, and non-statist connotations…. Securitisation studies, like mainstream strategic studies, remains somewhat stuck in Cold War mindsets. For Booth, therefore, securitization is not always about the ‘expectation of hostility’. A positive securitization embraces the potential for human equality unhampered by the closure of political boundaries that Aradau postulates. Boothian emancipatory communities are constituted by the recognition of individuals as possessing multiple identities that cut across existing social and political divides. In this sense, Others are also selves in a variety of ways. Through this interconnectedness, the recognition of us all as human makes salient the values that bind, such as compassion, reciprocity, justice and dignity (Booth, 2007: 136–40).

### SoPo Add-On – Ikenberry !’s

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#### Disease

**Greger 8** (M.D., is Director of Public Health and Animal Agriculture at The Humane Society of the United States (Michael Greger, , Bird Flu: A Virus of Our Own Hatching, <http://birdflubook.com/a.php?id=111>)

Senate Majority Leader Frist describes the recent slew of emerging diseases in almost biblical terms: “All of these [new diseases] were advance patrols of a great army that is preparing way out of sight.”3146 Scientists like Joshua Lederberg don’t think this is mere rhetoric. He should know. Lederberg won the Nobel Prize in medicine at age 33 for his discoveries in bacterial evolution. Lederberg went on to become president of Rockefeller University. “Some people think I am being hysterical,” he said, referring to pandemic influenza, “but there are catastrophes ahead. We live in evolutionary competition with microbes—bacteria and viruses. There is no guarantee that we will be the survivors.”3147 There is a concept in host-parasite evolutionary dynamics called the Red Queen hypothesis, which attempts to describe the unremitting struggle between immune systems and the pathogens against which they fight, each constantly evolving to try to outsmart the other.3148 The name is taken from Lewis Carroll’s Through the Looking Glass in which the Red Queen instructs Alice, “Now, here, you see, it takes all the running you can do to keep in the same place.”3149 Because the pathogens keep evolving, our immune systems have to keep adapting as well just to keep up. According to the theory, animals who “stop running” go extinct. So far our immune systems have largely retained the upper hand, but the fear is that given the current rate of disease emergence, the human race is losing the race.3150 In a Scientific American article titled, “Will We Survive?,” one of the world’s leading immunologists writes: Has the immune system, then, reached its apogee after the few hundred million years it had taken to develop? Can it respond in time to the new evolutionary challenges? These perfectly proper questions lack sure answers because we are in an utterly unprecedented situation [given the number of newly emerging infections].3151 The research team who wrote Beasts of the Earth conclude, “Considering that bacteria, viruses, and protozoa had a more than two-billion-year head start in this war, a victory by recently arrived Homo sapiens would be remarkable.”3152 Lederberg ardently believes that emerging viruses may imperil human society itself. Says NIH medical epidemiologist David Morens, When you look at the relationship between bugs and humans, the more important thing to look at is the bug. When an enterovirus like polio goes through the human gastrointestinal tract in three days, its genome mutates about two percent. That level of mutation—two percent of the genome—has taken the human species eight million years to accomplish. So who’s going to adapt to whom? Pitted against that kind of competition, Lederberg concludes that the human evolutionary capacity to keep up “may be dismissed as almost totally inconsequential.”3153 To help prevent the evolution of viruses as threatening as H5N1, the least we can do is take away a few billion feathered test tubes in which viruses can experiment, a few billion fewer spins at pandemic roulette. The human species has existed in something like our present form for approximately 200,000 years. “Such a long run should itself give us confidence that our species will continue to survive, at least insofar as the microbial world is concerned. Yet such optimism,” wrote the Ehrlich prize-winning former chair of zoology at the University College of London, “might easily transmute into a tune whistled whilst passing a graveyard.”3154

#### **Food shortages**

Cribb 10 (Julian, the principal of Julian Cribb & Associates, specialists in science communication, 1996-2002 he was Director, National Awareness, for Australia’s national science agency, CSIRO, has received 32 awards for journalism including the Order of Australia Association Media Prize, fellow of the Australian Academy of Technological Sciences and Engineering. The Coming Famine: The Global Food Crisis and what we can do to avoid it, University of California Press, 2010, p. 20)

The threat of conflict over food, land, and water is not, however, confined to the marginal world. Increasingly it imperils the economic powerhouses of the global economy in the early twenty-first century. In 2001 the Australian strategic analyst Alan Dupont predicted, “Food is destined to have greater strategic weight and import in an era of environmental scarcity. While optimists maintain that the world is perfectly capable of meeting the anticipated increases in demand for essential foodstuffs, there are enough imponderables to suggest that prudent governments would not want to rely on such a felicitous outcome." Anticipating the food crisis of 2007-8 by several years, he presciently added, "East Asia's rising demand for food and diminishing capacity to feed itself adds an unpredictable new element to the global food equation for several reasons. The gap between production and consumption of key foodstuffs globally is narrowing dangerously and needs to be reversed." Bearing out his words, Singapore president Lee Hsieng Loong told a 2008 international defense conference, "In the longer term, the trends towards tighter supplies and higher prices will likely reassert themselves. This has serious security implications. The impact of a chronic food shortage will be felt especially by the poor countries. The stresses from hunger and famine can easily result in social upheaval and civil strife, exacerbating conditions that lead to failed states. Between countries, competition for food supplies and displacement of people across borders could deepen tensions and provoke conflict and wars."15

#### Oil conflict escalate

**Klare 2002** (Michael – board of directors of the Arms Control Association, the National Council of the Federation of American Scientists, and the advisory board of the Arms Division of Human Rights Watch, Resource Wars: The New Landscape of Global Conflict, p. 27-29)

Of all the resources discussed in this book, none is more likely to provoke conflict between states in the twenty-first century than oil. Petroleum stands out from other materials-water, minerals, timber, and so on-because of its pivotal role in the global economy and its capacity to ignite large-scale combat. No highly industrialized society can survive at present without substantial supplies of oil, and so any significant threat to the continued availability of this resource will prove a cause of crisis and, in extreme cases, provoke the use of military force. Action of this sort could occur in any of the major oil-producing areas, including the Middle East and the Caspian basin. Lesser conflicts over petroleum are also likely, as states fight to gain or retain control over resource-rich border areas and offshore economic zones. Big or small, conflicts over oil will constitute a significant feature of the global security environment in the decades to come. Petroleum has, of course, been a recurring source of conflict in the past. Many of the key battles of World War II, for example, were triggered by the Axis Powers' attempts to gain control over petroleum supplies located in areas controlled by their adversaries. The pursuit of greater oil revenues also prompted Iraq's 1990 invasion of Kuwait, and this, in turn, provoked a massive American military response. But combat over petroleum is not simply a phenomenon of the past; given the world's ever-increasing demand for energy and the continuing possibility of supply interruptions, the outbreak of a conflict over oil is just as likely to occur in the future. The likelihood of future combat over oil is suggested, first of all, by the growing buildup of military forces in the Middle East and other oil-producing areas. Until recently, the greatest concentration of military power was to found along the East-West divide in Europe and at other sites of superpower competition. Since 1990, however, these concentrations have largely disappeared, while troop levels in the major oil zones have been increased. The United States, for example, has established a permanent military infrastructure in the Persian Gulf area and has "prepositioned" sufficient war materiel there to sustain a major campaign. Russia, meanwhile, has shifted more of its forces to the North Caucasus and the Caspian Sea basin, while China has expanded its naval presence in the South China Sea. Other countries have also bolstered their presence in these areas and other sites of possible conflict over oil. Geology and geography also add to the risk of conflict. While relatively abundant at present, natural petroleum does not exist in unlimited quantities; it is a finite, nonrenewable substance. At some point in the future, available supplies will prove inadequate to satisfy soaring demand, and the world will encounter significant shortages. Unless some plentiful new source of energy has been discovered by that point, competition over the remaining supplies of petroleum will prove increasingly fierce. In such circumstances, any prolonged interruption in the global flow of oil will be viewed by import- dependent states as a mortal threat to their security-and thus as a matter that may legitimately be resolved through the use of military force. Growing scarcity will also result in higher prices for oil, producing enormous hardship for those without the means to absorb added costs; in consequence, widespread internal disorder may occur. Geography enters the picture because many of the world's leading sources of oil are located in contested border zones or in areas of recurring crisis and violence. The distribution of petroleum is more concentrated than other raw materials, with the bulk of global sup- plies found in a few key producing areas. Some of these areas-the North Slope of Alaska and the American Southwest, for example- are located within the borders of a single country and are relatively free of disorder; others, however, are spread across several coun- tries-which may or may not agree on their common borders-and/ or are located in areas of perennial unrest. To reach global markets, moreover, petroleum must often travel (by ship or by pipeline) through other areas of instability. Because turmoil in these areas can easily disrupt the global flow of oil, any outbreak of conflict, however minor, will automatically generate a risk of outside intervention.

#### **Terror**

Ayson 10 (Robert, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand – Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects”, Studies in Conflict & Terrorism, 33(7), July)

*A Catalytic Response: Dragging in the Major Nuclear Powers*

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today's and tomorrow's terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,[40](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928" \l "EN0040) and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”[41](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0041) Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington's relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington's early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country's armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abetters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents' … long-standing interest in all things nuclear.”[42](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0042) American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide.

#### Economic collapse

Merlini 11

[Cesare Merlini, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs (IAI) in Rome. He served as IAI president from 1979 to 2001. Until 2009, he also occupied the position of executive vice chairman of the Council for the United States and Italy, which he co-founded in 1983. His areas of expertise include transatlantic relations, European integration and nuclear non-proliferation, with particular focus on nuclear science and technology. A Post-Secular World? DOI: 10.1080/00396338.2011.571015 Article Requests: Order Reprints : Request Permissions Published in: journal Survival, Volume 53, Issue 2 April 2011 , pages 117 - 130 Publication Frequency: 6 issues per year Download PDF Download PDF (357 KB) View Related Articles To cite this Article: Merlini, Cesare 'A Post-Secular World?', Survival, 53:2, 117 – 130]

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even **involving the use of nuclear weapons**. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular **rational approach would be sidestepped** by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism.

## CP

### Judiciary Adv CP – 2AC

#### 1. Perm do both

#### 2. Can’t solve environment – doesn’t solve environmental destruction during conflict or basing

#### 3. Can’t solve judiciary

#### A) Deference over military issues is key – London evidence indicates that the military seeking excemptions raises the bar in all public litigation suits against pro-environment parties –this makes counterplan solvency impossible

#### B) Donovan evidence indicates that military shutting off citizen efforts is a unique instance that has to be countered- otherwise suits won’t be brought before the court

#### 4. Military non-compliance undermines environmentalism across the board – only the plan solves

Stellakis 10

[John C, J.D. Candidate, 2011, Villanova University School of Law; B.A.H, 2008, Villanova University., Villanova Law Review, U.S. Navy Torpedoes NEPA: Winter v. Natural Resources Defense Council May Sink Future Environmental Pleas Brought under the National Environmental Policy Act,1/1/10 <http://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=1035&context=elj>,

The Winter holding has shown the significance of national security interests when the Court exercises discretion in deciding to fashion equitable relief.175 The Court also expressly set, and arguably raised, the bar for a requisite showing of irreparable harm to obtain a preliminary injunction for NEPA actions.176 Although narrow, the Court's decision is binding upon all courts, and thus may affect all NEPA claims brought in the lower courts. A. Weight of National Security The Winter majority demonstrated the importance of national security for both the public interest and for the Navy's interest in effectively trained sailors. 177 Although the Court discounts neither the public's environmental interest nor the effect of denying the preliminary injunction on the NRDC's interests, the majority's focus on national security serves as the Court's justification for finding an abuse of discretion by the lower courts in fashioning equitable relief, and it may be used persuasively in future cases. 178 Potential national security arguments in future cases could appeal to the Winter rationale, serving as a proverbial trump card. Courts could distinguish Winter on its narrow scope or on the facts. The Ninth Circuit distinguished Winter six months later in Internet Specialties West, Inc. v. Milon-DiGiorgio Enterprises, Inc.,179 a case dealing with trademark issues, which affirmed an injunction despite an appeal to Winters heavy public interest factor.' 80 The weight of the national security argument, however, has not yet been disturbed and may **weaken pleas for environmental protection under NEPA** if these NEPA claims will infringe military activities or other actions relating to national security. 81 NEPA and the environment may fall victim to this appeal to the national security interest. B. Raising the Irreparable Harm Bar NEPA plaintiffs seeking relief in the form of a preliminary injunction have an increased burden after Winter.'82 The relaxed standard for irreparable harm for NEPA claims, as **established in previous cases**, appears to have been set to the ordinary requisite level of establishing a likelihood of irreparable harm.183 The District Court for the Northern District of California in Save Strawberry Canyon v. Department of Energy (Strawberry Canyon),184 however, distinguished Winter and issued injunctive relief for the plaintiff.1 85 The Strawberry Canyon court found that Winter only addressed one of the two prongs of the preliminary injunction standard as established by the Ninth Circuit prior to Winter-the likelihood of success on the merits and possibility of irreparable harm prong.186 The Supreme Court in Winter neglected, according to Strawberry Canyon, to address the second prong: "A preliminary injunction is appropriate when a plaintiff demonstrates... that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor.' 87 The Winter holding, therefore, might not preclude injunctive relief where the plaintiff cannot show a likelihood of success on the merits, but can show irreparable injury is likely and imminent and demonstrates serious meritorious issues with a favorable balancing of the hardships.188 While this holding allows plaintiffs to obtain injunctive relief without showing a likelihood of success on the merits, it still requires a showing of a likelihood of irreparable harm.189 The Winter likelihood standard may continue to impose an increased burden for NEPA plaintiffs seeking relief via equitable remedies. 190 The Winter holding also forecloses relief for NEPA plaintiffs who have difficulty establishing likelihood of irreparable harm, or any degree of irreparable harm acceptable in court.191 For NEPA's and the environment's sake, hopefully the Winter holding continues to remain narrow and tailored to the Navy's particular interest in antisubmarine warfare training in California, other significant military operations and activities, or when national security is truly and directly at issue. Finally, to meet the Court's seemingly established likelihood standard of irreparable harm for all NEPA claims, future NEPA plaintiffs must meet a higher burden of proof in litigation before the courts

#### 6. Plan solves space weapons – solves U.S. Russia war

Scheetz 6 (Lori – J.D. Candidate, Georgetown University Law Center, Cites Thomas Graham Jr. – Former Acting Director of the U.S Arms Control and Disarmament Agency, “Infusing Environmental Ethics into the Space Weapons Dialouge”, Georgetown International Environmental Law Review, Fall, 19 Geo. Int'l Envtl. L. Rev. 57, lexis)

Proponents of weaponizing space focus on American military dependence on space and a sense of increasing danger of a ballistic missile attack. n24 Supporters argue that space weapons might be able to address threats from small, enemy satellites, n25 ground-based anti-satellite weapons, n26 and high altitude nuclear explosions. n27 With the growing concern in the United States over terrorists and unfriendly nations, weaponizing space to bolster U.S. national security is close to becoming a reality. Furthermore, the 2005 report of the Presidential Commission on the Future of Space Exploration, ("Aldridge Commission Report"), focuses on the commercialization of space. n28 Space weapons could be used to protect these new commercial interests, along with providing diplomatic leverage and creating offensive potential from space. n29 Many in the arms control community, on the other hand, believe that space weapons will destabilize the global community and promote a costly arms race. n30 Emphasizing the destabilizing consequences of space weapons, Thomas Graham Jr. asserts that, because American missile interceptors in space could quickly wipe out Russian early warning satellites, the mere existence of these weapons will escalate tension between the two countries and place Russia on constant alert. One false signal from an early warning satellite could lead to a Russian nuclear strike. n31 Moreover, weaponization of space might not significantly reduce American vulnerability to attack because most weapons systems will depend on ground facilities and radio links, which can be attacked through electronic hacking and jamming. n32 The actual weaponry based in space is also susceptible to attack. n33 Only a few scholars have focused on the potential impact of space weapons on the quality of the space environment. Space is characterized by transparency, [\*63] fragility, and the ability to hold orbital debris for longer periods of time. As a result, testing, deployment, and use of space weapons could result in irreparable harm. n34 Placing environmental concerns in the thick of the space weapons debate and establishing restrictions on testing and deployment of space weapons are critical for the future quality of the environment in space and on Earth.

#### 7. Weyand says environment regulations key to our allies -

#### Alliances prevent nuclear war.

**Ross**, Winter 1998/**1999** (Douglas – professor of political science at Simon Fraser University, Canada’s functional isolationism and the future of weapons of mass destruction, International Journal, p. lexis)

Thus, an easily accessible tax base has long been available for spending much more on international security than recent governments have been willing to contemplate. Negotiating the landmines ban, discouraging trade in small arms, promoting the United Nations arms register are all worthwhile, popular activities that polish the national self-image. But they should all be supplements to, not substitutes for, a proportionately equitable commitment of resources to the management and prevention of international conflict – and thus the containment of the WMD threat. Future American governments will not ‘police the world’ alone. For almost fifty years the Soviet threat compelled disproportionate military expenditures and sacrifice by the United States. That world is gone. Only by enmeshing the capabilities of the United States and other leading powers in a co-operative security management regime where the burdens are widely shared does the world community have any plausible hope of avoiding **warfare involving nuclear or other WMD**.

#### DB – results in the plan and links to disad or doesn’t solve broader CS

### Citizen Suits L to Ptx

**CP causes the court to re-hash the standing fight over climate**

**Gerrard 11** (Michael B. Gerrard, Director, Center for Climate Change Law, TODAY’S SUPREME COURT DECISION IN AEP V. CONNECTICUT, June 20, 2011, http://blogs.law.columbia.edu/climatechange/2011/06/20/todays-supreme-court-decision-in-aep-v-connecticut/)

“The petitioners contend that the federal courts lack authority to adjudicate this case. Four members of the Court would hold that at least some plaintiffs have Article III standing under Massachusetts, which permitted a State to **challenge** EPA’s refusal to regulate **greenhouse gas emissions**; and further, that no other threshold obstacle bars review. Four members of the court, adhering to a dissenting opinion in Massachusetts, or regarding that decision as distinguishable, would hold that none of the plaintiffs have Article III standing. We therefore affirm, by an equally divided Court, the Second Circuit’s exercise of jurisdiction and proceed to the merits.” Though unnamed in the opinion, clearly the four justices who **find standing**, and no other obstacles to review, are Ginsburg, Breyer, Kagan and Kennedy. The four who disagree are Roberts, Scalia, Thomas and Alito. (Thomas and Alito filed a concurrence casting doubt on Massachusetts; it’s interesting that neither Roberts nor Scalia joined.) The Ginsburg group thus apparently rejects the political question defense as well as the standing argument. Sotomayor was recused from this case because she was on the Second Circuit panel in the AEP case; should another case come up on which she wasn’t recused, there would apparently be a 5-4 majority to allow climate change nuisance litigation, but for the Clean Air Act displacement. On the other hand, I read the above-quoted paragraph (when considered in conjunction with Massachusetts) to say that **Justice Kennedy** may believe that **only states** would have standing. Thus there might be a **5-4 majority** against any kinds of GHG **nuisance claims** (and maybe other kinds of GHG claims) by non-states.

#### Spills over – changes the collegial atmosphere of the court

**Adler 9** (Jonathan H. Adler, Professor of Law and Director of the Center for Business Law and Regulation, Case Western Reserve University School of Law, “Law Review Symposium 2009: Standing Still In The Roberts Court,” Summer 2009, Case Western Reserve Law Review, 59 Case W. Res. 1061)

Yet the **Roberts Court** is hardly of one mind concerning standing. Four cases in particular **reveal sharp divisions** among the Justices on the application of Article III standing's requirements. Massachusetts v. EPA, n71 Sprint Communications Co. v. APCC Services, Inc., n72 Hein v. Freedom from Religion Foundation, Inc., n73 and Summers v. Earth Island Institute n74 were all 5-4 decisions. In two of these cases, Massachusetts and Sprint, the Court found Article III standing; in the other two it did not. The breakdown among the Justices remained consistent across these cases, with the Court's four most liberal Justices consistently voting to approve standing claims and the four most conservative Justices consistently in opposition. Only Justice Anthony **Kennedy** was in the Court's majority in all four cases, sometimes writing separately to qualify his position. n75 Here, as in other areas, Justice Kennedy is the median Justice whose views determine the outcome in close cases. n76 [\*1071] The **most consequential** standing case of the Roberts Court thus far **is Massachusetts** v. EPA. n77 Indeed, Massachusetts is among the most consequential cases decided by the Roberts Court on any issue. Massachusetts loosened the requirements for Article III standing to challenge federal regulatory actions, both for state litigants and others seeking to allege agency failure to comply with relevant statutory requirements. More than any other, this case altered preexisting standing doctrine, and did so in favor of those seeking to invoke the jurisdiction of federal courts. At issue in Massachusetts were whether the Environmental Protection Agency ("EPA") had the authority to regulate carbon dioxide and other greenhouse gases as "pollutants" under the Clean Air Act and, if so, whether the EPA had properly declined to exercise such authority in rejecting a rulemaking petition submitted by several states and environmentalist groups. Massachusetts and the other petitioners sought to force the EPA to regulate greenhouse gas emissions from new motor vehicles under Section 202 of the Act so as to mitigate the threat of global warming. Yet before it could approve the petitioners' claims, the Court had to first assure itself that at least one had Article III standing. **Climate change** presents an interesting standing challenge. The Court has long held that federal courts lack jurisdiction to hear "generalized grievance[s]" that are "'common to all members of the public.'" n78 Thus, an Article III court lacks the jurisdiction to hear a naked claim that a government agency has failed to violate some provision of the law or, as noted above, that some portion of the federal Treasury was appropriated for an illegal purpose. Invoking the power of federal courts requires something more. In particular, it requires something that connects the allegedly wrongful act to a distinct harm suffered by the litigant. At first blush, the general bar on hearing "generalized grievances" would seem to preclude hearing a claim predicated on an injury derived from a gradual warming of the Earth's atmosphere. By definition, global climate change is a global phenomenon. The emission of greenhouse gases from motor vehicles in the United States or anywhere else contributes to global atmospheric [\*1072] concentrations of greenhouse gases that, in turn, have an effect on the global climate. The alleged harms from any resulting global warming would be visited upon the globe, a conclusion that would seem to preclude the existence of a "case or controversy" fit for judicial resolution under Article III. n79 Much like an individual taxpayer could not claim a judicially cognizable injury from the misuse of funds in the federal Treasury, an individual citizen of the planet could not claim a judicially cognizable injury from a slight alteration of the planetary thermostat. At the very least, a prospective plaintiff would have to identify an actual or imminent harm to a specific legally-protected interest resulting from such changes. Such attribution is very difficult. This is not to deny or disparage the potential consequences from climate change, but only to recognize the difficulty of finding a distinct, particularized injury resulting from global environmental phenomena. The Commonwealth of Massachusetts sought to establish the requisite injury by focusing the Court's attention on a specific potential consequence of global warming: sea-level rise. n80 Massachusetts submitted affidavits asserting that anthropogenic emissions of greenhouse gases, by contributing to global warming, increase the threat of global sea-level rise that would flood some portion of Massachusetts's coast. n81 These affidavits noted that a modest rise in sea-level had occurred over the course of the twentieth century--albeit some of which was due to natural causes--and estimated the future sea-level rise that could result if anthropogenic emissions of greenhouse gases continue unabated. n82 The focus on sea-level rise simplified the Court's inquiry, but it did not make the standing concern go away. An "injury-in-fact" must be both actual or imminent and concrete and particularized. n83 Therein lied a potential rub. Demonstrating that the injury from climate change satisfied one prong of this standard would necessarily make it more difficult to satisfy the other. Insofar as anthropogenic emissions of greenhouse gases have already warmed the atmosphere, it is exceedingly difficult (if not impossible) to identify specific environmental changes that have occurred as a result of the human contribution to climatic warming with any degree of certainty. Identifying specific harms that will (or are at least quite likely to) [\*1073] occur in specific places requires a resort to computer models that seek to project likely impacts from the human contribution to global warming in the decades ahead. So the injury is made concrete and particularized at the expense of its imminence. Again, this is not to deny the existence of anthropogenic global warming, but only to recognize that climate scientists have not yet been able to attribute specific environmental phenomena in specific places to human contributions to global warming, and this complicates efforts to demonstrate Article III standing. In order to show that its injury was concrete and particularized, Massachusetts focused on sea-level rise, as the loss of **state sovereign** territory would certainly be a tangible harm of the sort Article III demands. Yet as already suggested, the problem for Massachusetts was that in order to identify a specific loss of its own land from human-induced global warming with any particularity, it was forced to rely upon model projections far into the future. Specifically, Massachusetts focused on the potential loss of coastline due to sea-level rise "by 2100." n84 Focusing on this sort of future injury enabled Massachusetts to identify a specific harm particular to it, but at the expense of its ability to claim any such harm was occurring here and now, and was thus "actual or imminent" as the Court's interpretation of Article III requires. Under the pre-existing case law, assertion of a future injury would not suffice. Yet had Massachusetts focused on the effects of greenhouse gas emissions already underway, it would have been forced to assert injury from a modest change in global atmospheric temperature, and little else. n85 Doing so would have meant abandoning any claim that the injury Massachusetts suffered was concrete and particular to its interests as a state. While purporting to adhere to the traditional test for standing articulated in Lujan v. Defenders of Wildlife, n86 the Court took two steps to ease Massachusetts's legal burden, each of which constitutes a potentially significant change in the law of standing. n87 First, and most conspicuously, the **Court declared** that it was "of **considerable** [\*1074] **relevance"** that the **petitioner was "a sovereign State and not**, as it was in Lujan, a **private individual**." n88 This was relevant because "[s]tates are not normal litigants for the purposes of invoking federal jurisdiction." n89 Having ceded a portion of their sovereign authority to the federal government, the Court announced, the Commonwealth of Massachusetts and other states were entitled to "special solicitude" when seeking to invoke the jurisdiction of federal courts. n90 With this newfound solicitude "in mind," the Court had little difficulty concluding that a miniscule increase in sea-level rise satisfied the injury-in-fact requirement. n91 The majority purported to justify its newfound "special solicitude" for states in Georgia v. Tennessee Copper Co., n92 a century-old case in which the state of Georgia brought a federal common law nuisance suit against a polluting factory from across the border in Tennessee. n93 This case had nothing to do with standing, however. Rather, it was a suit under the federal common law of interstate nuisance--a suit of the sort that would almost certainly be preempted today under the Clean Air Act. n94 The only "special solicitude" shown to Georgia in [\*1075] the case was the Court's willingness to consider providing Georgia with equitable relief of the sort unavailable to private parties under federal common law due to the state's "quasi-sovereign" interest in its territory. n95 Yet it is one thing to hold that one state cannot foul the air of its neighbor and that state parties can pursue extraordinary equitable relief in federal court. It is quite another to maintain that a state's ability to vindicate such a claim on behalf of its citizens gives rise to a "special solicitude" when a state sues in federal court to invoke the regulatory apparatus of administrative agencies. On any fair reading, Georgia v. Tennessee Copper provides little, if any, support to the majority's newfound doctrine of "special solicitude." This may explain why the case was not cited in Massachusetts's briefs. Indeed, the case was not cited in any brief filed by any party or amicus in the case. n96 While one brief filed by state amici did argue that states have special interests that should be taken into consideration as part of the standing analysis, it focused on the potential for federal law to preempt state regulatory initiatives. n97 [\*1076] Even those who believe states should receive such consideration recognize the Court's reasoning on this point was quite confused. n98 Recognizing a "special solicitude" for sovereign states was the Massachusetts Court's first revision to the law of standing. Its expansion of what constitutes a "procedural right" that would justify relaxing the traditional standing requirements of causation and redressability was the second. According to the Court, it was "of critical importance" that Congress had "authorized this type of challenge to EPA action." n99 As the Court had noted in Lujan, the "normal standards for redressability and immediacy" are relaxed when a statute vests a litigant with "procedural rights." n100 This is because, as **Justice Kennedy** explained in Lujan, "'Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before.'" n101 **However,** as the Massachusetts Court noted (again citing Justice Kennedy's Lujan concurrence), "'In exercising this power . . . Congress must at the very least identify the injury it seeks to vindicate and relate the injury to the class of persons entitled to bring suit.'" n102 Therefore, the Court could relax the "normal standards for redressability and immediacy" so long as Congress identified the injury it sought to vindicate and the related the injury to those entitled to bring suit. Yet Congress never did anything of the kind. The only congressional enactment cited by the Court as a justification for easing standing's traditional redressability and immediacy requirements was Section 307(b)(1) of the Clean Air Act. Here, according to the Court, is where Congress had "authorized this type of challenge to EPA action." This was an innovative reading of the Clean Air Act. Up until Massachusetts, Section 307(b)(1) had been recognized as little more than a jurisdictional provision, identifying which petitions for review of EPA action under the Clean Air Act must be filed in the U.S. Court of Appeals for the D.C. [\*1077] Circuit as opposed to regional circuit courts of appeals. n103 By its terms, this provision does not create a new procedural right, let alone "identify" an injury and "relate the injury to the class of persons entitled to bring suit." n104 The underlying right to review agency action is found in the Administrative Procedure Act, not Section 307 of the Clean Air Act. n105 Indeed, the Clean Air Act contains a citizen suit provision of its own that is virtually identical in every meaningful respect to the Endangered Species Act provision found not to create such a right in Lujan. n106 In Lujan, the Court held that the Endangered Species Act's conferral of the right of "'any person . . . to enjoin'" any federal agency "'alleged to be in violation'" of the Act was insufficient to create a procedural right, the violation of which would satisfy the requirements of standing. n107 Such a provision, **Justice Kennedy** explained, "**does not** of its own force establish that there is an injury in **'any person'** by virtue of **any 'violation**.'" n108 Yet if this is so, it is hard to conceive how a jurisdictional provision such as Section 307, which by its own terms does not impose any obligations on the EPA nor confer any express rights, does anything more to establish the existence of a judicially-cognizable injury. If the Court is to be taken at its word, Massachusetts effects a remarkable shift in administrative law by greatly expanding the class of statutes that should now be recognized as the source of procedural rights that justify loosening the causation and redressability requirements for standing. n109

#### Also links to warfighting – your Palatucci ev

## Warfighting

### Armed Forces Thumper – 2AC

#### Obama will continue to consult for military actions – takes out the link

Rothkopf 13

[David, CEO and editor at large of Foreign Policy, The Gamble, 8/31/13, <http://www.foreignpolicy.com/articles/2013/08/31/the_gamble?page=0,1>]

Whatever happens with regard to Syria, the larger consequence of the president's action will resonate for years. The president has made it highly unlikely that at any time during the remainder of his term he will be able to initiate military action without seeking congressional approval. It is understandable that many who have opposed actions (see: Libya) taken by the president without congressional approval under the War Powers Act would welcome Obama's newly consultative approach. It certainly appears to be more in keeping with the kind of executive-legislative collaboration envisioned in the Constitution. While America hasn't actually required a congressional declaration of war to use military force since the World War II era, the bad decisions of past presidents make Obama's move appealing to the war-weary and the war-wary. But whether you agree with the move or not, it must be acknowledged that now that Obama has set this kind of precedent -- and for a military action that is exceptionally limited by any standard (a couple of days, no boots on the ground, perhaps 100 cruise missiles fired against a limited number of military targets) -- it will be very hard for him to do anything comparable or greater without again returning to the Congress for support. And that's true whether or not the upcoming vote goes his way. 4. This president just dialed back the power of his own office. Obama has reversed decades of precedent regarding the nature of presidential war powers -- and whether you prefer this change in the balance of power or not, as a matter of quantifiable fact he is transferring greater responsibility for U.S. foreign policy to a Congress that is more divided, more incapable of reasoned debate or action, and more dysfunctional than any in modern American history. Just wait for the Rand Paul filibuster or similar congressional gamesmanship. The president's own action in Libya was undertaken without such approval. So, too, was his expansion of America's drone and cyber programs. Will future offensive actions require Congress to weigh in? How will Congress react if the president tries to pick and choose when this precedent should be applied? At best, the door is open to further acrimony. At worst, the paralysis of the U.S. Congress that has given us the current budget crisis and almost no meaningful recent legislation will soon be coming to a foreign policy decision near you. Consider that John Boehner was instantly more clear about setting the timing for any potential action against Syria with his statement that Congress will not reconvene before its scheduled September 9 return to Washington than anyone in the administration has been thus far. Perhaps more importantly, what will future Congresses expect of future presidents? If Obama abides by this new approach for the next three years, will his successors lack the ability to act quickly and on their own? While past presidents have no doubt abused their War Powers authority to take action and ask for congressional approval within 60 days, we live in a volatile world; sometimes security requires swift action. The president still legally has that right, but Obama's decision may have done more -- for better or worse -- to **dial back the imperial presidency than anything his predecessors or Congress have done for decades.**

#### AND the decision to consult on Syria killed resolve

Gaouette 13

[Nicole, Bloomberg/Businessweek, Obama’s Decision Stirs Doubts About America’s Resolve, 3/1/13, <http://www.businessweek.com/news/2013-09-01/obama-s-decision-reverberates-as-global-critics-sense-weakness>]

President Barack Obama’s decision to seek congressional authority to attack Syria for alleged chemical weapons use has dismayed friends, delighted foes and prompted criticism that he’s undermined U.S. credibility. In Syria, where President Bashar al-Assad learned the tactics of brute force from his father, Hafez, state-controlled media hailed the start of a “historic American retreat.” Syrian deputy foreign minister Fayssal Mekdad told reporters in Damascus yesterday that, “The hesitation and the disappointment is so obvious in the words of President Obama yesterday. The confusion was clear, as well.” “The regime people are taking great comfort from this,” said Joshua Landis, director of the Center for Middle East Studies at Oklahoma University in Norman, Oklahoma. “They see it as a sign of Obama’s weakness, that he doesn’t really want to hurt them or get involved.” In 1982, the elder Assad killed as many as 30,000 people in the city of Hama to squelch a Muslim Brotherhood uprising. His brutality gave rise to a Syrian joke about the Angel of Death bringing judgment to Hafez al-Assad, only to have Syria’s secret police return him to God battered, bruised and empty-handed. Now one possible immediate, unintended consequence of Obama’s move to Congress is that Assad “retaliates with an even more brutal crackdown in civilian areas where the opposition is operating,” said Sean Kay, director of the international relations program at Ohio Wesleyan University in Delaware, Ohio. “The red line has been chemical weapons; he might see that as a green light for conventional weapons.” Democracy Example Still Kay and Landis were among analysts who defended Obama’s decision, even if it’s perceived as indecisive in the Middle East and among Obama’s domestic critics. “Critics will say this signals weakness, that America doesn’t have resolve,” Kay said. “It’s a pretty important thing for the U.S. to demonstrate to the region respect for democratic procedures.”

