# 1AC

### Plan

#### The United States federal judiciary should rule that the President of the United States lacks the war powers authority to detain individuals indefinitely.

**Venezuela 1AC**

**US efforts to push Judicial Reforms in Venezuela through the Inter-American Human Rights Commission are hampered by hypocritical indefinite detention policy**

**Bosworth 13** (James, Former Associate for Communications at The Inter-American Dialogue and Director of Research at The Rendon Group, Consultant at the Woodrow Wilson International Center for Scholars, “Protecting the IACHR, now make it stronger,” 3-25-13, <http://www.bloggingsbyboz.com/2013/03/protecting-iachr-now-make-it-stronger.html>)

Last Friday, the OAS voted to reform the Inter-American Commission on Human **Rights** (IACHR). Most importantly, the organization managed to **pusM Mh back** against a set of cynical and **harmful proposals by** four countries - Bolivia, Ecuador, Nicaragua and **Venezuela** - that would have weakened the organization and reduced its funding sources. Those four countries ended up isolated from the other 30 voting members of the OAS who remained committed to strengthening the Inter-American human rights system. Sources: AQ, Pan-American Post, IPS, Ecuador wanted the system to be funded only by countries that have signed the San Jose Pact and wanted all the rapporteurs funded equally. This would have eliminated most of the funding for the IACHR coming from the US, Canada and Europe without guarantees of pledges to replace that money. It also would have weakened the Special Rapporteur on Freedom of Expression, a particularly thorn in the side for Ecuador's censorship-loving president. Of course, the ALBA criticisms aren't actually about funding. The ALBA countries tried to weaken the IACHR because they are annoyed that any independent outside organizations criticizes their abuses of human rights and free speech. So, good on the rest of the Americas including the US, Brazil and Mexico for working to stop those proposals from being implemented. All three of those countries have all recently faced **tough criticisms** from the IACHR, making it notable that they still defended the commission at this session. From the speech of Deputy Secretary Burns: This is why we actively respond to the Commission even as it raises challenging issues for us – from the death penalty and the human rights of migrants and incarcerated children, to **the status of detainees** at Guantanamo Bay. And this is why we continue to collaborate with the Commission – including its recent on-site visit to immigrant detention facilities in the United States. We do this not because we always see eye to eye with the Commission. We do it because we are secure in our **commitment to democratic principles** and in our conviction that we are accountable to our citizens for the protection of their human rights. We do it because we believe that no government should place itself beyond international scrutiny when it comes to the protection of basic human rights and civil liberties. Strong words that I absolutely agree with. However.... On 12 March the US formally answered questions to the IACHR about the detainees held at Guantanamo Bay. At that time, the US lawyer did not provide any timeline for closing the detention center and refused to admit anyone is being held in "indefinite detention," though the fact they are held without trial and without a potential release date seems to be the definition of that term. Though the US defended the conditions of the prison, as far as I can tell, no representative from the IACHR has been allowed to visit. On the issue of immigrant detentions, here is the IACHR in July 2009 based on its visits to detention centers (longer report released in 2011): Finally, the Rapporteurship was distressed at the use of solitary confinement to ostensibly provide personal protection for vulnerable immigrant detainees, including homosexuals, transgender detainees, detainees with mental illnesses, and other minority populations. The use of solitary confinement as a solution to safeguard threatened populations effectively punishes the victims. The Rapporteurship urges the U.S. Government to establish alternatives to protect vulnerable populations in detention and to provide the mentally-ill with appropriate treatment in a proper environment. Here is the NYT yesterday: On any given day, about 300 immigrants are held in solitary confinement at the 50 largest detention facilities that make up the sprawling patchwork of holding centers nationwide overseen by Immigration and Customs Enforcement officials, according to new federal data. Nearly half are isolated for 15 days or more, the point at which psychiatric experts say they are at risk for severe mental harm, with about 35 detainees kept for more than 75 days. Four years after the IACHR visited the immigrant detention facilities and spoke out against the practice of solitary confinement, the article in the NYT from 2013 reads just like the IACHR report from 2009. Nothing has been done to respond to those criticisms. The US gets credit for fighting back against the ALBA countries' push to silence the IACHR. The commission provides a needed voice for the hemisphere's human rights. Over the past month, with the purpose of protecting and strengthening human rights in the hemisphere, I've heard US officials praise Brazil, Mexico and Uruguay for listening and acting on the recommendations of the IACHR. The sad truth is that the US praised those other countries because the US hasn't acted on many of the important criticisms that it has received from the IACHR. It's part of the **credibility gap** that the US faces in this hemisphere. Last week, the Obama administration played a vital role in protecting human rights in the hemisphere by leading the effort at the OAS to maintain a strong IACHR. We need to remember that nothing the US says diplomatically at the OAS will be as powerful as the US ability to **lead by example**. If the US really wants stronger human rights protections in this hemisphere, that effort starts at home. The issues raised by Deputy Secretary Burns in his OAS speech - **Guantanamo and immigrant detention conditions - would be great places to start.**

#### Specifically true for a lack US Judicial Independence – sends a signal of appropriate balancing

**Yamamato 13** (Eric K., law professor at the University of Hawai'i William S. Richardson School of Law, BA University of Hawaiʻi at Mānoa 1975, JD UC Berkeley School of Law 1978, Race, Rights and Reparation: Law and the Japanese American Internment, 2013, p. 411-412)

For all these reasons, Justice Jackson’s warning still resonates loudly today. How will the judiciary prevent false **executive claims** of national security necessity from becoming a “**loaded weapon**” aimed at the essence of American democracy— the balance of national security and civil liberties? Rasul confirmed the salience of **judicial oversight** of executive national security policies. Yet the Rasul majority failed to articulate the appropriate level of judicial review of executive national security actions that curtail fundamental liberties. Deferential judicial review effectively affords the President a **blank check**. Unyielding scrutiny, however, may unduly constrain the executive. Ordinary judicial review doctrine embraces deferential review for most government actions, giving the President wide leeway to act in the best interest of the country. That doctrine also mandates heightened scrutiny where government action restricts fundamental liberties. It is still an open question whether the national security setting alters this paradigm of judicial review. Varying approaches persist. Some judges and scholars, including former Chief Justice William Rehnquist, argued that the judiciary should play a muted role in reviewing military necessity restrictions of civil liberties during military conflict: An entirely separate and important philosophical question is whether occasional presidential excesses and judicial restraint in wartime are desirable or undesirable. . . . [T]here is every reason to believe that the historic trend against the least justified of the curtailments of civil liberty in wartime will continue in the future. It is neither desirable nor remotely likely that civil liberty will occupy as favored a position in wartime as it does in peacetime. But it is both desirable and likely that more **careful attention** will **be paid by the courts** to the basis for the government’s claims of necessity as a basis for curtailing civil liberty. The laws will thus not be silent in time of war, but they will speak with a somewhat different voice.1210 By adopting this posture of sharply limited judicial review or almost total judicial deference to executive actions, courts would have a straightforward task. They would simply align with the executive whenever it invokes national security, even when fundamental liberties are significantly restricted. For others, the highly deferential approach conflicts with constitutional mandates. The judiciary’s purpose is to serve as a constitutional check on the two political branches of government, particularly where fundamental liberties are at stake.1211 Without close **judicial scrutiny,** no governmental body exists to assure executive and legislative accountability under law. The consequences of this were seen in the wartime internment cases. A watchful care approach would call for the judiciary to apply a heightened standard of review to executive restrictions of fundamental liberties even during times of war or national security crises, accounting for the government’s security concerns in the court’s analysis of the government’s asserted compelling interest.1212 During the Civil War, the U.S. Supreme Court barred President Lincoln from suspending the writ of habeas corpus if the civilian courts were open and functioning. The Court ruled that the safeguards of liberty [should receive the] watchful care of those [e]ntrusted with the guardianship of the Constitution and laws [namely, the judiciary].1213 This heightened scrutiny, or watchful care, approach calls for careful judicial assessment of the government’s proffered security justification for the restrictions. Under this approach, [e]xcept as to actions under civilly-declared martial law . . . a heightened standard of review [should] be applied to evaluate government restrictions of constitutionally-protected liberties ostensibly justified by military necessity or national security. At the same time, the watchful care approach affords the government needed protection for sensitive information or policies. In particular, a **heightened standard of review** confirms the appropriate **competency of federal courts** to adjudicate disputes at the intersection of civil liberties and national security. It **announces a confidence that courts possess** existing tools for ensuring strict confidentiality where warranted. Secrecy has its proper place. But the internment illustrates that the executive branch historically has invoked confidentiality to evade accountability.1214 How will American courts respond today and in the future? Some predict that “blind acceptance by the courts of the government’s insistence on the need for secrecy . . . [will] impermissibly compromise the **independence of the judiciary** and open the door to possible abuse.”1215 Yet, in hearing habeas corpus challenges after Rasul and Boumediene, the federal courts have more consistently scrutinized the government’s justification for indefinite detention, upholding 16 detentions and invalidating 37 others.1216 In his final pronouncement, Fred Korematsu urged that through public and judicial vigilance “the internment can remain a lighthouse that helps . . . navigate the rocky shores triangulated by freedom, equality, and security.”121

#### Venezuelan denunciation of the Convention on Human Rights means that the OAS’s Inter-American Commission remains the best hope of promoting judicial independence in Venezuela

Biron 13 (Carey L. Biron, Inter Press Service, “Venezuelan Pullout from Rights Pact Called “Deeply Concerning,” <http://www.ipsnews.net/2013/09/venezuelan-pullout-from-rights-pact-called-deeply-concerning/>)

WASHINGTON, Sep 10 2013 (IPS) - The Inter-American Commission on Human Rights (IACHR) says it is “deeply concerned” over the Venezuelan government’s decision to withdraw from the American Convention on Human Rights, a move that went into effect Tuesday. The Venezuelan government has denounced the four-decade-old convention, which currently covers 23 of the 35 members of the Organisation of American States (OAS), as a tool of U.S. meddling in Latin America. But rights groups warn the move will eliminate a court-of-last-resort option for Venezuelans who feel they are unable to receive a fair judicial response within their own country – an option that remains guaranteed in the Venezuelan constitution. “This comes at the expense of the protection of rights of the people of Venezuela, who are stripped of a mechanism to protect their human rights,” the IACHR, based here in Washington, stated Tuesday. “The Inter-American Commission calls on Venezuela to reconsider this decision … [and] regrets that, despite repeated calls by the Commission and by other international bodies for Venezuela to reconsider its decision to denounce the Convention, the State of Venezuela has not reversed that decision.” The American Convention on Human Rights sets out how OAS countries must guarantee citizens’ human rights. It also empowers the IACHR and the Inter-American Court of Human Rights, based in Costa Rica, to monitor and rule on rights-related complaints that have not been dealt with through domestic judicial channels. Venezuela is the third country to formally denounce the American Convention on Human Rights and withdraw from the Inter-American Court’s jurisdiction. Trinidad & Tobago made a similar decision in 1998 after the court criticised that country’s use of the death penalty, while Peru tried to do the same the following year. “It is very unfortunate that the Venezuelan government has decided to go through with this action,” Francisco Quintana, programme director for the Andean, North America and Caribbean region at the Centre for Justice and International Law (CEJIL), a Washington-based advocacy group, told IPS. “Yet if the government thought it was going to get away from this international supervision completely, that’s not right – at least with regard to any human rights violations that occurred before Sep. 10.” Indeed, given that Venezuela remains a member of the OAS, the IACHR will maintain jurisdiction to monitor the country’s human rights situation. Further, as Quintana notes, the Inter-American Court will be able to continue hearing cases of alleged rights violations from during the period that Venezuela was party to the convention, from 1977 until Tuesday. Yet critics worry about the potential impact not only on Venezuelans who have suffered abuses but also on the strength of the overall Inter-American structure, one of the world’s oldest pan-regional rights systems. The United Nations warned Tuesday the move could “have a very negative impact on human rights in [Venezuela] and beyond”. ‘Grave backlash’ Tuesday’s withdrawal follows through on one of the last policy decisions made by former president Hugo Chavez, who in July 2012 stepped up complaints that the Inter-American Court was interfering in domestic affairs. Chavez had earlier accused the OAS of supporting a coup against his government. But the final motivation to withdraw appears to have been a ruling by the Inter-American Court in favour of Raul Diaz Pena, a Venezuelan who was found to have been mistreated in prison after being convicted of placing bombs near Caracas embassies. “The Venezuelan government was against the external supervision of human rights issues from an international organ – over the past decade, the Inter-American Court lodged many cases against Venezuela, and the Chavez administration began to view these as political attacks,” CEJIL’s Quintana says. “While the court established that there were clear violations of human rights, many didn’t even take place under Chavez. Some had to do with judicial independence, others with excessive force by the police – a wide range of cases, which offered no reason for the government to become frustrated with the system as a whole. After all, these rights were explicitly protected by the system and the convention.” On Monday, CEJIL and more than 50 other organisations from 14 countries throughout the region derided the Venezuelan move and lamented its broader implications. “Venezuela’s denunciation of the American Convention represents a grave backlash for the protection of human rights in the region,” the groups warned. “Additionally, this denunciation is preceded in recent years by the non-compliance of most of the sentences and measures of protection issued by the Inter-American Court.” Also on Monday, Venezuela’s president, Nicolas Maduro, reiterated Chavez’s charge that the Inter-American system was a U.S. pawn. “[T]he U.S. is not part of the human rights system, does not acknowledge the court’s jurisdiction or the commission, but … the commission headquarters is in Washington,” President Maduro said at a news conference, according to media reports. “Almost all participants and bureaucracy that are part of the IACHR are captured by the interests of the State Department of the United States.” Indeed, the United States, itself a member of the OAS, has signed but never ratified the American Convention on Human Rights, part of a longstanding suspicion of international legal instruments. Yet rights groups are suggesting that Maduro’s criticism underlines an incongruous policy stance. “The Venezuelan government’s attitude is highly contradictory,” Guadalupe Marengo, deputy director of the Americas programme at Amnesty International, a watchdog group, said Tuesday. “On the one hand it is promoting universal ratification of the American Convention on Human Rights and urging other countries to ratify this instrument while, on the other, it is withdrawing from it and denying its inhabitants access to the protection of one of its bodies.”