### Prez Powers (General) DA – 2AC

#### 1. Plan doesn’t affect all power – the president will do what he wants absent direct prohibition

Marshall 08

[William, Kenan Professor of Law, University of North Carolina, Eleven Reasons Presidential Power Inevitably Expands and Why It Matters, 2008,

<http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf>]

The first and perhaps overarching reason underlying the growth of presidential power is that the constitutional text on the subject is notoriously unspecific, allowing as one writer maintains, for the office “to grow with the developing nation.”19 Unlike Article I, which sets forth the specific powers granted to Congress,20 the key provisions of Article II that grant authority to the President are written in indeterminate terms such as “executive power,”21 or the duty “to take care that the laws be faithfully executed.”22 Moreover, unlike the other branches, the Presidency has consistently been deemed to possess significant inherent powers.23 Thus, many of the President’s recognized powers, such as the authority to act in times of national emergency24 or the right to keep advice from subordinates confidential,25 are nowhere mentioned in the Constitution itself. In addition, case law on presidential power is underdeveloped. Unlike the many precedents addressing Congressional26 or federal judicial27 power, there are remarkably few Supreme Court cases analyzing presidential power. And the leading case on the subject, Youngstown Sheet & Tube Co. v. Sawyer, 28 is known less for its majority opinion than for its concurrence by Justice Jackson, an opinion primarily celebrated for its rather less-than-definitive announcement that much of presidential power exists in a “zone of twilight.”29 Accordingly, the question whether a President has exceeded her authority is seldom immediately obvious because the powers of the office are so openended.30 This fluidity in definition, in turn, allows presidential power to readily expand when factors such as national crisis, military action, or other matters of expedience call for its exercise.31 Additionally, such fluidity allows political expectations to affect public perceptions of the presidential office in a manner that can lead to expanded notions of the office’s power.32 This perception of expanded powers, in turn, can then lead to the perceived legitimacy of the President actually exercising those powers. Without direct prohibitions to the contrary, expectations easily translate into political reality.33

#### 2. Court rules against executive now

Wong 13 -- PhD dissertation in Government to Georgetown University (U Jin, 4/22/2013, "THE BLANK CHECK: SUPREME COURT DECISION - MAKING IN NATIONAL SECURITY CLAIMS AND DURING WARTIME," http://repository.library.georgetown.edu/bitstream/handle/10822/558286/Wong\_georgetown\_0076D\_12276.pdf?sequence=1)

This study started out with two questions. The first was: ?Does war influence judicial decision - making?? The second was: ?Do **national security** claims influence judicial decision - making?? The answer to the first question is: In a general hypothetical s ignificant war, there is a **statistically significant finding** of voting against the government. In the models run using the Spaeth database where the government is a party, the influence of all significant wars on judicial decision - making generally was to vote against the government. Presidential approval ratings are statistically significant only in wartime, but with a positive coefficient. Outside of wartime, presidential approval ratings are not statistically likely to influence Supreme Court behavior. This result suggests that while Courts vote strategically and support a popular president, they are still statistically likely to find against the government in a significant war. These findings altogether suggest that that the Supreme Court votes strat egically with an eye towards the popularity of the president, but revert to skepticism of government‘s wartime claims as the war progresses. The answer to the second question is: National security claims brought by the government achieve a **statistically significant likelihood** that the Supreme Court will vote against the government. National security claims were statistically significant with a negative signifier. **This finding is consistent across all the major wars as well as peacetime**. It also suggest s that the Supreme Court generally is not predisposed to defer to the executive branch‘s arguments when it comes to national security claims

#### 3. Fisa thumps the DA

WSJ 13 – Wall Street Journal, “The Absent Commander in Chief”, 6/16/13 <http://online.wsj.com/article/SB10001424127887324188604578545233232040760.html>

Even an effort by Mr. Obama to lead from behind would be better than this abdication. The President's mistake seems to be a combination of moral afflatus—how could anyone possibly imagine that he would abuse government power?—and treating the current furor as a law school seminar. The political danger is a lot greater than that. A real and growing risk is that Congress will move in a way that limits the war powers of the Commander in Chief and endangers national security. To take one example, support seems to be growing for Senate legislation from Democrats Ron Wyden and Jeff Merkley of Oregon and Republican Mike Lee of Utah that would require the declassification of certain legal opinions from the oversight court under the Foreign Intelligence Surveillance Act, or FISA. This infringes on executive power because the President has traditionally defined what is secret, especially in times of war.

#### 4. Plan allows for better executive decision making

Wells 04(Christina, Prof of law @ U of Missouri – Columbia, Missouri Law Review, Fall)

The psychology of accountability further suggests that opponents of deference are correct to push for more rigorous judicial review. Psychologists describe the phenomenon of accountability as the expectation that one may have to justify one's actions as sufficiently compelling or face negative consequences. Research shows that people who know they will be accountable reach better-reasoned decisions and avoid many of the problems that lead to skewed risk assessment. **Judicial review**, with its requirement that officials explain and justify their infringement of civil liberties, **can serve as a mechanism of accountability**, **thus improving executive branch decision making in times of crisis**. Furthermore, the contextual nature of civil liberties cases suggests that judicial review may be a necessary aspect of executive accountability.

#### 5. No link – plan only affects one issue that is not central to Obama’s presidential powers – make them read a card that says the plan prevents Obama from using executive power in other instances

#### 6. Alt cause – informal checks

Mansfield 11

[Harvey, NYT, Is the Imperial Presidency Inevitable?, 3/11/11, <http://www.nytimes.com/2011/03/13/books/review/book-review-the-executive-unbound-by-eric-a-posner-and-adrian-vermeule.html?pagewanted=all&_r=0>]

But as Posner and Vermeule develop their argument, Schmitt fades away, and is replaced by an incongruous reliance on the rational actors of game theory. The two authors mean to show that although the formal separation of powers no longer has effect, the president as a rational actor is still constrained through public opinion and politics; even a strong executive needs to appear bipartisan and to worry about popularity ratings. So there is no solid reason to fear executive tyranny, and we should feel free to enjoy the benefits of the administrative state. Posner and Vermeule rest their argument on necessity, on what could not be otherwise. History and social science, they say, prove that under modern conditions the administrative state is the only way for the nation to meet the challenges it faces. But their analysis also shows that informal checks remain necessary: the calculations and political maneuvering presidents engage in to retain their credibility replace the formal checks Madison described. Thus the Constitution is false but works anyway.

#### 7. Limits on prez powers solve global nuclear war

Sloane 08

[Robert, Associate Professor of Law, Boston University School of Law, THE SCOPE OF EXECUTIVE POWER IN THE TWENTYFIRST CENTURY: AN INTRODUCTION, 2008, <http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/SLOANE.pdf>]

There is a great deal more constitutional history that arguably bears on the scope of the executive power in the twenty-first century. But it is vital to appreciate that the scope of the executive power, particularly in the twenty-first century, is not only a constitutional or historical issue. As an international lawyer rather than a constitutionalist, I want to stress briefly that these debates and their concrete manifestations in U.S. law and policy potentially exert a profound effect on the shape of international law. Justice Sutherland’s sweeping dicta in United States v. Curtiss-Wright Export Corp., that the President enjoys a “very delicate, plenary and exclusive power . . . as the sole organ of the federal government in the field of international relations – a power which does not require as a basis for its exercise an act of Congress,”52 has been (correctly, in my view) criticized on a host of grounds.53 But in practice, in part for institutional and structural reasons,54 it accurately reflects the general preeminence of the President in the realm of U.S. foreign affairs. Because of the nature of the international legal and political system, what U.S. Presidents do and say often establish precedents that strongly influence what other states do and say – with potentially dramatic consequences for the shape of customary international law. The paradigmatic example is the establishment of customary international law on the continental shelf following the Truman Proclamation of September 28, 1945,55 which produced an echo of similar claims and counterclaims, culminating in a whole new corpus of the international law of the sea for what had previously been understood only as a geological term of art.56 Many states took note, for example, when in the 2002 National Security Strategy of the United States (“NSS”), President Bush asserted that the United States had the right under international law to engage in preventive wars of self-defense.57 While, contrary to popular belief, the United States never in fact formally relied on that doctrine in practice, many would argue that President Bush de facto exercised this purported right when he initiated an armed conflict with Iraq based on claims, which have since proved unfounded, about its incipient programs to develop catastrophic weapons. The 2006 NSS notably retreats from the 2002 NSS’s robust claims of a right to engage in preventive wars of self-defense.58 Yet even within this brief, four-year period, an astonishing number of other states have asserted a comparable right to engage in preventive self-defense. These include not only states that the United States has described as “rogue states,” such as North Korea and Iran, but Australia, Japan, the United Kingdom, China, India, Iran, Israel, Russia, and (though technically not a state) Taiwan.59 I doubt we will welcome the consequences of this pattern for the evolving jus ad bellum of the twenty-first century. Equally, after President Bush's decision to declare a global war on terror or terrorism - rather than, for example, the Taliban, al-Qaeda, and their immediate allies - virtually every insurgency or disaffected minority around the world, including peoples suffering under repressive regimes and seeking to assert legitimate rights to liberty and self-determination, has been recharacterized by opportunistic state elites as part of the enemy in this global war. n60 The techniques employed and justified by the United States, including the resurrection of rationalized torture as an "enhanced interrogation technique," n61 likewise have emerged - and will continue to emerge - in the [\*351] practice of other states. Because of customary international law's acute sensitivity to authoritative assertions of power, the widespread repetition of claims and practices initiated by the U.S. executive may well shape international law in ways the United States ultimately finds disagreeable in the future. So as we debate the scope of the executive power in the twenty-first century, the stakes, as several panelists point out, could not be higher. They include more than national issues such as the potential for executive branch officials to be prosecuted or impeached for exceeding the legal scope of their authority or violating valid statutes. n62 They also include international issues like the potential use of catastrophic weapons by a **rogue regime asserting a right to engage in preventive war;** **the deterioration of international human rights norms against practices like torture**, norms which took years to establish; and the atrophy of genuine U.S. power in the international arena, which, as diplomats, statesmen, and international relations theorists of all political persuasions appreciate, demands far more than the largest and most technologically advanced military arsenal. In short, what Presidents do, internationally as well as domestically - the precedents they establish - may affect not only the technical scope of the executive power, as a matter of constitutional law, but **the practical ability of future Presidents to exercise that power** both at home and abroad. We should candidly debate whether terrorism or other perceived crises require an expanded scope of executive power in the twenty-first century. But it is dangerous to cloak the true stakes of that debate with the expedient of a new - and, in the view of most, indefensible - "monarchical executive" theory, which claims to be coextensive with the defensible, if controversial, original Unitary Executive theory. n63 We should also weigh the costs and benefits of an expanded scope of executive power. But it is vital to appreciate that there are costs. They include not only short-term, acute consequences but long-term, systemic consequences that may not become fully apparent for years. In fact, the exorbitant exercise of broad, supposedly inherent, executive powers may well - as in the aftermath of the Nixon administration - culminate in precisely the sort of reactive statutory constraints and de facto diplomatic obstacles that proponents of a robust executive regard as misguided and a threat to U.S. national security in the twenty-first century.

#### Deference hurts counter-terror intelligence

Moshirnia 13 -- JD @ Harvard Law School; PhD in Informational Technology @ University of Kansas (Andrew V., 2013, "Valuing Speech and Open Source Intelligence in the Face of Judicial Deference," Harvard Nat'l Security Journal, Vol 4, http://harvardnsj.org/wp-content/uploads/2013/05/Vo.4-Moshirnia-Final.pdf)

It would seem, then, that the Court damaged established First Amendment doctrine in order to arrive at a possible military advantage. But this sacrifice of jurisprudential clarity for some imagined military necessity is coun terproductive. The great irony of the majority’s action is that by willfully deviating from strict scrutiny, the Court managed to protect a statute likely to chill OSINT and harm the war effort. The chilling of valuable OSINT will hamper intelligence effor ts.

#### Open-source intel k2 fight al-Qaeda – solves terror & mitigates prolif

Moshirnia 13 -- JD @ Harvard Law School; PhD in Informational Technology @ University of Kansas (Andrew V., 2013, "Valuing Speech and Open Source Intelligence in the Face of Judicial Deference," Harvard Nat'l Security Journal, Vol 4, http://harvardnsj.org/wp-content/uploads/2013/05/Vo.4-Moshirnia-Final.pdf)

While the failure to predict the arrival of a new nuclear power was an embarrassment, intelligence failures take on a much greater urgency when placed in the terr orism context. Intelligence analysts have repeatedly noted that OSINT is vital in the war on terror, primarily due to the diffuse nature of the terrorist threat and America’s reliance on multiple international allies. 40 Stephen Mercado, a CIA analyst, noted that OSINT or overt intelligence, often betters covert intelligence in speed , quantity, quality, clarity, ease of use, and affordability. 41 Furthermore, Mercado “maintain[s] that OSINT often equals or surpasses secrets in addressing such intelligence challenges . . . as proliferation, terrorism, and counterintelligence.” 42 This is especially true as “[i]t is virtually impossible to penetrate a revolutionary terrorist organization, particularly one structured and manned t he way al - Qa`ida is.” 43 Instead, we must rely “on the intelligence community’s overt collectors and analysts.” 44 The use of OSINT in the fight against al - Qaeda is especially important in light of the technological versatility of that organization. The as - S ahab institute, al - Qaeda’s complex multimedia production and Internet - based messaging wing, provides an “example of why open source collection and analysis is so important in today’s technology - driven and globalized world.” 45 Al - Qaeda’s use of I nternet chan nels limits detection by conventional intelligence gathering, allowing it to plot with relative impunity. Furthermore, al - Qaeda’s rapid adoption of new technologies is well known , 46 reinforcing our own need to implement f lexible intelligence strategies, bas ed in large part on open resources. In the words of one intelligence official, “[ o pen source information] is no longer the icing on the cake, it is the cake itself.” 47 It makes little sense to stem the flow of this valuable strategic resource in the name of greater security.

### AT Rogue States

#### We solve the impact to rogue states -- soft power and legitimacy help incorporate them into the international order

#### Says president k2 striking rogue states, not solving them -- if anything striking escalates the conflicts your impact ev references

#### Too late -- North Korea, Israel and Iran already have nukes -- accidental conflict is inevitable -- we won't strike all of them

#### Proliferation create alliances to contain rogue threats

Mueller, 2009 (John – Woody Hayes chair of national security studies at Ohio State University, Atomic Obsession, p. 97-99)

Proliferation alarmists (a category which seems to embrace almost the totality of the foreign policy establishment) may occasionally grant that countries principally obtain a nuclear arsenal to counter real or perceived threats, but many go on to argue that the newly nuclear country will then use its nuclear weapons to dominate the area. It was in this spirit that John Kennedy grandly prophesied in the early 1960s that from the moment the Chinese obtained a bomb, the “would dominate South East Asia” and “so upset the world political scene” that it would become “intolerable.”25 Such warnings have persisted, focused variously on other posited demons. The domination argument was repeatedly used with dramatic urgency by many for the dangers supposedly posed by Saddam Hussein in Iraq, and it is now being dusted off and applied to Iran. Thus, in the run-up to his 2003 war against Saddam Hussein’s Iraq, President George W. Bush insisted that a nuclear Iraq “would be in a position to dominate the Middle East,” even as Senator John McCain contended that a nuclear Saddam “would hold his neighbors and us hostage.” Later, Bush maintained that a nuclear Iran would become “the predominant state in the Middle East,” lording it over its neighbors.26 Exactly how this domination business is to be carried out is never made very clear. The United States possesses a tidy array of thousands of nuclear weapons and for years had difficulty dominating downtown Baghdad-or even keeping the lights on there. But the notion apparently is that should an atomic China or Iraq (in earlier fantasies) or North Korea or Iran (in present ones) rattle the occasional rocket, all other countries in the area, suitably intimidated, would supinely bow to its demands. **Far more likely** is that any threatened states would make **common cause with each other against the threatening neighbor**, perhaps **enlisting** the convenient aid eagerly proffered by other countries, probably including **the U**nited **S**tates, and conceivably even, in the case of Iran, Israel. One of the few to examine the glib domination assumption (or fantasy) in some detail is political scientist Stephen Walt. Pointing out that the United States alone has twice the population of your standard collection of rogue states combined, has 60 times the GNP, and spends over 23 times as much on defense, he suggests the country would be in a rather good position to **form the bedrock of an alliance** **in opposition to** efforts of **a rogue** to impose its ardent desires on unwilling neighbors-rather as George H. W. Bush showed when that Iraq rogue rashly invaded Kuwait in 1990. Moreover, continues Walt, construction of an alliance, even one that includes countries normally at odds with one another, should be **facilitated** because, as the rogue threatens, the dangers it poses would come to **outweigh possible** interests, **disagreements** about how to respond would decline, and each alliance member would be inclined to maximize its contribution. In the end, it hardly seems credible that, in Walt’s words, a “rogue state’s leaders will be utterly unfazed by the vast nuclear and conventional capabilities of the United States.”27

#### **No accidents**

Quinlan 9 (Sir Michael Quinlan, Former Permanent Under-Secretary of State UK Ministry of Defense, Thinking About Nuclear Weapons: Principles, Problems, Prospects, p. 63-69, The book reflects the author's experience across more than forty years in assessing and forming policy about nuclear weapons, mostly at senior levels close to the centre both of British governmental decision-making and of NATO's development of plans and deployments, with much interaction also with comparable levels of United States activity in the Pentagon and the State department)

Even if initial nuclear use did not quickly end the fighting, the supposition of inexorable momentum in a developing exchange, with each side rushing to overreaction amid confusion and uncertainty, is implausible. It fails to consider what the situation of the decision-makers would really be. Neither side could want escalation. Both would be appalled at what was going on. Both would be desperately looking for signs that the other was ready to call a halt. Both, given the capacity for evasion or concealment which drive modern delivery platforms and vehicles can possess, could have in reserve significant forces invulnerable enough not to entail use-or-lose pressures. (It may be more open to question, as noted earlier, whether newer nuclear weapon possessors can be immediately in that position; but it is within reach of any substantial state with advanced technological capabilities and attaining it is certain to be a high priority in the development of forces.) As a result, neither side can have any predisposition to suppose, in an ambiguous situation of fearful risk, that the right course when in doubt is to go on copiously launching weapons. And none of this analysis rests on any presumption of highly subtle or pre-concerted rationality. The rationality required is plain. The argument is reinforced if we consider the possible reasoning of an aggressor at a more dispassionate level. Any substantial nuclear armoury can inflict destruction outweighing any possible prize that aggression could hope to seize. A state attacking the possessor of such an armoury must therefore be doing so (once given that it cannot count upon destroying the armoury pre-emptively) on a judgment that the possessor would be found lacking in the will to use it. If the attacker possessor used nuclear weapons, whether first or in response to the aggressor’s own first use, this judgment would begin to look dangerously precarious. There must be at least a substantial probability of the aggressor leaders’ concluding that their initial judgment had been mistaken—that the risks were after all greater than whatever prize they had been seeking, and that for their own country’s survival they must call off the aggression. Deterrence planning such as that of NATO was directed in the first place to preventing the initial misjudgment and in the second, if it were nevertheless made, to compelling such a reappraisal. The former aim had to have primacy, because it could not be taken for granted that the latter was certain to work. But there was no ground for assuming in advance, for all possible scenarios, that the chance of its working must be negligible. An aggressor state would itself be at huge risk if nuclear war developed, as its leaders would know. It may be argued that a policy which abandons hope of physically defeating the enemy and simply hopes to get him to desist is pure gamble, a matter of who blinks first; and that the political and moral nature of most likely aggressors, almost ex hypothesi, makes them less likely to blink. One response to this is to ask what is the alternative—it can be only surrender. But a more hopeful answer lies in the fact that the criticism is posed in a political vacuum. Real-life conflict would have a political context.

### Military Training DA – 2AC

#### 3. Pre-9/11 restrictions disprove the DA – no significant effect on readiness

Dycus 05

[Stephen, Professor, Vermont Law School, Osama's Submarine: National Security and

Environmental Protection After 9/11, William & Mary Environmental Law and Policy Review, <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1112&context=wmelpr>]

The evidence that compliance with environmental laws has seriously impaired U.S. preparations for war is, however, far from conclusive. After all, the U.S. military's successes in Afghanistan and Iraq were achieved using troops trained and weapons tested under **pre-September 11th environmental statutes** and regulations. A Navy Admiral, testifying before Congress in support of RRPI in 2003, declared that "the readiness of the Navy is excellent. 32 According to a General Accounting Office report in 2002, "[d]espite the loss of some capabilities, service readiness data do not indicate the extent to which encroachment has significantly affected reported training readiness.” 33 In fact, the report concluded, "Training readiness, as reported in official readiness reports, remains high for most units.,34 Environmental Protection Agency ("EPA") Administrator Christine Todd Whitman went further in early 2003, stating, "**I don't believe that there is a training mission anywhere in the country that is being held up or not taking place because of environmental protection regulation**."35 A more recent study by the Congressional Research Service noted that "[a]lthough DOD has cited some examples of training restrictions or delays at certain installations and has used these as the basis for seeking legislative remedies, the department does not have a system in place to comprehensively track these cases and determine their impact on readiness.' "36 Some have taken a dimmer view of DOD's protests. EPA complained that the definition of "military readiness activities" in the DOD proposal was "broad and unclear and could be read to encompass more than the Department intends."37 Congressman John Dingell, a Democrat from Michigan, was much more emphatic: "I have dealt with the military for years and they constantly seek to get out from under environmental laws. But using the threat of 9-11 and al Qaeda to get unprecedented environmental immunity is despicable. 38

#### 6. Its all about relative power- even if the plan hurts the military a little bit, we will still be ahead of the competitors they cite

### 1NC Naval Power

#### Won’t collapse Navy – just says we’d make it harder

#### Naval force readiness high – new ship acquisitions solve

**O'Rourke 12** (Ronald, Specialist in Naval Affairs, “Navy Force Structure and Shipbuilding Plans: Background and Issues for Congress,” 8-9-12, http://www.fas.org/sgp/crs/weapons/RL32665.pdf)

In February 2006, the Navy presented to Congress a goal of achieving and maintaining a fleet of **313 ships**, consisting of certain types and quantities of ships. On March 28, 2012, the Department of Defense (DOD) submitted to Congress an FY2013 30-year (FY2013-FY2042) **shipbuilding plan** that includes a new goal for a fleet of about 310-316 ships. The Navy is conducting a force structure assessment, to be completed later this year, that could lead to a refinement of this 310316-ship plan. The Navy’s proposed FY2013 budget requests funding for the procurement of **10 new battle force** ships (i.e., ships that count against the 310-316 ship goal). The 10 ships include one Gerald R. Ford (CVN-78) class aircraft carrier, two Virginia-class attack submarines, two DDG-51 class Aegis destroyers, four Littoral Combat Ships (LCSs), and one Joint High Speed Vessel (JHSV). These ships are all funded through the Shipbuilding and Conversion, Navy (SCN) account.

#### Navy irrelevant

Holmes 3/13 -- defense analyst for The Diplomat and a professor of strategy at the U.S. Naval War College (James S., 2013, "Surface Combat Fleets: Obsolete?" http://thediplomat.com/the-naval-diplomat/2013/03/13/surface-combat-fleets-obsolete/)

What does the more distant future of surface warfare hold? Suppose antiship missiles come to boast transoceanic ranges — hardly a whimsical prospect if the DF-21D pans out. Sooner or later most of the world's oceans may fall under the shadow of land-based precision weaponry, much as the Allies extended air cover across the Atlantic Ocean during World War II. Bombers flying from shore airfields became potent antiship implements, helping negate the U-boat menace. If missiles fired from land can strike at surface vessels from vast distances, why send out cruisers or destroyers — basically mobile launch platforms — to accomplish the same thing at mortal risk to themselves? Such developments could see the offense-defense balance shift radically toward the defense, obviating the advantages cruise missiles and high-tech combat systems like Aegis bestowed on seaborne forces starting in the 1980s. If so, extended-range fire support coupled with submarine warfare could convert the seas into no-man's lands in wartime. I doubt new technology will empower defenders to command the sea from the shore, but it might well empower them to deny command across broad expanses — making for a Mad Max future on the high seas, a war of all against all. Is the end of surface combat fleets coming into sight? It's not an immediate prospect. Strategic one-upsmanship typifies international competition and conflict. Innovation begets counter-innovation.Nevertheless, the maritime strategic landscape is starting to look grim for "skimmers" such as myself who ply the water's surface. Surface navies doubtless have a future in peacetime. Whether they can contribute in wartime, even if armed with carrier killers, is worth pondering.

## Court Ptx

### Court Politics DA – 2AC

#### UQ card from January – since then the Courts have decided on the Voting Rights Act, DOMA, etc – those were giant issues and thumped the DA or the plan doesn’t either

#### 1. Court won’t uphold Holland – concerned about congressional circumvention

**Schweitzer 13**

[Dan, NAAG Supreme Court Counsel, NAAG, National Association of Attorneys General

“THE SUPREME COURT TERM’S OTHER CASES: IMPORTANT CASES THAT MAY NOT MAKE HEADLINES” February 12, 2013]

The Supreme Court will have a chance to revisit what it said in Missouri v. Holland in a case called Bond v. United States, which will probably be argued in late April. Carol Anne Bond sought revenge on her former best friend, who had an affair with her husband. So she obtained some toxic chemicals and spread them on her ex-friend’s car door, mail box, and doorknob. Nothing worse than a minor burn came of it, but the postal inspectors were called in and uncovered Bond’s scheme. Federal prosecutors not only made a federal case of it, they charged Bond with violating the Chemical Weapons Convention Implementation Act, which implements the Chemical Weapons Convention, an international treaty intended to address the proliferation of chemical weapons. In defense, Bond asserted that Congress lacks the power under Article I to make a crime of ordinary, intrastate poisoning. Whether Congress has that power under the Commerce Clause is an interesting question. But the Third Circuit never reached it, holding instead that Missouri v. Holland resolved the case. The Chemical Weapons Convention is a valid treaty, and the Chemical Weapons Convention Implementation Act reasonably implements it. Under Holland, the Act is therefore constitutional.

Bond’s cert petition argues that, “[g]iven the proliferation of treaties covering all manner of subjects, including those not traditionally thought of as matters of international concern, the Third Circuit’s broad reading of Holland opens a loophole through which Congress can circumvent the limits on its enumerated powers.” I suspect the Court will have similar concerns and will “clarify” or disown what it said in Holland. This is certainly a case to keep an eye on.

#### No impact to the Bond decision – other justifications for treaty power check

**Ku ‘13**

[Asian Journal of International law. Will Bond v. United States Matter? by Julian Ku¶ http://opiniojuris.org/2013/01/19/will-bond-v-united-states-matter/¶ January 19th, 2013]

As a matter of high constitutional principle about the nature of the U.S. Constitution’s grant of enumerated powers, this could be a huge case. But there are reasons to doubt the practical importance of any decision by the Court to revisit Missouri v. Holland in the context of Bond. Why? Because the central holding of Missouri v. Holland was that treaties are not constrained by the Tenth Amendment. Even if the Court holds that Congress cannot use a treaty to exceed its Article I powers, the President and Senate could still simply use a self-executing treaty to implement the same obligations (as Prof. Rick Pildes argues here).

#### 2. Kennedy’s down for the environment – he’s the swing vote

Blumm 07

[Michael, Lewis & Clark College, Justice Kennedy and the Environment: Property, States' Rights, and the Search For Nexus, 2007, <http://works.bepress.com/michael_blumm/2/>]

Justice Anthony Kennedy, now clearly the pivot of the Roberts Court, is the Court’s crucial voice in environmental and natural resources law cases. Kennedy’s central role was never more evident than in the two most celebrated environmental and natural resources law cases of 2006: Kelo v. New London and Rapanos v. U.S., since he supplied the critical vote in both: upholding local use of the condemnation power for economic development under certain circumstances, and affirming federal regulatory authority over wetlands which have a significant nexus to navigable waters. In each case Kennedy’s sole concurrence was outcome determinative. Justice Kennedy has in fact been the needle of the Supreme Court’s environmental and natural resources law compass since his nomination to the Court in 1988. Although Kennedy wrote surprisingly few environmental and natural resources law opinions during his tenure on the Rehnquist Court, over his first eighteen years on the Court, he was in the majority an astonishing 96 percent of the time in environmental and natural resources law cases—as compared to his generic record of being in the majority slightly over 60 percent of the time. And Kennedy now appears quite prepared to assume a considerably more prominent role on the Roberts Court in the environmental and natural resources law field. This article examines Kennedy’s environmental and natural resources law record over his first eighteen years on the Supreme Court and also on of the Ninth Circuit in the thirteen years before that. The article evaluates all of the environmental law and natural resources law cases in which he wrote an opinion over those three decades, and it catalogues his voting record in all of the cases in which he participated on the Supreme Court in an appendix. One striking measure of Justice Kennedy’s influence is that, after eighteen years on the Court, he has written **just one environmental dissent**—and that on states’ rights grounds, which is one of his chief priorities. The article maintains that Kennedy is considerably more interested in allowing trial judges to resolve cases on the basis of context than he is in establishing broadly applicable doctrine: Kennedy is a doctrinal minimalist. By consistently demanding a demonstrated “nexus” between doctrine and facts, he has shown that he will not tolerate elevating abstract philosophy over concrete justice. For example, he is interested in granting standing to property owners alleging regulatory takings, but he is quite skeptical about the substance of their claims. Another example of his nuanced approach concerns his devotion to states’ rights—which is unassailable—yet he has been quite willing to find federal preemption when it serves deregulation purposes. On the other hand, as his opinion in Rapanos reflects, Kennedy is far from an anti-regulatory zealot. But he does seem to prefer only one level of governmental regulation. At what might be close to the mid-point in his Court career—and with his power perhaps at its zenith—Justice Kennedy is clearly not someone any litigant can ignore. By examining every judicial opinion he has written in the environmental and natural resources law field, this article hopes to give both those litigants and academics a fertile resource to till. Although Kennedy has been purposefully difficult to interpret in this field (writing very few opinions until lately), his record suggests that he may be receptive to environmental and natural resources claims if they are factually well-grounded and do not conflict with Kennedy’s overriding notions of states’ rights. The article concludes with some comparisons between Justice Kennedy and Justice Holmes.

#### 3. Not intrninsic – the supreme court can rule for the plan and \_\_\_ - key to effective decisionmaking

#### 4. Ideology outweighs on controversies

Feldman 08

[Stephen, Jerry W. Housel/Carl F. Arnold Distinguished Professor of Law and Adjunct Professor of Political Science, University of Wyoming, Southern California Interdisciplinary Law Journal, Fall 2008, L/N]

So, did Roberts and Alito lie during their confirmation hearings? n4 Did they duplicitously proclaim dedication to the rule of law while secretly planning to implement their political agendas? While I disagree with the justices' votes in practically every controversial case, Roberts and Alito most likely answered senators' questions sincerely, and the justices have probably applied the rule of law in good faith during their initial terms. But, one might ask, how is this possible when they repeatedly vote for the conservative judicial outcome? Most simply, law and politics are not opposites. Roberts, Alito, and the other justices do not necessarily disregard the law merely because they vote to decide cases con**sistent with their respective political ideologies.** As a general matter, Supreme Court justices can decide legal disputes in accordance with law while simultaneously following their political preferences. [\*18] I elaborate this thesis by critiquing the theories of Judge Richard Posner n5 and Professor Ronald Dworkin, n6 two of the most prominent jurisprudents of this era. Embattled opponents, Posner and Dworkin have, for years, relentlessly attacked each other while developing strikingly different depictions of law and adjudication. n7 Despite their opposition, however, Posner and Dworkin together challenge a primary assumption of traditional jurisprudence - an assumption featured during Roberts's and Alito's Senate confirmation hearings. Most senators, jurists, and legal scholars assume that legal interpretation and judicial decision making can be separated from politics, that a judge or justice who decides according to political ideology skews or corrupts the judicial process. n8 Posner and Dworkin reject this traditional approach, particularly for hard cases at the level of the Supreme Court. Each in his own way asserts and explains the power of politics in adjudication: the justices self-consciously vote and thus decide cases according to their political ideologies. Posner and Dworkin agree that the justices do not, and should not, decide hard cases by applying an ostensibly clear rule of law in a mechanical fashion. The justices must be political in an open and expansive manner. n9 Supreme Court adjudication is, in other words, politics writ large. The conflicts between Posner and Dworkin stem from their distinct views of politics. Posner views politics as a pluralist battle among self-interested individuals and groups. He therefore argues that Supreme Court adjudication, manifesting politics writ large, should (and in fact does) entail a pragmatic focus on consequences. The justices should resolve cases by looking to the future and by aiming to do what is best in both the short and long term. n10 Dworkin, repudiating a pragmatic politics of self-interest, favors instead a politics of principles. Thus, according to Dworkin, the justices should resolve hard cases by applying law as integrity. They should theorize about the political-moral principles that fit the doctrinal history - including [\*19] case precedents and constitutional provisions - and that cast the history in its best moral light. n11 Consequently, although Posner and Dworkin both describe the Supreme Court as a political institution - as engaging in politics writ large - their theories otherwise clash tumultuously. Posner sees an adjudicative politics of interest and unmitigated practicality, while Dworkin sees an adjudicative politics of principles and coherent theory. Unfortunately, both Posner and Dworkin - like Roberts, Alito, and the senators who questioned them - remain stuck within the magnetic field of the traditional law-politics dichotomy. While most jurists, legal scholars, and senators are pulled to the law pole - maintaining that law mandates case results - Posner and Dworkin are pulled to the opposite pole. If politics matter to adjudication, they seem to say, then politics must become the overriding determinant of judicial outcomes. Supreme Court adjudication must be politics writ large. If their view is true, then Supreme Court nominees who declare their fidelity to the rule of law do, in fact, lie: current and future justices decide cases by hewing to their political ideologies, not to legal doctrines and precedents. But in their struggle against the forces of the law-politics dichotomy, Posner and Dworkin overcompensate. They neglect another possibility: namely, that Supreme Court adjudication is politics writ small. As Posner and Dworkin emphasize, the Court is a political institution: the justices' political ideologies always and inevitably influence their votes and decisions. But usually the justices do not self-consciously attempt to impose their politics in an expansive manner. To the contrary, the justices sincerely interpret and apply the law. Yet, because legal interpretation is never mechanical, the justices' political ideologies necessarily shape how they understand the relevant legal texts, whether in constitutional or other cases.

#### 5. No spillover --- there’s no reason \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ would be picked for make-up. The Court would choose another case that requires capital.

#### 5. Capital is compartmentalized

Redish 87 (Martin H., Professor of Law – Northwestern University, and Karen L. Drizin, Clerk – Illinois State Supreme Court, New York University Law Review, April, Lexis)

a. The fallacy of the concept of fungible institutional capital. The basis for Dean Choper's suggested judicial abstention on issues of federalism [143](http://www.lexis.com/research/retrieve?_m=11c71424f02a19dd3fddea3d6d214ae5&docnum=9&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=29cb5075b93d84858cb8ef752799c5b9&focBudTerms=supreme%20court%20w/35%20political%20capital%20or%20institutional%20capital%20w/35%20strong%20or%20strength%20or%20increas%21%20or%20abundan%21&focBudSel=all#n143) is the desire "to ease the commendable and crucial task of judicial review in cases of individual consitutional liberties. It is in the latter that the Court's participation is both vitally required and highly provocative." [144](http://www.lexis.com/research/retrieve?_m=11c71424f02a19dd3fddea3d6d214ae5&docnum=9&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=29cb5075b93d84858cb8ef752799c5b9&focBudTerms=supreme%20court%20w/35%20political%20capital%20or%20institutional%20capital%20w/35%20strong%20or%20strength%20or%20increas%21%20or%20abundan%21&focBudSel=all#n144) Judicial efforts in the federalism area, he asserts, "have expended large sums of institutional capital. This is prestige desperately needed elsewhere." [145](http://www.lexis.com/research/retrieve?_m=11c71424f02a19dd3fddea3d6d214ae5&docnum=9&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=29cb5075b93d84858cb8ef752799c5b9&focBudTerms=supreme%20court%20w/35%20political%20capital%20or%20institutional%20capital%20w/35%20strong%20or%20strength%20or%20increas%21%20or%20abundan%21&focBudSel=all#n145) Dean Choper's fundamental assumption, then, is that Supreme Court abstention on issues of constitutional federalism would somehow increase, or at least curtail loss of, limited capital for the more vital area of individual liberty. However, even if one were to concede that judicial review is more fundamental to our constitutional scheme in the area of individual liberty than in matters of federalism, acceptance of Dean Choper's proposal would not necessarily follow. The problem is that it is neither intuitively nor empirically clear that the Court's so-called capital is transferable from one area of constitutional law to another. As one of the current authors has previously argued: It is difficult to imagine . . . that the widespread negative public reactions to Miranda v. Arizona, Engle v. Vitale, or Roe v. Wade would  [\*37]  have been affected at all by the Court's practices on issues of separation of powers and federalism. Rather, public reaction in each seems to have focused on the specific, highly charged issues of rights for criminals, prayer in public schools, and abortions. It is doubtful that the Court would have had an easier time if it had chosen to stay out of interbranch and intersystemic conflicts. [146](http://www.lexis.com/research/retrieve?_m=11c71424f02a19dd3fddea3d6d214ae5&docnum=9&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=29cb5075b93d84858cb8ef752799c5b9&focBudTerms=supreme%20court%20w/35%20political%20capital%20or%20institutional%20capital%20w/35%20strong%20or%20strength%20or%20increas%21%20or%20abundan%21&focBudSel=all#n146)

#### 6. Fiat solves --- normal means is plan’s announced at the same time as the other decision, so it wouldn’t affect capital

#### 7. Capital resilient

Chemerinsky 99 (Erwin, Professor of Law – USC, South Texas Law Review, Fall, 40 S. Tex. L. Rev. 943, Lexis)

Interestingly, though, the Supreme Court has been immune from that cynicism. At a time when other government institutions are often held in disrepute, the Court's credibility is high. Professors John M. Scheb and Williams Lyons set out to measure and determine this. [2](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n2) They conducted a survey to answer the question: "How do the American people regard the U.S. Supreme Court?" [3](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n3) Their conclusion is important: According to the survey data, Americans render a relatively positive assessment of the U.S. Supreme Court. Not surprisingly, the Court fares considerably better in public opinion than does Congress. The respondents are almost twice as likely to rate the Court's performance as "good' or "excellent'  [\*945]  as they are to give these ratings to Congress. By the same token, they are more than twice as likely to rate Congress' performance as "poor.' [4](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n4) This survey was done in 1994, [5](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n5) before the recent events that likely further damaged Congress' public image. Strikingly, Scheb and Lyons found that the "Court is fairly well-regarded across the lines that usually divide Americans." [6](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n6) For example, there are no significant differences between how Democrats and Republicans rate the Court's performance. In short, the Court is a relatively highly regarded institution, more so certainly than Congress or the presidency. [7](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n7) This is not a new phenomena. Throughout this century, the Court has handed down controversial rulings. Yet the Court has retained its legitimacy and its rulings have not been disregarded. Judge John Gibbons remarked that the "historical record suggests that far from being the fragile popular institution that scholars like Professor Choper... and Alexander Bickel have perceived it to be, judicial review is in fact quite robust." [8](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n8) In fact, even at the times of the most intense criticism of the Supreme Court, the institution has retained its credibility. For example, opposition to the Court was probably at its height in the mid-1930s. In the midst of a depression, the Court was striking down statutes thought to be necessary for economic recovery. In an attempt to change the Court's ideology, President Franklin D. Roosevelt - fresh from a landslide reelection - proposed changing the size of the Court. This "Court packing" plan received little public support. The Senate Judiciary Committee, controlled by Democrats, rejected the proposal and strongly reaffirmed the need for an independent judiciary: Let us now set a salutary precedent that will never be violated. Let us, of the Seventy-fifth Congress,... declare that we would rather have an independent Court, a fearless Court, a Court that will dare to announce its honest opinions in what it believes to be the defense of the liberties of the people, than a Court that, out of fear or sense of obligation to the appointing power, or  [\*946]  factional passion, approves any measure we may enact. [9](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n9) This is a telling quotation and a powerful example because if anything should have undermined the Court's legitimacy, it was an unpopular Court striking down popular laws enacted by a popular administration in a time of crisis. Public opinion surveys reflect that this Committee report reflected general support for the Supreme Court, despite the unpopularity of its rulings. In 1935 and 1936, most respondents, 53% and 59% respectively, did not favor limiting the power of the Supreme Court in declaring laws unconstitutional. [10](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n10) Indeed, the Court's high regard, described by Professors Scheb and Lyons, has been remarkably constant over time. [11](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n11) Professor Roger Handberg studied public attitudes about the Supreme Court over several decades and concluded that public support for the institution has not changed significantly and that the "Court has a basic core of support which seems to endure despite severe shocks." [12](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n12) Professor John Hart Ely noted this and observed: The possibility of judicial emasculation by way of popular reaction against constitutional review by the courts has not in fact materialized in more than a century and a half of American experience. The warnings probably reached their peak during the Warren years; they were not notably heeded; yet nothing resembling destruction materialized. In fact, the Court's power continued to grow and probably never has been greater than it has been over the past two decades. [13](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n13) Why has the Court maintained its legitimacy even when issuing highly controversial rulings? Social science theories of legitimacy offer some explanation. The renowned sociologist Max Weber wrote that there are three major bases for an institution's legitimacy: tradition, rationality and affective ties. [14](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n14) That which historically has existed tends to be accepted as legitimate. Therefore, 200 years of  [\*947]  judicial review grants the Court enormous credibility. Additionally, that which is rational is likely to be regarded as legitimate. The judiciary's method of giving detailed reasons for its conclusions thus helps to provide it credibility. Finally, that which is charismatic, things to which people have strong affective ties, are accorded legitimacy. It has long been demonstrated that people feel great loyalty to the Constitution. The Court's relationship to the document and its role in interpreting it likely also enhances its legitimacy. More specifically, I suggest that the Court's robust public image is a result of its processes and its producing largely acceptable decisions over a long period of time. The Court is rightly perceived as free from direct political pressure and lobbying, bound by the convention of reaching rational decisions that are justified in opinions, and capable of protecting people from arbitrary government. Social scientists have shown that an institution receives legitimacy from following established procedures. The Court's legitimacy, in part, is based on the perception and reality that it does not decide cases based on the personal interests of the Justices or based on external lobbying and pressures. In a recent book highly critical of the Court, Edward Lazarus lambastes the current Justices, yet he never even suggests a single instance of improper influence or conflict of interest. [15](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n15) The Court's credibility is a product of the correct perception that it decides cases based on a formalized procedure: it reads briefs, hears arguments, deliberates, and writes opinions. Indeed, the very process of opinion writing, regardless of their content, is crucial because it makes the Court's decisions seem a product of reason, not simply acts of will. Although the Court's high credibility is a result of this process, I believe that this is necessary for its institutional legitimacy, but not sufficient. The Court also has produced a large body of decisions, that over a long period of time, have generally been accepted by the public. If the Court were to produce a large number of intensely unpopular rulings over a long period of time, its credibility would suffer. In the short-term, its processes ensure its continued legitimacy; in the long-term, overall acceptability of its decisions is sufficient to preserve this credibility. Recognition of the Court's robust legitimacy is important in the on-going debate over judicial review. Many, including those as  [\*948]  prominent as Felix Frankfurter, Alexander Bickel, and Jesse Choper, have proclaimed a need for judicial restraint so as to preserve the Court's fragile institutional legitimacy. [16](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n16) They argue that the Court must depend on voluntary compliance with its rulings from the other branches of government and that this will not occur unless the Court preserves its fragile legitimacy. Justice Frankfurter dissented in Baker v. Carr, the Supreme Court's landmark decision holding that challenges to malapportionment were justiciable, arguing that the Court was putting its fragile legitimacy at risk. [17](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n17) Frankfurter urged restraint, stating: "The Court's authority - possessed of neither the purse nor the sword - ultimately rests on public confidence in its moral sanction." [18](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n18) Choper, for example, concludes from this premise that the Court should not rule on federalism or separation of powers issues so as to not squander its political capital in these areas that he sees as less important than individual rights cases. Bickel argued that the Court should practice the "passive virtues" and use justiciability doctrines to avoid highly controversial matters so as to preserve its political capital. [19](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n19) Other scholars reason from the same assumption. Daniel Conkle, for example, speaks of the "fragile legitimacy that attaches to Supreme Court pronouncements of constitutional law." [20](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n20) I am convinced that these scholars are wrong and that the public image of the Court is not easily tarnished, and preserving it need not be a preoccupation of the Court or constitutional theorists. There is no evidence to support their assertion of fragile public legitimacy and almost 200 years of judicial review refute it.

#### 8. Normal means is courts will announce their decision at the end of the term and that solves the link

Mondak 92 [Jeffery J., assistant professor of political science @ the University of Pittsburgh. “Institutional legitimacy, policy legitimacy, and the Supreme Court.” American Politics Quarterly, Vol. 20, No. 4, Lexis]

The process described by the political capital hypothesis acts as expected in the laboratory, and the logic of the link between institutional and policy legitimacy has thus gained strong empirical corroboration. However, the dynamic's pervasiveness defies precise estimation due to the limitations of available public opinion data. Still, the results reported here are provocative. First, this view of legitimation may apply to institutions beyond the Supreme Court. Consequently, efforts to use this theory in the study of other institutions may yield evidence supportive of a general process. A second concern is how the Court responds to its institutional limits. Specifically, strategy within the Court can be considered from the context of legitimacy. For example, what tactics may the Court employ to reduce the erosion of political capital? By releasing controversial rulings at the end of a term, for instance, the Court may afford itself a healing period, a time to repair damaged credibility prior to the next round of efforts at conferring policy legitimacy. This suggests a third issue, the manner in which institutional approval is replenished. Does institutional support return to some equilibrium once dispute surrounding a particular ruling fades, or must the Court release popular edicts to offset the effects of its controversial actions?

#### 9. Winners win --- plan boosts capital

Little 00 (Laura, Professor of Law – Temple University, Beasley School of Law, November, 52 Hastings L.J. 47, Lexis)

Other scholars bolster Redish's position by pointing out that judicial review of both federalism and separation of powers questions presents something of a self-fulfilling prophesy. Through review of these sensitive issues of power, the judiciary bolsters its own position or amasses "political capital" and, thereby, legitimates its own power to engage in such review . 237 The judiciary has therefore established  [\*98]  itself as an effective watchdog to ensure that governmental structures are functioning appropriately. n237. Perry, supra note 11, at 57 (Supreme Court has "amassed a great deal of the political capital it now enjoys ... precisely by resolving problems arising under the doctrines of federalism and of the separation-of-powers "); see also Archibald Cox, The Role of the Supreme Court in American Government 30 (1972) (explaining that "history legitimated the power [of judicial review], and then habit took over to guide men's actions so long as the system worked well enough").

#### 10. Controversial decisions don’t affect capital – Bush v. Gore proves

Balkin 01

[Jack, Knight Professor of Constitutional Law and the First Amendment, Yale Law School, Bush v. Gore and the Boundary Between Law and Politics, June 2001, L/N]

The Court's legitimacy is often described in terms of its "political capital." n143 The term "political capital" is generally not defined. It is likely that it has many facets. One element of political capital might be the likelihood that people will follow the Court's decisions and treat them as binding law, especially in controversial cases. Yet if the question is merely whether the Court's decisions will be obeyed, it seems clear that its capital was hardly damaged at all. No one doubted for a second that Al Gore would obey the Court's order, or that the Florida Supreme Court would cease the recounts immediately. The Court's ability to command obedience remains largely unaffected by Bush v. Gore. There is little doubt that people will continue to follow the Supreme Court's decisions. Lawyers will continue to cite them, and lower courts and legal officials will continue to apply them as before. Thus, if legitimacy or political capital means only brute [\*1451] acceptance of the Court and its decisions as a going concern, **the Court will not lose any legitimacy as a result of its decision in Bush v. Gore**. If the Court's political capital is judged by whether politicians are well-or ill-disposed toward the Supreme Court, then the Supreme Court may well have increased its political capital in the short term by halting the recounts. n144 After all, there is now a Republican president, and Republicans control both houses of Congress. They are no doubt delighted with the Supreme Court's exercise of judicial review, for it guarantees them a period of one-party rule. As a result, they are probably much more favorably disposed to granting the Justices the pay raise that Chief Justice Rehnquist has been requesting for several years. n145 Judged in raw political terms, the Supreme Court made much more powerful friends than enemies when it decided Bush v. Gore. n146 Nevertheless, legitimacy might mean something more than the two senses of "political capital" that I have just described. When people speak of "legitimacy" - not in a rigorously philosophical sense but in an everyday sense of the word - they are often referring to basic questions of trust and confidence in public officials: Do people believe that public officials are honest and trustworthy, and do they have confidence that public officials will act in the public interest and not for purely partisan or selfish reasons? These forms of legitimacy are crucial to the courts because the courts rely so heavily on the appearance of fairness and reasonableness. To be sure, sometimes people speak of "moral legitimacy" - whether what government officials do is in fact just and fair - and "procedural legitimacy" - whether government officials have employed fair procedures. But often people do not know what government officials are doing - for example, most people do not read judicial opinions - and even then what is actually just and fair is often difficult to determine. So in practice when [\*1452] people speak of a court's "moral legitimacy" or "procedural legitimacy," they may not mean whether courts actually are fair and just but whether people believe that they are fair and just. According to this analysis, moral and procedural legitimacy are elements of trust and confidence in public officials - in this case, trust and confidence that these officials are upright and honest and will do the right thing. Understood in this broader sense, the question of the Court's legitimacy concerns whether people will continue to have faith in the Court as a fair-minded arbiter of constitutional questions, whether they trust the Court, whether they have confidence in its decisions, and whether they believe its decisions are principled and above mere partisan politics. That sort of confidence and trust probably has been shaken, particularly among lawyers and legal academics, but also in portions of the public at large. Even so, the effects of Bush v. Gore on the Court's legitimacy may differ markedly for different populations and social groups. Perhaps trust and confidence have been damaged among Democratic voters - who are a sizeable proportion of the population - and within the legal academy, which tends to be liberal. But in other groups, the evidence of a loss of faith is quite mixed. Republican politicians like Tom DeLay and Trent Lott probably now have renewed confidence in the Court. After Bush v. Gore, they know that they can rely on the Court to do the right thing (in all the different senses of the word "right"). Although liberal legal academics have been badly shaken by the decision, conservative legal academics have come to the Court's defense, and one expects that we will see more spirited endorsements in the future. n147 Finally, most Americans are not privy to the niceties of constitutional argument and so may not be able to judge whether the Court has played fast and loose with the law. Indeed, the polling data do not seem to suggest a sharp drop off in the Court's approval ratings. A Gallup Poll conducted from January 10 to 14, 2001, indicated that 59% of those surveyed approved of how the Court was handling its job while 34% disapproved, only a three percentage point drop from its 62% approval rating in a similar poll taken from August 29 to September 5, 2000, long before the Florida controversy occurred. n148 Make no mistake: Many people are very, very angry at the Supreme Court, and the Court probably has lost their trust and confidence. But these citizens may not constitute a majority [\*1453] of all Americans. Perhaps more importantly, the persons who are currently in power like what the Court is doing just fine. In any case, there is no doubt in my mind that the Supreme Court will eventually regain whatever trust and confidence among the American public that it lost in Bush v. Gore. The Supreme Court has often misbehaved and squandered its political capital foolishly. It has done some very unjust and wicked things in the course of its history, and yet people still continue to respect and admire it. If the Court survived Dred Scott v. Sandford, it can certainly survive this.

#### 11. Strong public support for the plan

ENS 01

[Environmental News Service , U.S. Military Under Attack on Environmental Grounds, 6/25/01, <http://www.ens-newswire.com/ens/jun2001/2001-06-25-03.asp>]

A coalition of citizen’s organizations is challenging the U.S. Armed Forces, alleging that the health and safety of communities across the country is under assault from past and current polluting military operations. In a new national campaign, citizens impacted by military operations **from Hooper Bay, Alaska to Vieques, Puerto Rico** are participating in the Military Toxics Project�s effort to hold the U.S. military accountable to the same laws that apply to all other sectors of society. The military is not subject to most laws that protect communities and workers, either because it is completely exempt or because the Environmental Protection Agency has no enforcement authority, says Steve Taylor, national coordinator for the Maine based Military Toxics Project. The campaign is timed to support the introduction of a bill by Congressman Bob Filner, a California Democrat, who represents San Diego, home to a large contingent of U.S. Navy ships in the Pacific Fleet, the Space and Naval Warfare Systems Center, and the Naval Air Force. On June 13, Filner introduced the Military Environmental Responsibility Act, which seeks to remove all military exemptions from existing environmental, worker and public safety laws and regulations. To back up the new bill, the Military Toxics Project (MTP) released to Congress a report entitled "Defend Our Health: The U.S. Military�s Environmental Assault On Communities." Prepared by MTP and Environmental Health Coalition, an environmental justice organization based in San Diego, the report shows how military exemptions from laws and lax enforcement by regulatory agencies have contributed to the existence of more than 27,000 toxic hot spots on 8,500 military properties across the country. Based on the findings of this report, the citizens' groups charge that military activities like legal and illegal toxic dumping, testing and use of munitions, manufacture and use of depleted uranium ammunition, hazardous waste generation, nuclear propulsion, toxic air emissions have created "an environmental catastrophe.

#### Public key to the court

Hoeksta 3 (Valerie, Arizona State U., Public Reaction to Supreme Court Decisions, Cambridge U. Press)

In some respects, comparisons with Congress or the presidency are neither appropriate nor fair. Unlike its democratically selected and accountable counterparts, the Supreme Court appears relatively isolated from and unconstrained by public opinion. Its members do not run for election, and once in office, they essentially serve for life. While this certainly places them in an enviable position, the justices must rely on public support for the implementation of their policies since they possess “neither the purse nor the sword.” The Court’s lack of many enforcement mechanisms makes public support even more essential to the Court than it is to other institutions. This public support may generate an important source of political capital for the Court (Choper 1980).

### Thumper – 2AC

#### Schuette decision coming now – saps capital

Feder 9/2

[Jody, Legislative Attorney, Banning the Use of Racial Preferences in Higher Education: A Legal Analysis of Schuette v. Coalition to Defend Affirmative Action, 9/2/13, <http://www.fas.org/sgp/crs/misc/R43205.pdf>]

In the more than three decades since the Supreme Court’s ruling in Regents of the University of California v. Bakke affirmed the constitutionality of affirmative action in public colleges and universities, many institutions of higher education have implemented race-conscious admissions programs in order to achieve a racially and ethnically diverse student body or faculty. Nevertheless, the pursuit of diversity in higher education remains controversial, and legal challenges to such admissions programs routinely continue to occur. Currently, the Court is poised to consider a novel question involving affirmative action in higher education during its upcoming 2013-2014 term. Unlike earlier rulings, in which the Court considered whether it is constitutional for a state to use racial preferences in higher education, the new case, Schuette v. Coalition to Defend Affirmative Action, raises the question of whether it is constitutional for a state to ban such preferences in higher education. Schuette arose in the wake of a pair of cases involving admissions to the University of Michigan’s law school and undergraduate programs. Although the Court struck down the undergraduate admissions program, it upheld the law school’s program in a decision that affirmed the constitutionality of the limited use of race-conscious admissions programs in public higher education. In the wake of the University of Michigan cases, opponents of affirmative action in Michigan successfully lobbied for the passage of Proposal 2, which amended the Michigan state constitution to prohibit preferential treatment on the basis of race, sex, color, ethnicity, or national origin in public employment, public education, or public contracting. Opponents of Proposal 2 sued, and a federal appeals court ruled that Proposal 2’s ban on racial preferences in public education violates the equal protection clause of the United States Constitution. This decision was subsequently upheld in a divided ruling by the full court of appeals, sitting en banc, and the Supreme Court will review the case during the upcoming term.

### AT Treaties

#### Impact sucks --

#### 1. CWC has not been passed by the Senate or ratified internationally -- even if the decision helps it, doesn't result in its implementation

#### 2. Not key to broader treaties – says it requires PRES PC to pass them

#### 3. No terminal impact – just warrantlessly says human survival – we’ll read impact d when they read impacts

#### **Don’t solve war**

Wippman 96 (David, Associate Professor – Cornell Law School, Columbia Human Rights Law Review, 27 Colum. Human Rights L. Rev. 435, Spring, Lexis)

What international law has long attempted to prohibit, or at least to regulate, is foreign involvement in internal conflict. [**4**](http://www.lexis.com/research/retrieve?_m=1eaeca8a103666c056688c6d2438e77d&docnum=2&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=60fd9e16efde2ff1d58f663fbab664a0&focBudTerms=What%20international%20law%20has%20long%20and%20particular%20conflict&focBudSel=all#n4) Foreign  [\*436]  participation in an internal conflict heightens the risk that the conflict will spread to other states and transform an internal struggle into an interstate war. In addition, foreign involvement may deny the people of the affected state the right to determine their own political future. As a result, foreign involvement in internal conflicts often undermines two of the principal goals of the international legal order: the containment of conflict and the preservation of the internal autonomy of each state. **[5](http://www.lexis.com/research/retrieve?_m=1eaeca8a103666c056688c6d2438e77d&docnum=2&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=60fd9e16efde2ff1d58f663fbab664a0&focBudTerms=What%20international%20law%20has%20long%20and%20particular%20conflict&focBudSel=all" \l "n5" \t "_self)** Accordingly, contemporary international law is formally non-interventionist: no state is supposed to interfere in civil strife in another state. **[6](http://www.lexis.com/research/retrieve?_m=1eaeca8a103666c056688c6d2438e77d&docnum=2&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=60fd9e16efde2ff1d58f663fbab664a0&focBudTerms=What%20international%20law%20has%20long%20and%20particular%20conflict&focBudSel=all" \l "n6" \t "_self)** Nonetheless, foreign intervention in internal conflicts is more the rule than the exception. **[7](http://www.lexis.com/research/retrieve?_m=1eaeca8a103666c056688c6d2438e77d&docnum=2&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=60fd9e16efde2ff1d58f663fbab664a0&focBudTerms=What%20international%20law%20has%20long%20and%20particular%20conflict&focBudSel=all" \l "n7" \t "_self)** In the past, foreign intervention consisted almost exclusively of unilateral acts by individual states. During the Cold War, political polarization between East and West made it virtually impossible to achieve the consensus necessary to support collective interventions. With the end of the Cold War, however, collective interventions have become more common. When individual states intervene unilaterally in internal conflicts, they typically seek to justify their involvement under legal principles deemed consistent with, or in some cases, deemed more important than, the principle of non-intervention. In some cases, states rely on consent of the affected state, on the theory that the principle of non-intervention only bars conduct that amounts to "dictatorial interference" in a state's internal affairs. [8](http://www.lexis.com/research/retrieve?_m=1eaeca8a103666c056688c6d2438e77d&docnum=2&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=60fd9e16efde2ff1d58f663fbab664a0&focBudTerms=What%20international%20law%20has%20long%20and%20particular%20conflict&focBudSel=all" \l "n8" \t "_self) States also frequently justify intervention as necessary to insulate a state from the effects of another state's prior, illegal intervention, or as necessary to defend a state from an illegal external attack. [9](http://www.lexis.com/research/retrieve?_m=1eaeca8a103666c056688c6d2438e77d&docnum=2&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=60fd9e16efde2ff1d58f663fbab664a0&focBudTerms=What%20international%20law%20has%20long%20and%20particular%20conflict&focBudSel=all" \l "n9" \t "_self) On occasion, states rely on international human rights norms or democratic principles to justify their support for one faction or another in a particular conflict.