**Now is the key time – Maduro is consolidating power in Venezuela – a signal of an independent judiciary is crucial to a smooth, democratic transition**

**The Economist 13** (“Latin America’s Venezuela problem: Ostrich diplomacy, Venezuela’s neighbours studiously ignore the crisis unfolding next door,” 6-8-13, <http://www.economist.com/news/americas/21579067-venezuelas-neighbours-studiously-ignore-crisis-unfolding-next-door-ostrich-diplomacy/>)

FOR Latin American presidents of all political persuasions, a knock on the door from Henrique Capriles is a far from welcome sound these days. Not that the leader of Venezuela’s opposition is a particularly boring or obnoxious guest, despite the strenuous efforts of President Nicolás Maduro to portray him as a “murderous fascist”. It’s just that having Mr Capriles round for a cup of tea can get you into all sorts of trouble, as Colombia’s Juan Manuel Santos found out to his cost. On May 29th a shirtsleeved Mr Santos held a private meeting of about an hour with Mr Capriles, which provoked a barrage of invective from the Venezuelan government. The Colombian president had “put a bomb under” relations between the two countries, said Diosdado Cabello, the speaker of Venezuela’s National Assembly. Venezuela would have to “review” its support for Colombia’s peace talks with the leftist FARC guerrillas, added Elías Jaua, the foreign minister. To top things off, Mr Maduro said certain Colombian institutions “at the highest level” were plotting with the Venezuelan opposition to inject him with a poison that would lead to a slow death. Mr Santos said this was “crazy”. His foreign minister declined to engage in microphone diplomacy. Colombia and Venezuela, whose governments are poles apart ideologically, have enjoyed a friendship of convenience in recent years after a very rocky decade. The reason for all the huffing and puffing is that Mr Capriles, who came within an ace of winning a snap presidential election on April 14th, has challenged the result in the **supreme court** and is seeking to persuade the region’s governments of his case. Mr Maduro is the chosen successor of Hugo Chávez, who died of cancer in March, five months after being re-elected. He heads a weak administration beset by political and economic problems and desperate to hang on to the international support that Chávez built up over more than a decade of oil diplomacy. With the Chávez charisma gone, the new president’s **legitimacy in doubt** and the money running out, bluster is one of the few resources not in short supply. This week was to have been Peru’s turn to receive a visit from Mr Capriles. But such was the panic in Ollanta Humala’s government at having to decide whether to receive him that the trip was postponed. Peru currently chairs the South American Union (Unasur), one of several regional bodies failing to deal with the Venezuelan crisis. Unasur held an emergency meeting on the eve of Mr Maduro’s inauguration to insist on an audit of the election result. But although the opposition says the partial audit now under way is insufficient, Unasur has failed to pursue the case. Peru’s foreign minister stood down—officially for health reasons—shortly after he had the effrontery to say publicly that a fresh Unasur summit on the subject was being mooted. Most Latin American and Caribbean governments are either ideologically close to the chavista regime, dependent on its oil-fuelled largesse, or simply disinclined to incur its wrath. The Organisation of American States (OAS), whose annual assembly began on June 4th in Guatemala, is bound by treaty to monitor its members’ democratic credentials. But the OAS’s Democratic Charter, launched in 2001, has so far been used only to protect presidents (including Chávez) and to bludgeon puny countries such as Honduras and Paraguay. Brazil, which has the muscle to take on a country the size of Venezuela, seems more concerned with protecting its businesses, which are making billions from trade with its northern neighbour. Ahead of the OAS meeting its secretary-general, José Miguel Insulza, said the “atmosphere” was not conducive to a discussion of the Venezuelan crisis—a diplomatic way of saying no one was prepared to pick up the hot potato. Mr Insulza himself has in the past admitted that Venezuela is in breach of the **Democratic Charter**. Among other things, it requires an **independent judiciary** and guarantees recourse to the inter-American human-rights system. Venezuela has announced that it will abandon the system later this year. The ostrich approach may not work for ever. For one thing, the Venezuelan **opposition’s campaign** across the region is putting presidents under pressure from their parliaments and civic groups to **support democracy**. Second, Venezuela’s **political fragility** and Mr Maduro’s weakness threaten instability which the region may be unable to ignore. Shutting the door in Mr Capriles’ face could prove a short-sighted policy, as well as a shameful one.

#### Venezuelan Stability stops Russian Arctic development and jumpstarts the US Economy

**Weafer 13** (Chris Weafer is chief strategist at Sberbank Investment Research, BBC Monitoring Former Soviet Union – Political, “No business as usual for Russia in Venezuela – paper,” 3-12-13, Supplied by BBC Worldwide Monitoring)

Despite assurances from government officials in Caracas that it will be business as usual after the death of Venezuelan President Hugo Chavez last week, his passing will almost certainly lead to the start of political and social changes in that country. The only question is the **time frame**. Chavez's death and the emergence of a new presidential administration will surely have a significant impact on the global oil industry and price of oil, although perhaps on an even longer timeline. According to the BP Energy Review, Venezuela sits on the world's largest exploitable reserves of oil. Chavez's policies have led not only to no significant exploitation of those reserves but have actually directly led to a cut in the country's average daily oil output by one-third in the 14 years he served as president. In 1999, the country produced an average of 3.5 million barrels per day, while the current average output has dropped to 2.5 million barrels. With the right investments, the country may easily support average daily oil output of 5 million barrels and probably higher, according to industry estimates. There can be little doubt that as of last week, Venezuela has become the **most important target location** for foreign oil majors, especially **US companies**. Russian oil majors still have a small advantage, and senior executives from state-owned Rosneft and Gazprom will be eager to ensure good relations with the next administration. But they must know that there is now a limited window to convert promised cooperation with the Venezuelan state-owned oil company, PDVSA, into actual projects. Oil executives from Houston will soon be descending on Venezuela with lucrative alternatives, and **PDVSA**, in dire need of capital investment, **will** surely **be listening to** their **offers**. For Russia, that means three risks. First, Gazprom and Rosneft will have more competition for joint-venture deals in that country. Second, Venezuela is an **easier alternative** to the hostile and unpredictable **Russian Arctic** for US oil companies, which may make it harder for Moscow to attract joint-venture deals. Finally, the prospect of more oil coming out of Venezuela adds to the growth projections for shale oil as a significant longer-term threat to the price of oil, and therefore, to the Russian economy. None of this will be lost on the Kremlin. It means that there will have to be greater urgency to convert promised deals into real projects in Venezuela. At the same time, the Kremlin will want to conclude more joint ventures to **exploit the Arctic**. It also means that the clock counting down to lower oil revenues is now ticking, increasing the need for more urgent progress in economic reforms. The Venezuelan constitution mandates that a new election must take place within 30 days. As it stands today, the current vice president, Nicolas Maduro, is expected to be elected to replace Chavez. Maduro said he intends to stick with the economic and political policies and ideologies of his former boss, but since Maduro is no Chavez, this will be virtually impossible to achieve. Chavez was a hugely charismatic, larger-than-life leader who managed to maintain unity of purpose among the many vested interests in the country. At the same time, he stayed popular with the people even as the economy slid further into trouble. With oil averaging over 110 dollars per barrel last year, the Venezuelan state budget ran a deficit of close to 20 per cent of gross domestic product. Now that Chavez is gone, the soon-to-be-elected president Maduro will come under **increasing pressure** to take actions to start improving the economy. No different from President Vladimir Putin's situation when he took over an ailing economy in Russia in 2000, **the only place** that the new Venezuelan president can get revenue is from **the oil sector**. But after Chavez practically destroyed PDVSA when he fired 20,000 skilled engineers and other workers in 2002, PDVSA will need a huge boost to capital spending and joint-venture partnerships. Although politically risky, Maduro may have no other choice than to ask ExxonMobil and Chevron, two of the US majors that had their local projects nationalized by Chavez, to come back. Venezuela is certainly an attractive option for the world's big oil majors. Recoverable reserves are now put at just under 300 billion barrels, compared to about 265 billion in Saudi Arabia and less than 100 billion in Russia. Most of Venezuelan oil is heavy and more expensive to refine, but it lies only a few hundred meters below the Orinoco Belt. That makes it a lot more attractive than, for example, speculatively drilling in the hostile Russian Arctic while dodging icebergs. The Orinoco Belt is an extremely important natural environment, and the inevitable objections from domestic, regional and international environmentalists will slow any development. But as has happened in similar situations elsewhere, the quest for the prize will almost certainly prevail. Venezuela needs the money. Venezuela has also very likely moved to near the top of the US government's list of geopolitical priorities. The US is set on a course to become **energy independent**, and the International Energy Agency calculates this may take two to three decades based on current trends and with optimistic assumptions for US shale oil production. Such assumptions have always been speculative when it comes to the oil industry. But a more achievable target for the US is to become **regionally oil independent** -that is, to only source its oil requirements domestically and from Canada, Mexico and now perhaps from **Venezuela**. That would allow the US to become completely independent of Middle East oil within 10 years or so. A change in Venezuela's political and economic priorities would also weaken the Cuban economy since Chavez supplied Cuba with almost free oil. That would hasten the inevitable regime change there as well, an extra bonus for Washington. But while such an outcome would be **very favourable for the US economy**, it would **accelerate the game change** already started in the global oil industry with the rapid growth in **shale oil volumes**. No matter how you work the assumptions, the world is heading for a lot more oil supply over the balance of this decade. New major oil production will come from North America, Iraq and the Caspian Sea, where Kazakhstan's giant Kashagan field starts to produce from this year, almost certainly from Venezuela if a new administration takes concrete steps to increase foreign investment and production in the oil sector. This may be the real reason Russian officials shed a few tears at Chavez's funeral on Friday.

#### Economic decline causes nuclear war

Harris and Burrows, 9 – \*counselor in the National Intelligence Council, the principal drafter of Global Trends 2025, \*\*member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis”, Washington Quarterly, http://www.twq.com/09april/docs/09apr\_burrows.pdf)

Increased Potential for Global Conflict Of course, the report encompasses more than economics and indeed believes the future is likely to be the result of a number of intersecting and interlocking forces. With so many possible permutations of outcomes, each with ample opportunity for unintended consequences, there is a growing sense of insecurity. Even so, history may be more instructive than ever. While we continue to believe that the Great Depression is not likely to be repeated, the lessons to be drawn from that period include the harmful effects on fledgling democracies and multiethnic societies (think Central Europe in 1920s and 1930s) and on the sustainability of multilateral institutions (think League of Nations in the same period). There is no reason to think that this would not be true in the twenty-first as much as in the twentieth century. For that reason, the ways in which the potential for greater conflict could grow would seem to be even more apt in a constantly volatile economic environment as they would be if change would be steadier. In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. Terrorism’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced. For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. Terrorist groups in 2025 will likely be a combination of descendants of long established groups inheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacks and newly emergent collections of the angry and disenfranchised that become self-radicalized, particularly in the absence of economic outlets that would become narrower in an economic downturn. The most dangerous casualty of any economically-induced drawdown of U.S. military presence would almost certainly be the Middle East. Although Iran’s acquisition of nuclear weapons is not inevitable, worries about a nuclear-armed Iran could lead states in the region to develop new security arrangements with external powers, acquire additional weapons, and consider pursuing their own nuclear ambitions. It is not clear that the type of stable deterrent relationship that existed between the great powers for most of the Cold War would emerge naturally in the Middle East with a nuclear Iran. Episodes of low intensity conflict and terrorism taking place under a nuclear umbrella could lead to an unintended escalation and broader conflict if clear red lines between those states involved are not well established. The close proximity of potential nuclear rivals combined with underdeveloped surveillance capabilities and mobile dual-capable Iranian missile systems also will produce inherent difficulties in achieving reliable indications and warning of an impending nuclear attack. The lack of strategic depth in neighboring states like Israel, short warning and missile flight times, and uncertainty of Iranian intentions may place more focus on preemption rather than defense, potentially leading to escalating crises. Types of conflict that the world continues to experience, such as over resources, could reemerge, particularly if protectionism grows and there is a resort to neo-mercantilist practices. Perceptions of renewed energy scarcity will drive countries to take actions to assure their future access to energy supplies. In the worst case, this could result in interstate conflicts if government leaders deem assured access to energy resources, for example, to be essential for maintaining domestic stability and the survival of their regime. Even actions short of war, however, will have important geopolitical implications. Maritime security concerns are providing a rationale for naval buildups and modernization efforts, such as China’s and India’s development of blue water naval capabilities. If the fiscal stimulus focus for these countries indeed turns inward, one of the most obvious funding targets may be military. Buildup of regional naval capabilities could lead to increased tensions, rivalries, and counterbalancing moves, but it also will create opportunities for multinational cooperation in protecting critical sea lanes. With water also becoming scarcer in Asia and the Middle East, cooperation to manage changing water resources is likely to be increasingly difficult both within and between states in a more dog-eat-dog world.