## 1AR

## CP

### CP L to Ptx

#### \*\*\*Spills over – changes the collegial atmosphere of the court

**Adler 9** (Jonathan H. Adler, Professor of Law and Director of the Center for Business Law and Regulation, Case Western Reserve University School of Law, “Law Review Symposium 2009: Standing Still In The Roberts Court,” Summer 2009, Case Western Reserve Law Review, 59 Case W. Res. 1061)

Yet the **Roberts Court** is hardly of one mind concerning standing. Four cases in particular **reveal sharp divisions** among the Justices on the application of Article III standing's requirements. Massachusetts v. EPA, n71 Sprint Communications Co. v. APCC Services, Inc., n72 Hein v. Freedom from Religion Foundation, Inc., n73 and Summers v. Earth Island Institute n74 were all 5-4 decisions. In two of these cases, Massachusetts and Sprint, the Court found Article III standing; in the other two it did not. The breakdown among the Justices remained consistent across these cases, with the Court's four most liberal Justices consistently voting to approve standing claims and the four most conservative Justices consistently in opposition. Only Justice Anthony **Kennedy** was in the Court's majority in all four cases, sometimes writing separately to qualify his position. n75 Here, as in other areas, Justice Kennedy is the median Justice whose views determine the outcome in close cases. n76 [\*1071] The **most consequential** standing case of the Roberts Court thus far **is Massachusetts** v. EPA. n77 Indeed, Massachusetts is among the most consequential cases decided by the Roberts Court on any issue. Massachusetts loosened the requirements for Article III standing to challenge federal regulatory actions, both for state litigants and others seeking to allege agency failure to comply with relevant statutory requirements. More than any other, this case altered preexisting standing doctrine, and did so in favor of those seeking to invoke the jurisdiction of federal courts. At issue in Massachusetts were whether the Environmental Protection Agency ("EPA") had the authority to regulate carbon dioxide and other greenhouse gases as "pollutants" under the Clean Air Act and, if so, whether the EPA had properly declined to exercise such authority in rejecting a rulemaking petition submitted by several states and environmentalist groups. Massachusetts and the other petitioners sought to force the EPA to regulate greenhouse gas emissions from new motor vehicles under Section 202 of the Act so as to mitigate the threat of global warming. Yet before it could approve the petitioners' claims, the Court had to first assure itself that at least one had Article III standing. **Climate change** presents an interesting standing challenge. The Court has long held that federal courts lack jurisdiction to hear "generalized grievance[s]" that are "'common to all members of the public.'" n78 Thus, an Article III court lacks the jurisdiction to hear a naked claim that a government agency has failed to violate some provision of the law or, as noted above, that some portion of the federal Treasury was appropriated for an illegal purpose. Invoking the power of federal courts requires something more. In particular, it requires something that connects the allegedly wrongful act to a distinct harm suffered by the litigant. At first blush, the general bar on hearing "generalized grievances" would seem to preclude hearing a claim predicated on an injury derived from a gradual warming of the Earth's atmosphere. By definition, global climate change is a global phenomenon. The emission of greenhouse gases from motor vehicles in the United States or anywhere else contributes to global atmospheric [\*1072] concentrations of greenhouse gases that, in turn, have an effect on the global climate. The alleged harms from any resulting global warming would be visited upon the globe, a conclusion that would seem to preclude the existence of a "case or controversy" fit for judicial resolution under Article III. n79 Much like an individual taxpayer could not claim a judicially cognizable injury from the misuse of funds in the federal Treasury, an individual citizen of the planet could not claim a judicially cognizable injury from a slight alteration of the planetary thermostat. At the very least, a prospective plaintiff would have to identify an actual or imminent harm to a specific legally-protected interest resulting from such changes. Such attribution is very difficult. This is not to deny or disparage the potential consequences from climate change, but only to recognize the difficulty of finding a distinct, particularized injury resulting from global environmental phenomena. The Commonwealth of Massachusetts sought to establish the requisite injury by focusing the Court's attention on a specific potential consequence of global warming: sea-level rise. n80 Massachusetts submitted affidavits asserting that anthropogenic emissions of greenhouse gases, by contributing to global warming, increase the threat of global sea-level rise that would flood some portion of Massachusetts's coast. n81 These affidavits noted that a modest rise in sea-level had occurred over the course of the twentieth century--albeit some of which was due to natural causes--and estimated the future sea-level rise that could result if anthropogenic emissions of greenhouse gases continue unabated. n82 The focus on sea-level rise simplified the Court's inquiry, but it did not make the standing concern go away. An "injury-in-fact" must be both actual or imminent and concrete and particularized. n83 Therein lied a potential rub. Demonstrating that the injury from climate change satisfied one prong of this standard would necessarily make it more difficult to satisfy the other. Insofar as anthropogenic emissions of greenhouse gases have already warmed the atmosphere, it is exceedingly difficult (if not impossible) to identify specific environmental changes that have occurred as a result of the human contribution to climatic warming with any degree of certainty. Identifying specific harms that will (or are at least quite likely to) [\*1073] occur in specific places requires a resort to computer models that seek to project likely impacts from the human contribution to global warming in the decades ahead. So the injury is made concrete and particularized at the expense of its imminence. Again, this is not to deny the existence of anthropogenic global warming, but only to recognize that climate scientists have not yet been able to attribute specific environmental phenomena in specific places to human contributions to global warming, and this complicates efforts to demonstrate Article III standing. In order to show that its injury was concrete and particularized, Massachusetts focused on sea-level rise, as the loss of **state sovereign** territory would certainly be a tangible harm of the sort Article III demands. Yet as already suggested, the problem for Massachusetts was that in order to identify a specific loss of its own land from human-induced global warming with any particularity, it was forced to rely upon model projections far into the future. Specifically, Massachusetts focused on the potential loss of coastline due to sea-level rise "by 2100." n84 Focusing on this sort of future injury enabled Massachusetts to identify a specific harm particular to it, but at the expense of its ability to claim any such harm was occurring here and now, and was thus "actual or imminent" as the Court's interpretation of Article III requires. Under the pre-existing case law, assertion of a future injury would not suffice. Yet had Massachusetts focused on the effects of greenhouse gas emissions already underway, it would have been forced to assert injury from a modest change in global atmospheric temperature, and little else. n85 Doing so would have meant abandoning any claim that the injury Massachusetts suffered was concrete and particular to its interests as a state. While purporting to adhere to the traditional test for standing articulated in Lujan v. Defenders of Wildlife, n86 the Court took two steps to ease Massachusetts's legal burden, each of which constitutes a potentially significant change in the law of standing. n87 First, and most conspicuously, the **Court declared** that it was "of **considerable** [\*1074] **relevance"** that the **petitioner was "a sovereign State and not**, as it was in Lujan, a **private individual**." n88 This was relevant because "[s]tates are not normal litigants for the purposes of invoking federal jurisdiction." n89 Having ceded a portion of their sovereign authority to the federal government, the Court announced, the Commonwealth of Massachusetts and other states were entitled to "special solicitude" when seeking to invoke the jurisdiction of federal courts. n90 With this newfound solicitude "in mind," the Court had little difficulty concluding that a miniscule increase in sea-level rise satisfied the injury-in-fact requirement. n91 The majority purported to justify its newfound "special solicitude" for states in Georgia v. Tennessee Copper Co., n92 a century-old case in which the state of Georgia brought a federal common law nuisance suit against a polluting factory from across the border in Tennessee. n93 This case had nothing to do with standing, however. Rather, it was a suit under the federal common law of interstate nuisance--a suit of the sort that would almost certainly be preempted today under the Clean Air Act. n94 The only "special solicitude" shown to Georgia in [\*1075] the case was the Court's willingness to consider providing Georgia with equitable relief of the sort unavailable to private parties under federal common law due to the state's "quasi-sovereign" interest in its territory. n95 Yet it is one thing to hold that one state cannot foul the air of its neighbor and that state parties can pursue extraordinary equitable relief in federal court. It is quite another to maintain that a state's ability to vindicate such a claim on behalf of its citizens gives rise to a "special solicitude" when a state sues in federal court to invoke the regulatory apparatus of administrative agencies. On any fair reading, Georgia v. Tennessee Copper provides little, if any, support to the majority's newfound doctrine of "special solicitude." This may explain why the case was not cited in Massachusetts's briefs. Indeed, the case was not cited in any brief filed by any party or amicus in the case. n96 While one brief filed by state amici did argue that states have special interests that should be taken into consideration as part of the standing analysis, it focused on the potential for federal law to preempt state regulatory initiatives. n97 [\*1076] Even those who believe states should receive such consideration recognize the Court's reasoning on this point was quite confused. n98 Recognizing a "special solicitude" for sovereign states was the Massachusetts Court's first revision to the law of standing. Its expansion of what constitutes a "procedural right" that would justify relaxing the traditional standing requirements of causation and redressability was the second. According to the Court, it was "of critical importance" that Congress had "authorized this type of challenge to EPA action." n99 As the Court had noted in Lujan, the "normal standards for redressability and immediacy" are relaxed when a statute vests a litigant with "procedural rights." n100 This is because, as **Justice Kennedy** explained in Lujan, "'Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before.'" n101 **However,** as the Massachusetts Court noted (again citing Justice Kennedy's Lujan concurrence), "'In exercising this power . . . Congress must at the very least identify the injury it seeks to vindicate and relate the injury to the class of persons entitled to bring suit.'" n102 Therefore, the Court could relax the "normal standards for redressability and immediacy" so long as Congress identified the injury it sought to vindicate and the related the injury to those entitled to bring suit. Yet Congress never did anything of the kind. The only congressional enactment cited by the Court as a justification for easing standing's traditional redressability and immediacy requirements was Section 307(b)(1) of the Clean Air Act. Here, according to the Court, is where Congress had "authorized this type of challenge to EPA action." This was an innovative reading of the Clean Air Act. Up until Massachusetts, Section 307(b)(1) had been recognized as little more than a jurisdictional provision, identifying which petitions for review of EPA action under the Clean Air Act must be filed in the U.S. Court of Appeals for the D.C. [\*1077] Circuit as opposed to regional circuit courts of appeals. n103 By its terms, this provision does not create a new procedural right, let alone "identify" an injury and "relate the injury to the class of persons entitled to bring suit." n104 The underlying right to review agency action is found in the Administrative Procedure Act, not Section 307 of the Clean Air Act. n105 Indeed, the Clean Air Act contains a citizen suit provision of its own that is virtually identical in every meaningful respect to the Endangered Species Act provision found not to create such a right in Lujan. n106 In Lujan, the Court held that the Endangered Species Act's conferral of the right of "'any person . . . to enjoin'" any federal agency "'alleged to be in violation'" of the Act was insufficient to create a procedural right, the violation of which would satisfy the requirements of standing. n107 Such a provision, **Justice Kennedy** explained, "**does not** of its own force establish that there is an injury in **'any person'** by virtue of **any 'violation**.'" n108 Yet if this is so, it is hard to conceive how a jurisdictional provision such as Section 307, which by its own terms does not impose any obligations on the EPA nor confer any express rights, does anything more to establish the existence of a judicially-cognizable injury. If the Court is to be taken at its word, Massachusetts effects a remarkable shift in administrative law by greatly expanding the class of statutes that should now be recognized as the source of procedural rights that justify loosening the causation and redressability requirements for standing. n109

## Court DA

### AT Chem Industry

#### Not key to whole industry – card just says trade regulations hurt the industry, not that they collapse it

#### No terminal impact to Baum – its from the 90’s and just warrantlessly says bioattacks and envioronment

#### \*\*\*-- Chemical industry resilient

CNI 8 (Chemical News & Intelligence, “This Week in ICIS Chemical Business”, 8-18, Lexis)

Engineering and construction companies are expanding to specialties and photovoltaics Global engineering and construction companies report that the projects are changing, but the chemical sector continues to show a surprising amount of resilience Profitability analysis reveals North American petrochemical industry's demise is exaggerated Profits in the North American petrochemical industry are expected to decline sharply following Middle Eastern and Asian capacity additions. But contrary to the prevailing view, fears of its long-term demise will prove to be exaggerated. Shell's Omega MEG process kicks off in South Korea The big goal for a process engineer could be the development of a technology that converts all the raw materials to the desired end product with the minimum theoretical energy consumption, no emissions and the lowest capital cost.

#### -- Chemical industry doesn’t solve sustainability

**Elkington 12** (John, executive chairman of Volans and non-executive director at SustainAbility. “Chemical industry isn't doing enough to embrace sustainability,” 9-12-12, <http://www.guardian.co.uk/sustainable-business/sustainability-with-john-elkington/chemical-industry-embrace-sustainability-environment?newsfeed=true>)

One speaker showed a slide headed 'Sustainability is …', spotlighting Shin-Etsu, a Japanese chemical company that suffered a major explosion. Instead of clamming up, as Japanese corporate leaders are wont to do, the CEO took a voluntary pay-cut and went out to apologise to the local community. Apologising to people when you have accidentally blown them up makes sense, most of the time, but in the context of the global challenges we face I struggle to see this as a definitive (indeed, even a legitimate) case of sustainability in practice. Then another speaker, this time from ExxonMobil Chemical, asserted that – based on the latest life-cycle assessment data – shopping bags made out of high density polyethylene (HDPE) are the sustainable option. Paper bags, he insisted, should be dropped because of the energy and water consumption involved. Ah. When the discussion period came, I asked whether the data had taken into account the great swirling gyres of plastic debris that now scar large areas of the world ocean? No, he admitted. For such people, as a speaker from BASF assured us, sustainability means we "are on a journey". Like many others, this German company has talked to a considerable number of stakeholders (350, by their reckoning) and boiled it all down to a shortlist of issues (just 40 of those). The main conclusion seems to be that we must all create more shared value while, simultaneously, shrinking our environmental footprints. Good, but by how much? That's a question that the sector finds it hard to answer, except in areas where there is a legal requirement that the use of particular chemicals be driven to zero, like hexavalent chromium. And, while most participants intensely dislike the idea of further regulation, there were those – including Peter Kunze of the European Automobile Manufacturers Association – who argued for much clearer signals on which chemicals would be banned ultimately, coupled with "smart legislation" to ensure that the process of conversion didn't undermine industrial or regional competitiveness. It was intriguing to see successive speakers through the lenses of vested interests. A panel of four speakers, for example, agreed that renewable feedstocks were very unlikely to make much of an impression on the industry in the next decade or two. Then a colleague from another chemical company whispered in my ear that three of the four companies were backwards-integrated into the **oil sector**, effectively making them fossil fuel junkies. Hardly surprising, then, that they find it hard to imagine – or at least publicly admit the possibility of – a radically different future. Behind the scenes people spoke quietly of lobbying that is underway by parts of the industry: in the US, for example, chemical companies are fighting tooth-and-nail to ensure **suspect chemicals** and products like formaldehyde and styrene continue to be allowed in LEED-certified buildings. On the upside, Nicholas Denis of McKinsey & Co reported results of their recent market survey showing that green products are now seen much more positively by both consumers and industry executives, with between 82 and 93% of both categories saying they want to go greener, even though "the road to green chemicals is harder than we thought initially" and the notion of a "green premium is still a Holy Grail for most companies." Procter & Gamble promptly disagreed, to a degree, noting that their efforts to promote greener products like compact detergents had been stymied by the unwillingness of most consumers to change to seemingly smaller products at the same price-point. So the detergent industry went to government, asked for permission to avoid anti-trust rules, and moved as a group of companies to strip non-compact products from the shelves. "I would love it if consumers wanted greener products, mused P&G's Peter Kunze, "because we would then have a business model!"

## Readiness DA

### AT NEPA Kills Readiness

#### Their evidence is from fear mongers- no risk of a da

Babcock 7 (Hope – Professor of Law, Georgetown University Law Center, “NATIONAL SECURITY AND ENVIRONMENTAL LAWS: A CLEAR AND PRESENT DANGER?”, 2007, 25 Va. Envtl. L.J. 105, lexis)

There are many reasons to doubt the genuineness of the armed forces' repeated statements about the crucial importance of an unfettered capacity to train and prepare soldiers for combat in Afghanistan and Iraq and their demonization of environmental regulations for impeding that effort. n243 Prominent among those [\*154] reasons is that the initiatives contained in the RRPI relieving the military from compliance with three critically important wildlife laws were under development before 9/11. n244 Further, many of the pollution control laws from which the armed forces have sought relief have been in effect for over thirty years. With the exception of an occasional lawsuit, these laws have not constrained the armed forces. n245 Furthermore, "no President has ever denied a request from the military for exemptions from an environmental statute," and there appear to be no examples where pollution control laws have actually, as opposed to theoretically, interfered with military readiness activities. n246 As Dycus points out, the military's initial success in Afghanistan and Iraq was achieved under pre-9/11 training and weapons testing conditions. n247 Despite the lack of evidence that military readiness has actually been compromised by environmental laws, the military's arguments have gained sufficient traction to get broad, perhaps permanent, relief from important wildlife laws, and it is unabashedly seeking similar relief from basic pollution control laws by mounting [\*155] the same arguments. The military's largely unmonitored activities under these exemptions could be as, if not more, damaging to the environment than what occurred on its bases before environmental regulations took hold. In this time of "war," the military will be able to self-regulate. Based on prior experience, it is reasonable to assume that the courts will give the military substantial deference in its use of these exemptions, and that neither the public nor Congress will display much interest in constraining military activities. Because of the changes to public disclosure laws, much of what the military does and the effects of those activities will be withheld from public view. These changes to environmental and public disclosure laws are preemptive as they seek relief before any problem occurs, and thus they fit within the broader national response to the events of 9/11. However, it is difficult to see how any of them will prevent another 9/11 from occurring. It may be harsh to say, but not unreasonable to conclude, that DOD "rode the wave of public insecurity of another terrorist attack" n248 to rid itself of environmental and public disclosure burdens it has been chafing under for decades.

#### Training irrelevant – the mere perception of basing is sufficient

**Cooley 2008** (Alexander – Tow Professor of Political Science at Barnard College and Faculty Member of Columbia University’s Harriman Institute, Base Politics: Democratic Change and the U.S. Military Overseas, p. 4-8)

The Enduring Significance of U.S. Bases At first glance, the topic of base politics itself may seem anachronistic, for the term "overseas bases" conjures images of superpowers during the cold war maneuvering across the third world to secure geopolitical access and advantage.' But securing overseas basing access remains a critical aspect of current U.S. defense policy and the global war on terrorism, especially as U.S. planners reconfigure the force structure and basing pos-ture to cope with more regionally based threats.6 Moreover, for host coun-tries, base issues can still dominate bilateral relations with the United States—a fact that is not always shared or sufficiently appreciated by U.S. officials—and the manner in which base-related issues are managed (or mismanaged) can symbolize the broader relationship between the base host and the United States. Finally, studying the politics of bases reveals some unexpected aspects of how U.S. allies and military clients engage with American unipolarism or the "American Empire." Most important, this account of base politics reveals an emerging, if unexpected, tension inherent in the current U.S. strategy of promoting democracy abroad while maintaining an extensive global basing presence—the pursuit of one may actually undermine the viability of the other in any given base host. Projecting American Power U.S. overseas bases and access rights are the linchpin of American global power and its military supremacy of the global commons.7 Overseas bases in countries such as Spain and Uzbekistan act as "force multipliers" and enable U.S. planners to rapidly project power both within and across regions.' Securing overseas bases and access agreements with a number of countries was critical for the recent U.S.-led military campaigns in Afghanistan and Iraq.' For example, the K2 base in Uzbekistan was stag-ing facility for the OIF mission, whereas facilities in Spain were used for both the Afghanistan and Iraq campaigns. Even when not used for combat purposes, bases are significant when they guarantee U.S. access to neigh-boring assets, territories, or resources that are of critical importance.10 Beyond their military roles and strategic functions, bases also provide service and repair facilities, storage, training facilities, and logistical stag-ing posts. Bases can also be used to conduct surveillance, coordinate tasks, collect intelligence, and facilitate command, control, and communications (C3)." As it turns out, overseas bases such as K2 have been used to trans-port enemy combatants and terror suspects as part of the CIA's program of extraordinary rendition and may even have been used as sites to detain and interrogate some suspects.12 The sheer number of U.S. overseas bases is staggering (see table 1.1). According to the Department of Defense's 2006 Base Structure Report, the United States officially maintains 766 military installations overseas and another 77 in noncontinental U.S. territories. Fifteen of these facilities were estimated to be worth more than $1.6 billion each, whereas an additional 19 were valued at between $862 million and $1.6 billion.13 Of course, such official figures do not include the numerous secret installations and jointly operated bases and / or tacit governance arrangements that are scattered overseas.14 Not surprisingly, some commentators refer to this vast over-seas network of bases and troop deployments as the U.S. Empire and com-pare it to the peripheral holdings of previous imperial powers." The structure of this global basing network is also changing. The Pen-tagon's current Global Defense Posture Review (GDPR) marks the first fundamental transformation of U.S. basing posture since World War II as U.S. defense planners adjust to new strategic imperatives such as the global war on terror." The GDPR will reduce U.S. forces in several major cold war base hosts—especially Germany, Korea, and Japan—and will estab-lish a global network of smaller, more flexible facilities. These new-style bases or "lily pads" will be located in several regions where the United States has not traditionally maintained a presence, including Africa, Central Asia, and the Black Sea. As a result, the United States seems set to abandon its traditional role as an "offshore balancer" and, using its new basing posture, to more directly engage regional threats such as terrorists and insurgents." One explicitly political goal of the GDPR is to reduce the footprint and local friction caused by a large U.S. military presence and establish smaller facilities of a less permanent nature that will be less politically controversial and socially intrusive within host countries. Bases as Diplomatic Symbols Overseas bases, however, are not merely installations that serve a military purpose. For host governments and citizens, U.S. bases are also concrete institutions and embodiments of U.S. power, identity, and diplomacy. The physical presence of overseas U.S. troops and installations—from the large garrison towns in Germany that look like imported American counties to the small but restricted sites in Central Asia—serves as a daily reminder of the scope of U.S. global influence and signifies that the host country has sacrificed some of its domestic sovereignty." Negotiations over bases and their governing agreements can become the most pressing bilateral issue that host countries face with the United States, as they were in Spain in the mid-1980s and Uzbekistan from 2001 to 2005, and displace all other political and security concerns.19 Moreover, host countries often view the basing relationship as a symbol of the broader state of U.S.-host relations. Hence, Korean antibase activists campaign for a more "equal relation-ship" between U.S. forces and Korean sovereignty, whereas Romanian politicians proudly refer to the new U.S. bases on the Black Sea as symbols of the country's new status as a strong partner in the U.S.-led Western security system. Politically, bases are the most immediate issue through which a host country's politicians and its public experience, debate, and even contest U.S. global power. Often, basing agreements may even signal political and social commit-ments that U.S. officials did not necessarily intend to make. For example, America's western European allies strongly opposed the U.S.-Spain 1953 Madrid Pact and argued that the deal bestowed international legitimacy on the autocrat General Francisco Franco when he was otherwise ostracized from the international community. Similarly, although the basing agree-ment with Uzbekistan focused on fighting common terrorist elements in the Central Asian region, other states and publics across Central Asia saw the deal as a U.S. endorsement of the Uzbek regime's repressive policies and undemocratic tendencies. Historically, U.S. officials have found it dif-ficult to limit basing agreements from being perceived as broader political endorsements of host-country regimes and their domestic political and social practices.20

### AT Navy

#### There’s a disconnect – their link cards are about broader readiness, not naval collapse – they haven’t read an impact to that

#### \*\*\*No challengers

Friedman, 07 (George Friedman, The Limitations and Necessity of Naval Power, April 10, 2007, <http://www.stratfor.com/limitations_and_necessity_naval_power>)

The issue for the United States is not whether it should abandon control of the seas — that would be irrational in the extreme. Rather, the question is whether it has to exert itself at all in order to retain that control. Other powers either have abandoned attempts to challenge the United States, have fallen short of challenging the United States or have confined their efforts to building navies for extremely limited uses, or for uses aligned with the United States. No one has a shipbuilding program under way that could challenge the United States for several generations.

One argument, then, is that the United States should cut its naval forces radically — since they have, in effect, done their job. Mothballing a good portion of the fleet would free up resources for other military requirements without threatening U.S. ability to control the sea-lanes. Should other powers attempt to build fleets to challenge the United States, the lead time involved in naval construction is such that the United States would have plenty of opportunities for re-commissioning ships or building new generations of vessels to thwart the potential challenge.

#### Naval power is good for nothing

Reed 8 [John T. Reed, West Point Graduate and platoon leader in the 82nd Airborne Division., June, 2008.<"Are U.S. Navy surface ships sitting ducks to enemies with modern weapons?"http://www.johntreed.com/sittingducks.html]

I have read media stories that said whenever the U.S. Navy did computer war games against the Soviet Union, all significant U.S. Navy surface ships were destroyed by the Soviets within about **20 minutes** of the start of the computerized war. How? Nukes. A reader says that the Soviet submarines in the Cuban missile crisis had nuclear torpedoes which they would have used if we did an amphibious landing. I have no way to confirm that. Although the Navy ships and their carrier-based planes perform spectacularly well against third-rate enemies like Afghanistan and Iraq, I wonder how they would do against Argentina or any other enemy equipped with modern weapons. In short, I wonder if **U.S. Navy surface vessels are obsolete.** Think about it. They are large, slow-moving, metal objects that float on the surface of the ocean—in the Twenty-First Century! Ocean liners were the main way to get across the oceans for civilian passengers until the second half of the Twentieth Century. Since then, most people have used planes because they are much faster and cheaper. Except the U.S. military. Civilians essentially got rid of their “navy” around 1950. Only the hidebound military would still have a Navy in the Twenty-First Century. Nowadays, civilians only ride passenger ships for pleasure cruises. An argument can be made that the Navy does the same. Only maybe the old line, “you can tell the men from the boys by the size of their toys” is a more accurate way to put it. Navy brass want to grow up to captain a ship. A big ship. The bigger the better. Before WW II, they wanted to be captains of battleships. After WW II, British historian B.H. Liddell Hart said, “A battleship had long been to an admiral what a cathedral is to a bishop.” Now Navy officers want to captain aircraft carriers. Very exciting. Very romantic. Great fun. But obsolete. WW II in the Pacific last time they were not obsolete The last time we used them to fight worthy opponents was in the Pacific during World War II. At that time, warring navies had to send out slow-moving patrol planes to search for the enemy’s ships. The motion picture Midway does an excellent job of showing both the Japanese and the Americans doing this. Low-visibility weather would often hide ships back then. Easily detected- Those days are long gone. Surface ships are not only easily seen by the human eye absent fog or clouds, they are also easily detected, pinpointed, and tracked by such technologies as radar, sonar, infrared detectors, motion detectors, noise detectors, magnetic field detectors, and so forth. Nowadays, you can probably create an Exocet-type, anti-ship missile from stuff you could buy at Radio Shack. Surface ships can no longer hide from the enemy like they did in World War II. Satellites- Satellites and spy planes obviate the need for World War II-type patrol planes and blimps, unless someone shoots them down, in which case planes can accomplish the same thing.. Too slow- Anti-ship missiles can travel at speeds up to, what, 20,000 miles an hour in the case of an ICBM aimed at a carrier task force. Carriers move at 30 knots or so which is 34.6 miles per hour. Too thin-skinned- Can you armor the ships so anti-ship missiles do not damage them? Nope. They have to stay relatively light so they can float and go 34.6 miles per hour. Cannot defend themselves-Can you arm them with anti-missile defenses? They are trying. They have electronic Gatling guns that automatically shoot down the incoming missiles. But no doubt those Gatling guns have a certain capacity as to number of targets they can hit at a time and range and ammunition limitations. They also, like any mechanical device, would malfunction at times. Generally, one would expect that if the enemy fired enough missiles at a Gatling-gun-equipped ship, one or more would eventually get through. How many? Let’s say the capacity of an aircraft carrier and its entourage body-guard ships to stop simultaneous Exocet-type anti-ship missiles is X. The enemy then need only simultaneously fire X + 1 such missiles to damage or sink the carrier. In the alternative, the enemy could fire one Exocet-type missile at a time at the carrier. Unless they are programmed otherwise, having only one such target, all the relevant guns would fire at it, thereby exhausting the carrier task force’s anti- missile ammunition more quickly, in which case fewer than X +1 Exocet-type missiles might be enough to put the carrier out of action. As Japan’s top WW II Admiral Yamamoto said, There is no such thing as an unsinkable ship. The fiercest serpent may be overcome by a swarm of ants. U.S. warships also have electronic warfare jamming devices that screw up the guidance systems of some types of incoming missiles. These, of course, are ineffective against nuclear-tipped missiles that need little guidance. Furthermore, if the enemy uses 20,000-miles-per-hour nuclear missiles, there is no known anti-missile defense. They move too fast for the electronic Gatling guns and do not need to ever get within the Gatling guns’ range to destroy the ships. Our enemy certainly would use nukes if they had enough of them and were in an all-out war against us. Cannot hide, run, or defend themselves In summary, Navy surface ships cannot hide from a modern enemy. They cannot run from a modern enemy. And they cannot defend themselves against a modern enemy. Accordingly, they are only useful for action against backward enemies like Afghanistan and Iraq or drug smugglers.