**Russian energy development in the Arctic causes escalating military competition**

**Talmadge 12** (Eric – AP, Huffington Post, “Arctic Climate Change Opening Region To New Military Activity’, 4/16, http://www.huffingtonpost.com/2012/04/16/arctic-climate-change-military-activity\_n\_1427565.html)

To the world's military leaders, the debate over climate change is long over. **They are preparing for a new kind of Cold War in the Arctic**, anticipating that rising temperatures there will open up a treasure trove of resources, long-dreamed-of sea lanes and **a slew of potential conflicts**. By Arctic standards, **the region is already buzzing with military activity**, and experts believe that **will increase significantly** in the years ahead. Last month, Norway wrapped up one of the largest Arctic maneuvers ever — Exercise Cold Response — with 16,300 troops from 14 countries training on the ice for everything from high intensity warfare to terror threats. Attesting to the harsh conditions, five Norwegian troops were killed when their C-130 Hercules aircraft crashed near the summit of Kebnekaise, Sweden's highest mountain. The U.S., Canada and Denmark held major exercises two months ago, and in an unprecedented move, the military chiefs of the eight main Arctic powers — Canada, the U.S., Russia, Iceland, Denmark, Sweden, Norway and Finland — gathered at a Canadian military base last week to specifically discuss regional security issues. None of this means a shooting war is likely at the North Pole any time soon. But as the number of workers and ships increases in the High North to exploit oil and gas reserves, **so will the need for policing, border patrols and** — if push comes to shove — **military muscle to enforce rival claims**. The U.S. Geological Survey estimates that 13 percent of the world's undiscovered oil and **30 percent of its untapped natural gas is in the Arctic**. Shipping lanes could be regularly open across the Arctic by 2030 as rising temperatures continue to melt the sea ice, according to a National Research Council analysis commissioned by the U.S. Navy last year. What countries should do about climate change remains a heated political debate. But that has not stopped north-looking militaries from moving ahead with strategies that assume current trends will continue. Russia, Canada and the United States have the biggest stakes in the Arctic. With its military budget stretched thin by Iraq, Afghanistan and more pressing issues elsewhere, the United States has been something of a reluctant northern power, though its nuclear-powered submarine fleet, which can navigate for months underwater and below the ice cap, remains second to none. Russia — one-third of which lies within the Arctic Circle — **has been the most aggressive in establishing itself as the emerging region's superpower**. Rob Huebert, an associate political science professor at the University of Calgary in Canada, said Russia has recovered enough from its economic troubles of the 1990s to significantly rebuild its Arctic military capabilities, which were a key to the overall Cold War strategy of the Soviet Union, and has increased its bomber patrols and submarine activity. He said that has in turn led other Arctic countries — Norway, Denmark and Canada — to resume regional military exercises that they had abandoned or cut back on after the Soviet collapse. Even non-Arctic nations such as France have expressed interest in deploying their militaries to the Arctic. "We have an entire ocean region that had previously been closed to the world now opening up," Huebert said. "There are numerous factors now coming together that are mutually reinforcing themselves, causing a buildup of military capabilities in the region. **This is only going to increase as time goes on**." Noting that the Arctic is warming twice as fast as the rest of the globe, the U.S. Navy in 2009 announced a beefed-up Arctic Roadmap by its own task force on climate change that called for a three-stage strategy to increase readiness, build cooperative relations with Arctic nations and identify areas of potential conflict. "**We want to maintain our edge up there**," said Cmdr. Ian Johnson, the captain of the USS Connecticut, which is one of the U.S. Navy's most Arctic-capable nuclear submarines and was deployed to the North Pole last year. "Our interest in **the Arctic** has never really waned. It **remains very important**." **But the U.S. remains ill-equipped for large-scale Arctic missions**, according to a simulation conducted by the U.S. Naval War College. A summary released last month found the Navy is "inadequately prepared to conduct sustained maritime operations in the Arctic" because it **lacks ships** able to operate in or near Arctic ice, **support facilities and adequate communications**. "The findings indicate the Navy is entering a new realm in the Arctic," said Walter Berbrick, a War College professor who participated in the simulation. "Instead of other nations relying on the U.S. Navy for capabilities and resources, sustained operations in the Arctic region will require the Navy to rely on other nations for capabilities and resources." He added that although the U.S. nuclear submarine fleet is a major asset, the Navy has severe gaps elsewhere — **it doesn't have any icebreakers**, for example. The only one in operation belongs to the Coast Guard. **The U.S. is currently mulling whether to add more icebreakers**.

**De-escalation is key to prevent Arctic conflicts from going nuclear – draws in major powers**

**Wallace and Staples 10** (Michael Wallace and Steven Staples. \*Professor Emeritus at the University of British Columbia and President of the Rideau Institute in Ottawa “Ridding the Arctic of Nuclear Weapons: A Task Long Overdue,”http://www.arcticsecurity.org/docs/arctic-nuclear-report-web.pdf)

The fact is, the Arctic is becoming a zone of increased military competition. Russian President Medvedev has announced the creation of a special military force to defend Arctic claims. Last year Russian General Vladimir Shamanov declared that Russian troops would step up training for Arctic combat, and that Russia’s submarine fleet would increase its “operational radius.” 55 Recently, two Russian attack submarines were spotted off the U.S. east coast for the first time in 15 years. 56 In January 2009, on the eve of Obama’s inauguration, President Bush issued a National Security Presidential Directive on Arctic Regional Policy. It affirmed as a priority the preservation of U.S. military vessel and aircraft mobility and transit throughout the Arctic, including the Northwest Passage, **and foresaw greater capabilities to protect U.S. borders in the Arctic**. 57 The Bush administration’s disastrous eight years in office, particularly its decision to withdraw from the ABM treaty and deploy missile defence interceptors and a radar station in Eastern Europe, have greatly contributed to the instability we are seeing today, even though the Obama administration has scaled back the planned deployments. The Arctic has figured in this renewed interest in Cold War weapons systems, particularly the upgrading of the Thule Ballistic Missile Early Warning System radar in Northern Greenland for ballistic missile defence. The Canadian government, as well, has put forward new military capabilities to protect Canadian sovereignty claims in the Arctic, including proposed ice-capable ships, a northern military training base and a deep-water port. Earlier this year Denmark released an all-party defence position paper that suggests the country should create a dedicated Arctic military contingent that draws on army, navy and air force assets with shipbased helicopters able to drop troops anywhere. 58 Danish fighter planes would be tasked to patrol Greenlandic airspace. Last year Norway chose to buy 48 Lockheed Martin F-35 fighter jets, partly because of their suitability for Arctic patrols. In March, that country held a major Arctic military practice involving 7,000 soldiers from 13 countries in which a fictional country called Northland seized offshore oil rigs. 59 The manoeuvres prompted a protest from Russia – which objected again in June after Sweden held its largest northern military exercise since the end of the Second World War. About 12,000 troops, 50 aircraft and several warships were involved. 609 Ridding the Arctic of Nuclear Weapons: A Task Long Overdue Jayantha Dhanapala, President of Pugwash and former UN under-secretary for disarmament affairs, summarized the situation bluntly: “From those in the international peace and security sector, **deep concerns are being expressed over the fact that two nuclear weapon states** – the United States and the Russian Federation, which **together own 95 per cent of the nuclear weapons in the world** **– converge on the Arctic and have competing claims**. These claims, together **with those of other allied NATO countries** – Canada, Denmark, Iceland, and Norway – could, **if unresolved**, **lead to conflict escalating into the threat or use of nuclear weapons**.” 61 Many will no doubt argue that this is excessively alarmist, but **no circumstance in which nuclear powers find themselves in military confrontation can be taken lightly**. The current geo-political threat level is nebulous and low – for now, according to Rob Huebert of the University of Calgary, “[the] issue is the uncertainty as Arctic states and non-Arctic states begin to recognize the geo-political/economic significance of the Arctic because of climate change.” 62

### Terror 1AC

**Indefinite detention increases terrorism—multiple warrants**

Scheinin 12 (January 11, Martin, professor of international law and former UN Special Rapporteur on human rights and counter-terrorism from 2005 to 2011, “Should Human Rights Take a Back Seat in Wartime?” <http://www.realclearworld.com/articles/2012/01/11/national_defense_authorization_act_scheinin_interview-full.html>)

The National Defense Authorization Act (NDAA), signed by President Barack Obama December 31, 2011, codifies into law the post-9/11 practice of indefinite detention without charge of terrorist suspects. Martin Scheinin, professor of international law and former UN Special Rapporteur on human rights and counter-terrorism from 2005 to 2011, offered his thoughts on the new law and its potential implications for the global counter-terrorism struggle. Casey L. Coombs: First, Mr. Scheinin, could you provide your general impressions of the NDAA’s indefinite detention provisions vis-à-vis international legal standards governing civil liberties? Martin Scheinin: The NDAA builds upon the well-established rule in international humanitarian law (law of armed conflict) that during an international armed conflict combatants, i.e. soldiers of one of the states involved in the war, can be detained as prisoners of war until the end of hostilities. When there is an international armed conflict and when someone is a combatant, then such detention does not amount to arbitrary detention that would violate international human rights law. The NDAA extends the possibility - even presumption - of indefinite detention to terrorism, far beyond genuine situations of international or even non-international armed conflict. And it extends indefinite detention to persons who are not combatants, or analogously situated persons in a non-international armed conflict. For instance, persons who are held to have provided substantial support to terrorism would be subject to indefinite detention. This approach has no support in the laws of war and will unavoidably result in what human rights law considers arbitrary detention and hence a violation of international treaties legally binding upon the United States, such as the International Covenant on Civil and Political Rights. CLC: As a world leader and active promoter of universal human rights, the practice of indefinite detention without charge would seem to clash with U.S. ideals. Could you comment on this contradiction? MS: One of the main lessons learned in the international fight against terrorism is that counter-terrorism professionals have gradually come to learn and admit that human rights violations are not an acceptable shortcut in an effective fight against terrorism. Such measures tend to backfire in multiple ways. They result in legal problems by hampering prosecution, trial and punishment. The use of torture is a clear example here. They also tend to alienate the communities with which authorities should be working in order to detect and prevent terrorism. And they add to causes of terrorism, both by perpetuating "root causes" that involve the alienation of communities and by providing "triggering causes" through which bitter individuals make the morally inexcusable decision to turn to methods of terrorism. The NDAA is just one more step in the wrong direction, by aggravating the counterproductive effects of human rights violating measures put in place in the name of countering terrorism. CLC: Does the NDAA afford the U.S. a practical advantage in the fight against terrorism? Or might the law undermine its global credibility? MS: It is hard to see any practical advantage gained through the NDAA. It is just another form of what I call symbolic legislation, enacted because the legislators want to be seen as being "tough" or as "doing something." The law is written as just affirming existing powers and practices and hence not providing any meaningful new tools in the combat of terrorism. By constraining the choices by the executive, it nevertheless hampers effective counter-terrorism work, including criminal investigation and prosecution, as well as international counter-terrorism cooperation, markedly in the issue of closing the Guantanamo Bay detention facility. Hence, it carries the risk of distancing the United States from its closest allies and the international community generally. And of course these kinds of legal provisions are always open for bad faith copying by repressive governments that will use them for their own political purposes.

**Indefinite detention is the key internal link to recruitment and causes a resource trade off which shatters the ability to fight terrorism**

**Powell 8** (Catherine, Georgetown Law Visiting Professor for the 2012-13 academic year and teaches international law, constitutional law, and constitutional rights in comparative perspective. She has recently served in government on Secretary of State Hillary Clinton’s Policy Planning Staff and on the White House National Security Staff, where she was Director for Human Rights. “Scholars’ Statement of Principles for the New President on U.S. Detention Policy: An Agenda for Change\*” <http://www.law.yale.edu/documents/pdf/Alumni_Affairs/Scholars_Statement.pdf>)

Across the political spectrum, there is a growing consensus that the existing system of long term detention of terrorism suspects without trial through the network of facilities in Guantanamo and elsewhere is an unsustainable liability for the United States that must be changed. The current policies undermine the rule of law and our national security. The last seven years have seen a dangerous erosion of the rule of law in the United States through a disingenuous interpretation of the laws of war, the denial of ordinary legal process, the violation of the most basic rights, and the use of unreliable evidence (including secret and coerced evidence). The current detention policies also point to the inherent fallibility of “preventive” determinations that are based on assessment of future dangerousness (as opposed to past criminal conduct). Empirical studies demonstrate that “preventive” detention determinations that rely on assessment of future dangerousness generate unacceptably high levels of false positives (i.e., detention of innocent people).1 Indeed, while the Bush Administration once claimed the Guantanamo detainees were “the worst of the worst,” following minimal judicial intervention, it subsequently released more than 300 of them, as of the end of 2006.2 Because it is viewed as unprincipled, unreliable, and illegitimate, the existing detention system undermines our national security. Because the current system threatens our national security, we strongly oppose any effort to extend the status quo by establishing either (1) a comprehensive system of long-term “preventive” detention without trial for suspected terrorists, or (2) a specialized national security court to make “preventive” detention determinations and ultimately to try terrorism suspects.3 Despite dressed up procedures, these proposals would make some of the most notorious aspects of the current failed system permanent. To the extent such systems were established within the territorial United States as opposed to on Guantanamo or elsewhere, they would essentially bring the failed Guantanamo system home. Perhaps most fundamental is the fact that the supporters of these proposals typically fail to make clear who should be detained, much less how such individuals, once designated, can prove they are no longer a threat. Without a reasonably precise definition, not only is arbitrary and indefinite detention possible, it is nearly inevitable. Moreover, many of the proponents of a renewed “preventive” detention regime explicitly underscore the primacy of interrogation with respect to detainees’ otherwise-recognized rights. A detention system that permits ongoing interrogation inevitably treats individuals as means to an end, regardless of the danger they individually pose, thereby creating perverse incentives to prolonged, incommunicado, arbitrary (and indefinite) detention, minimized procedural protections, and coercive interrogation. Such **arrangements instill resentment and provide propaganda for recruitment of future terrorists, undermine our relationships with our allies, and embolden terrorists as “combatants” in a “war on terror”** (rather than delegitimizing them as criminals in the ordinary criminal justice system).4 Moreover, the current system of long term (and, essentially, **indefinite) detention diverts resources and attention away from other, more effective means of combating terrorism.** Reflecting what has now become a broad consensus around the need to use the full range of instruments of state power to combat terrorism, the bi-partisan 9/11 Commission pointed out that “long-term success [in efforts to pursue al Qaeda] demands the use of all elements of national power: diplomacy, intelligence, covert action, law enforcement, economic policy, foreign aid, public diplomacy, and homeland defense.”5 Thus, in addition to revamping the existing detention program to bring it within the rule of law, the incoming President should work with Congress to utilize this broad array of tools to vigorously prosecute terrorism.

**Al Qaeda is still a major threat—predictions of decline are premature and false**

Sinai 13 (Joshua, JINSA Fellow, Washington, DC-based consultant on national security studies, focusing primarily on terrorism, counterterrorism, and homeland security, 3-11-13, “Al Qaeda Threat to U.S. Not Diminished, Data Indicates” The Jewish Institute for National Security Affairs) http://www.jinsa.org/fellowship-program/joshua-sinai/al-qaeda-threat-us-not-diminished-data-indicates#.UbaiWvmsiSo

Conventional wisdom holds that the threat to America posed by al Qaeda and its affiliates is greatly diminished compared to 9/11. Today, it is claimed, al Qaeda is less well organized, with many of its top leaders eliminated, and is so broken into geographically disparate franchises that it is unable to recruit, train, and deploy a specialized cell to carry out a comparable catastrophic attack against America. The fact that no al Qaeda terrorist attacks have been carried out in America over the last two years, while some 20 individuals have plotted to carry out attacks but were arrested and convicted during the pre-incident phases, is seen as evidence that this terrorist threat is decreasing domestically. Therefore, according to this thesis, security authorities should prepare for more numerous and frequently occurring but low casualty attacks mounted by less well-trained and capable homegrown operatives, particularly by what are termed "lone wolves." When a more complete compilation of all the components involved in terrorism are taken into account, however, the magnitude of the threat becomes much clearer and includes a higher likelihood of attempts to carry out catastrophic attacks as well as evidence that al Qaeda continues to recruit and prepare terrorist operatives in the United States. Downplaying the terrorist threat posed by al Qaeda and its affiliates also has significant political implications due in part to the more than $70 billion that is spent annually on America's domestic counterterrorism programs (with larger amounts expended for overseas operations), all of which need to be continuously justified as cost effective by Administration planners and Congressional appropriators. Such purported decline in al Qaeda attacks domestically, however, is now being seized upon by those who favor reduced government funding for counterterrorism programs, including weakening the USA PATRIOT Act, to support their position that a reduced threat requires reduced funding and resources. When the trajectory of attacks by al Qaeda and its associates over the years are carefully studied, however, certain patterns recur. Specifically, every time the threat is underplayed, it is invariably followed by a major attack. In the months leading up to the November 2012 elections, the media was filled with pronouncements that al Qaeda's threat had greatly diminished as a result of the elimination of its leadership and the reduced operational role over attacks by what is termed "al Qaeda Central" in Pakistan's tribal areas. While accurate on one level, this did not stop al Qaeda and its affiliates from continuing to launch major terrorist attacks, including that by its Libyan affiliate against the U.S. consulate in Benghazi on September 11, 2012, which led to severe political repercussions for the Administration for its unpreparedness to anticipate such an attack. This was followed by the launching of the devastating cross-border attack against the natural gas facility in eastern Algeria in mid-January by another al Qaeda affiliate in Mali. Thirty-six foreign workers were murdered in that attack, which, again, was unanticipated.Moreover, the fact that a catastrophic attack against America comparable to 9/11 has not occurred over the past 11 years should not suggest that a future one is not being planned. In summer 2006, al Qaeda-linked operatives in London plotted to detonate liquid explosives on board 10 transatlantic airliners flying from the UK to America and Canada. In September 2009, Najibullah Zazi and his associates were arrested for plotting to conduct a suicide bombing attack against the New York City subway system. On Christmas Day, 2009, Umar Farouk Abdulmutallab failed to detonate plastic explosives while on board an airliner heading to Detroit. Anwar al Awlaki, a former American extremist cleric, reportedly masterminded Abdulmutallab's operation. Awlaki was killed in a drone attack in Yemen on September 30, 2011. The killings of al Awlaki and Samir Khan, another American extremist who had made his way to Yemen in 2009, could well trigger a catastrophic attack by al Qaeda to avenge their deaths.The recent capture of Osama Bin Laden's son-in-law, Sulaiman abu Ghaith, and the decision to try him in New York City, is also likely to trigger a major revenge attack against America. Finally, organizing catastrophic terrorist attacks requires extensive planning, funding and preparation. A terrorist group that feels itself strong will take its time to carefully plan a few but devastating attacks, while a group that regards itself as weak may feel compelled to carry out frequent, but low-casualty attacks to demonstrate its continued relevancy. Some incident databases, such asa recent compilation of data about American al Qaeda terrorists by the UK-based Henry Jackson Society, only account for completed attacks and convictions of those arrested. If such counting is expanded to include other factors, however, then the overall threat becomes much more severe. Other factors, therefore, should include the potential consequences ofthe thwarted attacks had they not been prevented, the number of radicalized Americans who travel overseas to join al Qaeda-affiliated insurgencies, and the extent of radicalized activity by al Qaeda's American sympathizers in jihadi website forums and chatrooms. A more complete accounting of the threat will now reveal that the supportive extremist infrastructure for al Qaeda in America is actually not diminishing and that the purported "lone wolf" actors have actual ties to al Qaeda operatives overseas. We should not, therefore, also be misled into complacencyif catastrophic attacks by al Qaeda do not occur for lengthy periods. Nor so by the comforting but false sense of security that comes with believing that "lone wolf" attacks in the United States are not a product of al Qaeda recruitment and support. It is also possible, nevertheless, that al Qaeda's terrorist planners are considering both types of attacks, infrequent catastrophic and frequent low casualty. This may explain why al Qaeda's propaganda organs are calling on its radicalized followers in the West to take matters into their own hands and embark on any sort of attacks that may be feasible at the moment, but with further surprise attacks of a catastrophic nature still ahead.

**Terrorism goes nuclear---high risk of theft and attacks escalate**

**Dvorkin 12** (Vladimir Z., Major General (retired), doctor of technical sciences, professor, and senior fellow at the Center for International Security of the Institute of World Economy and International Relations of the Russian Academy of Sciences. The Center participates in the working group of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, 9/21/12, "What Can Destroy Strategic Stability: Nuclear Terrorism is a Real Threat," belfercenter.ksg.harvard.edu/publication/22333/what\_can\_destroy\_strategic\_stability.html)

Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons. The use of “**dirty bombs**” will not cause many immediate casualties, but it will result into long-term radioactive contamination, contributing to the spread of **panic and socio-economic destabilization**.¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that **well-trained terrorists may be able to penetrate nuclear facilities**.¶ Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time.¶ Of all the scenarios, it is building an improvised nuclear device by terrorists that poses the maximum risk. **There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** Information on the design of such devices, as well as implosion-type devices, is available in the public domain. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that such materials can be bought on the black market. **Theft of weapons-grade uranium is also possible**. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).¶ A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is **comparable to the yield of the bomb dropped on Hiroshima**. The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures.¶ If a nuclear terrorist act occurs, nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act. We can imagine what would happen if they do so, given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause **violent protests in the Muslim world**. **Series of armed clashing terrorist attacks may follow**. The prediction that Samuel Huntington has made in his book “The Clash of Civilizations and the Remaking of World Order” may come true. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. This is especially dangerous for Russia because these fault lines run across its territory. To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. **The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order**.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

#### Extinction – tech and poor response mechanisms

Myhrvold 13 (Nathan, Phd in theoretical and mathematical physics from Princeton, and founded Intellectual Ventures after retiring as chief strategist and chief technology officer of Microsoft Corporation , July 2013, "Stratgic Terrorism: A Call to Action," The Lawfare Research Paper Series No.2, <http://www.lawfareblog.com/wp-content/uploads/2013/07/Strategic-Terrorism-Myhrvold-7-3-2013.pdf>)

Several powerful trends have aligned to profoundly change the way that the world works. Technology now allows stateless groups to organize, recruit, and fund themselves in an unprecedented fashion. That, coupled with the extreme difficulty of finding and punishing a stateless group, means that stateless groups are positioned to be lead players on the world stage. They may act on their own, or they may act as proxies for nation-states that wish to duck responsibility. Either way, stateless groups are forces to be reckoned with. At the same time, a different set of technology trends means that small numbers of people can obtain incredibly lethal power. Now, for the first time in human history, a small group can be as lethal as the largest superpower. Such a group could execute an attack that could kill millions of people. It is technically feasible for such a group to kill billions of people, to end modern civilization—perhaps even to drive the human race to extinction. Our defense establishment was shaped over decades to address what was, for a long time, the only strategic threat our nation faced: Soviet or Chinese missiles. More recently, it has started retooling to address tactical terror attacks like those launched on the morning of 9/11, but the reform process is incomplete and inconsistent. A real defense will require rebuilding our military and intelligence capabilities from the ground up. Yet, so far, strategic terrorism has received relatively little attention in defense agencies, and the efforts that have been launched to combat this existential threat seem fragmented. History suggests what will happen. The only thing that shakes America out of complacency is a direct threat from a determined adversary that confronts us with our shortcomings by repeatedly attacking us or hectoring us for decades.

### New 1AC

#### The absence of independent, judicial checks on executive power ensures ethnic conflict and instability throughout Sri Lanka

ICG 13 (International Crisis Group, "Sri Lanka's Authoritarian Turn: The Need for International Action," http://www.crisisgroup.org/en/regions/asia/south-asia/sri-lanka/243-sri-lankas-authoritarian-turn-the-need-for-international-action.aspx)

Government attacks on the judiciary and political dissent have accelerated Sri Lanka’s authoritarian turn and threaten long-term stability and peace. The government’s politically motivated impeachment of the chief justice reveals both its intolerance of dissent and the weakness of the political opposition. By incapacitating the last institutional check on the executive, the government has crossed a threshold into new and dangerous terrain, threatening prospects for the eventual peaceful transfer of power through free and fair elections. Strong international action should begin with Sri Lanka’s immediate referral to the Commonwealth Ministerial Action Group (CMAG) and a new resolution from the UN Human Rights Council (HRC) calling for concrete, time-bound actions to restore the rule of law, investigate rights abuses and alleged war crimes by government forces and the Liberation Tigers of Tamil Eelam (LTTE), and devolve power to Tamil and Muslim areas of the north and east.¶ Sri Lanka is faced with two worsening and inter-connected governance crises. The dismantling of the independent judiciary and other democratic checks on the executive and military will inevitably feed the growing ethnic tension resulting from the absence of power sharing and the denial of minority rights. Both crises have deepened with the Rajapaksa government’s refusal to comply with the HRC’s March 2012 resolution on reconciliation and accountability. While the government claims to have implemented many of the recommendations of its Lessons Learnt and Reconciliation Commission (LLRC) – a key demand of the HRC’s resolution – there has in fact been no meaningful progress on the most critical issues:¶ the government has conducted no credible investigations into allegations of war crimes, disappearances or other serious human rights violations;¶ rather than establish independent institutions for oversight and investigation, the government has in effect removed the last remnants of judicial independence through the impeachment of the chief justice;¶ there has been no progress toward a lasting and fair constitutional settlement of the ethnic conflict through devolution of power;¶ the military still controls virtually all aspects of life in the north, intimidating and sidelining the civilian administration;¶ more than 90,000 people remain displaced in the north and east, amid continued land seizures by the military, with no effective right of appeal and no fair process for handling land disputes;¶ government security forces have broken up peaceful Tamil protests in the north, detained students on questionable charges of working with the LTTE and actively harassed Tamil politicians;¶ the government has responded with force to protest and dissent in the south, too, deploying troops to prevent the newly impeached chief justice and supporters from visiting the Supreme Court while pro-government groups attacked lawyers protesting the impeachment.¶ Analysts and government critics have warned of Sri Lanka’s growing authoritarianism since the final years of the civil war, but developments over the last year have worsened the situation. The president’s willingness and ability to push through the impeachment – in the face of contrary court rulings, unprecedented opposition from civil society and serious international concern – confirms his commanding political position. The move completes the “constitutional coup” initiated in September 2010 by the eighteenth amendment, which removed presidential term limits and the independence of government oversight bodies. It has sent a clear message to domestic critics that their dissent is unwelcome.¶ The consolidation of power paves the way for moves that could further set back chances of sustainable peace. The president and his two most powerful brothers – Defence Secretary Gotabaya and Economic Development Minister Basil – have signalled their intention to weaken or repeal the provinces’ already minimal powers. As the government makes explicit its hostility to meaningful power sharing between the centre and the Tamil-speaking north and east, Tamil identity and political power are being systematically undermined by the military-led political and economic transformation of the northern province.¶ Recent months have also seen an upsurge in attacks by militant Buddhists on Muslim religious sites and businesses. The government has done little to discourage these. Should such provocations continue, the remarkable moderation of Sri Lanka’s Muslims could face serious tests. Given the country’s history of violent resistance to state power perceived as unjust, the authoritarian drift can only increase the risk of an eventual outbreak of political violence.

#### This undermines US efforts to stabilize the region and sparks South Asian nuclear escalation

Bouton 10 (Marshall M., President – Chicago Council on Global Affairs, “America’s Interests in India”, CNAS Working Paper, October, <http://www.cnas.org/files/documents/publications/CNAS_USInterestsinIndia_> Bouton.pdf)

In South Asia, the most immediately compelling U.S. interest is preventing terrorist attacks on the U.S. homeland originating in or facilitated by actors in South Asia, particularly in Afghanistan and Pakistan. To avert that possibility, the United States also has an interest in the stability and development of both countries. At the same time, the United States has a vital interest in preventing conflict between Pakistan and India, immediately because such a conflict would do great damage to U.S. efforts in Afghanistan and Pakistan (such as the diversion of Pakistani military attention away from the insurgency) and because it would pose the severe risk of nuclear escalation. Finally, the United States has an interest in peace and stability in South Asia as a whole. Instability and violence in nearly every one of India’s neighbors, not to mention in India itself, could, if unchecked, undermine economic and political progress, potentially destabilizing the entire region. At present, a South Asia dominated by a politically stable and economically dynamic India is a hugely important counterweight to the prevalent instability and conflict all around India’s periphery. Imagining the counterfactual scenario, a South Asian region, including India, that is failing economically and stumbling politically, is to imagine instability on a scale that would have global consequences, including damage to the global economy, huge dislocations of people and humanitarian crisis, increasing extremism and terrorism, and much greater potential for unchecked interstate and civil conflict.