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### SoPo Add-On – Ikenberry !’s

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#### Disease

**Greger 8** (M.D., is Director of Public Health and Animal Agriculture at The Humane Society of the United States (Michael Greger, , Bird Flu: A Virus of Our Own Hatching, <http://birdflubook.com/a.php?id=111>)

Senate Majority Leader Frist describes the recent slew of emerging diseases in almost biblical terms: “All of these [new diseases] were advance patrols of a great army that is preparing way out of sight.”3146 Scientists like Joshua Lederberg don’t think this is mere rhetoric. He should know. Lederberg won the Nobel Prize in medicine at age 33 for his discoveries in bacterial evolution. Lederberg went on to become president of Rockefeller University. “Some people think I am being hysterical,” he said, referring to pandemic influenza, “but there are catastrophes ahead. We live in evolutionary competition with microbes—bacteria and viruses. There is no guarantee that we will be the survivors.”3147 There is a concept in host-parasite evolutionary dynamics called the Red Queen hypothesis, which attempts to describe the unremitting struggle between immune systems and the pathogens against which they fight, each constantly evolving to try to outsmart the other.3148 The name is taken from Lewis Carroll’s Through the Looking Glass in which the Red Queen instructs Alice, “Now, here, you see, it takes all the running you can do to keep in the same place.”3149 Because the pathogens keep evolving, our immune systems have to keep adapting as well just to keep up. According to the theory, animals who “stop running” go extinct. So far our immune systems have largely retained the upper hand, but the fear is that given the current rate of disease emergence, the human race is losing the race.3150 In a Scientific American article titled, “Will We Survive?,” one of the world’s leading immunologists writes: Has the immune system, then, reached its apogee after the few hundred million years it had taken to develop? Can it respond in time to the new evolutionary challenges? These perfectly proper questions lack sure answers because we are in an utterly unprecedented situation [given the number of newly emerging infections].3151 The research team who wrote Beasts of the Earth conclude, “Considering that bacteria, viruses, and protozoa had a more than two-billion-year head start in this war, a victory by recently arrived Homo sapiens would be remarkable.”3152 Lederberg ardently believes that emerging viruses may imperil human society itself. Says NIH medical epidemiologist David Morens, When you look at the relationship between bugs and humans, the more important thing to look at is the bug. When an enterovirus like polio goes through the human gastrointestinal tract in three days, its genome mutates about two percent. That level of mutation—two percent of the genome—has taken the human species eight million years to accomplish. So who’s going to adapt to whom? Pitted against that kind of competition, Lederberg concludes that the human evolutionary capacity to keep up “may be dismissed as almost totally inconsequential.”3153 To help prevent the evolution of viruses as threatening as H5N1, the least we can do is take away a few billion feathered test tubes in which viruses can experiment, a few billion fewer spins at pandemic roulette. The human species has existed in something like our present form for approximately 200,000 years. “Such a long run should itself give us confidence that our species will continue to survive, at least insofar as the microbial world is concerned. Yet such optimism,” wrote the Ehrlich prize-winning former chair of zoology at the University College of London, “might easily transmute into a tune whistled whilst passing a graveyard.”3154

#### **Food shortages**

Cribb 10 (Julian, the principal of Julian Cribb & Associates, specialists in science communication, 1996-2002 he was Director, National Awareness, for Australia’s national science agency, CSIRO, has received 32 awards for journalism including the Order of Australia Association Media Prize, fellow of the Australian Academy of Technological Sciences and Engineering. The Coming Famine: The Global Food Crisis and what we can do to avoid it, University of California Press, 2010, p. 20)

The threat of conflict over food, land, and water is not, however, confined to the marginal world. Increasingly it imperils the economic powerhouses of the global economy in the early twenty-first century. In 2001 the Australian strategic analyst Alan Dupont predicted, “Food is destined to have greater strategic weight and import in an era of environmental scarcity. While optimists maintain that the world is perfectly capable of meeting the anticipated increases in demand for essential foodstuffs, there are enough imponderables to suggest that prudent governments would not want to rely on such a felicitous outcome." Anticipating the food crisis of 2007-8 by several years, he presciently added, "East Asia's rising demand for food and diminishing capacity to feed itself adds an unpredictable new element to the global food equation for several reasons. The gap between production and consumption of key foodstuffs globally is narrowing dangerously and needs to be reversed." Bearing out his words, Singapore president Lee Hsieng Loong told a 2008 international defense conference, "In the longer term, the trends towards tighter supplies and higher prices will likely reassert themselves. This has serious security implications. The impact of a chronic food shortage will be felt especially by the poor countries. The stresses from hunger and famine can easily result in social upheaval and civil strife, exacerbating conditions that lead to failed states. Between countries, competition for food supplies and displacement of people across borders could deepen tensions and provoke conflict and wars."15

#### Oil conflict escalate

**Klare 2002** (Michael – board of directors of the Arms Control Association, the National Council of the Federation of American Scientists, and the advisory board of the Arms Division of Human Rights Watch, Resource Wars: The New Landscape of Global Conflict, p. 27-29)

Of all the resources discussed in this book, none is more likely to provoke conflict between states in the twenty-first century than oil. Petroleum stands out from other materials-water, minerals, timber, and so on-because of its pivotal role in the global economy and its capacity to ignite large-scale combat. No highly industrialized society can survive at present without substantial supplies of oil, and so any significant threat to the continued availability of this resource will prove a cause of crisis and, in extreme cases, provoke the use of military force. Action of this sort could occur in any of the major oil-producing areas, including the Middle East and the Caspian basin. Lesser conflicts over petroleum are also likely, as states fight to gain or retain control over resource-rich border areas and offshore economic zones. Big or small, conflicts over oil will constitute a significant feature of the global security environment in the decades to come. Petroleum has, of course, been a recurring source of conflict in the past. Many of the key battles of World War II, for example, were triggered by the Axis Powers' attempts to gain control over petroleum supplies located in areas controlled by their adversaries. The pursuit of greater oil revenues also prompted Iraq's 1990 invasion of Kuwait, and this, in turn, provoked a massive American military response. But combat over petroleum is not simply a phenomenon of the past; given the world's ever-increasing demand for energy and the continuing possibility of supply interruptions, the outbreak of a conflict over oil is just as likely to occur in the future. The likelihood of future combat over oil is suggested, first of all, by the growing buildup of military forces in the Middle East and other oil-producing areas. Until recently, the greatest concentration of military power was to found along the East-West divide in Europe and at other sites of superpower competition. Since 1990, however, these concentrations have largely disappeared, while troop levels in the major oil zones have been increased. The United States, for example, has established a permanent military infrastructure in the Persian Gulf area and has "prepositioned" sufficient war materiel there to sustain a major campaign. Russia, meanwhile, has shifted more of its forces to the North Caucasus and the Caspian Sea basin, while China has expanded its naval presence in the South China Sea. Other countries have also bolstered their presence in these areas and other sites of possible conflict over oil. Geology and geography also add to the risk of conflict. While relatively abundant at present, natural petroleum does not exist in unlimited quantities; it is a finite, nonrenewable substance. At some point in the future, available supplies will prove inadequate to satisfy soaring demand, and the world will encounter significant shortages. Unless some plentiful new source of energy has been discovered by that point, competition over the remaining supplies of petroleum will prove increasingly fierce. In such circumstances, any prolonged interruption in the global flow of oil will be viewed by import- dependent states as a mortal threat to their security-and thus as a matter that may legitimately be resolved through the use of military force. Growing scarcity will also result in higher prices for oil, producing enormous hardship for those without the means to absorb added costs; in consequence, widespread internal disorder may occur. Geography enters the picture because many of the world's leading sources of oil are located in contested border zones or in areas of recurring crisis and violence. The distribution of petroleum is more concentrated than other raw materials, with the bulk of global sup- plies found in a few key producing areas. Some of these areas-the North Slope of Alaska and the American Southwest, for example- are located within the borders of a single country and are relatively free of disorder; others, however, are spread across several coun- tries-which may or may not agree on their common borders-and/ or are located in areas of perennial unrest. To reach global markets, moreover, petroleum must often travel (by ship or by pipeline) through other areas of instability. Because turmoil in these areas can easily disrupt the global flow of oil, any outbreak of conflict, however minor, will automatically generate a risk of outside intervention.

#### **Terror**

Ayson 10 (Robert, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand – Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects”, Studies in Conflict & Terrorism, 33(7), July)

*A Catalytic Response: Dragging in the Major Nuclear Powers*

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today's and tomorrow's terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,[40](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928" \l "EN0040) and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”[41](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0041) Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington's relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington's early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country's armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abetters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents' … long-standing interest in all things nuclear.”[42](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0042) American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide.

#### Economic collapse

Merlini 11

[Cesare Merlini, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs (IAI) in Rome. He served as IAI president from 1979 to 2001. Until 2009, he also occupied the position of executive vice chairman of the Council for the United States and Italy, which he co-founded in 1983. His areas of expertise include transatlantic relations, European integration and nuclear non-proliferation, with particular focus on nuclear science and technology. A Post-Secular World? DOI: 10.1080/00396338.2011.571015 Article Requests: Order Reprints : Request Permissions Published in: journal Survival, Volume 53, Issue 2 April 2011 , pages 117 - 130 Publication Frequency: 6 issues per year Download PDF Download PDF (357 KB) View Related Articles To cite this Article: Merlini, Cesare 'A Post-Secular World?', Survival, 53:2, 117 – 130]

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even **involving the use of nuclear weapons**. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular **rational approach would be sidestepped** by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism.

### AT Heg Bad

#### Deep engagement and strong alliances solve nuclear war

Brooks et al 13

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A core premise of deep engagement is that it prevents the emergence of a far more dangerous global security environment. For one thing, as noted above, the United States’ overseas presence gives it the leverage to restrain partners from taking provocative action. Perhaps more important, its core alliance commitments also deter states with aspirations to regional hegemony from contemplating expansion and make its partners more secure, reducing their incentive to adopt solutions to their security problems that threaten others and thus stoke security dilemmas. The contention that engaged U.S. power dampens the baleful effects of anarchy is consistent with influential variants of realist theory. Indeed, arguably the scariest portrayal of the war-prone world that would emerge absent the “American Pacifier” is provided in the works of John Mearsheimer, who forecasts dangerous multipolar regions replete with security competition, arms races, nuclear proliferation and associated preventive war temptations, regional rivalries, and even runs at regional hegemony and full-scale great power war. 72 How do retrenchment advocates, the bulk of whom are realists, discount this benefit? Their arguments are complicated, but two capture most of the variation: (1) U.S. security guarantees are not necessary to prevent dangerous rivalries and conflict in Eurasia; or (2) prevention of rivalry and conflict in Eurasia is not a U.S. interest. Each response is connected to a different theory or set of theories, which makes sense given that the whole debate hinges on a complex future counterfactual (what would happen to Eurasia’s security setting if the United States truly disengaged?). Although a certain answer is impossible, each of these responses is nonetheless a weaker argument for retrenchment than advocates acknowledge. The first response flows from defensive realism as well as other international relations theories that discount the conflict-generating potential of anarchy under contemporary conditions. 73 Defensive realists maintain that the high expected costs of territorial conquest, defense dominance, and an array of policies and practices that can be used credibly to signal benign intent, mean that Eurasia’s major states could manage regional multipolarity peacefully without the American pacifier. Retrenchment would be a bet on this scholarship, particularly in regions where the kinds of stabilizers that nonrealist theories point to—such as democratic governance or dense institutional linkages—are either absent or weakly present. There are three other major bodies of scholarship, however, that might give decisionmakers pause before making this bet. First is regional expertise. Needless to say, there is no consensus on the net security effects of U.S. withdrawal. Regarding each region, there are optimists and pessimists. Few experts expect a return of intense great power competition in a post-American Europe, but many doubt European governments will pay the political costs of increased EU defense cooperation and the budgetary costs of increasing military outlays. 74 The result might be a Europe that is incapable of securing itself from various threats that could be destabilizing within the region and beyond (e.g., a regional conflict akin to the 1990s Balkan wars), lacks capacity for global security missions in which U.S. leaders might want European participation, and is vulnerable to the influence of outside rising powers. What about the other parts of Eurasia where the United States has a substantial military presence? Regarding the Middle East, the balance begins to swing toward pessimists concerned that states currently backed by Washington— notably Israel, Egypt, and Saudi Arabia—might take actions upon U.S. retrenchment that would intensify security dilemmas. And concerning East Asia, pessimism regarding the region’s prospects without the American pacifier is pronounced. Arguably the principal concern expressed by area experts is that Japan and South Korea are likely to obtain a nuclear capacity and increase their military commitments, which could stoke a destabilizing reaction from China. It is notable that during the Cold War, both South Korea and Taiwan moved to obtain a nuclear weapons capacity and were only constrained from doing so by a still-engaged United States. 75 The second body of scholarship casting doubt on the bet on defensive realism’s sanguine portrayal is all of the research that undermines its conception of state preferences. Defensive realism’s optimism about what would happen if the United States retrenched is very much dependent on its particular—and highly restrictive—assumption about state preferences; once we relax this assumption, then much of its basis for optimism vanishes. Specifically, the prediction of post-American tranquility throughout Eurasia rests on the assumption that security is the only relevant state preference, with security defined narrowly in terms of protection from violent external attacks on the homeland. Under that assumption, the security problem is largely solved as soon as offense and defense are clearly distinguishable, and offense is extremely expensive relative to defense. Burgeoning research across the social and other sciences, however, undermines that core assumption: states have preferences not only for security but also for prestige, status, and other aims, and they engage in trade-offs among the various objectives. 76 In addition, they define security not just in terms of territorial protection but in view of many and varied milieu goals. It follows that even states that are relatively secure may nevertheless engage in highly competitive behavior. Empirical studies show that this is indeed sometimes the case. 77 In sum, a bet on a benign postretrenchment Eurasia is a bet that leaders of major countries will never allow these nonsecurity preferences to influence their strategic choices. To the degree that these bodies of scholarly knowledge have predictive leverage, U.S. retrenchment would result in a significant deterioration in the security environment in at least some of the world’s key regions. We have already mentioned the third, even more alarming body of scholarship. Offensive realism predicts that the withdrawal of the American pacifier will yield either a competitive regional multipolarity complete with associated insecurity, arms racing, crisis instability, nuclear proliferation, and the like, or bids for regional hegemony, which may be beyond the capacity of local great powers to contain (and which in any case would generate intensely competitive behavior, possibly including regional great power war). Hence it is unsurprising that retrenchment advocates are prone to focus on the second argument noted above: that avoiding wars and security dilemmas in the world’s core regions is not a U.S. national interest. Few doubt that the United States could survive the return of insecurity and conflict among Eurasian powers, but at what cost? Much of the work in this area has focused on the economic externalities of a renewed threat of insecurity and war, which we discuss below. Focusing on the pure security ramifications, there are two main reasons why decisionmakers may be rationally reluctant to run the retrenchment experiment. First, overall higher levels of conflict make the world a more dangerous place. Were Eurasia to return to higher levels of interstate military competition, one would see overall higher levels of military spending and innovation and a higher likelihood of competitive regional proxy wars and arming of client states—all of which would be concerning, in part because it would promote a faster diffusion of military power away from the United States. Greater regional insecurity could well feed proliferation cascades, as states such as Egypt, Japan, South Korea, Taiwan, and Saudi Arabia all might choose to create nuclear forces. 78 It is unlikely that proliferation decisions by any of these actors would be the end of the game: they would likely generate pressure locally for more proliferation. Following Kenneth Waltz, many retrenchment advocates are proliferation optimists, assuming that nuclear deterrence solves the security problem. 79 Usually carried out in dyadic terms, the debate over the stability of proliferation changes as the numbers go up. Proliferation optimism rests on assumptions of rationality and narrow security preferences. In social science, however, such assumptions are inevitably probabilistic. Optimists assume that most states are led by rational leaders, most will overcome organizational problems and resist the temptation to preempt before feared neighbors nuclearize, and most pursue only security and are risk averse. Confidence in such probabilistic assumptions declines if the world were to move from nine to twenty, thirty, or forty nuclear states. In addition, many of the other dangers noted by analysts who are concerned about the destabilizing effects of nuclear proliferation—including the risk of accidents and the prospects that some new nuclear powers will not have truly survivable forces—seem prone to go up as the number of nuclear powers grows. 80 Moreover, the risk of “unforeseen crisis dynamics” that could spin out of control is also higher as the number of nuclear powers increases. Finally, add to these concerns the enhanced danger of nuclear leakage, and a world with overall higher levels of security competition becomes yet more worrisome. The argument that maintaining Eurasian peace is not a U.S. interest faces a second problem. On widely accepted realist assumptions, acknowledging that U.S. engagement preserves peace dramatically narrows the difference between retrenchment and deep engagement. For many supporters of retrenchment, the optimal strategy for a power such as the United States, which has attained regional hegemony and is separated from other great powers by oceans, is offshore balancing: stay over the horizon and “pass the buck” to local powers to do the dangerous work of counterbalancing any local rising power. The United States should commit to onshore balancing only when local balancing is likely to fail and a great power appears to be a credible contender for regional hegemony, as in the cases of Germany, Japan, and the Soviet Union in the midtwentieth century. The problem is that China’s rise puts the possibility of its attaining regional hegemony on the table, at least in the medium to long term. As Mearsheimer notes, “The United States will have to play a key role in countering China, because its Asian neighbors are not strong enough to do it by themselves.” 81 Therefore, unless China’s rise stalls, “the United States is likely to act toward China similar to the way it behaved toward the Soviet Union during the Cold War.” 82 It follows that the United States should take no action that would compromise its capacity to move to onshore balancing in the future. It will need to maintain key alliance relationships in Asia as well as the formidably expensive military capacity to intervene there. The implication is to get out of Iraq and Afghanistan, reduce the presence in Europe, and pivot to Asia— just what the United States is doing. 83 In sum, the argument that U.S. security commitments are unnecessary for peace is countered by a lot of scholarship, including highly influential realist scholarship. In addition, the argument that Eurasian peace is unnecessary for U.S. security is weakened by the potential for a large number of nasty security consequences as well as the need to retain a latent onshore balancing capacity that dramatically reduces the savings retrenchment might bring. Moreover, switching between offshore and onshore balancing could well be difficult. Bringing together the thrust of many of the arguments discussed so far underlines the degree to which the case for retrenchment misses the underlying logic of the deep engagement strategy. By supplying reassurance, deterrence, and active management, the United States lowers security competition in the world’s key regions, thereby preventing the emergence of a hothouse atmosphere for growing new military capabilities. Alliance ties dissuade partners from ramping up and also provide leverage to prevent military transfers to potential rivals. On top of all this, the United States’ formidable military machine may deter entry by potential rivals. Current great power military expenditures as a percentage of GDP are at historical lows, and thus far other major powers have shied away from seeking to match top-end U.S. military capabilities. In addition, they have so far been careful to avoid attracting the “focused enmity” of the United States. 84 All of the world’s most modern militaries are U.S. allies (America’s alliance system of more than sixty countries now accounts for some 80 percent of global military spending), and the gap between the U.S. military capability and that of potential rivals is by many measures growing rather than shrinking. 85

### Heg Impact Cards

#### Reputational legitimacy theory is true and key to foster cooperation

Douglas M Gibler 8, Department of Political Science University of Alabama, Tuscaloosa “The Costs of Reneging: Reputation and Alliance Formation” The Journal of Conflict Resolution, Vol. 52, No. 3, June, pp. 426-454

More sophisticated treatments of the reputation logic have been produced by formal theorists, both in economics and in political science. In economics, the ability of firm reputation to deter competition has been well analyzed (see Kreps and Wilson, 1982; Wilson, 1989; and Weigelt and Camerer, 1988), and political scientists have adopted these theories as tools in understanding the types of signals leaders can send (see for example, Alt, Calvert, and Humes, 1988; Ordeshook, 1986; and Wagner, 1992). Sartori (2002) and Guisinger and Smith (2002) probably go furthest in arguing that leaders and their envoys have incentives to develop certain types of reputations in order to overcome the uncertainty endemic to crisis diplomacy. In these models, a reputation for honesty allows the sender to credibly give information that would otherwise be “cheap talk”, and thus, leaders may concede less important issues, without bluffing, in order to maintain a reputation for honesty when more important issues arise (Sartori, 2002: 122).¶ The sum argument of these statements and theoretical treatments is clear. Decision-makers argue and act, at least in part, based on reputations. Traditional deterrence theory suggests reputations should be pursued by leaders as important and manipulable tools, which are useful in future crises. Formal theorists agree; reputations provide valuable information when the costs of signaling are low.

#### Legitimacy’s the fundamental internal link to effective hegemony---power distributions perceived as illegitimate are the most likely causes of great power war

Martha Finnemore 9, professor of political science and international affairs at George Washington University, January 2009, “Legitimacy, Hypocrisy, and the Social Structure of Unipolarity: Why Being a Unipole Isn’t All It’s Cracked Up to Be,” World Politics, Volume 61, Number 1

Legitimacy is, by its nature, a social and relational phenomenon. One’s position or power cannot be legitimate in a vacuum. The concept only has meaning in a particular social context. Actors, even unipoles, cannot create legitimacy unilaterally. Legitimacy can only be given by others. It is conferred either by peers, as when great powers accept or reject the actions of another power, or by those upon whom power is exercised. Reasons to confer legitimacy have varied throughout history. Tradition, blood, and claims of divine right have all provided reasons to confer legitimacy, although in contemporary politics conformity with [End Page 61] international norms and law is more influential in determining which actors and actions will be accepted as legitimate. 9¶ Recognizing the legitimacy of power does not mean these others necessarily like the powerful or their policies, but it implies at least tacit acceptance of the social structure in which power is exercised. One may not like the inequalities of global capitalism but still believe that markets are the only realistic or likely way to organize successful economic growth. One may not like the P5 vetoes of the Security Council but still understand that the United Nations cannot exist without this concession to power asymmetries. We can see the importance of legitimacy by thinking about its absence. Active rejection of social structures and the withdrawal of recognition of their legitimacy create a crisis. In domestic politics, regimes suffering legitimacy crises face resistance, whether passive or active and armed. Internationally, systems suffering legitimacy crises tend to be violent and noncooperative. Post-Reformation Europe might be an example of such a system. Without at least tacit acceptance of power’s legitimacy, the wheels of international social life get derailed. Material force alone remains to impose order, and order creation or maintenance by that means is difficult, even under unipolarity. Successful and stable orders require the grease of some legitimation structure to persist and prosper.10¶ The social and relational character of legitimacy thus strongly colors the nature of any unipolar order and the kinds of orders a unipole can construct. Yes, unipoles can impose their will, but only to an extent. The willingness of others to recognize the legitimacy of a unipole’s actions and defer to its wishes or judgment shapes the character of the order that will emerge. Unipolar power without any underlying legitimacy will have a very particular character. The unipole’s policies will meet with resistance, either active or passive, at every turn. Cooperation will be induced only through material quid pro quo payoffs. Trust will be thin to nonexistent. This is obviously an expensive system to run and few unipoles have tried to do so.

#### Hegemony key to solve extinction

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It is worth first examining the larger picture: **We live in a time of arguably the greatest structural change in the global order yet endured**, **with this historical moment's most amazing feature being its** relative and absolute **lack of mass violence**. That is something to consider when Americans contemplate military intervention in Libya, because if we do take the step to prevent larger-scale killing by engaging in some killing of our own, we will not be adding to some fantastically imagined global death count stemming from the ongoing "megalomania" and "evil" of American "empire." We'll be engaging in the same sort of system-administering activity that has marked our **stunningly successful stewardship of global order** since World War II. Let me be more blunt: **As the guardian of globalization**, **the U.S. military has been the greatest force for peace the world has ever known**. Had America been removed from the global dynamics that governed the 20th century, the mass murder never would have ended. Indeed, it's entirely conceivable there would now be no identifiable human civilization left, once nuclear weapons entered the killing equation. But the **world did not keep sliding down that path of perpetual war**. **Instead, America stepped up and changed everything by ushering in our now-perpetual great-power peace**. **We introduced the international liberal trade order known as globalization** and played loyal Leviathan over its spread. **What resulted was the collapse of empires, an explosion of democracy**, the **persistent spread of human rights**, the liberation of women, **the doubling of life expectancy**, a roughly **10-fold increase in adjusted global GDP** **and a profound and persistent reduction in battle deaths from state-based conflicts.** That is what American "hubris" actually delivered. Please remember that the next time some TV pundit sells you the image of "unbridled" American military power as the cause of global disorder instead of its cure. With self-deprecation bordering on self-loathing, we now imagine a post-American world that is anything but. Just watch who scatters and who steps up as the Facebook revolutions erupt across the Arab world. While we might imagine ourselves the status quo power, we remain the world's most vigorously revisionist force. **¶** As for the sheer "evil" that is our military-industrial complex, again, let's examine what the world looked like before that establishment reared its ugly head. **The last great period of global structural change was the first half of the 20th century, a period that saw a death toll of about 100 million across two world wars.** That comes to an average of 2 million deaths a year in a world of approximately 2 billion souls. Today, with far more comprehensive worldwide reporting, researchers report an average of less than 100,000 battle deaths annually in a world fast approaching 7 billion people. Though admittedly crude**, these calculations suggest a 90 percent absolute drop and a 99 percent relative drop in deaths due to war. We are clearly headed for a world order characterized by multipolarity,** something the American-birthed system was designed to both encourage and accommodate. **But given how things turned out the last time we collectively faced such a fluid structure, we would do well to keep U.S. power, in all of its forms, deeply embedded in the geometry to come.¶** To continue the historical survey, after salvaging Western Europe from its half-century of civil war, **the U.S. emerged as the progenitor of a new, far more just form of globalization -- one based on actual free trade rather than colonialism.** America then successfully replicated globalization further in East Asia over the second half of the 20th century, **setting the stage for the Pacific Century now unfolding.**

#### Two-thousand years of history prove

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Despite increasingly compelling findings concerning the importance of status seeking in human behavior, research on its connection to war waned some three decades ago.38 Yet empirical studies of the relationship between both systemic and dyadic capabilities distributions and war have continued to cumulate. If the relationships implied by the status theory run afoul of well-established patterns or general historical findings, then there is little reason to continue investigating them. **The clearest empirical implication** of the theory **is that** status **competition is unlikely to cause great power military conflict in unipolar systems**. If status competition is an important contributory cause of great power war, then, ceteris paribus, unipolar systems should be markedly less war-prone than bipolar or multipolar systems. And this appears to be the case. As Daniel Geller notes in a review of the empirical literature: "**The only polar structure that appears to influence conflict probability is unipolarity**."39 In addition, a larger number of studies at the dyadic level support the related expectation that narrow capabilities gaps and ambiguous or unstable capabilities hierarchies increase the probability of war.40 These studies are based entirely on post-sixteenth-century European history, and most are limited to the post-1815 period covered by the standard data sets. Though the systems coded as unipolar, near-unipolar, and hegemonic are all marked by a high concentration of capabilities in a single state, these studies operationalize unipolarity in a variety of ways, often very differently from the definition adopted here. An ongoing collaborative project looking at ancient interstate systems over the course of two thousand years suggests that historical systems that come closest to the definition of unipolarity used here exhibit precisely the behavioral properties implied by the theory. 41 As David C. Kang's research shows, the East Asian system between 1300 and 1900 was an unusually stratified unipolar structure, with an economic and militarily dominant China interacting with a small number of geographically proximate, clearly weaker East Asian states.42 Status politics existed, but actors were channeled by elaborate cultural understandings and interstate practices into clearly recognized ranks. Warfare was exceedingly rare, and the major outbreaks occurred precisely when the theory would predict: when China's capabilities waned, reducing the clarity of the underlying material hierarchy and increasing status dissonance for lesser powers. Much more research is needed, but initial exploration of other arguably unipolar systems-for example, Rome, Assyria, the Amarna system-appears consistent with the hypothesis.43 Status Competition and Causal Mechanisms Both theory and evidence demonstrate convincingly that competition for status is a driver of human behavior, and social identity theory and related literatures suggest the conditions under which it might come to the fore in great power relations. Both the systemic and dyadic findings presented in large-N studies are broadly consistent with the theory, but they are also consistent with power transition and other rationalist theories of hegemonic war.

#### War is at its lowest level in history because of US primacy---best statistical studies prove

John M. Owen 11, Professor of Politics at University of Virginia PhD from Harvard "DON’T DISCOUNT HEGEMONY" Feb 11 www.cato-unbound.org/2011/02/11/john-owen/dont-discount-hegemony/

Andrew Mack and his colleagues at the Human Security Report Project are to be congratulated. Not only do they present a study with a striking conclusion, driven by data, free of theoretical or ideological bias, but they also do something quite unfashionable: they bear good news. Social scientists really are not supposed to do that. Our job is, if not to be Malthusians, then at least to point out disturbing trends, looming catastrophes, and the imbecility and mendacity of policy makers. And then it is to say why, if people listen to us, things will get better. We do this as if our careers depended upon it, and perhaps they do; for if all is going to be well, what need then for us?¶ Our colleagues at Simon Fraser University are brave indeed. That may sound like a setup, but it is not. I shall challenge neither the data nor the general conclusion that violent conflict around the world has been decreasing in fits and starts since the Second World War. When it comes to violent conflict among and within countries, **things have been getting better**. (The trends have not been linear—Figure 1.1 actually shows that the frequency of interstate wars peaked in the 1980s—but the 65-year movement is clear.) Instead I shall accept that Mack et al. are correct on the macro-trends, and focus on their explanations they advance for these remarkable trends. With apologies to any readers of this forum who recoil from academic debates, this might get mildly theoretical and even more mildly methodological.¶ Concerning international wars, one version of the “nuclear-peace” theory is not in fact laid to rest by the data. It is certainly true that nuclear-armed states have been involved in many wars. They have even been attacked (think of Israel), which falsifies the simple claim of “assured destruction”—that any nuclear country A will deter any kind of attack by any country B because B fears a retaliatory nuclear strike from A.¶ But the most important “nuclear-peace” claim has been about mutually assured destruction, which obtains between two robustly nuclear-armed states. The claim is that (1) rational states having second-strike capabilities—enough deliverable nuclear weaponry to survive a nuclear first strike by an enemy—will have an overwhelming incentive not to attack one another; and (2) we can safely assume that nuclear-armed states are rational. It follows that states with a second-strike capability will not fight one another.¶ Their colossal atomic arsenals neither kept the United States at peace with North Vietnam during the Cold War nor the Soviet Union at peace with Afghanistan. But the argument remains strong that those arsenals did help keep the United States and Soviet Union at peace with each other. Why non-nuclear states are not deterred from fighting nuclear states is an important and open question. But in a time when calls to ban the Bomb are being heard from more and more quarters, we must be clear about precisely what the broad trends toward peace can and cannot tell us. They may tell us nothing about why we have had no World War III, and little about the wisdom of banning the Bomb now.¶ Regarding the **downward trend in international war**, Professor Mack is friendlier to more palatable theories such as the “**democratic peace**” (democracies do not fight one another, and the proportion of democracies has increased, hence less war); the interdependence or “**commercial peace**” (states with extensive economic ties find it irrational to fight one another, and interdependence has increased, hence less war); and the notion that people around the world are more anti-war than their forebears were. Concerning the downward trend in civil wars, he favors theories of economic growth (where commerce is enriching enough people, violence is less appealing—a logic similar to that of the “commercial peace” thesis that applies among nations) and the end of the Cold War (which end reduced superpower support for rival rebel factions in so many Third-World countries).¶ These are all **plausible mechanisms for peace**. What is more, none of them excludes any other; all could be working toward the same end. That would be somewhat puzzling, however. Is the world just lucky these days? How is it that an array of peace-inducing factors happens to be working coincidentally in our time, when such a magical array was absent in the past? The answer may be that one or more of these mechanisms reinforces some of the others, or perhaps some of them are mutually reinforcing. Some scholars, for example, have been focusing on whether economic growth might support democracy and vice versa, and whether both might support international cooperation, including to end civil wars.¶ We would still need to explain how this charmed circle of causes got started, however. And here let me raise another factor, perhaps even less appealing than the “nuclear peace” thesis, at least outside of the United States. That factor is what international relations scholars call hegemony—specifically **American hegemony**.¶ A theory that many regard as discredited, but that refuses to go away, is called hegemonic stability theory. The theory emerged in the 1970s in the realm of international political economy. It asserts that **for the global economy to remain open**—for countries to keep barriers to trade and investment low—**one powerful country must take the lead**. Depending on the theorist we consult, “taking the lead” entails paying for global public goods (keeping the sea lanes open, providing liquidity to the international economy), coercion (threatening to raise trade barriers or withdraw military protection from countries that cheat on the rules), or both. The theory is skeptical that international cooperation in economic matters can emerge or endure absent a hegemon. The distastefulness of such claims is self-evident: they imply that it is good for everyone the world over if one country has more wealth and power than others. More precisely, they imply that it has been good for the world that the United States has been so predominant.¶ There is no obvious reason why hegemonic stability theory could not apply to other areas of international cooperation, including in security affairs, human rights, international law, peacekeeping (UN or otherwise), and so on. What I want to suggest here—suggest, not test—is that **American hegemony might just be a deep cause of the steady decline of political deaths in the world**.¶ How could that be? After all, the report states that United States is the third most war-prone country since 1945. Many of the deaths depicted in Figure 10.4 were in wars that involved the United States (the Vietnam War being the leading one). Notwithstanding politicians’ claims to the contrary, a candid look at U.S. foreign policy reveals that the country is as ruthlessly self-interested as any other great power in history.¶ The answer is that U.S. hegemony might just be a **deeper cause of the proximate causes** outlined by Professor Mack. Consider economic growth and openness to foreign trade and investment, which (so say some theories) **render violence irrational**. American power and policies may be responsible for these in two related ways. First, at least since the 1940s Washington has **prodded other countries to embrace the market capitalism** that entails economic openness and produces **sustainable economic growth**. The United States promotes capitalism for selfish reasons, of course: its own domestic system depends upon growth, which in turn depends upon the efficiency gains from economic interaction with foreign countries, and the more the better. During the Cold War most of its allies accepted some degree of market-driven growth.¶ Second, the U.S.-led western victory in the Cold War damaged the credibility of alternative paths to development—communism and import-substituting industrialization being the two leading ones—and **left market capitalism the best model**. The end of the Cold War also involved an end to the billions of rubles in Soviet material support for regimes that tried to make these alternative models work. (It also, as Professor Mack notes, **eliminated the superpowers’ incentives to feed civil violence** in the Third World.) What we call **globalization** is **caused in part by the emergence of the United States as the global hegemon**.¶ The same case can be made, with somewhat more difficulty, concerning the **spread of democracy**. Washington has supported democracy only under certain conditions—the chief one being the absence of a popular anti-American movement in the target state—but those conditions have become much more widespread following the collapse of communism. Thus in the 1980s the Reagan administration—the most anti-communist government America ever had—began to dump America’s old dictator friends, starting in the Philippines. Today Islamists tend to be anti-American, and so the Obama administration is skittish about democracy in Egypt and other authoritarian Muslim countries. But general U.S. material and moral support for liberal democracy remains strong.