#### That escalates to extinction and deterrence doesn’t check

**Hundley** **12** (Tom – Pulitzer Center staff, Pakistan and India: Race to the End, Pulitzer Center, p. <http://pulitzercenter.org/reporting/pakistan-nuclear-weapons-battlefield-india-arms-race-energy-cold-war>)

Nevertheless, military analysts from both countries still say that a nuclear exchange triggered by miscalculation, miscommunication, or panic is far more likely than terrorists stealing a weapon -- and, significantly, that the odds of such an exchange increase with the deployment of battlefield nukes. As these ready-to-use weapons are maneuvered closer to enemy lines, the chain of command and control would be stretched and more authority necessarily delegated to field officers. And, if they have weapons designed to repel a conventional attack, there is obviously a reasonable chance they will use them for that purpose. "It lowers the threshold," said Hoodbhoy. "The idea that tactical nukes could be used against Indian tanks on Pakistan's territory creates the kind of atmosphere that greatly shortens the distance to apocalypse." Both sides speak of the possibility of a limited nuclear war. But even those who speak in these terms seem to understand that this is fantasy -- that once started, a nuclear exchange would be almost impossible to limit or contain. "The only move that you have control over is your first move; you have no control over the nth move in a nuclear exchange," said Carnegie's Tellis. The first launch would create hysteria; communication lines would break down, and events would rapidly cascade out of control. Some of the world's most densely populated cities could find themselves under nuclear attack, and an estimated 20 million people could die almost immediately. What's more, the resulting firestorms would put 5 million to 7 million metric tons of smoke into the upper atmosphere, according to a new model developed by climate scientists at Rutgers University and the University of Colorado. Within weeks, skies around the world would be permanently overcast, and the condition vividly described by Carl Sagan as "nuclear winter" would be upon us. The darkness would likely last about a decade. The Earth's temperature would drop, agriculture around the globe would collapse, and a billion or more humans who already live on the margins of subsistence could starve. This is the real nuclear threat that is festering in South Asia. It is a threat to all countries, including the United States, not just India and Pakistan. Both sides acknowledge it, but neither seems able to slow their dangerous race to annihilation.

#### AND Sri Lankan instability undermines the security of Indian Ocean waterways

Orland 8 (Brian, Research Fellow @ Institute of Peace and Conflict Studies, "India's Sri Lanka Policy," April, http://www.ipcs.org/pdf\_file/issue/1445888596RP16-Brian-SriLanka.pdf)

Freed from the compulsion to push Cold ¶ War meddling away from its southern ¶ border, India's chief security concern in Sri ¶ Lanka shifted from the presence of foreign ¶ powers to the destabilizing presence of ¶ separatist insurgents in and around the ¶ island nation. India's diplomatic efforts ¶ countering a military solution to Sri Lanka's ¶ ethnic conflict and its support for a ¶ sustainable political solution through a ¶ negotiated settlement have characterized ¶ India's policy on Sri Lanka's ethnic conflict. ¶ In addition to this politically safe rhetorical ¶ position, domestically it has denounced the ¶ LTTE as a legitimate political force, backed ¶ by law and order measures and effective ¶ naval patrolling to clamp down on political, ¶ financial, and materiele support for the ¶ LTTE from south India. This, in turn, has ¶ been a source of support for the Sri Lankan ¶ state in its struggle against the Tamil ¶ insurgents. ¶ On the economic side, increased trade and ¶ investment have been the impetus for ¶ improved bilateral relations. India's decision ¶ to offer Sri Lanka favorable terms in trade has yielded not only greater economic ¶ engagement but political and strategic ¶ benefits as well. For instance, more ¶ equitable benefits in trade—represented by ¶ a narrowing of the trade balance that had ¶ titled heavily towards India—helped to ¶ diminish the perception within Sri Lanka of ¶ India as a hegemonic neighborhood bully. ¶ Burgeoning trade and investment between ¶ India and Sri Lanka, including in the ¶ strategic energy sector, have woven ¶ economic inter-dependency into the bilateral ¶ relationship and provided the forum for ¶ increased communication and cooperation ¶ on non-economic issues like counterterrorism. ¶ The progress in bilateral relations, however, ¶ has failed to transform India's policy vis-à-¶ vis the ethnic conflict into a coherent and ¶ constructive force toward reducing violence. ¶ Indeed, Sri Lanka's ethnic conflict continues ¶ to destabilize the state, a short distance from ¶ India's southern coast, and threaten the security of adjacent waterways. India's close ¶ proximity to Sri Lanka, its responsibility and ¶ influence as a regional and world power, and ¶ its historical ties with the island nation ¶ demand a sharper response to the conflict. ¶ Yesterday's cautious policy has become ¶ today's outdated policy. And this will remain ¶ the case if the question of which policy will ¶ act as a coherent and constructive political ¶ force does not receive a satisfactory answer.

#### That decks the global economy and risks Asian nuclear conflict

Anderson and Wijeyesekera 11 (David and Anton, professor of Strategic Studies and Odom Chair of Joint, Interagency, and Multinational Operations at the U.S. Army Command and General Staff College + serving Armor officer in the Sri Lanka Army, Small Wars Journal, http://smallwarsjournal.com/jrnl/art/us-naval-basing-in-sri-lanka)

The Indian Ocean has economic, political and strategic significance for the whole world. It provides major sea routes connecting the Middle East, Africa, and East Asia with Europe and the Americas. It is considered as a hub of natural resources and is rich in several important minerals, raw material and marine food. “The region accounts for 80 per cent of world extraction of gold, 52 percent of tin, 28 percent manganese, 25 percent of nickel, 18 percent bauxite, 12 percent zinc and 77 percent of natural rubber production in the world.”[4] Almost one fourth of the all maritime cargo destined for trade and two thirds of the world’s oil are loaded and/or offloaded in the ports of this region. Furthermore, an estimated 40 percent of the world’s offshore oil production comes from the Indian Ocean and more than half of the world’s oil and gas deposits are said to be located in this region.¶ The Indian Ocean has a number of important seas and gulfs as well. The Arabian Sea separates the peninsula of India and Africa, and hugs the littoral of the oil rich Persian Gulf. The Strait of Homuz and Gulf of Oman command the entry to the Persian Gulf. The Gulf of Aden ends at the strait of Bab el Mandeb and controls entry into the Red Sea. The Gulf of Malacca in the Bay of Bengal controls the entry to the Indian Ocean from the East.¶ All the oil supplies to Southeast and East Asia that originate in the Middle East are shipped from ports in the Red Sea or the Persian Gulf. The sea-lanes from here converge in the Arabian Sea, and then pass through the Gulf of Mannar and curve off the western, southern and southeastern coast of Sri Lanka.[5] Eighty percent of Japan's oil supplies and 60 percent of China's oil supplies are shipped on this sea-lane. Almost half of the world's container traffic passes through the choke points of this sea-lane and its branches in the Indian Ocean.¶ Along with its growing economic significance, the Indian Ocean borders 36 states with a total population of over two billion. Additionally, 11 hinterland countries have security and economic interests tied to the Indian Ocean.[6] The Indian Ocean has several nuclear powered states and a number of states with nuclear ambition along its littoral. The region is also home to some of the world’s most volatile failed and failing states. Poverty, terrorism, fundamentalism and piracy are also glaring issues of concern in the region.

#### Asian nuclear instability risks extinction

Ogura and Oh 97 (Toshimaru and Ingyu, Teachers – Economics, Monthly Review, April)

North Korea, South Korea, and Japan have achieved quasi- or virtual nuclear armament. Although these countries do not produce or possess actual bombs, they possess sufficient technological know-how to possess one or several nuclear arsenals. Thus, virtual armament creates a new nightmare in this region - nuclear annihilation. Given the concentration of economic affluence and military power in this region and its growing importance to the world system, any hot conflict among these countries would threaten to escalate into a global conflagration.

#### Signals of US judicial independence are VITAL for effective judicial exchanges with Sri Lanka

Aghazadyan and Rasmussen 10 (Ruzan and Lewis, Project Manager and Senior Technical Advisor @ USAID, "SRI LANKA RULE OF LAW - ASSESSMENT REPORT 2010," http://reliefweb.int/sites/reliefweb.int/files/resources/1109271407511.pdf)

Initiate judicial exchange/study tour programs. It will be as important to initiate programs in the ¶ training area with well-planned judicial exchanges and study tours to appropriate court locations ¶ in the United States. Malaysia and the UK are possible destinations, in that the Sri Lankan jurists ¶ may benefit from seeing how much legal as well as judicial administrative reform have occurred ¶ at the source of much of the current Sri Lankan system. Both legal procedure and court ¶ administration has been thoroughly reformed in England in the past two decades; in Sri Lanka, in ¶ contrast, civil and criminal procedure codes there remained virtually unchanged for more than a ¶ century. The aim of the exchanges (such as the well-known Russian-US Judges program) is to ¶ increase the awareness of Sri Lankan judges at all levels with the kind of judicial independence ¶ with accountability that characterizes US federal and state judicial systems. Some features of ¶ American court systems that should be emphasized are the “good behavior” life terms of federal ¶ and some state judges, the role of Supreme Courts and judicial councils in administering court ¶ systems, the role of professional court administrators at the federal, state, and municipal levels, ¶ the increasingly common practice in US trial courts of scheduling the events in a case at an early ¶ date, and the willingness of US judges to take control of the case calendars from lawyers (in civil ¶ cases) and prosecutors (in criminal cases). Many US courts can also serve to demonstrate how the ¶ courts themselves become capable of performing advanced budget, personnel, and statistics ¶ functions. How automated information systems can assist courts in managing caseloads will also ¶ be gained during these study tours and exchanges.

#### And Sri Lanka looks to SPECIFIC US legal precedents when shaping constitutional jurisprudence

Billias 9 (George, Renowned Historian @ US Air Force + PhD @ Columbia, American Constitutionalism Heard Round the World, 1776-1989: A Global Perspective, p. 344)

Sri Lanka, meantime, presented a curious case of both the negative and positive influence of American constitutionalism. Under British rule, Sri Lanka specifically rejected the American-style bill of rights in its 1940 constitution. This step was deliberate: Britain had no bill of rights at the time, and Sri Lanka wanted to follow the mother country. After Sri Lanka gained its independence in 1948, however, its judges, without any provisions for individual rights, began to rely more on the law and judicial precedents to affirm the protection of rights. In doing so, they drew on the precedents from both the Indian and American courts. When the Sri Lankans wrote their constitutions of 1972 and 1978, therefore, they specifically included a bill of rights derived from many sources, including that of the United States. These inherent rights were "reminiscent of the Constitutions of the United States,...India, and of certain countries in Europe."

### Solvency 1AC

#### Obama would comply with the court – costs of circumvention too high

Vladeck 9 (Stephen I.. Professor of Law and Associate Dean for Scholarship at American University Washington College of Law, senior editor of the peer-reviewed Journal of National Security Law and Policy, Supreme Court Fellow at the Constitution Project, and fellow at the Center on National Security at Fordham University School of Law, JD from Yale Law School, 3-1-2009, “The Long War, the Federal Courts, and the Necessity / Legality Paradox,” <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1002&context=facsch_bkrev>)

Moreover, even if one believes that suspensions are unreviewable, there is a critical difference between the Suspension Clause and the issue here: at least with regard to the former, there is a colorable claim that the Constitution itself ousts the courts from reviewing whether there is a “Case[ ] of Rebellion or Invasion [where] the public Safety may require” suspension––and even then, only for the duration of the suspension.179 In contrast, Jackson’s argument sounds purely in pragmatism—courts should not review whether military necessity exists because such review will lead either to the courts affirming an unlawful policy, or to the potential that the political branches will simply ignore a judicial decision invalidating such a policy.180 Like Jackson before him, Wittes seems to believe that the threat to liberty posed by judicial deference in that situation pales in comparison to the threat posed by judicial review. ¶ The problem is that such a belief is based on a series of assumptions that Wittes does not attempt to prove. First, he assumes that the executive branch would ignore a judicial decision invalidating action that might be justified by military necessity.181 While Jackson may arguably have had credible reason to fear such conduct (given his experience with both the Gold Clause Cases182 and the “switch in time”),183 **a lot has changed in the past six-and-a-half decades**, to the point where I, at least, **cannot imagine** a contemporary President possessing the **political capital** to squarely refuse to comply with a Supreme Court decision. But perhaps I am naïve.184

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#### Multiple controversial decisions coming now

Wakefield 9/16/13 (Mike, "Supreme Court Preview: Three Cases to Watch Next Term," http://redalertpolitics.com/2013/09/16/supreme-court-preview-three-cases-to-watch-next-term/)

The Supreme Court’s upcoming term will not feature the same blockbuster, hyper-political issues like same-sex marriage or the Voting Rights Act, but Americans should be aware of several important cases on the docket for oral arguments beginning in October. Here are three cases particularly likely to make news and have significant political implications.¶ 1) National Labor Relations Board v. Canning¶ The Supreme Court is set to rule on the constitutionality of President Barack Obama’s controversial recess appointments to the National Labor Relations Board without Senate confirmation. To date, three federal appellate courts have already held that Obama’s appointments were unconstitutional.¶ You may recall that President Obama’s questionable NLRB appointments were part of his administration’s “We can’t wait” call-to-action back in 2011, in which Obama announced that he intended to do as much as possible without Congress’s approval using executive orders or other means. The Supreme Court is likely to hand Obama an embarrassing rebuke for his impatience, potentially invalidating every action undertaken by the NLRB during the time it had unconfirmed members.¶ 2) Schuette v. Coalition to Defend Affirmative Action¶ Schuette is another college affirmative action case, but with a bizarre twist — the Court is being asked to decide whether the Constitution sometimes might actually require racial discrimination. We previously reported this case as the “worst case of the year.”¶ The case was raised in response to a successful Michigan initiative amending the state’s constitution to prohibit the use of preferential treatment in college admissions and public hiring. The Sixth Circuit Court of Appeals ruled that under the circumstances, the state constitutional amendment requiring equal treatment was prohibited by the U.S. Constitution.¶ Presumably recalling the text of the Fourteenth Amendment, which requires “equal protection under the law,” a dissenting judge on the Sixth Circuit concluded that “a State does not deny equal treatment by mandating it.” Expect the Supreme Court, which in the past has been blunt in its denunciations of truly discriminatory “anti-discrimination” policies, to wholeheartedly agree.¶ 3) McCutcheon v. Federal Election Commission¶ In this campaign finance case, an Alabama resident and the Republican National Committee have asked the Court to strike down the current aggregated political contribution limits as unconstitutional under the First Amendment’s protection of political speech.¶ Currently, individuals may contribute no more than $2,600 per election to a candidate and no more than $32,400 per year to a national political committee like the RNC. However, individuals are also limited by aggregate contribution limits. For example, no individual may donate more than $48,600 to candidates or more than $74,600 to anything else during a two-year election period. That means someone can give the maximum legal contribution of $2,600 to 18 different candidates but not to 19 or more. The Justices may now overturn that somewhat arbitrary limit.¶ Last time the Court issued a significant campaign finance decision, liberals howled about the “end of democracy,” and President Obama took the unprecedented step of publicly scolding the Justices, right to their faces, at his nationally televised State of the Union address. Be on the look out for similarly dramatic hyperbole in the lead up to the decision.

**Supreme court action to restrict detention powers is key**

**Reinhardt 6** (Stephen, Judge, U.S. Court of Appeals for the Ninth Circuit, "The Judicial Role in National Security," http://www.bu.edu/law/central/jd/organizations/journals/bulr/volume86n5/documents/REINHARDTv.2.pdf)

The role of judges during times of war – whether it be a traditional war or a ¶ “war on terrorism” – is essentially no different than during times of peace: it is ¶ to interpret the law to the best of our ability, consistent with our ¶ constitutionally mandated role **and without regard to external pressure**. Among ¶ the differences in wartime for the judiciary, however, is one that involves a ¶ principle that is essential to the proper operation of the federal courts – **judicial** ¶ **independence**. In wartime, the need for judicial independence is **at its highest**, ¶ yet the very concept is **at its most vulnerable**, imperiled by threats both within ¶ and without the judiciary. Externally, there is pressure from the elected ¶ branches, and often the public, to afford far more deference than may be ¶ desirable to the President and Congress, as they wage wars to keep the nation ¶ safe. Often this pressure includes threats of retribution, including threats to ¶ strip the courts of jurisdiction. Internally, judges may question their own right ¶ or ability to make the necessary, potentially perilous judgments at the very ¶ time when it is most important that they exercise their full authority. This ¶ concern is exacerbated by the fact that the judiciary is essentially a ¶ conservative institution and judges are generally conservative individuals who ¶ dislike controversy, risk taking, and change. ¶ As Professor Stone can tell you, the history of judicial responses to threats ¶ to our liberties in wartime is mixed at best.1¶ Now, in the first years of the ¶ twenty-first century, the threat to judicial independence is **proving particularly troublesome**, and I am not referring just to those demagogues who rush to the ¶ steps of the Capitol to call for legislation stripping the federal courts of ¶ jurisdiction every time they do not like a decision bolstering the Bill of Rights. ¶ Rather, I refer to the chilling reality that, as we enter the fifth year of the socalled “Global War on Terror,” we are faced with a conflict with no projected ¶ or foreseeable end, and, thus, with the prospect that the war-related challenges ¶ to constitutional rights and to judicial independence, which typically subside ¶ with the end of a conflict, will continue unabated into the indefinite future. In ¶ an era of “war without end,” any inclination of judges to lessen the necessary ¶ constitutional vigilance will not only seriously jeopardize basic rights to ¶ privacy and liberty, but also **will make it more difficult to fend off** other, nonwar-related challenges to judicial **independence**, and as a result cause harm to ¶ all of our fundamental rights and liberties. ¶ Archibald Cox – who knew a thing or two about the necessity of ¶ government actors being independent – emphasized that an essential element ¶ of judicial independence is that “there shall be no tampering with the ¶ organization or jurisdiction of the courts for the purposes of controlling their ¶ decisions upon constitutional questions.”2¶ Applying Professor Cox’s precept ¶ to current events, we might question whether some recent actions and ¶ arguments advanced by the elected branches constitute threats to judicial ¶ independence. Congress, for instance, recently passed the Detainee Treatment ¶ Act.3¶ The Graham-Levin Amendment, which is part of that legislation, ¶ prohibits any court from hearing or considering habeas petitions filed by aliens ¶ detained at Guantanamo Bay.4¶ The Supreme Court has been asked to rule on ¶ whether the Act applies only prospectively, or whether it applies to pending ¶ habeas petitions as well. It is unclear at this time which interpretation will ¶ prevail.5¶ But if the Act is ultimately construed as applying to pending appeals, ¶ one must ask whether it constitutes “tampering with the . . . jurisdiction of the ¶ courts for the purposes of controlling their decisions,” which Professor Cox ¶ identified as a key marker of a violation of judicial independence. All of this, ¶ of course, is wholly aside from the question of whether Congress and the ¶ President may strip the courts of such jurisdiction prospectively. And it is, of ¶ course, also wholly apart from the Padilla case,6¶ in which many critics believe ¶ that the administration has played fast and loose with the courts’ jurisdiction in ¶ order to avoid a substantive decision on a fundamental issue of great ¶ importance to all Americans. ¶ Another possible **threat to judicial independence** involves the position taken ¶ by the administration regarding the scope of its war powers. In challenging ¶ cases brought by individuals charged as enemy combatants or detained at ¶ Guantanamo, the administration has argued that the President has “inherent ¶ powers” as Commander in Chief under Article II and that actions he takes ¶ pursuant to those powers are essentially not reviewable by courts or subject to ¶ limitation by Congress.7¶ The administration’s position in the initial round of ¶ Guantanamo cases was that no court anywhere had any jurisdiction to consider ¶ any claim, be it torture or pending execution, by any individual held on that ¶ American base, which is located on territory under American jurisdiction, for ¶ an indefinite period.8¶ The executive branch has also relied on sweeping and ¶ often startling assertions of executive authority in defending the ¶ administration’s domestic surveillance program, asserting at times as well a ¶ congressional resolution for the authorization of the use of military force. To ¶ some extent, such assertions carry with them a challenge to judicial ¶ independence, as they seem to rely on the proposition that a broad range of ¶ cases – those that in the administration’s view relate to the President’s exercise ¶ of power as Commander in Chief (and that is a broad range of cases indeed) – ¶ are, in effect, beyond the reach of judicial review. The full implications of the ¶ President’s arguments are open to debate, especially since the scope of the ¶ inherent power appears, in the view of some current and former administration ¶ lawyers, to be limitless. What is clear, however, is that the administration’s ¶ stance raises important questions about how the constitutionally imposed ¶ system of checks and balances should operate during periods of military ¶ conflict, **questions judges should not shirk from resolving**. ¶ The fundamental question, I suppose, is whether the role of the judge should ¶ change in wartime. The answer is that while our function does not change, the ¶ manner in which we perform the balancing of interests that we so often ¶ undertake in constitutional cases does. In times of national emergency, we ¶ must necessarily give greater weight in many instances to the governmental, ¶ more specifically the national security, interest than we might at other times. ¶ As courts have often recognized, the government’s interests in protecting the ¶ nation’s security are heightened during periods of military conflict. ¶ Accordingly, particular searches or detentions that might be unconstitutional ¶ during peacetime may well be deemed constitutional during times of war – not ¶ because the role of the judge is any different, and not because courts curtail ¶ their constitutionally mandated role, but because a governmental interest that ¶ may be insufficient to justify such deprivations in peacetime may be ¶ sufficiently substantial to justify that action during times of national ¶ emergency. **Courts must not**, however, at any time allow the balancing to turn ¶ into a routine licensing of unbridled and unsupervised governmental power.

# 2AC

## Venezuela

### A2 Venezuelan Withdrawal: 2AC

#### 1. Venezuela has withdrawn from the American *Convention* on Human rights, but remains in the Organization of American States. The Inter-American *Commission* retains jurisdiction regarding internal Venezuelan human rights abuses – That’s our Biron Evidence.

#### 2. US lack of judicial action on detention policy means that there is no credibility within the Inter-American *Commission* on Human Rights to push for reforms within Venezuela – That’s our Bosworth Evidence.

### 2AC Circumvention

#### Doesn’t take out judicial exchanges in Venezuela – the *decision* is the internal link

#### Will comply – even if they disagree

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

#### Obama would comply with the court – costs of circumvention too high

Vladeck 9 (Stephen I.. Professor of Law and Associate Dean for Scholarship at American University Washington College of Law, senior editor of the peer-reviewed Journal of National Security Law and Policy, Supreme Court Fellow at the Constitution Project, and fellow at the Center on National Security at Fordham University School of Law, JD from Yale Law School, 3-1-2009, “The Long War, the Federal Courts, and the Necessity / Legality Paradox,” <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1002&context=facsch_bkrev>)

Moreover, even if one believes that suspensions are unreviewable, there is a critical difference between the Suspension Clause and the issue here: at least with regard to the former, there is a colorable claim that the Constitution itself ousts the courts from reviewing whether there is a “Case[ ] of Rebellion or Invasion [where] the public Safety may require” suspension––and even then, only for the duration of the suspension.179 In contrast, Jackson’s argument sounds purely in pragmatism—courts should not review whether military necessity exists because such review will lead either to the courts affirming an unlawful policy, or to the potential that the political branches will simply ignore a judicial decision invalidating such a policy.180 Like Jackson before him, Wittes seems to believe that the threat to liberty posed by judicial deference in that situation pales in comparison to the threat posed by judicial review. ¶ The problem is that such a belief is based on a series of assumptions that Wittes does not attempt to prove. First, he assumes that the executive branch would ignore a judicial decision invalidating action that might be justified by military necessity.181 While Jackson may arguably have had credible reason to fear such conduct (given his experience with both the Gold Clause Cases182 and the “switch in time”),183 **a lot has changed in the past six-and-a-half decades**, to the point where I, at least, **cannot imagine** a contemporary President possessing the **political capital** to squarely refuse to comply with a Supreme Court decision. But perhaps I am naïve.184

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#### Executive circumvention isn’t possible on detention policy – judicial review creates powerful incentives for compliance

Martin 5 (David, professor of law at the University of Virginia, 25 B.C. Third World L.J. 125, Winter, lexis)

For administrative officers, including both those in charge of initial detention decisions and those who serve on the review tribunals, the single most important fact is that the federal courts have a review role at all -- whatever the precise formal constraints on that role may be. Such [\*155] a role is now solidly entrenched for detainees at Guantanamo, and apparently for U.S. citizen detainees anywhere in the world; I argue here for extending that entrenchment to longer-term alien detainees at other overseas facilities. In such a setting, anything the administering authorities do is at least potentially subject to being called into question before a federal judge. This exposure provides significant inducements for greater rigor in the internal processes that lead to initial detention decisions, and in decisions to continue detention -- especially when compared to a situation where the administrators know that they cannot be called to explain their actions in any external forum. The pattern of Defense Department responses to the Supreme Court's "enemy combatant" cases illustrates this point. The press reported an accelerated pace of releases from Guantanamo shortly after certiorari was granted in Rasul. 124 More concretely, as noted, within two weeks of the actual decision in Rasul, the Defense Department began to establish combatant status review tribunals at Guantanamo, along lines generally consistent with Hamdi (even though that latter decision was technically distinguishable). 125 Internal review and quality control mechanisms doubtless existed before, but the prospect of court review gives them new urgency, polish, and force. Significantly, the mere prospect of court review greatly enhances the bargaining position of those within the agency who wish to adopt tighter standards, closer supervision, or more protective procedures. The real-world operation of such review magnifies this effect. As a realistic matter, federal judges, even within the confines of a highly deferential standard, can increase the pressure on the agency in any case where they sense that the panel has acted questionably or reached a ruling deeply inconsistent with the evidence presented -- even if there is enough, when it comes time to announce a final decision in the case, to sustain the final agency determination under the [\*156] "some evidence" standard. A judge suspecting such a misfire of decision-making can, for example, minutely scrutinize the procedures employed, or find fault with some element of the description of the legal standard employed. In short, at least some judges will yield to the undertow about which Judge Wilkinson wrote, and find ways to put administrative officers through extra hoops while not overtly transgressing the boundaries of the governing deferential standard -- at least until an appellate court calls them back into line. Most courts, to be sure, will not undertake such a covertly interventionist role and will honor the prescribed limits on their powers. But here is the key to understanding administrative reactions to the presence of review: the administrators cannot know when they make an initial decision to put someone into longer-term detention, or when they conduct a formal review proceeding before a military tribunal, exactly which cases might run into a judicial buzz saw. This ineluctable uncertainty provides an ongoing external incentive for the administrators to set up the administrative system in as professional and careful a manner as possible, and to conduct each case with close attention to fairness, in order to avoid tempting a court into quietly pressing the boundaries of judicial deference and adopting, de facto, a more intrusive review process. Even a deferential standard of review, then, creates an external force for serious internal checks and balances, an outside factor that also strengthens the hand of the inside players who push for better individual protections and closer internal review and monitoring. This dynamic significantly increases the odds of avoiding factually erroneous outcomes, as compared with a system that has no such external spur. Undeniably, it still falls short of guaranteeing against individual injustice worked by a biased or lazy or inattentive decisionmaker. It must be acknowledged, of course, that arming the reviewing court with a highly demanding standard of review would catch and correct a few more wrongful outcomes that evade the internal checks and balances than does a deferential standard. But the point here is that a deferential standard moves us a good deal further in the direction of accuracy than is ordinarily credited, precisely because of the interplay that will regularly occur between judges and the military. We may need to accept the remaining divergences as the price of assuring that the system does not intrude too far on military effectiveness in the struggle against terrorist forces.

**No circumvention – review mechanism distributes power and insulates from pressure**

**Siegel 12** - Senior Editor for UCLA Law Review, UCLA Law Review, April, 2012, 59 UCLA L. Rev. 1076Reconciling Caperton and Citizens United: When Campaign Spending Should Compel Recusal of Elected Officials, Samuel P. Siegel

BIO: \* AUTHOR Samuel P. Siegel is a Senior Editor for UCLA Law Review

The influence of campaign expenditures is further lessened when an adjudicatory decision is made by a **group of executive officials**, even if each of those officials is directly accountable to the elected official. For example, the Committee on Foreign Investment in the United States - comprised of top-ranking officials from various executive departments n258 - is a body authorized by Congress to screen and investigate foreign-investment proposals "to determine the effects of the transaction on the national security of the United States," n259 negotiate mitigation agreements with foreign investors to minimize national security concerns, n260 and, should mitigation efforts fail, recommend to the president that she block the [\*1119] deal, n261 powers that are "like individual adjudications (or quasi-adjudications)." n262 Yet the very fact that a committee, rather than a single officer, exercises this adjudicatory power **insulates its decisions from presidential control**: "With a single agency, the President could credibly threaten to remove or otherwise pressure or discipline that agency's Secretary or Administrator. **But there is strength in numbers**." n263 Thus, **even within a unitary executive**, such a structure **would likely temper** the **influence** that campaign expenditures would have on the outcome of an adjudication.