**Heg decreases structural violence---any alt dooms humanity to deprivation**

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First the absurdity: A few of the most over-the-top Bush-Cheney neocons did indeed promote a vision of U.S. primacy by which America shouldn't be afraid to wage war to keep other rising powers at bay. **It was a nutty concept then**, and it **remains a nutty concept today**. But since it feeds a lot of major military weapons system purchases, especially for the China-centric Air Force and Navy, don't expect it to disappear so long as the Pentagon's internal budget fights are growing in intensity. ¶ Meanwhile, the Chinese do their stupid best to fuel this outdated logic by building a force designed to keep America out of East Asia just as their nation's dependency on resources flowing from unstable developing regions skyrockets. With America's fiscal constraints now abundantly clear, the world's primary policing force is pulling back, while that force's implied successor is nowhere close to being able to field a similar power-projection capacity -- and never will be. So with NATO clearly stretched to its limits by the combination of Afghanistan and Libya, a lot of future fires in developing regions will likely be left to burn on their own. We'll just have to wait and see how much foreign commentators delight in that G-Zero dynamic in the years ahead. ¶ That gets us to the original "insult": the U.S. did not lord it over the world in the 1990s. Yes, it did argue for and promote the most rapid spread of globalization possible. But **the "evil" of the Washington Consensus** only yielded the **most rapid growth of a truly global middle class that the world has ever seen**. Yes, we can, in our current economic funk, somehow cast that development as the "loss of U.S. hegemony," in that the American consumer is no longer the demand-center of globalization's universe. But this is without a doubt the most amazing achievement of U.S. foreign policy, surpassing even our role in World War II. ¶ Numerous world powers served as global or regional hegemons before we came along, **and their record on economic development was painfully transparent**: **Elites got richer, and the masses got poorer**. Then America showed up after World War II and engineered an international liberal trade order, one that was at first admittedly limited to the West. But within four decades it went virally global, and now for the first time in history, more than half of our planet's population lives in conditions of modest-to-mounting abundance -- **after millennia of mere sustenance**. ¶ You may choose to interpret this as some sort of cosmic coincidence, but the historical sequence is undeniable: **With its unrivaled power, America made the world a far better place**. ¶ That spreading wave of global abundance has reformatted all sorts of traditional societies that lay in its path. Some, like the Chinese, have adapted to it magnificently in an economic and social sense, with the political adaptation sure to follow eventually. Others, being already democracies, have done far better across the board, like Turkey, Indonesia and India. But there are also numerous traditional societies where that reformatting impulse from below has been met by both harsh repression from above and violent attempts by religious extremists to effect a "counterreformation" that firewalls the "faithful" from an "evil" outside world.¶ Does this violent blowback constitute the great threat of our age? Not really. As I've long argued, this "friction" from globalization's tectonic advance is merely what's left over now that great-power war has gone dormant for 66 years and counting, with interstate wars now so infrequent and so less lethal as to be dwarfed by the civil strife that plagues those developing regions still suffering weak connectivity to the global economy. ¶ Let's remember what the U.S. actually did across the 1990s after the Soviet threat disappeared. It went out of its way to police the world's poorly governed spaces, battling rogue regimes and answering the 9-1-1 call repeatedly when disaster and/or civil strife struck vulnerable societies. **Yes, playing globalization's bodyguard made America public enemy No. 1 in the eyes of its most violent rejectionist movements**, including al-Qaida, but we made the effort because, in our heart of hearts, we knew that this is what blessed powers are supposed to do. ¶ Some, like the Bush-Cheney neocons, were driven by more than that sense of moral responsibility. They saw a chance to remake the world so as to assure U.S. primacy deep into the future. The timing of their dream was cruelly ironic, for it blossomed just as America's decades-in-the-making grand strategy reached its apogee in the peaceful rise of so many great powers at once. Had Sept. 11 not intervened, the neocons would likely have eventually targeted rising China for strategic demonization. Instead, they locked in on Osama bin Laden. The rest, as they say, is history. ¶ The follow-on irony of the War on Terror is that its operational requirements actually revolutionized a major portion of the U.S. military -- specifically the Army, Marines and Special Forces -- in such a way as to redirect their strategic ethos from big wars to small ones. It also forged a new operational bond between the military's irregular elements and that portion of the Central Intelligence Agency that pursues direct action against transnational bad actors. The up-front costs of this transformation were far too high, largely because the Bush White House stubbornly refused to embrace counterinsurgency tactics until after the popular repudiation signaled by the 2006 midterm election. But the end result is clear: **We now have the force we actually need to manage this global era**.¶ But, of course, **that can all be tossed into the dumpster** if we convince ourselves that our "loss" of hegemony was somehow the result of our own misdeed, instead of being our most profound gift to world history. Again, we grabbed the reins of global leadership and patiently engineered not only the **greatest redistribution -- and expansion -- of global wealth ever seen,** but also the **greatest consolidation of global peace ever seen**. ¶ Now, if we can sensibly realign our strategic relationship with the one rising great power, China, whose growing strength upsets us so much, then in combination with the rest of the world's rising great powers we can collectively wield enough global policing power to manage what's yet to come. ¶ As always, **the choice is ours**.

#### The world is getting better now because heg is peaceful

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Is Unipolarity Peaceful? As evidence, Monteiro provides metrics of the number of years during which great powers have been at war. For the unipolar era since the end of the Cold War, the United States has been at war 13 of those 22 years or 59% (see his Table 2 below). Now, I've been following some of the discussion by and about Steven Pinker and Joshua Goldstein's [work](http://www.nytimes.com/2011/12/18/opinion/sunday/war-really-is-going-out-of-style.html?pagewanted=all) that suggests the world is becoming more peaceful with interstate wars and intrastate wars becoming more rare. I was struck by the graphic that Pinker used in a Wall Street Journal [piece](http://online.wsj.com/article/SB10001424053111904106704576583203589408180.html) back in September that drew on the Uppsala Conflict Data, which shows a steep decline in the number of deaths per 100,000 people. How do we square this account by Monteiro of a unipolar world that is not peaceful (with the U.S. at war during this period in Iraq twice, Afghanistan, Kosovo) and Pinker's account which suggests declining violence in the contemporary period? Where Pinker is focused on systemic outcomes, Monteiro's measure merely reflect years during which the great powers are at war. Under unipolarity, there is only one great power so the measure is partial and not systemic. However, Monteiro's theory aims to be systemic rather than partial. In critiquing Wohlforth's early work on unipolarity stability, Monteiro notes: Wohlforth’s argument does not exclude all kinds of war. Although power preponderance allows the unipole to manage conflicts globally, this argument is not meant to apply to relations between major and minor powers, or among the latter (17). So presumably, **a more adequate test of the peacefulness or not of unipolarity** (at least for Monteiro) is not the number of years the great power has been at war **but whether the system as a whole is becoming more peaceful under unipolarity compared** to previous eras, including wars between major and minor powers or wars between minor powers and whether the wars that do happen are as violent as the ones that came before. Now, as Ross Douthat pointed [out](http://douthat.blogs.nytimes.com/2011/10/17/steven-pinkers-history-of-violence/), Pinker's argument isn't based on a logic of benign hegemony. It could be that even if the present era is more peaceful, unipolarity has nothing to do with it. Moreover, Pinker may be wrong. Maybe the world isn't all that peaceful. I keep thinking about the places I don't want to go to anymore because they are violent (Mexico, Honduras, El Salvador, Nigeria, Pakistan, etc.) As Tyler Cowen [noted](http://marginalrevolution.com/marginalrevolution/2011/10/steven-pinker-on-violence.html), the measure Pinker uses to suggest violence is a per capita one, which doesn't get at the absolute level of violence perpetrated in an era of a greater world population. **But, if my read of other** [**reports**](http://www.hsrgroup.org/human-security-reports/20092010/graphs-and-tables.aspx) **based on Uppsala data is right, war is becoming more rare and less deadly** (though later [data](http://www.pcr.uu.se/research/ucdp/charts_and_graphs/) suggests lower level armed conflict may be increasing again since the mid-2000s). The apparent violence of the contemporary era may be something of a presentist bias and reflect our own lived experience and the ubiquity of news media .Even if the U.S. has been at war for the better part of unipolarity, the deadliness is declining, even compared with Vietnam, let alone World War II. Does Unipolarity Drive Conflict? So, I kind of took issue with the Monteiro's premise that unipolarity is not peaceful. What about his argument that unipolarity drives conflict? Monteiro suggests that the unipole has three available strategies - defensive dominance, offensive dominance and disengagement - though is less likely to use the third. Like Rosato and Schuessler, Monteiro suggests because other states cannot trust the intentions of other states, namely the unipole, that minor states won't merely bandwagon with the unipole. Some "recalcitrant" minor powers will attempt to see what they can get away with and try to build up their capabilities. As an aside, in Rosato and Schuessler world, unless these are located in strategically important areas (i.e. places where there is oil), then the unipole (the United States) should disengage. In Monteiro's world, disengagement would inexorably lead to instability and draw in the U.S. again (though I'm not sure this necessarily follows), but neither defensive or offensive dominance offer much possibility for peace either since it is U.S. power in and of itself that makes other states insecure, even though they can't balance against it.

#### No risk of heg bad---US engagement and reintervention are inevitable---it’s only a question of making it effective

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In theory, the United States could refrain from intervening abroad. But, in practice, will it? Many assume today that the American public has had it with interventions, and Alice Rivlin certainly reflects a strong current of opinion when she says that “much of the public does not believe that we need to go in and take over other people’s countries.” That sentiment has often been heard after interventions, especially those with mixed or dubious results. It was heard after the four-year-long war in the Philippines, which cost 4,000 American lives and untold Filipino casualties. It was heard after Korea and after Vietnam. It was heard after Somalia. Yet the reality has been that after each intervention, the sentiment against foreign involvement has faded, and the United States has intervened again. ¶ Depending on how one chooses to count, the United States has undertaken roughly 25 overseas interventions since 1898: Cuba, 1898 The Philippines, 1898-1902 China, 1900 Cuba, 1906 Nicaragua, 1910 & 1912 Mexico, 1914 Haiti, 1915 Dominican Republic, 1916 Mexico, 1917 World War I, 1917-1918 Nicaragua, 1927 World War II, 1941-1945 Korea, 1950-1953 Lebanon, 1958 Vietnam, 1963-1973 Dominican Republic, 1965 Grenada, 1983 Panama, 1989 First Persian Gulf war, 1991 Somalia, 1992 Haiti, 1994 Bosnia, 1995 Kosovo, 1999 Afghanistan, 2001-present Iraq, 2003-present¶ That is one intervention every 4.5 years on average. Overall, the United States has intervened or been engaged in combat somewhere in 52 out of the last 112 years, or roughly 47 percent of the time. Since the end of the Cold War, it is true, the rate of U.S. interventions has increased, with an intervention roughly once every 2.5 years and American troops intervening or engaged in combat in 16 out of 22 years, or over 70 percent of the time, since the fall of the Berlin Wall. ¶ The argument for returning to “normal” begs the question: What is normal for the United States? The historical record of the last century suggests that it is not a policy of nonintervention. This record ought to raise doubts about the theory that American behavior these past two decades is the product of certain unique ideological or doctrinal movements, whether “liberal imperialism” or “neoconservatism.” Allegedly “realist” presidents in this era have been just as likely to order interventions as their more idealistic colleagues. George H.W. Bush was as profligate an intervener as Bill Clinton. He invaded Panama in 1989, intervened in Somalia in 1992—both on primarily idealistic and humanitarian grounds—which along with the first Persian Gulf war in 1991 made for three interventions in a single four-year term. Since 1898 the list of presidents who ordered armed interventions abroad has included William McKinley, Theodore Roose-velt, William Howard Taft, Woodrow Wilson, Franklin Roosevelt, Harry Truman, Dwight Eisenhower, John F. Kennedy, Ronald Reagan, George H.W. Bush, Bill Clinton, and George W. Bush. One would be hard-pressed to find a common ideological or doctrinal thread among them—unless it is the doctrine and ideology of a mainstream American foreign policy that leans more toward intervention than many imagine or would care to admit. ¶ Many don’t want to admit it, and the only thing as consistent as this pattern of American behavior has been the claim by contemporary critics that it is abnormal and a departure from American traditions. The anti-imperialists of the late 1890s, the isolationists of the 1920s and 1930s, the critics of Korea and Vietnam, and the critics of the first Persian Gulf war, the interventions in the Balkans, and the more recent wars of the Bush years have all insisted that the nation had in those instances behaved unusually or irrationally. And yet the behavior has continued.¶ To note this consistency is not the same as justifying it. The United States may have been wrong for much of the past 112 years. Some critics would endorse the sentiment expressed by the historian Howard K. Beale in the 1950s, that “the men of 1900” had steered the United States onto a disastrous course of world power which for the subsequent half-century had done the United States and the world no end of harm. But whether one lauds or condemns this past century of American foreign policy—and one can find reasons to do both—the fact of this consistency remains. It would require not just a modest reshaping of American foreign policy priorities but a sharp departure from this tradition to bring about the kinds of changes that would allow the United States to make do with a substantially smaller force structure. ¶ Is such a sharp departure in the offing? It is no doubt true that many Americans are unhappy with the on-going warfare in Afghanistan and to a lesser extent in Iraq, and that, if asked, a majority would say the United States should intervene less frequently in foreign nations, or perhaps not at all. It may also be true that the effect of long military involvements in Iraq and Afghanistan may cause Americans and their leaders to shun further interventions at least for a few years—as they did for nine years after World War I, five years after World War II, and a decade after Vietnam. This may be further reinforced by the difficult economic times in which Americans are currently suffering. The longest period of nonintervention in the past century was during the 1930s, when unhappy memories of World War I combined with the economic catastrophe of the Great Depression to constrain American interventionism to an unusual degree and produce the first and perhaps only genuinely isolationist period in American history. ¶ So are we back to the mentality of the 1930s? It wouldn’t appear so. There is no great wave of isolationism sweeping the country. There is not even the equivalent of a Patrick Buchanan, who received 3 million votes in the 1992 Republican primaries. Any isolationist tendencies that might exist are severely tempered by continuing fears of terrorist attacks that might be launched from overseas. Nor are the vast majority of Americans suffering from economic calamity to nearly the degree that they did in the Great Depression. ¶ Even if we were to repeat the policies of the 1930s, however, it is worth recalling that the unusual restraint of those years was not sufficient to keep the United States out of war. On the contrary, the United States took actions which ultimately led to the greatest and most costly foreign intervention in its history. Even the most determined and in those years powerful isolationists could not prevent it. ¶ Today there are a number of obvious possible contingencies that might lead the United States to substantial interventions overseas, notwithstanding the preference of the public and its political leaders to avoid them. Few Americans want a war with Iran, for instance. But it is not implausible that a president—indeed, this president—might find himself in a situation where military conflict at some level is hard to avoid. The continued success of the international sanctions regime that the Obama administration has so skillfully put into place, for instance, might eventually cause the Iranian government to lash out in some way—perhaps by attempting to close the Strait of Hormuz. Recall that Japan launched its attack on Pearl Harbor in no small part as a response to oil sanctions imposed by a Roosevelt administration that had not the slightest interest or intention of fighting a war against Japan but was merely expressing moral outrage at Japanese behavior on the Chinese mainland. Perhaps in an Iranian contingency, the military actions would stay limited. But perhaps, too, they would escalate. One could well imagine an American public, now so eager to avoid intervention, suddenly demanding that their president retaliate. Then there is the possibility that a military exchange between Israel and Iran, initiated by Israel, could drag the United States into conflict with Iran. Are such scenarios so farfetched that they can be ruled out by Pentagon planners? ¶ Other possible contingencies include a war on the Korean Peninsula, where the United States is bound by treaty to come to the aid of its South Korean ally; and possible interventions in Yemen or Somalia, should those states fail even more than they already have and become even more fertile ground for al Qaeda and other terrorist groups. And what about those “humanitarian” interventions that are first on everyone’s list to be avoided? Should another earthquake or some other natural or man-made catastrophe strike, say, Haiti and present the looming prospect of mass starvation and disease and political anarchy just a few hundred miles off U.S. shores, with the possibility of thousands if not hundreds of thousands of refugees, can anyone be confident that an American president will not feel compelled to send an intervention force to help?¶ Some may hope that a smaller U.S. military, compelled by the necessity of budget constraints, would prevent a president from intervening. More likely, however, it would simply prevent a president from intervening effectively. This, after all, was the experience of the Bush administration in Iraq and Afghanistan. Both because of constraints and as a conscious strategic choice, the Bush administration sent too few troops to both countries. The results were lengthy, unsuccessful conflicts, burgeoning counterinsurgencies, and loss of confidence in American will and capacity, as well as large annual expenditures. Would it not have been better, and also cheaper, to have sent larger numbers of forces initially to both places and brought about a more rapid conclusion to the fighting? The point is, it may prove cheaper in the long run to have larger forces that can fight wars quickly and conclusively, as Colin Powell long ago suggested, than to have smaller forces that can’t. Would a defense planner trying to anticipate future American actions be wise to base planned force structure on the assumption that the United States is out of the intervention business? Or would that be the kind of penny-wise, pound-foolish calculation that, in matters of national security, can prove so unfortunate?¶ The debates over whether and how the United States should respond to the world’s strategic challenges will and should continue. Armed interventions overseas should be weighed carefully, as always, with an eye to whether the risk of inaction is greater than the risks of action. And as always, these judgments will be merely that: judgments, made with inadequate information and intelligence and no certainty about the outcomes. No foreign policy doctrine can avoid errors of omission and commission. But history has provided some lessons, and for the United States the lesson has been fairly clear: The world is better off, and the United States is better off, in the kind of international system that American power has built and defended.

#### Focus on deterrence and democracy is key to adverting crisis escalation—reject infinite root causes that debilitate action

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If major interstate war is predominantly a product of a synergy between a potential nondemocratic aggressor and an absence of effective deterrence, what is the role of the many traditional "causes" of war? Past, and many contemporary, theories of war have focused on the role of specific disputes between nations, ethnic and religious differences, arms races, poverty and social injustice, competition for resources, incidents and accidents, greed, fear, perceptions of "honor," and many other factors. Such factors may well play a role in motivating aggression or generating fear and manipulating public opinion. The reality, however, is that whie some of these factors may have more potential to contribute to war than others, there may well be an infinite set of motivating factors, or human wants, motivating aggression. It is not the independent existence of such motivating factors for war but rather the circumstances permitting or encouraging high-risk decisions leading to war that is the key to more effectively controlling armed conflict. And the same may also be true of democide. The early focus in the Rwanda slaughter on "ethnic conflict," as though Hutus and Tutsis had begun to slaughter each other through spontaneous combustion, distracted our attention from the reality that a nondemocratic Hutu regime had carefully planned and orchestrated a genocide against Rwandan Tutsis as well as its Hutu opponents. 158 Certainly if we were able to press a button and end poverty, racism, religious intolerance, injustice, and endless disputes, we would want to do so. Indeed, democratic governments must remain committed to policies that will produce a better world by all measures of human progress. The broader achievement of democracy and the rule of law will itself assist in this progress. No one, however, has yet been able to demonstrate the kind of robust correlation with any of these "traditional" causes of war that is reflected in the "democratic peace." Further, given the difficulties in overcoming many of these social problems, an approach to war exclusively dependent on their solution may doom us to war for generations to come. [\*394] A useful framework for thinking about the war puzzle is provided in the Kenneth Waltz classic Man, the State and War, 159 first published in 1954 for the Institute of War and Peace Studies, in which he notes that previous thinkers about the causes of war have tended to assign responsibility at one of the three levels of individual psychology, the nature of the state, or the nature of the international system. This tripartite level of analysis has subsequently been widely copied in the study of international relations. We might summarize my analysis in this classical construct by suggesting that the most critical variables are the second and third levels, or "images," of analysis. Government structures, at the second level, seem to play a central role in levels of aggressiveness in high-risk behavior leading to major war. In this, the "democratic peace" is an essential insight. The third level of analysis, the international system, or totality of external incentives influencing the decision to go to war, is also critical when government structures do not restrain such high-risk behavior on their own. Indeed, nondemocratic systems may not only fail to constrain inappropriate aggressive behavior, they may even massively enable it by placing the resources of the state at the disposal of a ruthless regime elite. It is not that the first level of analysis, the individual, is unimportant - I have already argued that it is important in elite perceptions about the permissibility and feasibility of force and resultant necessary levels of deterrence. It is, instead, that the second level of analysis, government structures, may be a powerful proxy for settings bringing to power those who are disposed to aggressive military adventures and in creating incentive structures predisposed to high-risk behavior. We might also want to keep open the possibility that a war/peace model focused on democracy and deterrence might be further usefully refined by adding psychological profiles of particular leaders as we assess the likelihood of aggression and levels of necessary deterrence. Nondemocracies' leaders can have different perceptions of the necessity or usefulness of force and, as Marcus Aurelius should remind us, not all absolute leaders are Caligulas or Neros. Further, the history of ancient Egypt reminds us that not all Pharaohs were disposed to make war on their neighbors. Despite the importance of individual leaders, however, the key to war avoidance is understanding that major international war is critically an interaction, or synergy, of certain characteristics at levels two and three - specifically an absence of [\*395] democracy and an absence of effective deterrence. Yet another way to conceptualize the importance of democracy and deterrence in war avoidance is to note that each in its own way internalizes the costs to decision elites of engaging in high-risk aggressive behavior. Democracy internalizes these costs in a variety of ways including displeasure of the electorate at having war imposed upon it by its own government. And deterrence either prevents achievement of the objective altogether or imposes punishing costs making the gamble not worth the risk. 160 III. Testing the Hypothesis Hypotheses, or paradigms, are useful if they reflect the real world better than previously held paradigms. In the complex world of foreign affairs and the war puzzle, perfection is unlikely. No general construct will fit all cases even in the restricted category of "major interstate war;" there are simply too many variables. We should insist, however, on testing against the real world and on results that suggest enhanced usefulness over other constructs. In testing the hypothesis, we can test it for consistency with major wars. That is, in looking, for example, at the principal interstate wars in the twentieth century, did they present both a nondemocratic aggressor and an absence of effective deterrence? 161 And although it, by itself, does not prove causation, we might also want to test the hypothesis against settings of potential wars that did not occur. That is, in non-war settings, was there an absence of at least one element of the synergy? We might also ask questions about the effect of changes on the international system in either element of the synergy. That is, what, in general, happens when a totalitarian state makes a transition to stable democracy or vice versa? And what, in general, happens when levels of deterrence are dramatically increased or decreased?

### 1NC Global Prolif

#### Prolif won’t happen

Hymans 12 (Jacques, Associate Professor of International Relations – USC, North Korea's Lessons for (Not) Building an Atomic Bomb, Foreign Affairs, 4-16, www.foreignaffairs.com/articles/137408/jacques-e-c-hymans/north-koreas-lessons-for-not-building-an-atomic-bomb?page=show)

Washington's miscalculation is not just a product of the difficulties of seeing inside the Hermit Kingdom. It is also a result of the broader tendency to overestimate the pace of global proliferation. For decades, Very Serious People have predicted that strategic weapons are about to spread to every corner of the earth. **Such warnings have routinely proved wrong** - for instance, the intelligence assessments that led to the 2003 invasion of Iraq - but they continue to be issued. In reality, despite the diffusion of the relevant technology and the knowledge for building nuclear weapons, the world has been experiencing a great proliferation slowdown. Nuclear weapons programs around the world are taking much longer to get off the ground - and their failure rate is much higher - than they did during the first 25 years of the nuclear age. As I explain in my article "Botching the Bomb" in the upcoming issue of Foreign Affairs, the key reason for the great proliferation slowdown is the absence of strong cultures of scientific professionalism in most of the recent crop of would-be nuclear states, which in turn is a consequence of their poorly built political institutions. In such dysfunctional states, the quality of technical workmanship is low, there is little coordination across different technical teams, and technical mistakes lead not to productive learning but instead to finger-pointing and recrimination. **These problems are debilitating**, and **they cannot be fixed** simply by bringing in more imported parts through illicit supply networks. In short, as a struggling proliferator, North Korea has a lot of company.

#### Doesn’t cause war

Alagappa, 2008 (Muthiah – distinguished senior fellow at the East-West Center, The Long Shadow, p. 508-509)

Another major conclusion of this study is that although nuclear weapons could have destabilizing consequences in certain situations, on net they have **reinforced national security and** regional **stability** in Asia. It is possible to argue that fledgling and small nuclear arsenals would be more vulnerable to preventive attacks; that the related strategic compulsion for early use may lead to early launch postures and crisis situations; that limited war under nuclear conditions to alter or restore the political status quo can intensify tensions and carry the risk of escalation to major war; that inadequate command, control, and safety measures could result in accidents; and that nuclear facilities and material may be vulnerable to terrorist attacks. These are legitimate concerns, but thus far nuclear weapons have not undermined national security and regional stability in Asia. Instead, they have **ameliorated national security concerns**, strengthened the status quo, **increased deterrence dominance**, prevented the outbreak of major wars, and reinforced the regional trend to reduce the salience of force in international politics. Nor have nuclear weapons had the predicted domino effect. These consequences have strengthened regional security and stability that rest on multiple pillars. The grim scenarios associated with nuclear weapons in Asia frequently rely on worst-case political and military situations; often they are seen in isolation from the national priorities of regional states that **emphasize economic development** and modernization through participation in regional and global economies and the high priority accorded to stability in domestic and international affairs. The primary goal of regional states is **not** aggrandizement through **military aggression** but preservation of national integrity, state or regime survival, economic growth and prosperity, increase in national power and international influence, preservation or incremental change in the status quo, and the construction of regional and global orders in which they are subjects rather than objects. Seen in this broader perspective, nuclear weapons and more generally military force are of **greater relevance in the defense, deterrence, and assurance roles than offensive ones**. This does not imply that offensive use of force or military clashes will not occur; only that force is not the first option, that military clashes will be infrequent, and that when they do occur they will be limited in scope and intensity. Security interaction in Asia increasingly approximates behavior associated with defensive realism.

#### Their scholarship is flawed- no prolif

Yusuf 9 (Moeed, Fellow and Ph.D. Candidate in the Frederick S. Pardee Center for the Study of the Longer-Range

Future – Boston University, “Predicting Proliferation: The History of the Future of Nuclear Weapons”, Brookings Policy Paper 11, January, http://www.brookings.edu/~/media/Files/rc/papers/2009/01\_nuclear\_proliferation\_ yusuf/01\_nuclear\_proliferation\_yusuf.pdf)

It is a paradox that few aspects of international security have been as closely scrutinized, but as incorrectly forecast, as the future nuclear landscape. Since the advent of nuclear weapons in 1945, there have been dozens, if not hundreds of projections by government and independent analysts trying to predict horizontal and vertical proliferation across the world. Various studies examined which countries would acquire nuclear weapons, when this would happen, how many weapons the two superpowers as well as other countries would assemble, and the impact these developments might have on world peace. The results have oscillated between gross underestimations and terrifying overestimations. Following the September 11, 2001 attacks, the fear that nuclear weapons might be acquired by so-called “rogues states” or terrorist groups brought added urgency – and increased difficulty – to the task of accurately assessing the future of nuclear weapons. A survey of past public and private projections provides a timely reminder of the flaws in both the methodologies and theories they employed. Many of these errors were subsequently corrected, but not before, they made lasting impressions on U.S. nuclear (and non-nuclear) policies. This was evident from the time the ‘Atoms for Peace’ program was first promulgated in 1953 to the 1970 establishment of the Nuclear Non- Proliferation Treaty (NPT), and more recently during the post-Cold War disarmament efforts and debates surrounding U.S. stance towards emerging nuclear threats. This study offers a brief survey of attempts to predict the future of nuclear weapons since the beginning of the Cold War.1 The aim of this analysis is not merely to review the record, but to provide an overall sense of how the nuclear future was perceived over the past six decades, and where and why errors were made in prediction, so that contemporary and future predictive efforts have the benefit of a clearer historical record. The survey is based on U.S. intelligence estimates as well as the voluminous scholarly work of American and foreign experts on the subject. Six broad lessons can be gleaned from this history. First, it reveals consistent misjudgments regarding the extent of nuclear proliferation. Overall, projections were far more pessimistic than actual developments; those emanating from independent experts more so than intelligence estimates. In the early years of the Cold War, the overly pessimistic projections stemmed, in part, from an incorrect emphasis on technology as the driving factor in horizontal proliferation, rather than intent, a misjudgment, which came to light with the advent of a Chinese bomb in 1964. The parallel shift from developed-world proliferation to developing-world proliferation was accompanied by greater alarm regarding the impact of proliferation. It was felt that developing countries were more dangerous and irresponsible nuclear states than developed countries. Second, while all the countries that did eventually develop nuclear weapons were on the lists of suspect states, the estimations misjudged when these countries would go nuclear. The Soviet Union went nuclear much earlier than had been initially predicted, intelligence estimates completely missed China’s nuclear progress, and India initially tested much later than U.S. intelligence projections had anticipated and subsequently declared nuclear weapon status in 1998 when virtually no one expected it to do so. Third, the pace of proliferation has been consistently slower than has been anticipated by most experts due to a combination of overwhelming alarmism, the intent of threshold states, and many incentives to abstain from weapons development. In the post-Cold War period, the number of suspected threshold states has gradually decreased and the geographical focus has shifted solely to North-East Asia, South Asia, and the Middle East. There is also much greater concern that a nuclear chain reaction will break out than was the case during the Cold War.

## T

### T – Hostilities – 2AC

#### 1. We meet – plan restricts on whatever they define hostilities as – we say it in the plan text

#### 2. Hostilities a state of confrontation

Hardy 84 (William H, Pacific Law Journal Issue 265, Tug of War: The War Powers Resolution and the Meaning of Hostilities, P 281-282)

The House Foreign Affairs Committee (hereinafter H.F.A.C) has adopted its own deﬁnition of hostilities. The H.F.A.C. Report discusses the background, constitutional context, and intent of the WPR. The section-by-section analysis of the H.F.A.C. Report is the clearest statement of the definition of hostilities to be found: The word hostilities was substituted for the phrase armed conﬂict during the subcommittee drafting process because it was considered to be somewhat broader in scope. In addition to a situation in which ﬁghting actually has begun, hostilities also encompasses a state of confrontation in which no shots have been fired but where there is a clear and present danger of armed conflict. Imminent hostilities denotes a situation in which there is a clear potential either for such a state of confrontation or for actual armed conflict. Hearings were held during the Ford Administration in which Chair- man Zablocki used the definition as a benchmark in questioning legal advisors to the President)” The use of this deﬁnition by Zablocki supports a broad interpretation of hostilities because **as long as a clear and present danger of armed conﬂict exists**, even though no shots have been ﬁred, hostilities are present.United States forces are not required to accompany foreign forces in combat or on operational patrols. The President, however, has persisted in defining hostilities more narrowly than Congress apparently intended. The Ford and Reagan Administrations have both adopted a narrow deﬁnition of hostilities that conﬂicts with the H.F.A.C. deﬁnition.