**Obama believes he is constrained by statute – won’t circumvent**

Saikrishna **Prakash 12,** professor of law at the University of Virginia and Michael Ramsey, professor of law at San Diego, “The Goldilocks Executive” Feb, SSRN

We accept that the President’s lawyers search for legal arguments to justify presidential action, that they find the President’s policy preferences legal more often than they do not, and that the President sometimes disregards their conclusions. But the close attention the Executive pays to legal constraints suggests that the President (who, after all, is in a good position to know) **believes** himself constrained by **law**. Perhaps Posner and Vermeule believe that the President is mistaken. But we think, to the contrary, it represents the President’s **recognition of** the various **constraints** we have listed, and his **appreciation** that attempting to operate **outside the bounds of law** would **trigger censure from Congress, courts, and the public**.

**Obama will comply—the Court has the final word**

Meacham 12 (Joe executive editor, Random House, “Why Obama Shouldn’t Declare War on Supreme Court,” TIME, 4—2—12, http://ideas.time.com/2012/04/02/why-obama-shouldnt-declare-war-on-the-supreme-court/)

With the Supreme Court weighing the constitutionality of a central element of President Obama’s comprehensive health care reform, there’s a lot of talk (in the places where people talk about such things, usually unburdened by responsibility or firsthand knowledge) of making the court an issue in the campaign if it were to rule against the White House. But here is a pretty good rule of thumb for Democratic Presidents: if it didn’t work for Franklin D. Roosevelt, who won four terms and a World War, it probably won’t work for you either. In one of the rare political debacles of his long life, FDR overreached after his landslide win against Alf Landon in 1936. (Roosevelt carried every state, save for Maine and Vermont.) A largely conservative Supreme Court had already struck down key parts of New Deal legislation, and there was the threat of more anti-Roosevelt decisions to come. And so FDR proposed a plan that would have enabled him to appoint additional justices in an attempt to shift the court’s political orientation. The effort failed, miserably. Justified or not, the Supreme Court has a kind of sacred statusin American life. For whatever reason, Presidents can safely run against Congress, and vice versa, but I think there is an inherent popular aversion to assaults on the court itself. Perhaps it has to do with an instinctive belief that life needs umpires, even ones who blow calls now and then. Ironies abound. One of the great partisans of the early republic, John Marshall, created an ethos around the court that has largely protected it (even from itself) from successful partisan attack. Even when it makes bad law (Bush v. Gore), it has the last word. Even when it makes decisions that enrage vast swaths of politically, culturally and religiously motivated citizens (Roe v. Wade), it basically has the last word. (If you disagree with this example, ask yourself how successful pro-lifers have been in amending the Constitution over the past 40 years.) It has had the grimmest of hours (Dred Scott v. Sandford) and the finest (Brown v. Board of Education). The court is, of course, a political institution. In no way is it a clinically impartial tribunal, for virtually every decision requires an application of values and an assessment in light of experience. “Activist judges” tend to be judges who make decisions with which you disagree. Wise Presidents have learned that taking the court on directly rarely turns out well. Thomas Jefferson cordially hated his cousin Marshall, but even Jefferson trod carefully as he repealed John Adams’ extension of Federalist judicial power. “John Marshall has made his decision,” Andrew Jackson is alleged to have said after a Cherokee case. “Now let him enforce it.” The showdown between Marshall and Jackson over the fate of Native Americans, however, was much more subtle on both sides, with Marshall characteristically taking care not to force an existential crisis with the executive branch. Segregationist Southerners may have put up billboards urging the impeachment of Earl Warren in the 1950s, but the chief justice’s job — and his place in history — was never in actual jeopardy. On a human level, Presidents who have to fight and claw their way to shape public opinion, pass legislation and then try to implement their policies must be mightily tempted to make a hostile Supreme Court a target to energize the base. But history shows that Obama should resist the temptation. There are subtle ways to make the point about a given court’s seeming hostility to your agenda and still win over highly informed independents in swing states who tend to decide elections. The big thing experience shows is that you should not declare war on the court. More in sadness than in anger, just mention the issues on which you feel stymied by the justices. From health care to campaign finance, those independent voters will get the message without being frightened off by an unsettling rhetorical attack on the judiciary. That’s what FDR got wrong. Obama may well have a chance to get it right.

<INSERT OBAMA LOVES THE PLAN>

#### Courts can successfully restrain executive actions via precedent – history proves

Cole 3 (David, Prof of Law @ Georgetown, "JUDGING JUDICIAL REVIEW: MARBURY IN THE MODERN ERA: JUDGING THE NEXT EMERGENCY: JUDICIAL REVIEW AND INDIVIDUAL RIGHTS IN TIMES OF CRISIS," August, 101 Mich. L. Rev. 2565, lexis)

Considered over time, judicial review of emergency and national-security measures can and has established important constraints on the exercise of emergency powers and has restricted the scope of what is acceptable in future emergencies. Because emergency measures frequently last well beyond the de facto end of the emergency, and because the wheels of justice move slowly, courts often have an opportunity to assess the validity of emergency measures after the emergency has passed, when passions have been reduced and reasoned judgment is more attainable. In doing so, courts have at least sometimes been able to take advantage of hindsight to pronounce certain emergency measures invalid for infringing constitutional rights. And because courts, unlike the political branches or the political culture more generally, must explain their reasons in a formal manner that then has precedential authority in future disputes, judicial decisions offer an opportunity to set the terms of the next crisis, even if they often come too late to be of much assistance in the immediate term. Thus, the Court has over time developed a highly protective test for speech advocating illegal activity, n5 subjected all racial discrimination since Korematsu to exacting scrutiny, n6 and prohibited guilt by association. n7 These decisions, among others, impose important limits on what the government can do in the current, post-September 11th crisis.¶ Since Marbury, scholars have devoted thousands of pages to debating the issue of judicial review, offering critiques of Chief Justice Marshall's reasoning, proposing alternative defenses of judicial review, and, more recently, questioning the value of judicial review altogether. One of the most familiar, and in my view still the strongest, defenses of judicial review is that first advanced in footnote four of Carolene Products, n8 implemented by the Warren Court and given its definitive academic elaboration in Professor John Hart Ely's Democracy and Distrust. n9 This is the notion that as an institution insulated from [\*2567] everyday politics, the Court is best suited to protect the interests of those who cannot protect themselves through the political process, whether they be members of discrete and insular minorities, dissidents, noncitizens, or other vulnerable individuals. As others have shown, the Court does not always live up to its responsibility. n10 But it is nonetheless an important ideal to which courts should be held accountable.¶ How should we judge judicial review from the standpoint of protecting the constitutional rights and liberties of the vulnerable in times of crisis? It is in times of crisis that constitutional rights and liberties are most needed, because the temptation to sacrifice them in the name of national security will be at its most acute. To government officials, civil rights and liberties often appear to be mere obstacles to effective protection of the national interest. As Bush-administration supporters frequently intone when defending their post-September 11th initiatives, "the Constitution is not a suicide pact." n11 Judicial protection is also critical because crisis measures are typically targeted at the most vulnerable among us, especially noncitizens, who have little or no voice in the political process. n12 We have been in such a crisis period since September 11th and will be for the foreseeable future. So now is a particularly propitious time to assess the value of judicial review in times of crisis. n13¶ Part I of this Article will set forth the traditional view that the judiciary is inadequate in times of crisis, along with the evidence that supports it and the reasons that might explain it. Part II maintains that the traditional view overstates the case, because over time judicial decisions have had more of a constraining influence on emergency measures than appears when one looks only at the courts' performance in the midst of a crisis. Part III surveys judicial performance since September 11th on matters of national security and argues that while the record is far from exemplary, courts have actually been more willing to stand up to the government in this period than in many prior crises. Part IV responds to a recent proposal by [\*2568] two leading scholars that courts and the Constitution ought to play less of a role in assessing emergency measures. n14 Professors Oren Gross and Mark Tushnet have both recently argued that the poor performance of courts during emergency periods and the need for extraordinary emergency powers should impel us to acknowledge explicitly the validity of extraconstitutional emergency measures and leave judgment of such measures to the political rather than the judicial process. In my view, this proposal is fundamentally misguided, both because it fails to acknowledge the valuable role that courts have played, when viewed over time, in constraining emergency powers, and because the alternative of relying on the political process would almost certainly provide even less protection for individual rights than the courts have. To paraphrase Winston Churchill, judicial review is the worst protector of liberty in times of crisis, with the exception of all the others.

#### Executive won’t ignore the court – reputation and popular respect for Court ensure

Wells 4 (Christina, Professor of Law, University of Missouri-Columbia, "Questioning Deference," Fall, 69 Mo. L. Rev. 903, lexis)

To improve decision making, the decision maker must perceive that the audience to which she is accountable has a legitimate reason to inquire into [\*946] her judgment. Accountability perceived as illegitimate -- i.e., intrusive or insulting -- has no beneficial effect and may even backfire. n225 Important factors here may include that the audience be as or more powerful than the decision maker and that the audience be well-informed. n226¶ The judicial system is a powerful institution. In the context of resolving constitutional issues, many people, the Court included, believe that the judicial system has the final (and, thus, most powerful) say. n227 To be sure, executive officials, past and present, have asserted that national security matters are particularly within the executive branch's ambit, suggesting that they do not share this view of the Court's legitimacy. n228 Even so, executive officials rarely flout the Court's authority, instead preferring to enlist the Court's support (which the Court often willingly provides). Executive officials might prove more willing to deny the Court's authority if it engaged in more rigorous review of executive decisions regarding national security. However, popular support for the institution of judicial review would likely preclude outright executive defiance n229 and could eventually spur acceptance. This might be especially true if the Court's constitutional standards of review focused more explicitly on decision-making processes, thus avoiding the impression that the Court was substituting its judgment for the executive's. n230¶ The Court is also well-informed within the meaning of accountability literature. Importantly, being well-informed does not require expert knowledge on particular issues but simply that the audience be not easily tricked. n231 Thus, judges need simply be able to inform themselves to the point where they understand generally the issues involved. Briefs, oral argument, and other evidentiary devices already aid courts in educating themselves and should be able to do so for accountability purposes as well. [\*947]

## Terror

### 2AC Intel Link

### 2AC Release Link

#### Seriously the risk of this link is 5 thousandths of a percent

Eppinger 13 (Monica-Assistant Professor, Saint Louis University School of Law and Department of Sociology and Anthropology; J.D., Yale Law School; Ph.D. Anthropology, University of California Berkeley, Winter, “REALITY CHECK: DETENTION IN THE WAR ON TERROR”, Catholic University Law Review-Lexis)

Second, serious consideration should be given to the low rates of recidivism by those held in preventive detention in Afghanistan. In 2010, Vice Admiral Harward, U.S./ISAF commander of detainee operations in Afghanistan, said that of a detainee population numbering over 3,000 in all the years of conflict in Afghanistan, he had documented only seventeen cases in which those released from preventive detention returned to the battlefield. 219 That is a recidivism rate of roughly one-half of one percent. Reasons for that astonishingly low rate of battlefield recapture need to be investigated and analyzed. Is the low rate because of treatment or training that took place during detention? Is it related to community guarantees extracted at the time of release? Is it because too many were detained in the first place, including wrong place/wrong time non-combatants? Or is the figure a result of under-reporting, understandably missing, in the fog of war, released detainees who did return to the battlefield? Reasons for the low rate of recidivism or, in the case of the wrongly detained, first-time fighting by released detainees should be carefully analyzed and lessons extracted for future conduct.

#### And detention outweighs the alt causes

Welsh 11 (David, JD University of Utah, “Procedural Justice Post-9/11: The Effects of Procedurally

Unfair Treatment of Detainees on Perceptions of Global Legitimacy” University of New Hampshire Law Review, <http://law.unh.edu/assets/images/uploads/publications/unh-law-review-vol-09-no2-welsh.pdf>)

The Global War on Terror has been ideologically framed as a struggle between the principles of freedom and democracy on the one hand and tyranny and extremism on the other. 2 Although this war has arguably led to a short-term disruption of terrorist threats such as al-Qaeda, it has also damaged America’s image both at home and abroad. 3 Throughout the world, there is a growing consensus that America has “a lack of credibility as a fair and just world leader.” 4 The perceived legitimacy of the United States in the War on Terror is critical because terrorism is not a conventional threat that can surrender or can be defeated in the traditional sense. Instead, this battle can only be won through legitimizing the rule of law and undermining the use of terror as a means of political influence. 5 Although a variety of political, economic, and security policies have negatively impacted the perceived legitimacy of the United States, one of the most damaging has been the detention, treatment, and trial (or in many cases the lack thereof) of suspected terrorists. While many scholars have raised constitutional questions about the legality of U.S. detention procedures, 6 this article offers a psychological perspective of legitimacy in the context of detention.

### A2: Terrorist cant get nukes

#### Terrorists will obtain nuclear weapons—multiple potential sources

Neely 13 (Meggaen, research intern for the Project on Nuclear Issues, 3-21-13, "Doubting Deterrence of Nuclear Terrorism" Center for Strategic and International Studies) csis.org/blog/doubting-deterrence-nuclear-terrorism

The risk that terrorists will set off a nuclear weapon on U.S. soil is disconcertingly high. While a terrorist organization may experience difficulty constructing nuclear weapons facilities, there is significant concern that terrorists can obtain a nuclear weapon or nuclear materials. The fear that an actor could steal a nuclear weapon or fissile material and transport it to the United States has long-existed. It takes a great amount of time and resources (including territory) to construct centrifuges and reactors to build a nuclear weapon from scratch. Relatively easily-transportable nuclear weapons, however, present one opportunity to terrorists. For example, exercises similar to the recent Russian movement of nuclear weapons from munitions depots to storage sites may prove attractive targets. Loose nuclear materials pose a second opportunity. Terrorists could use them to create a crude nuclear weapon similar to the gun-type design of Little Boy. Its simplicity – two subcritical masses of highly-enriched uranium – may make it attractive to terrorists. While such a weapon might not produce the immediate destruction seen at Hiroshima, the radioactive fall-out and psychological effects would still be damaging. These two opportunities for terrorists differ from concerns about a “dirty bomb,” which mixes radioactive material with conventional explosives.