#### 3. Prefer our interpretation

#### A) Overlimits – limiting to just \_\_ means that it avoids states of confrontation the president could introduce the U.S. into that are core aff ground

#### B) Education - Broad definitions are key to topic education

Hardy 84 (William H, Pacific Law Journal Issue 265, Tug of War: The War Powers Resolution and the Meaning of Hostilities, P 277-278)

The determination that “hostilities” is an ambiguous term and therefore, susceptible to different meanings, is supported by selected provisions from congressional hearings. In general, opposition to deﬁning hostilities precisely or too narrowly was evidenced throughout congressional hearing records. The idea of making a “laundry list” or spelling out the circumstances in which the President may involve the military in the absence of a declaration of war was rejected.'°’ Rather than attempting to codify the circumstances that define hostilities, Professor Bickel, a noted constitutional law expert and Professor of Law at Yale University, stated that the preferable mode was a good faith understanding of the term and an assumption that Presidents would act in good faith to discharge their duties.“ Senator Javits, one of the chief sponsors of the WPR, acknowledged that the resolu- tion did not endeavor to spell out a definition of hostilities, but adopted the term as a word of basic understanding)" Members of Congress recognized the peril in trying to be too exact with defini- tions because of the difficulties in achieving a terminology that could anticipate all the emergencies which might arise. By choosing a general approach, rather than trying to be too exact in deﬁnitions, something was “left to judgment, the intelligence, [and] the wisdom” of members of Congress and the President.'" Based on the hearings, some evidence also exists that hostilities was deliberately left undefined and ambiguous so that the meaning of the word could be clariﬁed or gradually spelled out by experience.

#### 4. Function limits check – Agent cp’s solve their runaway weapons claims

#### 5. Reasonability is good – prevents a race to the bottom and arbitrary counter interpretations that exclude the aff

#### No vagueness – you didn’t ask in CX – we use domestic environmental legislation – no burden for us to specify

## CP

### Executive CP – 2AC

#### 1. Perm do both – solves the links

#### 2. Can’t solve the case –

#### A) Overseas application

#### Executive order aren’t applied extraterritorially

Hilbert 12 (Sarah – J.D. Candidate, William & Mary Law School, “A Legislative Solution to Environmental Protection in Military Action Overseas”, 2012, 37 Wm. & Mary Envtl. L. & Pol'y Rev. 263, lexis)

III. Solution A. Executive Orders It has been suggested that the solution to the inadequate DoD environmental regulation is an executive order. n119 Executive orders have been proposed because of the power of the executive branch and its ability to produce change. n120 Laporte points to President Carter's executive order as a successful way to promote NEPA's ideals overseas and cites DoD action prompted by President Carter's executive order as an indication that the executive order was successful. n121 Although Laporte acknowledges the downfalls of the DoD's response to President Carter's executive order, she attributes the response to "exemptions or ambiguities in the Order itself," rather than the DoD's response to the Order. n122 Executive orders, however, are not the best answer. It is true that executive orders can affect the extraterritorial application of environmental principles as President Carter's executive order furthered the goals of NEPA, n123 but this benefit is limited. n124 President Carter's executive order's purpose was to further the goals of NEPA, n125 but it did not have the power to override the presumption that NEPA could not apply extraterritorially. n126 The executive order may be able to capture general [\*278] ideals or priorities of the executive, but President Carter's executive order illustrated that those ideals and priorities can be implemented very differently after the DoD interprets the meaning of the executive order. n127 Laporte assumes that the executive branch has the expertise and time to draft an executive order that has the perfect amount of specificity, flexibility, and practicality, n128 but this is not realistic. Creating standards for the DoD in the way that Laporte describes the ideal executive order n129 is not a job for the executive branch.

#### And that’s key to solve public concerns about the military ducking responsibility – that’s **Chanbonpin**

#### B) Secrecy - Executive regulation allows the military to exempt itself from environmental laws– internal secrecy means they will be noncompliant – that’s Babcock

#### C) Compliance - executive orders enforcing NEPA in the past were not implemented because of a lack of judicial review – the military chose not to comply as a result – that’s Schwabach

#### D) Liability - Weyand indicates holding the military legally accountable key to solve backlash

#### E) Certainty – Legal decision key

Pildes 13 (Rick, udler Family Professor of Constitutional Law and Co-Faculty Director for the Program on Law and Security at NYU School of Law, "Does Judicial Review of National-Security Policies Constrain or Enable the Government?," 8/5, <http://www.lawfareblog.com/2013/08/does-judicial-review-of-national-security-policies-constrain-or-enable-the-government/>)

First, government actors have a need for legal clarity, particularly in national-security areas where the legal questions are novel and the stakes of guessing wrong particularly high. In the absence of more definitive court guidance, government lawyers and policymakers have spent a staggering number of hours trying to anticipate what courts might conclude is the valid scope of the government’s power to detain, or to use military trials, and similar questions. In many contexts, a significant element in what government actors need is simply legal clarity; knowledge of where the lines lie between the permitted and the forbidden can help government actors figure out how best to reach their legitimate goals. Surely there is something not fully functional about a system that requires a decade’s worth of guesswork, and all the resources involved, about exactly where the legal boundaries lie.

#### 3. Congress will roll back the counterplan during a conflict – kills solvency

Tisler **11**

[Tiffany, J.D. Candidate, University of Toledo, 2011., FEDERAL ENVIRONMENTAL LAW WAIVERS AND HOMELAND SECURITY: ASSESSING WAIVER APPLICATION IN HOMELAND SECURITY SETTINGS AT THE SOUTHERN BORDER IN COMPARISON TO NATIONAL SECURITY SETTINGS INVOLVING THE MILITARY, Spring, 2011 The University of Toledo Law Review, L/N]

In times of war, the conflict between national-security goals and environmental laws tends to come out in favor of national security, n54 and shortly after 9/11 the United States was at war. As it was, the U.S. military never particularly liked the pre-9/11 waiver system, finding the scope of waivers too narrow and the time limits incompatible with long-term activities. n55 Thus, sensing the time to strike, the military began lobbying for changes to environmental-waiver provisions in the aftermath of 9/11. n56 The military has since actively and successfully sought changes to the waiver system, giving them much broader authority to disregard environmental laws, especially for reasons of "military readiness." n57 First, the military convinced Congress to attach riders to the 2004 and 2005 Defense Appropriations Acts exempting them from provisions of the Marine Mammal Protection Act ("MMPA"), some provisions of the ESA, and the entire Migratory [\*784] Bird Treaty Act. n58 Not only did the military successfully change the application of various sections of statute, it also changed the waiver structure for the MMPA, giving the Secretary of Defense the authority to grant waivers in addition to the President. n59 Though not always successful, military lobbying efforts have removed many external checks on military activities that impact the environment, creating a dim future for the environment. n60

#### 4. Counterplan is a voter

#### A) Topic education – shifts the focus of the debate from whether the president should have the authority and to whether the president should be the person to stop it – causes stale debate about process

#### B) Fairness- steals the entirety off the aff and makes it impossible to generate offense

#### C) Object fiat – fiats the object of the resolution which makes clash impossible- no way to have a stable source of aff offense

#### 5. **XO’s are misconstrued – military avoids change**

Hilbert 12 (Sarah – J.D. Candidate, William & Mary Law School, “A Legislative Solution to Environmental Protection in Military Action Overseas”, 2012, 37 Wm. & Mary Envtl. L. & Pol'y Rev. 263, lexis)

IV. Call to Action Judicial action through liability for the government and government contractors in the courts is not a viable solution for the environmental degradation and human health problems that result from military action overseas because the burdens that plaintiffs must overcome are too heavy to result in consistent decisions, or in any decisions at all. n180 Executive action through an executive order would not cause the kind of change in military behavior that is needed at this point, and Executive Orders have been ineffective in the past because the DoD was able to [\*287] misconstrue each Order through its own interpretations. n181 Legislative action provides the best option for a long-term solution that will apply to all military action, will have the intent of many federal statutes that already apply within United States borders, will hold military leaders accountable to a rigid set of procedures and standards, and will effectuate the change our country needs. n182

#### Takes out solvency - Empirically proven

Hilbert 12 (Sarah – J.D. Candidate, William & Mary Law School, “A Legislative Solution to Environmental Protection in Military Action Overseas”, 2012, 37 Wm. & Mary Envtl. L. & Pol'y Rev. 263, lexis)

II. Current Government Direction The current environmental protection plan for military efforts overseas has allowed burn pits to continue to cause health and environmental problems. Through an Executive Order, President Carter first emphasized the importance of government actors considering the environmental effects of proposed actions, n60 but the DoD interpreted the key parts of the Executive Order n61 and created the environmental protection plan it currently follows. Allowing the DoD to essentially create their own regulatory regime is contrary to environmental interests and poses a classic "fox guarding the hen house" problem. A. Executive Order 12,114 President Carter issued Executive Order 12,114-Environmental Effects Abroad of Major Federal Actions ("Executive Order 12,114") on January 4, 1979. n62 Executive Order 12,114 required officials of Federal Agencies to examine environmental effects of proposed actions and consider these effects in making decisions about actions. n63 The Executive Order mandated an information exchange between the Department of State, the Council on Environmental Quality, and any other interested agency or nation to provide information to decisionmakers through the use of environmental impact statements, bilateral or multilateral environmental studies, or concise reviews of environmental issues. n64 The Executive Order sought to further the goals of the National Environmental Policy Act ("NEPA") n65 which required environmental [\*271] assessment for governmental actions having environmental effects within the United States. n66 Executive Order 12,114 forced federal agencies to consider the environmental effect of their actions abroad, but it provided no substantive requirements or procedure for ensuring that protocol was followed. n67 The Executive Order was a start down the long road of a comprehensive environmental protection plan for the United States military, yet it was hardly a binding plan for the military to live by. Because President Carter's Executive Order lacked any substantial guidance but still mandated the military to consider the environmental effects of proposed actions, the DoD was left to interpret what the Executive Order required of it. B. Department of Defense Directive 6050.7 The DoD issued Directive 6050.7 soon after President Carter issued Executive Order 12,114 to define key terms of Executive Order 12,114 and elaborate as to what the DoD must consider when approving "major actions." n68 Because Executive Order 12,114 was not specific, the DoD granted ample discretion to commanders reviewing proposed actions. n69 The DoD interpreted "major action" to mean actions "of considerable importance involving substantial expenditures of time, money, and resources, that affect[] the environment on a large geographic scale or has substantial environmental effects on a more limited geographical area," and it sought to establish procedures for review of these actions. n70 Beyond establishing what is meant by "major action," the DoD does not define any other standard for determining when an environmental assessment is necessary. There is no definition of "substantial expenditures" or an elaboration on the geographic area requirements. n71 [\*272] The DoD also defined exceptions. Included in the list of exceptions are actions taken by the President, actions taken at the direction of the President or a cabinet officer in the course of armed conflict or when a national security risk is involved, activities of intelligence components, actions of the Office of the Assistant Secretary of Defense or the Defense Security Assistance Agency, and actions relating to nuclear activities and nuclear material except actions providing to a foreign nation a nuclear production or utilization facility. n72 The DoD's interpretation of what is required from President Carter's Executive Order weighs in the favor of the DoD. The amount of discretion given to reviewing officers allows an officer to decide that a project does not require an environmental review simply by finding that it is not a major action, which, according to DoD's interpretation of a "major action," would be easy for an officer to find. n73

#### 6. Perm do the CP – its an example of the president complying with the plans’ restriction

#### 7. Court has unique symbolic effect --- key to foreign perception of the plan

Fontana 8 (David, Associate Professor of Law – George Washington University Law School, “The Supreme Court: Missing in Action”, Dissent Magazine, Spring, http://www.dissentmagazine.org/article/?article=1165)

*The Results of Inaction*
What is the problem with this approach? The answer, simply put, is that it legitimates and even catalyzes political activity by Congress and the president, but it does so without including in this political activity the critically influential background voice of the Supreme Court on issues related to individual rights. The Court has two main powers: one has to do with law and compulsion, the other has to do with political debate. The Court can legally compel other branches of government to do something. When it told states and the federal government in Roe v. Wade that they could not criminalize all abortions, for example, the Court’s decision was a binding legal order. But the Supreme Court also plays a role in political debate, even when it does not order anyone to do anything. If the Justices discuss the potential problems for individual rights of a governmental action, even if they don’t contravene the action, their decision still has enormous import. This is because other actors (members of Congress, lawyers, newspaper editorial writers, college teachers, and many others) can now recite the Court’s language in support of their cause. Supreme Court phrases such as “one person, one vote” have enormous symbolic effect and practical influence. If there had been a case about torture, for example, and some of the justices had written in detail about its evils, then Senator Patrick Leahy (senior Democrat on the Judiciary Committee) could have used the Justices’ arguments to criticize attorney general nominee Michael Mukasey during his confirmation hearings. Attorneys for those being detained at Guantánamo could have made appearances on CNN and (even) Fox News reciting the evils of torture as described by the Court. Concerns about rights could have been presented far more effectively than if, as actually happened, the Court refused to speak to these issues. The Supreme Court’s discussion of constitutional questions is particularly important for two reasons. First, the justices view these questions from a distinct standpoint. While members of Congress and the president have to focus more on short-term and tangible goods, members of the Court (regardless of which president appointed them) focus more on the long term and on abstract values. The Court offers a perspective that the other branches simply cannot offer. Second, when the Supreme Court presents this perspective, people listen. It is and has been for some time the most popular branch of American government. Although there is some debate about terminology and measurement, most scholars agree that the Court enjoys “diffuse” rather than “specific” support. Thus, even when Americans don’t like a specific decision, they still support the Court. By contrast, when the president or Congress does something Americans don’t like, their support drops substantially. AMERICANS BECOME more aware of the Court the more it involves itself in controversies. This is because of what political scientists call “positivity bias.” The legitimating symbols of the Court (the robes, the appearance of detachment, the sophisticated legal opinions) help to separate it from other political institutions—and in a good way for the Court. If the Justices had drawn attention to violations of individual rights, most of America would have listened and possibly agreed. As it is, our politics has been devoid of a voice—and an authoritative voice—on individual rights. For most of the time since September 11, few major political figures have been willing to stand up and speak in support of these rights. Recall that the Patriot Act was passed in 2001 by a vote of ninety-eight to one in the Senate, with very little debate. Congress overwhelmingly passed the Detainee Treatment Act (DTA) of 2005, which barred many of those complaining of torture from access to a U.S. court. Congress also overwhelmingly passed the Military Commissions Act (MCA) of 2006, which prevented aliens detained by the government from challenging their detention—and barred them from looking to the Geneva Conventions as a source of a legal claim.

#### 8. Perm do the counterplan then the plan – shields the link to the net benefit because it looks like the court enforcing the XO

#### 9. Executive fails – external regulation key

Yap 05

[Julie, J.D. Candidate, 2005, Fordham University School of Law, Fordham Law Review, JUST KEEP SWIMMING: GUIDING ENVIRONMENTAL STEWARDSHIP OUT OF THE RIPTIDE OF NATIONAL SECURITY, L/N]

Environmental self-regulation solely by the executive branch is not a serious proposal. n331 **The military should not be the sole regulator of its own environmental stewardship.** The role of the military is "to fight and win the nation's wars." n332 An important part of this role is preparation and realistic training; the DOD consistently reiterates the concept that ""we need to train as we fight, but the reality is we fight as we train.'" n333 It is naive to think that military leaders and soldiers, no matter how much training in considering environmental damages that may result from their action, will place a **top level priority on environmental concerns when the job of the military is to prepare for, fight, and win wars.** The military also has a poor track record of environmental stewardship. Military readiness and preparation to protect the country's national security during the Cold War "left a legacy of hazardous waste, nuclear contamination, polluted air, water and soil, [\*1333] and resulted in the destruction of natural and cultural resources." n334 With the advent of new technology and highly advanced methods of warfare, the potential environmental dangers have become even more devastating. The military manages "unexploded and surplus ordnance, millions of gallons of liquid waste that is both extremely corrosive and highly radioactive, chemical weapons, excess nuclear warheads and weapons-grade plutonium, and defoliant production residues ... ." ,FN='335'> Given the enormous responsibilities that come with the handling of these substances, coupled with a poor history of proper environmental consideration, the military needs external regulation in order to ensure that decisions that represent all of society's values are being made. Another problem with regulation of defense activities by the executive branch alone is the unitary executive policy of the Department of Justice. n336 This policy **prevents the EPA "from issuing administrative compliance orders or filing suit against other federal agencies for violations"** n337 "without the President's [approval], if at all." n338 Under most environmental statutes, the EPA cannot levy a penalty against other agencies. n339 The principles behind the unitary executive theory have merit, "implicating very real executive branch management and separation of powers issues." n340 Regardless, the unitary executive approach eliminates another method of regulation that helps ensure environmental compliance of private entities. The military has made major improvements to its environmental policy over the past fifteen years. The DOD has created an environmental program that centers on the "four pillars" of [\*1334] restoration, compliance, pollution prevention, and conservation. n341 Environmental planning is a component to each of these four pillars and is included in DOD manuals for proposed actions. n342 Military commanders and soldiers operate under new statements of mission that include "stewardship of the land, air, water and natural ... resources." n343 The incorporation of environmental responsibility in the mission and culture of the military is an important step that should be encouraged in the future. It is not, however, a large enough step to validate internal regulation of environmental stewardship.

### Oil Spills Add- On – 2AC

#### Citizen suits solve pipeline safety and oil spills

**Geis 11** (Stacey P. Geis is an Assistant United States Attorney at the United States Attorney's Office in San

Francisco and is the office's Environmental Crimes Coordinator, “An Accident Waiting to Happen? Prosecuting Negligence-Based Environmental Crimes,” United States Attorneys' Bulletin July 2011, <http://www.justice.gov/usao/eousa/foia_reading_room/usab5904.pdf>)

Undertaking a criminal investigation in a large **environmental disaster** (or any disaster that may have resulted in casualties or invokes a federal interest) is no easy endeavor. Numerous parties will be interested in the matter, including federal, state, and local law enforcement agencies; federal, state, and local regulators; federal safety boards charged with immediately investigating such disasters; local and state governments; federal, state, and local politicians; local citizens; and, of course, the press. It will be imperative **to navigate** through the obstacles presented by so many interested parties. It also will be imperative to coordinate and work with these parties, especially the relevant law enforcement agencies, safety boards, and regulators. While a separate article can be written on issues that arise while investigating a disaster such as an **oil spill** or **pipeline explosion**, a few points may be made. First, a prosecutor will need to decide whether to open a criminal investigation immediately or wait until other agencies, such as a federal safety board, conduct a separate investigation. There are pros and cons to both approaches and legal and policy issues to consider, all of which can be the subject of a separate article. Suffice it to say, if a prosecutor is faced with such a decision, he should discuss the matter with his management and consider reaching out to Main Justice or other districts to assess the appropriate route to take in a specific investigation. Second, coordination with state and local law enforcement and regulatory agencies is key. At some point, if potential violations of more than just federal statutes have occurred, a decision will need to be made regarding who takes the lead and moves forward with the investigation. For many reasons, including the high profile nature of the disaster, turf issues may arise. If, however, a strong relationship has been developed among federal, state, and local authorities, the issues surrounding who moves forward and in what manner can be minimized. Third, investigating these types of cases can take a **vast amount of resources**. Therefore, a prosecutor should seek to include resources from as many agencies as are willing to assist. EPA's Criminal Investigation Division will have an interest if it is a pollution case. The U.S. Fish and Wildlife Service will also have an interest if wildlife was harmed. The U.S. Coast Guard will have an interest if it involves a large oil spill in maritime waters. The FBI may assist, especially if fraud was involved or if lives were lost. Local and state law enforcement may also have a role here because they typically regulate and enforce the applicable state laws. Several of these agencies have specific expertise that may be used throughout the course of the investigation. Cross-designation of state and local law enforcement may be useful. Assistance from Main Justice is also a highly recommended option. DOJ's Environmental Crimes Section has highly competent, well-trained trial attorneys whose job is to provide assistance to the ninety-four districts in prosecuting environmental crimes. In addition to bringing specialized knowledge, they may also bring other resources to the investigation, such as additional attorneys, paralegals, or other agency assistance. Disasters happen—often with terrible consequences to the environment and surrounding community. Many of these disasters are unforeseeable and unavoidable, such as those caused by acts of God, including earthquakes or hurricanes. Other times they are not. In these latter instances, prosecutors will need to determine whether the disaster was caused by negligent behavior and, if so, whether the negligent behavior rises to a level warranting criminal prosecution as opposed to relying on a civil or administrative enforcement action as an appropriate remedy. Given a prosecutor's ability to prosecute ordinary negligence, **the sound exercise of prosecutorial discretion in these instances is key to ensuring just and proper resolutions**. Prosecuting negligence-based **environmental crimes** should only be done when the circumstances warrant it. There will be times, however, when a non-criminal remedy is simply not adequate to address or deter the offending behavior. In those instances, the prosecutor should consider whether a CWA negligence charge is appropriate. Such prosecutions, although relatively rare in the scheme of environmental crime prosecutions, not only result in specific deterrence but also **general deterrence**. It is not uncommon to see convictions in environmental cases change the behavior of not only the convicted defendant, but **entire industries**. Accidents happen, but sometimes human or corporate behavior creates an accident waiting to happen. When that is the case, prosecution of those responsible may help **reduce the likelihood** that a similar disaster happens again.

#### Extinction

Craig 11—Associate Dean for Environmental Programs @ Florida State University [Robin Kundis Craig, “Legal Remedies for Deep Marine Oil Spills and Long-Term Ecological Resilience: A Match Made in Hell,” Brigham Young University Law Review, 2011, 2011 B.Y.U.L. Rev. 1863

Systemic risk is as important as individual risk. Notwithstanding the National Environmental Policy Act's requirement that federal permitting agencies consider cumulative impacts to the environment, [n188](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1348065909828&returnToKey=20_T15563238106&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.735297.7128077165#n188) we currently evaluate the risks of offshore oil drilling primarily with respect to individual oil drilling operations in connection with individual permits and leases. As the Deepwater Horizon Commission recognized, however, the larger systemic context of such drilling is also important, and perhaps arguably more so. From a resilience perspective, a drilling operation that uses the only oil rig in a pristine marine environment is an inherently different risk problem than the Deepwater Horizon's situation of being one of thousands of similar rigs in a pervasively and multiply stressed Gulf. As Clark, Jones, and Holling have suggested, our trial-and-error experiments with Nature in our first-sense resilience [\*1895] dependence mode "now threaten errors larger and more costly than society can afford." [n189](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1348065909828&returnToKey=20_T15563238106&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.735297.7128077165#n189) Resilience thinking should more forcibly insist on multilayered systemic awareness, promoting limits on how much exploitation should be occurring simultaneously and encouraging more gradual resource development over longer periods of time. . Risk to the environment should be presumed, even when all actors follow all best practices. Our current first-sense resilience dependency produces laws that assume that ecosystems can be fixed—and, perhaps more importantly, as embodied in the OPA natural resource damages regulations, that natural processes will often be able to restore themselves without human effort. Resilience thinking, in contrast, effectively assumes that ecosystems could suddenly shift to a new regime at any time for any number of reasons that we do not understand and may not even be able to anticipate—the combined potential of the second and third conceptions of resilience. In the words of Clark, Jones, and Holling, "if a system has multiple regions of stability, then Nature can seem to play the practical joker rather than the forgiving benefactor." [n190](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1348065909828&returnToKey=20_T15563238106&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.735297.7128077165#n190) To exaggerate the differences in outlook just a bit, our current paradigm presumes that most ecosystems can cope with most human activities, while resilience thinking presumes that all changes to an ecosystem are at least potentially completely destabilizing—i.e., inherently risky, with the outer limits of that risk being potentially massive. To translate this change in presumption into legalese, full resilience thinking promotes a policy framework where most human activities in the environment could be—and perhaps should be—considered inherently dangerous activities. [\*1896] As every first-year law student learns, engaging in inherently dangerous activities tends to subject the actor to strict and fairly absolute liability for the kinds of harm that made the activity inherently dangerous. [n191](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1348065909828&returnToKey=20_T15563238106&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.735297.7128077165#n191) Under resilience thinking, those kinds of harm would include all of the unpredictable and unexpected changes to the ecosystem that might occur as a result of a disaster like the Deepwater Horizon oil spill, up to and including a substantial shift in ecosystem regime or ecosystem collapse. While full implementation of an "inherently dangerous activity" legal regime for all marine activities is unlikely, the case is fairly strong for deep sea oil exploration and drilling. It is at least worth pondering what such a consequence of resilience thinking might mean for risk assessment and behavioral incentives in this context. If nothing else, one would predict under such a new view of potential liability that oil companies' insurers might begin charging premiums that more accurately reflect the potentially catastrophic liability that resilience-minded regulations and policies would make legally cognizant—and might insist on the much more precautionary and safety-minded approach to offshore oil drilling that a multitude of commentators and the Deepwater Horizon Commission have sought in the wake of the Deepwater Horizon disaster. V. Conclusion The second and third senses of resilience, and the socio-ecological risks for humans that they underscore, should not be foreign concepts in the regulation of the marine environment, including (and perhaps especially) when it comes to regulating the offshore oil and gas exploration and drilling taking place at ever-increasing depths. Nor should the possibility that the cumulative stresses to the Gulf of Mexico have pushed its ecosystems to the brink of ecosystem thresholds be ignored in our regulatory regimes. By acknowledging that ecosystems are dynamic and subject to sudden and fairly catastrophic (at least from a human perspective) changes, full resilience thinking provides a path away from the trap of first-sense resilience dependence. Specifically, full resilience thinking recognizes that exploitative activities that affect the Gulf—not just deep sea oil drilling but also fishing and farming up the Mississippi River—put all of the human beings who depend on the ecosystem services, as well as the ecosystems themselves, at collective risk of catastrophic ecosystem collapse. A liability regime based on these unavoidable and potentially massive environmental risks would likely protect the Gulf of Mexico better than our current regime of natural resource damages, especially when injury occurs in the Gulf's murky depths.

#### And Says it solves natural gas explosions – o/w nuke war

**Lovins and Lovins 01**

[Amory Lovins- Co-Founder of Rocky Mountain Institute and six honorary doctorates and numerous major awards, including a 1997 Heinz Award, a 1993 MacArthur Fellowship, and the Onassis Foundation’s first Delphi Prize in 1989, and with Hunter Lovins he has shared a 1999 Lindbergh Award, a 1993 Nissan Prize, a 1983 Right Livelihood Award , Hunter Lovins- a former co-CEO of Rocky Mountain Institute, a Colorado-based nonprofit resource policy think tank. She holds a BA from Pitzer College, a JD from Loyola University School of Law with the Alumni Award for Outstanding Service to the School, and an honorary LHD from the University of Maine. “Brittle Power”- 2001 update and re-release of 1982 book. Pg 87-88]

LNG is less than half as dense as water, so a cubic meter of LNG (the usual unit of measure) weighs just over half a ton.1 LNG contains about thirty per- cent less energy per cubic meter than oil, but is potentially far more hazardous.2 Burning oil cannot spread very far on land or water, but a cubic meter of spilled LNG rapidly boils into about six hundred twenty cubic meters of pure natural gas, which in turn mixes with surrounding air. Mixtures of between about five and fourteen percent natural gas in air are flammable. Thus a single cubic meter of spilled LNG can make up to twelve thousand four hundred cubic meters of flammable gas-air mixture. A single modern LNG tanker typically holds one hundred twenty-five thousand cubic meters of LNG, equivalent to twenty-seven hundred million cubic feet of natural gas. That gas can form between about twenty and fifty billion cubic feet of flammable gas-air mixture—several hundred times the volume of the Great Pyramid of Cheops. About nine percent of such a tankerload of LNG will probably, if spilled onto water, boil to gas in about five minutes.3 (It does not matter how cold the water is; it will be at least two hundred twenty-eight Fahrenheit degrees hotter than the LNG, which it will therefore cause to boil violently.) The resulting gas, however, will be so cold that it will still be denser than air. It will therefore flow in a cloud or plume along the surface until it reaches an ignition source. Such a plume might extend at least three miles downwind from a large tanker spill within ten to twenty minutes.4 It might ultimately reach much farther—perhaps six to twelve miles.5 If not ignited, the gas is asphyxiating. If ignited, it will burn to completion with a turbulent diffusion flame reminiscent of the 1937 Hindenberg disaster but about a hundred times as big. Such a fireball would burn everything within it, and by its radiant heat would cause third-degree burns and start fires a mile or two away.6 An LNG fireball can blow through a city, creating “a very large number of ignitions and explosions across a wide area. No present or foreseeable equipment can put out a very large [LNG]... fire.”7 The energy content of a single standard LNG tanker (one hundred twenty-five thousand cubic meters) is equivalent to seven-tenths of a megaton of TNT, or about fifty-five Hiroshima bombs.

## DA

### General Thumper – 2AC

#### Judicial activism going both ways now – triggers your DA’s

The Economist 13

[“Moderately legitimate”, 6/27/13, <http://www.economist.com/blogs/democracyinamerica/2013/06/supreme-courts-term-review>]

In recent years, the charge of judicial activism has been heard from the left in complaints about the Citizens United decision. It was a trope a year ago from the right when the court upheld the constitutionality of Obamacare on grounds some thought were judicially invented. This season, liberals are unhappy with the court’s decision to ignore the huge margin by which Congress voted to reauthorise the VRA in 2006. Adam B at the Daily Kos writes that the “conservative activist Supreme Court” erred by brushing off the 15,000 pages of evidence establishing discriminatory practices in jurisdictions covered by Section 4. (Matt Berreto shares more evidence of voting discrimination that Chief Justice Roberts willfully ignored.) At the same time, conservatives call the DOMA ruling a “judicial activist opinion which will create disorder and confusion.” Justice Scalia is being mocked on Comedy Central for overturning a law he doesn’t like (the VRA) and upholding one he does (DOMA). But liberals could just as easily be called to account for their inverted views: had the court issued a more sweeping ruling in Hollingsworth and recognised a fundamental, nationwide right to marriage equality, few on the left would have complained about activist intrusions on the rights of Alabamans to define marriage more traditionally. It would be very hard to find someone who is happy with every decision the court has issued this term. This fact alone lends legitimacy to the Supreme Court as an institution and eases the “counter-majoritarian difficulty” diagnosed by Mr Bickel. Several patterns in the court’s 78 opinions this year give it an air of moderation. First, while there were many 5-4 splits (23% of the total), a surprising proportion of decisions—43 percent—were unanimous. So the Roberts court is often cohesive, but it is not ideologically monolithic the way, say, the Warren court was. While it leans conservative and is undoubtedly pro-business (witness the two cases sharply limiting the rights of employees to sue their employers for sexual harassment or retaliation), the Roberts court splits differences and tends to rule on narrow grounds in hot-button cases. Second, this year's court has splintered in unpredictable ways over some sensitive issues: in the Native American adoption case, liberal stalwart Justice Breyer joined the conservatives in the majority and Justice Scalia sided with the liberals in dissent. Justice Scalia is a favorite whipping boy of the left, but he received kudos from the editorial board of the New York Times for opposing Arizona's proof of citizenship law in Arizona v. Inter Tribal Council of Arizona.

### Court Stripping DA – 2AC

#### 1. Judicial activism going both ways now

The Economist 13

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In recent years, the charge of judicial activism has been heard from the left in complaints about the Citizens United decision. It was a trope a year ago from the right when the court upheld the constitutionality of Obamacare on grounds some thought were judicially invented. This season, liberals are unhappy with the court’s decision to ignore the huge margin by which Congress voted to reauthorise the VRA in 2006. Adam B at the Daily Kos writes that the “conservative activist Supreme Court” erred by brushing off the 15,000 pages of evidence establishing discriminatory practices in jurisdictions covered by Section 4. (Matt Berreto shares more evidence of voting discrimination that Chief Justice Roberts willfully ignored.) At the same time, conservatives call the DOMA ruling a “judicial activist opinion which will create disorder and confusion.” Justice Scalia is being mocked on Comedy Central for overturning a law he doesn’t like (the VRA) and upholding one he does (DOMA). But liberals could just as easily be called to account for their inverted views: had the court issued a more sweeping ruling in Hollingsworth and recognised a fundamental, nationwide right to marriage equality, few on the left would have complained about activist intrusions on the rights of Alabamans to define marriage more traditionally. It would be very hard to find someone who is happy with every decision the court has issued this term. This fact alone lends legitimacy to the Supreme Court as an institution and eases the “counter-majoritarian difficulty” diagnosed by Mr Bickel. Several patterns in the court’s 78 opinions this year give it an air of moderation. First, while there were many 5-4 splits (23% of the total), a surprising proportion of decisions—43 percent—were unanimous. So the Roberts court is often cohesive, but it is not ideologically monolithic the way, say, the Warren court was. While it leans conservative and is undoubtedly pro-business (witness the two cases sharply limiting the rights of employees to sue their employers for sexual harassment or retaliation), the Roberts court splits differences and tends to rule on narrow grounds in hot-button cases. Second, this year's court has splintered in unpredictable ways over some sensitive issues: in the Native American adoption case, liberal stalwart Justice Breyer joined the conservatives in the majority and Justice Scalia sided with the liberals in dissent. Justice Scalia is a favorite whipping boy of the left, but he received kudos from the editorial board of the New York Times for opposing Arizona's proof of citizenship law in Arizona v. Inter Tribal Council of Arizona.

#### 2. President and DOJ prevents stripping even on policies they oppose

**Grove 12**

[Tara Leigh,Assistant Professor, William and Mary Law School, The Article II Safeguards Of Federal Jurisdiction, Columbia Law Review March, 2012, L/N]

This Article argues that scholars have overlooked an important (and surprising) advocate for the federal judiciary in these jurisdictional struggles: the executive branch. The Constitution gives the President considerable authority to block constitutionally questionable legislation. The President can veto problematic legislation or use the threat of a veto to urge Congress to pursue other alternatives. Moreover, under Article II's Take Care Clause, the President is in charge of enforcing federal law in the federal courts - a task that he has largely delegated to the Department of Justice (DOJ). n6 The executive branch can use this enforcement authority to ensure that laws are applied in a manner that accords with constitutional values. Drawing on recent social science scholarship, this Article contends that the executive branch has a strong incentive to use this constitutional authority to oppose efforts to curb federal jurisdiction. First, social scientists have argued that the President often expresses his constitutional philosophy through litigation in the federal courts. Accordingly, the President has some incentive to ensure that the federal courts retain jurisdiction over constitutional claims. These presidential incentives are reinforced by the institutional incentives of the DOJ. Relying on theories of path dependence and institutional entrenchment, this Article argues that the DOJ has a substantial interest in defending the authority of the federal judiciary, because it can thereby maintain its own enforcement power. The DOJ has a particularly overriding interest in protecting the [\*253] appellate jurisdiction of the Supreme Court, because the Solicitor General is in charge of all federal litigation at that level. By defending the authority of the Supreme Court, the DOJ can maximize its power and influence over the development of federal law. In sum, this Article contends that the executive branch has strong institutional incentives to oppose the very kind of legislation that scholars find most problematic: restrictions on the Supreme Court's appellate jurisdiction and the federal courts' authority to adjudicate constitutional claims. The executive branch should be inclined to use its constitutional authority to shield the judiciary from such challenges to the federal judicial power. This structural argument has considerable historical support. The executive branch has sought to protect federal jurisdiction in two major ways. First, the executive branch has repeatedly opposed bills targeted at the Supreme Court's appellate review power or at federal jurisdiction over constitutional claims. n7 Notably, that has been true even when the President strongly disagreed with the federal courts' constitutional jurisprudence. For example, during the New Deal era, the Roosevelt Justice Department opposed efforts to eliminate the Supreme Court's appellate jurisdiction over constitutional claims. n8 Likewise, the Reagan Justice Department spoke out against proposals to strip federal jurisdiction over cases involving school prayer and abortion. n9 Other DOJ officials have similarly urged Congress to refrain from enacting jurisdiction-stripping proposals, at times expressly invoking the threat of a presidential veto. Although most jurisdiction-stripping bills have been defeated in the legislative process, some proposals to curb federal jurisdiction have, in recent decades, captured sufficient political support to gain the assent of both Congress and the President. But the executive branch has an additional constitutional tool to limit the impact of such laws: The DOJ controls the enforcement of most federal laws and can urge the federal judiciary to interpret those laws narrowly in order to preserve federal jurisdiction. That is the approach that recent Justice Departments have taken. Both the Clinton and the second Bush Administrations urged the courts to construe broadly worded jurisdiction-stripping statutes, like the Antiterrorism and Effective Death Penalty Act, so as to preserve jurisdiction over federal constitutional claims. n10 The federal courts, of course, could disregard these arguments and independently determine their jurisdiction. But, to the extent that the [\*254] courts are already inclined to interpret jurisdiction-stripping laws narrowly, the DOJ's arguments provide substantial reassurance that such constructions will have the support of a coequal branch of the federal government. And, in practice, the federal judiciary has proven quite receptive to the executive branch's efforts to preserve the scope of federal jurisdiction.

### 1NC Russian Expansionism

#### Card from Supreme Court of Ohio from 2008 -- 8 members took a lecture

#### Not key to stability -- just says the judicial system is key not independence

#### Russian expansion purely economic

Behi & Wagner 12 -- \*PhD in Social Anthropology and Masters in Regional Studies from Harvard University AND \*\*CEO of Country Risk Solutions, a cross-border risk management consultancy (Kambiz and Daniel, 7/23, " Russia's Growing Economic Influence in Europe and Beyond," http://www.huffingtonpost.com/kambiz-behi/russias-growing-economic-influence\_b\_1696304.html)

In an effort to recapture the glory days of the Soviet Union, and to enhance its standing among its neighbors, Russia is leading an economic regional reintegration plan at such a rapid pace, it may make the Europeans envious. Covering an area more than five times that of the European Union (EU), if Russia has its way, the 'Eurasian Union' (EAU) will serve as a de facto bond between the nations of the former Soviet Union, and could come to rival Europe in terms of economic importance. Eurasian reintegration became a priority in Russian economic and foreign policy in 2008, coinciding with the onset of the Great Recession, following the EU announcement of its Eastern Partnership program. The Partnership program was initiated to improve political and economic relations between the EU and six "strategic" post-Soviet states -- Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine -- in the core areas of democracy, the rule of law, human rights, the promotion of a market economy, and sustainable development. Since then, Russia has in essence been competing with the EU to gain influence in these countries. But while EU's eastward expansion stalled at the borders of Ukraine -- considered by Russians as its backyard -- the Russian-led program is rapidly moving forward. Earlier this year, Russia launched a single economic space with Belarus and Kazakhstan, establishing a unified market for goods, investment and labor. The EAU, which fully reintegrates member countries, is expected to begin functioning by 2015. If the EU continues on its rocky economic path, the EAU may have little difficulty in establishing a firm operational foundation. The EAU is not oriented toward the past in terms of Russian domination; rather, it is a market-oriented reintegration based on the EU's rule-based governance system. Although its institutional framework is modeled after the EU, the EAU seeks to avoid unnecessary bureaucratic superstructures. Its 'supranational' institutions are minimal, consisting of a commission that sets binding legal agreements, and a court -- the first major regional civilian institution of its kind in the post-Soviet era. Moreover, the EAU is in line with both EU and World Trade Organization (WTO) norms and regulations on most economic and many political issues. A common currency (the 'Yevraz'), similar to the euro, may also be introduced to hedge against volatility in global financial markets, and to insulate member countries from global economic crises.

#### No rollback – card way too vague

#### 3. \*No risk of stripping

**Devins 6** (Neal, Professor of Law and Government – College of William & Mary,  May, 90 Minn. L. Rev. 1337, Lexis)
Indeed, even if the social conservative agenda becomes the dominant agenda in Congress and the White House, there is good reason to think that elected officials would steer away from jurisdiction-stripping measures. [119](http://www.lexis.com/research/retrieve?_m=4f4be9901ca853c7bdcbd97bc82eda2f&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=9fc665c44d8df004f229f74a4b1ff081&focBudTerms=&focBudSel=all#n119) First, median voters  [\*1359]  have historically backed judicial independence. For example, although most Americans are disappointed with individual Supreme Court decisions, there is a "reservoir of support" for the power of the Court to independently interpret the Constitution. [120](http://www.lexis.com/research/retrieve?_m=4f4be9901ca853c7bdcbd97bc82eda2f&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=9fc665c44d8df004f229f74a4b1ff081&focBudTerms=&focBudSel=all#n120) Consequently, even though some Supreme Court decisions trigger a backlash by those who disagree with the Court's rulings, the American people nonetheless support judicial review and an independent judiciary. [121](http://www.lexis.com/research/retrieve?_m=4f4be9901ca853c7bdcbd97bc82eda2f&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=9fc665c44d8df004f229f74a4b1ff081&focBudTerms=&focBudSel=all#n121) Indeed, even President George W. Bush and Senate majority leader Bill Frist backed "judicial independence" after the federal courts refused to challenge state court factfinding in the Terri Schiavo case. [122](http://www.lexis.com/research/retrieve?_m=4f4be9901ca853c7bdcbd97bc82eda2f&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=9fc665c44d8df004f229f74a4b1ff081&focBudTerms=&focBudSel=all#n122) Second, there is an additional cost to lawmakers who want to countermand the courts through coercive court-curbing measures. Specifically, powerful interest groups sometimes see an independent judiciary as a way to protect the legislative deals they make. [123](http://www.lexis.com/research/retrieve?_m=4f4be9901ca853c7bdcbd97bc82eda2f&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=9fc665c44d8df004f229f74a4b1ff081&focBudTerms=&focBudSel=all#n123) In particular, interest groups who invest in the legislative process by securing legislation that favors their preferences may be at odds with the current legislature or executive (who may prefer judicial interpretations that undermine the original intent of the law). Court-curbing measures "that impair the functioning of the judiciary" are therefore disfavored because they "impose costs on all who use the courts, including various politically effective groups and indeed the beneficiaries of whatever legislation the current legislature has enacted." [124](http://www.lexis.com/research/retrieve?_m=4f4be9901ca853c7bdcbd97bc82eda2f&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=9fc665c44d8df004f229f74a4b1ff081&focBudTerms=&focBudSel=all#n124)

#### 4. No Congressional backlash

Baum 3 (Lawrence, Professor of Political Science – Ohio State University, “The Supreme Court in American Politics”, Annual Review of Political Science, p. 173)

In recent years, some scholars with a strategic perspective have analyzed relationships between the Supreme Court and lower courts in formal terms, terms that facilitate comparison between implementation processes in the judiciary and hierarchical relationships in other settings (Kornhauser 1995, Hammond et al. 2001; see Brehm & Gates 1997, pp. 13–20). Especially important is collaborative work by Segal, Songer, and Cameron (Songer et al. 1994, 1995; Cameron et al. 2000), who have employed principal-agent theory to guide empirical studies of the relationship between the Supreme Court and federal courts of appeals. Even in this new wave of research, however, there has been little systematic comparison between courts and other policy enactors. The natural comparison is between the Supreme Court and Congress, each of which acts to shape administrative policy. It is reasonable to posit that Congress does better in getting what it wants from administrators, because its powers (especially fiscal) and its capacity to monitor the bureaucracy are appreciably stronger. The sequences of events that overcame school segregation and racial barriers to voting in the Deep South support that hypothesis. But it remains essentially untested, in part because good tests are difficult to design. Thus, we still know little about the relative success of implementation for legislative and judicial policies. Once we know more about the implementation of the Court’s decisions in absolute and relative terms, the most important question might well be why implementation is as successful as it is. The Court’s limited concrete powers would seem to aggravate the difficulties faced by all organizational leaders, so why do judges and administrators follow the Court’s lead so frequently? Within the judiciary, part of the answer undoubtedly lies in selection and socialization processes that enhance agreement about legal policy and acceptance of hierarchical authority. Even the Court’s limited powers may be sufficient to rein in administrators, especially in the era of broad legal mobilization that Epp has described: Groups that undertake litigation campaigns to achieve favorable precedents can also litigate against organizations that refuse to accept those precedents. Both judges and administrators may reduce their decision costs by using the Court’s legal rules as a guide. In any event, the relationship between the Court and policy makers who implement its policies may be an especially good subject for studies to probe the forces that reduce centrifugal tendencies in hierarchies. It is also worth asking why the Court fares so well in Congress. As noted above, few of the Court’s most controversial interventions in the past half century have been directly reversed. Nor has Congress enacted any of the numerous bills to remove the Court’s jurisdiction over areas in which the Court has aroused congressional anger. A large part of the explanation lies in the difficulty of enacting legislation in a process with so many veto points. That difficulty is especially great in an era like the current one, which lacks a strong or stable law-making majority. In such an era, interventions are likely to have significant support in government regardless of their ideological direction, and even decisions that strike down federal laws may enjoy majority support. The line of decisions since 1995 that has limited the regulatory power of the federal government (e.g., Alden v. Maine 1999, United States v. Morrison 2000) aconstitutes the most significant judicial attck on federal policy since the 1930s. But since 1995, Congress has had Republican majorities except for the bare Democratic Senate majority in 2001–2002. In that situation, any significant action to counter the Court’s policies has been exceedingly unlikely. Beyond the difficulty of enacting legislation, two other factors may come into play. First, Congress often adopts measures that limit the impact of a Court policy or that attack the policy symbolically, actions that suffice for members who want to vent their unhappiness with the Court or to claim credit with constituents who oppose the decision (see Keynes & Miller 1989). In response to Roe v. Wade (1973), for instance, Congress (often with presidential encouragement) has mandated various limits on federal funding of abortion. Two years after Miranda v. Arizona (1966), it enacted a statutory provision purportedly to supersede the Miranda rules in federal cases, a provision that federal prosecutors ignored and that the Court ultimately struck down in Dickerson v. United States (2000). Second, the Court may enjoy a degree of institutional deference in Congress, similar to that found in other relationships among the three branches but buttressed by the symbolic status of the Constitution itself. This deference tinges certain courses of action, such as restrictions on court jurisdiction, with illegitimacy. The failure of proposals to overturn the flag-burning decisions with a constitutional amendment, despite broad and deep public opposition to those decisions, reflects the symbolic power of the First Amendment. Congressional deference to the Court is not limitless, but in combination with other factors it may help to explain why the Court’s recent interventions and the Court itself have survived congressional scrutiny so well.

### Bioweapons – 2AC

#### Plan solves bioweapons

Wheeler 6 (Kristen D. – J.D. Candidate – Washburn University School of Law, “Homeland Security and Environmental Regulation: Balancing Long-Term Environmental Goals with Immediate Security Needs”, Winter, 45 Washburn L.J. 437, lexis)

Threats to national security through environmental security include both acts of ecoterrorism, such as the Iraqi attacks on Kuwaiti oil fields, as well as threats to preparedness that result from environmental policies. n229 Preparedness threats result "from the knowledge that the country's environmental policies, while benefiting citizens in the short term, may weaken the country's strategic position in the long term." n230 The United States may gain short term advantages by granting the DOD exemptions from waste-regulating statutes like CERCLA or the Resource, Conservation and Recovery Act, but the enormous amounts of money required to clean up those DOD sites in the future may jeopardize long-term national security. n231 Moreover, threats to environmental security are real: After September 11, United States' soldiers found copies of American chemical trade journals hidden in a former hideout of Osama Bin Laden in Afghanistan. n232 It is not unreasonable to believe that the same terrorists who used planes as weapons might turn to chemical or biological warfare agents to accomplish their objectives. n233 A government that wishes to protect its environmental security "must internalize the ramifications of operating within a realm of federated environmental management. This means that it will have to engage in a process of identity refinement that potentially includes ceding some of its governing responsibility to another governing body." n234 To effectively accomplish its goal of providing national security, the DOD should address threats to environmental security. n235 In doing so, the DOD must coordinate with the EPA to establish creative and effective policies that will ensure both long-term environmental and national security. The EPA's experience with quasi-security functions and creative, long-term environmental goal-setting will assist the DOD with inventive thinking that will allow the DOD to consider the environmental effects of its actions while effectively promoting national security. Environmental law is more creative than other areas of law due to its [\*465] subversive nature. n236 The basic premise of environmental regulation is to assume that all other prior endeavors failed and that "every corner of settled law had bypassed their mission." n237 When the DOD learns to use the EPA's experience with regulation of toxic and hazardous wastes to its advantage, the DOD will discover something the U.S. Customs Service already knows: Ensuring compliance with environmental regulations actually helps increase national security. n238

#### Extinction

Sandberg et al 8—Research Fellow at the Future of Humanity Institute at Oxford University. PhD in computation neuroscience, Stockholm—AND—Jason G. Matheny—PhD candidate in Health Policy and Management at Johns Hopkins. special consultant to the Center for Biosecurity at the University of Pittsburgh—AND—Milan M. Ćirković—senior research associate at the Astronomical Observatory of Belgrade. Assistant professor of physics at the University of Novi Sad. (Anders, How can we reduce the risk of human extinction?, 9 September 2008, http://www.thebulletin.org/web-edition/features/how-can-we-reduce-the-risk-of-human-extinction)

The risks from anthropogenic hazards appear at present larger than those from natural ones. Although great progress has been made in reducing the number of nuclear weapons in the world, humanity is still threatened by the possibility of a global thermonuclear war and a resulting nuclear winter. We may face even greater risks from emerging technologies. Advances in synthetic biology might make it possible to engineer pathogens capable of extinction-level pandemics. The knowledge, equipment, and materials needed to engineer pathogens are more accessible than those needed to build nuclear weapons. And unlike other weapons, pathogens **are self-replicating, allowing a small arsenal to become exponentially destructive**. Pathogens have been implicated in the extinctions of many wild species. Although most pandemics "fade out" by reducing the density of susceptible populations, pathogens with wide host ranges in multiple species can reach even isolated individuals. The intentional or unintentional release of engineered pathogens with high transmissibility, latency, and lethality might be capable of causing human extinction. While such an event seems unlikely today, the likelihood may increase as biotechnologies continue to improve at a rate rivaling Moore's Law.

## 1AR

### Warming

#### Warming outweighs – temperature rises cause sea level rise, water shortages, droughts – all lead to resource conflicts existential threat now Warming causes extinction

Flournoy 12 – Citing Feng Hsu, PhdD NASA Scientist @ the Goddard Space Flight Center, Don Flournoy, PhD and MA from UT, former Dean of the University College @ Ohio University, former Associate Dean at SUNY and Case Institute of Technology, Former Manager for Unviersity/Industry Experiments for the NASA ACTS Satellite, currently Professor of Telecommunications @ Scripps College of Communications, Ohio University, “Solar Power Satellites,” January 2012, Springer Briefs in Space Development, p. 10-11

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

#### Warming is not inevitable – question of degrees – cuts can mitigate

Somerville 11 – professor of Oceanography at UC San Diego and coordinating lead author in the 2007 Assessment Report of the Intergovernmental Panel on Climate Change (Richard, Mar. 8, “Climate Science and EPA’s Greenhouse Gas Regulations, CQ Congressional Testimony, Lexis, CBC)

Thus, atmospheric CO2 concentrations are already at levels predicted to lead to global warming of between 2.0 and 2.4C. The conclusion from both the IPCC and subsequent analyses is blunt and stark - immediate and dramatic emission reductions of all greenhouse gases are urgently needed if the 2 deg C (or 3.6 deg F) limit is to be respected. This scientific conclusion illustrates a key point, which is that it will be **governments** that **will decide**, by actions or inactions, what level of climate change they regard as **tolerable**. This choice by governments may be affected by risk tolerance, priorities, economics, and other considerations, but in the end it is a choice that humanity as a whole, acting through national governments, will make. Science and scientists will not and should not make that choice. After governments have set a tolerable limit of climate change, however, climate science can then provide valuable information about what steps will be required to **keep climate change within that limit**.

### AT Heg

US will always maintain power in some way – if not in terms of basing we still have things like air powers

Their offense is inevitable – we’ll always pursue heg

Shalmon and Horowitz 09

(Dan, Mike, Total B.A.’s, Orbis, Spring)

It is important to recognize at the outset two key points about United States strategy and the potential costs and benefits for the United States in a changing security environment. First, the United States is very likely to remain fully engaged in global affairs. Advocates of restraint or global withdrawal, while popular in some segments of academia, remain on the margins of policy debates in Washington D.C. This could always change, of course. However, at present, it is a given that the United States will define its interests globally and pursue a strategy that requires capable military forces able to project power around the world. Because ‘‘indirect’’ counter-strategies are the rational choice for actors facing a strong state’s power projection, irregular/asymmetric threats are inevitable given America’s role in the global order.24

**Plus decline causes aggression- triggers the impact**

**Snyder 07**

Robert and Renee Belfer Professor of International Relations at Columbia University

[Jack “FREE HAND ABROAD, DIVIDE AND RULE AT HOME: THE DOMESTIC POLITICS OF UNIPOLARITY” (http://www.henryfarrell.net/unipolarity.pdf)]

Plausible as these arguments may be, the opposite case may be equally plausible. States that are under intense international pressure may be especially vulnerable to myth-ridden foreign policies. Hostile encirclements heighten the enemy images, bunker mentalities, and double standards in perception that are common in competitive relationships of all kinds, especially in international relations. 9 Nationalist and garrison-state ideologies are reinforced. Likewise, Charles Kupchan argues that declining empires typically adopt strategic ideologies of aggressive forward defense out of fear that their opponents will discover the truth about their growing weakness. 10 In contrast, diplomatic historians commonly applaud the pragmatism of powerful “off-shore balancers,” whose privileged position grants them the freedom to be selective and fact-driven, waiting upon developments before committing troops. Whether powerful, unconstrained states are more ideological than weaker or highly constrained states depends greatly on their domestic politics, not simply their position in the international system. 11 Krasner’s corollary hypothesis—that powerful or unconstrained states are likely to succumb to an ideology of expansionism—is also an oversimplification. Powerful, secure states have the option to express their ideological values in the world through coercion, but they also have other options. They might choose to engage with the world pragmatically, taking what they need and ignoring the global problems that good fortune insulates them from. Or they might adopt a highly principled foreign policy that increases humanitarian assistance abroad, but eschews empire and declines to meddle in the internal politics of foreign peoples. Finally, they might be tempted by policies of limited liability, embarking on good works and moralistic hectoring abroad, but then heading for the exits when backlash makes costs rise. 12 Simply being powerful says little about whether or how ideology will express itself.

### China

#### Heg key to solve China war

Blumenthal 12

[Dan Blumenthal is a resident fellow in Asian studies at the American Enterprise Institute and a member of the U.S.-China Economic and Security Review Commission, “A strong military keeps the threat of war small”, 5/2/12, <http://www.aei.org/article/foreign-and-defense-policy/regional/asia/a-strong-military-keeps-the-threat-of-war-small/>]

There are good reasons for mutual apprehension; they cannot be papered over with better communications or "confidence building measures." China's dictators are neither wrong in their belief that the ultimate U.S. aim is democracy in China, nor misguided in their belief that Washington will do whatever it takes to make sure China does not dominate Asia. Washington is right to believe that China has greater ambitions now that it is more powerful. China wants more control, if not hegemony, over the Asia Pacific. There should be no surprise that China is a strategic rival: great power competition is the natural state of international politics. Why anyone thought China would be different is a mystery. Though the two sides have clashing interests, neither side wants strategic competition to descend into conflict. Managing the competition calls for sophisticated statecraft. The two sides should acknowledge their divergent objectives, while continuing to focus on their mutual interests — deep economic reform in both countries But, in the end, it will be old-fashioned deterrence by the U.S. that will keep the peace between these great powers. This is easier said than done. A war-weary United States is reluctant to provide resources for its stated strategy of checking Chinese power. Historically, Washington's habit is to cut its military after long wars. It is incumbent upon America to go against this penny-wise, pound-foolish practice. America's leaders must make the case that paying now for a greater military presence in Asia will deter a far more costly possible conflict with China. By paying for the ships and aircraft our military needs, Americans may buy themselves peace.

### Iran

#### Perception of American strength prevents iran nuke war

**Talent and Hall ‘10,**

 March (Jim - distinguished fellow in government relations at the Heritage Foundation, and Heath, Sowing the Wind, p. http://www.freedomsolutions.org/2010/03/sowing-the-wind-the-decay-of-american-power-and-its-consequences/)

There is a reason that regimes like Iran and North Korea go to the time and expense, and assume the risks of developing nuclear weapons programs; nuclear capability empowers them to achieve their ends, and thereby poses challenges to the United States, for several reasons. First, there is a danger that rogue regimes with nuclear material may assist terrorists in developing weapons of mass destruction.[36] Even the possibility that such regimes may do so gives them leverage internationally. Second, these regimes have ambitions in their regions and around the world.[37] Some of their leaders are fanatical enough to actually consider a first strike using nuclear weapons; for example, high-ranking officials of the Iranian government have openly discussed using a nuclear weapon against Israel.[38] Whether a first strike occurs or not, the possession of nuclear capability frees aggressive regimes to pursue their other goals violently with less fear of retaliation. For example, North Korea’s nuclear capability means that it could attack South Korea conventionally with a measure of impunity; even if the attack failed, the United States and its allies would be less likely to remove the North Korean regime in retaliation. In other words, nuclear capability lessens the penalties which could be exacted on North Korea if it engages in aggression, which makes the aggression more likely. § Marked 20:28 § The same logic applies to Iran, which is why the other nations in the Middle East are so concerned about Iran’s nuclear program. A nuclear attack by Iran is possible, but the real danger of Iranian nuclear capability is that it would make conventional aggression in the region more likely.[39] Finally, the more nations that get nuclear weapons, the greater the pressure on other nations to acquire them as a deterrent, and this is particularly true when a government acquiring the capability is seen as unstable or aggressive. North Korea’s possession of nuclear weapons has tended, for obvious reasons, to make the South Koreans and Japanese uncomfortable about having no deterrent themselves. The possibility of uncontrolled proliferation—what experts call a “nuclear cascade”[40]—is tremendously dangerous; it increases the possibility that terrorists can get nuclear material from a national program, and it raises the prospect of a multilateral nuclear confrontation between nations.[41] Many of the smaller nuclear nations do not have well-established first strike doctrine or launch protocols; the chance of a nuclear exchange, accidental or intentional, increases geometrically when a confrontation is multilateral. The antidote to proliferation is American leadership and power. The reality and perception of American strength not only deters aggressive regimes from acquiring weapons of mass destruction; it reassures other countries that they can exist safely under the umbrella of American power without having to develop their own deterrent capability.[42]

### A2 Iran Prolif

#### Prolif inevitable but there’s no impact

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[Kenneth Waltz is senior research scholar at the Saltzman Institute of War and Peace Studies., Iran Nukes? No Worries, 6/17/12, <http://usatoday30.usatoday.com/news/opinion/forum/story/2012-06-17/iran-nuclear-bomb-israel-proliferation/55654248/1>]

It should not. In fact, a nuclear-armed Iran would probably be the best possible result of the standoff and the one most likely to restore stability to the Middle East. The crisis over Iran's nuclear program could end in three ways. First, diplomacy coupled with sanctions could persuade Iran to abandon pursuit of a nuclear weapon. But that's unlikely: The historical record indicates that a country bent on acquiring nuclear weapons can rarely be dissuaded. Take North Korea, which succeeded in building its weapons despite countless rounds of sanctions and U.N. Security Council resolutions. If Tehran decides that its security depends on possessing nuclear weapons, sanctions are unlikely to change its mind. The second possible outcome is that Iran stops short of testing a nuclear weapon but develops a breakout capability, the capacity to build and test one quite quickly. Such a capability might satisfy the domestic political needs of Iran's rulers by assuring hard-liners that they can enjoy all the benefits of having a bomb (such as greater security) without the downsides (such as international isolation and condemnation).Israel, however, has made it clear that it views a significant Iranian enrichment capacity alone as an unacceptable threat. It would likely continue its risky efforts at subverting Iran's nuclear program through sabotage and assassination— which could lead Iran to conclude that a breakout capability is an insufficient deterrent, after all, and that only weaponization can provide it with the security it seeks. The third possible outcome of the standoff is that Iran continues its course and publicly goes nuclear by testing a weapon. U.S. and Israeli officials have declared that outcome unacceptable, arguing that a nuclear Iran is an existential threat to Israel. Such language is typical of major powers, which have historically gotten riled up whenever another country begins to develop a nuclear weapon. Yet **every time another country has managed to shoulder its way into the nuclear club, the other members have always changed tack and decided to live with it**. In fact, by reducing imbalances in military power, new nuclear states generally produce more regional and international stability, not less. Israel's regional nuclear monopoly, which has proved remarkably durable for more than four decades, has long fueled instability § § Marked 20:28 § Marked 20:28 § in § Marked 20:28 § the Middle East. In no other region of the world does a lone, unchecked nuclear state exist. It is Israel's nuclear arsenal, not Iran's desire for one, that has contributed most to the crisis. Power, after all, begs to be balanced. The danger of a nuclear Iran has been grossly exaggerated due to fundamental misunderstandings of how states generally behave in the international system. One prominent concern is that the Iranian regime is inherently irrational. Portraying Iran that way has allowed U.S. and Israeli officials to argue that the logic of nuclear deterrence does not apply. If Iran acquired a nuclear weapon, they warn, it would not hesitate to launch a first strike against Israel, though it would risk an overwhelming response destroying everything the Islamic Republic holds dear. Although it is impossible to be certain of Iranian intentions, it is far more likely that if Iran desires nuclear weapons, it is for the purpose of enhancing its own security, not to improve its offensive capabilities. Iran could be intransigent when negotiating and defiant in the face of sanctions, but it still acts to secure its own preservation. Nevertheless, even some observers and policymakers who accept that the Iranian regime is rational still worry that a nuclear weapon would embolden it, providing Tehran with a shield that would allow it to act more aggressively and increase its support for terrorism. The problem with these concerns is that they contradict the record of almost every other nuclear weapons state dating to 1945. History shows that when countries acquire the bomb, they feel increasingly vulnerable and become acutely aware that their nuclear weapons make them a potential target in the eyes of major powers. This awareness discourages nuclear states from bold and aggressive action. Maoist China, for example, became much less bellicose after acquiring nuclear weapons in 1964, and India and Pakistan have both become more cautious since going nuclear. Another oft-touted worry is that if Iran obtains the bomb, other states in the region will follow suit, leading to a nuclear arms race in the Middle East. But the nuclear age is now almost 70 years old, and fears of proliferation have proved to be unfounded. When Israel acquired the bomb in the 1960s, it was at war with many of its neighbors. If an atomic Israel did not trigger an arms race then, there is no reason a nuclear Iran should now. For these reasons, the U.S. and its allies need not take such pains to prevent the Iranians from developing a nuclear weapon. Diplomacy should continue because open lines of communication will make the Western countries feel better able to live with a nuclear Iran. But the sanctions on Iran can be dropped: They primarily harm ordinary Iranians, with little purpose. Most important, policymakers and citizens worldwide should take comfort from the fact that where nuclear capabilities have emerged, so, too, has stability. When it comes to nuclear weapons, now as ever, more could be better.