## Exchanges

## Off

### OLC CP w New Adv– 2AC

#### Perm do both – solves the links

#### 2. Can’t solve the case –

#### OLC fails at executive restraint

Posner 11 -- Kirkland & Ellis Professor, University of Chicago Law School (Eric, 9/22/2011, "DEFERENCE TO THE EXECUTIVE IN THE UNITED STATES AFTER 9/11:CONGRESS, THE COURTS AND THE OFFICE OF LEGAL COUNSEL," http://www.law.uchicago.edu/files/file/363-eap-deference.pdf)

The medical protocol analogy does not provi de any reason for doubting the deference thesis. Rules are valuable in many settings, in cluding emergencies; but it does not follow from that observation that courts and legislatures rather than the ex ecutive should create and enforce the rules. Each institution has specific advantag es; the executive’s advant ages are salient during emergencies. The notion that the executive can be constr ained by its own components is a paradoxical idea, and has little to recommend it. In the end, someone must have discretion to respond to unforeseen events, and in the U.S. system that ro le has been given to the president. The theory that OLC or some similar office within the exec utive branch could constrain the president rests on a confusion between rational self-binding, which presidents may (albeit with difficulty) engage in, and external constraint, which pres idents resist. OLC may serve as a device for rational self-binding, which extends the executive power; it is highly unlik ely, however, that it can serve as a constraint.

#### CP gets overruled and circumvented---data goes aff

Bruce Ackerman 11, Sterling Professor of Law and Political Science at Yale University, “LOST INSIDE THE BELTWAY: A REPLY TO PROFESSOR MORRISON,” Harvard Law Review Forum Vol 124:13, http://www.harvardlawreview.org/media/pdf/vol124forum\_ackerman.pdf

The problem is confirmed by Morrison’s very useful data analysis, which shows that only thirteen percent of OLC opinions have provided a more- or- less clear “no” to the White House during the past generation.34 Morrison’s data- set doesn’t include OLC’s unpublished opinions — which typically involve confidential matters involving national security. Since OLC is almost- certainly more deferential to the White House in these sensitive areas, the percentage of “no’s” would likely sink into the single- digits if these secret opinions could be included in Morrison’s data set.35 And remember, quantitative data can’t take into account the occasions on which the White House is especially exigent in its telephonic demands.36 ¶ \*\*\*TO FOOTNOTES\*\*\*¶ 36 Morrison is undoubtedly right in suggesting that stare decisis plays a restraining role in garden-variety cases. But he also notes that the OLC overrules (or substantially modifies) its own decisions in more than five percent of the opinions in his sample. See Alarmism, supra note P, at NTOP n.NPN. This is a significant percentage, given my focus on the likely way the OLC will function in high-stress situations. It indicates that stare decisis is by no means a rigid rule, and that the OLC cannot credibly claim that its hands are tied when the White House is pressuring it to overrule existing case- law to vindicate a high-priority presidential initiative. ¶ Similarly, Morrison is undoubtedly correct in suggesting that his data fails to reflect the fact that the OLC sometimes informally deflects the White House from a legally problematic initiative. See Alarmism, supra note P, at NTNV. But on high-priority initiatives, the White House won’t easily take an informal “no” for an answer — it will either push the OLC to write a formal opinion saying “yes” or it will withdraw the issue from its jurisdiction and rely on the WHC to uphold the legality of the President’s plan. As a consequence, I believe that Morrison’s data provides an overestimate, not an under-estimate, of likely OLC resistance: it fails to count unreported national security opinions (on which the OLC is probably extremely deferential), and this failure is not mitigated by its additional failure to detect informal modes of OLC resistance.

#### No compliance

Bruce Ackerman 11, Sterling Professor of Law and Political Science at Yale University, “LOST INSIDE THE BELTWAY: A REPLY TO PROFESSOR MORRISON,” Harvard Law Review Forum Vol 124:13, http://www.harvardlawreview.org/media/pdf/vol124forum\_ackerman.pdf

To see why, consider that the relationship between the WHC and the OLC is utterly mysterious to most lawyers, let alone to most Americans. So imagine the scene when some future White House Counsel issues a legal opinion, rubberstamping the President’s latest power- grab, with the peroration: “Ever since Lloyd Cutler assumed the position as White House Counsel in NVTV, this office has, from to time, taken the lead in explaining the constitutional foundations for major presidential initiatives . . . .” ¶ Given pervasive ignorance dealing with Beltway arcana, this famous precedent will go a long way toward legitimating the White House decision to cut out the OLC. Instead of conceding impropriety, our hypothetical Counsel can summon up the great spirit of Lloyd Cutler in support of his leading role. After establishing his distinguished pedigree, Counsel can reinforce his claim to authority with a host of additional arguments: After all, there’s nothing in the Constitution that requires the President to prefer the OLC to the WHC. Article II simply tells the President to “take Care that the Laws be faithfully executed”69 — it doesn’t tell him where to get his legal advice. Moreover, as Morrison acknowledges, the OLC’s traditional role is principally based on executive order, not Congressional statutes.70 If the President prefers to treat his Counsel as a modern-day Cutler, there can be no question that the bureaucracy and military will follow his lead — at least until the courts enter into the field. ¶ Undoubtedly, the Cutler precedent won’t stifle all grumbling from Beltway cognoscenti.71 But it will make it much tougher to convince the generality of lawyerdom, as well as the broader public, that they are witnessing a dreadful act of legal usurpation — even if that’s precisely what is happening.72

#### Conditionality is a voter-

#### A – it results in argument irresponsibility because it encourages contradictory positions

#### B – creates time and strat skews by making the neg a moving target

#### no cost options in the 1nc make the 2ac impossible- one condo advocacy/ dispo solves your offense

#### Uniquely worse with multiple worlds – forces us into strategic double binds and tradeoffs

#### Court action is key to Solve Terror –

#### Interrogation techniques benefit from judicial oversight – it’s a strategic benefit to the war on terror – that’s Powell

#### *Judicial* restrictions are key to effective counterterrorism

Guiora 11 (Amos, Prof of Law @ Univ. of Utah, "Indeﬁnite Detention of Megaterrorists: A Road We Must Not Travel," April, http://johnjayresearch.org/cje/files/2012/10/GUIORA-out.pdf)

Offering modifications or alternatives, such as indefinite detention, to¶ replace existing legal structures\*in¶ whole or in part\*raises a fundamental question: have sufficient controls been created? Although creating¶ alternatives, even if justifiable, is¶ risky, any expansion of executive¶

power\*the net result of Scheid’s¶ proposal\*must be tempered by¶ both independent judicial review¶ and robust congressional oversight.¶ Restraining the executive branch is¶ essential, especially when alternatives are created.¶ When Scheid asked if I would¶ consider commenting on his paper¶ (before I had a chance to read it) I instinctively agreed. My reasons were¶ simple. I first met Scheid when he¶ graciously attended a public lecture I¶ gave at the William Mitchell Law¶ School (hosted by my good friend¶ and colleague, John Radson). His questions were particularly engaging and¶ our subsequent communications\*including Scheid’s insightful and critical¶ blog postings in response to my¶ writings\*have invariably been interesting and thought-provoking.¶ When Scheid explained the article’s thesis I was intrigued, largely¶ because of my own efforts to grapple¶ with how to create alternative legal¶ infrastructures relevant to the post 9/¶ 11 world. As a consistent advocate¶ for the creation of a National Security¶ Court,1¶ I have probed the limits of¶ many of the issues Scheid addresses.¶ Friends and colleagues have criticized various aspects of my proposal;¶ similarly, members of the U.S. Senate¶ Judiciary Committee were skeptical¶ of my proposal when I testified¶ before the committee.¶ Precisely for the above reasons, I¶ feel well suited to respond to Scheid’s¶ proposal. Perhaps I have an insider’s¶ perspective of proposing an alternative and then responding to the inevitable criticism. Experience has¶ taught me that any alternative that¶ involves an expansion of executive¶ powers is only as good as the limits¶ it also imposes.¶ Scheid’s proposal does not conjure up images of President Bush’s¶ ‘‘by all means necessary’’ approach¶ to counterterrorism because it wisely¶ includes independent judicial review¶ in accordance with constitutional¶ principles of checks and balances¶ and separation of powers. The key¶ question, however, is: ‘‘how much¶ judicial review’’? Not enough to ensure effective external restraints on¶ the executive. Although Scheid¶ clearly incorporates some control¶ measures, the overall sense is of¶ insufficient restraint.¶ To push the issue: we must ask¶ whether there are controls, whether¶ they are sufficiently defined, and¶ whether they can be implemented.¶ Simply put, suggesting an alternative¶ alone is not sufficient, particularly¶ when its intended purpose is to¶ create an infrastructure specifically¶ designed to limit rights rather than¶ protect them.

#### Doesn’t solve Venezuela –

#### court action key – that’s Biron – it’s the international court of human rights, so they perceive judicial remedies, not executive remedies – doesn’t change the legal hypocrisy of the united states

#### Venezuelan transition to democracy requires an IJ – that’s Yamamoto – and legal clarity key – CP doesn’t change authority

#### It’s a rubber stamp---1AC [economist] says external oversight key

Ilya Somin 11, Professor of Law at George Mason University School of Law, June 21 2011, “Obama, the OLC, and the Libya Intervention,” http://www.volokh.com/2011/06/21/obama-the-olc-and-the-libya-intervention/

But I am more skeptical than Balkin that illegal presidential action can be constrained through better consultation with legal experts within the executive branch. The fact is that the president can almost always find respectable lawyers within his administration who will tell him that any policy he really wants to undertake is constitutional. Despite the opposition of the OLC, Obama got the view he wanted from the White House Counsel and from State Department Legal Adviser Harold Koh. Bush, of course, got it from within the OLC itself, in the form of John Yoo’s “torture memo.” This isn’t just because administration lawyers want to tell their political masters what they want to hear. It also arises from the understandable fact that administrations tend to appoint people who share the president’s ideological agenda and approach to constitutional interpretation. By all accounts, John Yoo was and is a true believer in nearly unlimited wartime executive power. He wasn’t simply trying to please Bush or Dick Cheney.¶ Better and more thorough consultation with executive branch lawyers can prevent the president from undertaking actions that virtually all legal experts believe to be unconstitutional. But on the many disputed questions where there is no such consensus, the president will usually be able find administration lawyers who will tell him what he wants to hear. To his credit, Ackerman is aware of this possibility, and recommends a creative institutional fix in his recent book: a new quasi-independent tribunal for assessing constitutional issues within the executive branch. I am somewhat skeptical that his approach will work, and it may well require a constitutional amendment to enact. I may elaborate these points in a future post, if time permits.¶ Regardless, for the foreseeable future, the main constraints on unconstitutional presidential activity must come from outside executive branch – that is, from Congress, the courts, and public opinion. These constraints are highly imperfect. But they do impose genuine costs on presidents who cross the line. Ackerman cites the Watergate scandal, Iran-Contra and the “torture memo” as examples of the sorts of abuses of executive power that need to be restricted. True enough. But it’s worth remembering that Nixon was forced to resign over Watergate, Reagan paid a high political price for Iran-Contra, and the torture memo was a public relations disaster for Bush, whose administration eventually ended up withdrawing it (thanks in large part to the efforts of Jack Goldsmith). On the other side of the ledger, Bill Clinton paid little price for waging an illegal war in Kosovo, though he avoided it in part by keeping that conflict short and limited. It remains to be seen whether President Obama will suffer any political damage over Libya.

#### Courts key to Sri Lanka

#### A – the internal link is effective exchanges – US judicial independence is key to that – that’s Rasmussen

#### B – sri lanka looks to judicial precedent –e mpirically proven – that’s Bilias

#### 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.

#### South Sudan models US precedent of judicial supremacy – key to ensuring peace in the Abyei region

PILPG 8 (Public International Law & Policy Group, a global pro bono law firm that provides legal assistance to foreign governments and international organizations on the negotiation and implementation of peace agreements, the drafting and implementation of post-conflict constitutions, and the creation and operation of war crimes tribunals. PILPG also assists states with the training of judges and the drafting of legislation, “brief of the public international law & policy group as amicus curiae in support of petitioners”, http://www.americanbar.org/content/dam/aba/publishing/preview/publiced\_preview\_briefs\_pdfs\_09\_10\_08\_1234\_PetitionerAmCuPILPG.authcheckdam.pdf)

In the South Sudan peace process, the Sudan People’s Liberation Movement/Army (SPLM/A), the¶ leading political party in the Government of Southern Sudan, relied on U.S. precedent to argue for the primacy¶ of law and the importance of the enforceability of adjudicative decisions in deciding one of the most important and contentious issues in the ongoing peace¶ process. In May 2008, large-scale violence in Abyei, South Sudan, resulted in the destruction of Abyei Town¶ and the displacement of its residents. The violence further threatened to unravel the 2005 Comprehensive¶ Peace Agreement between the Government of Sudan and the SPLM/A. The violence was a result of tension¶ between the parties regarding the long-overdue establishment of boundaries of the Abyei Area, which¶ straddles the North and South of Sudan and was the location of widespread violence during decades of civil¶ war. The parties had agreed in the Comprehensive Peace Agreement to a specific process to determine the¶ boundaries of the Abyei Area. When the Abyei Boundaries Commission issued its binding decision,¶ however, the Government of Sudan refused to implement the ruling. Given the long and violent history between¶ the parties, the unresolved status of Abyei threatened to re-ignite widespread conflict.¶ Rather than returning to hostilities, however, the parties elected to refer the Abyei question to an¶ adjudicative body. On July 7, 2008, the parties signed the Abyei Arbitration Agreement. Under the terms of¶ the Arbitration Agreement, the parties agreed to submit questions regarding the boundaries of the Abyei Area¶ to an arbitration tribunal seated at the Permanent Court of Arbitration in The Hague. The leaders of the¶ SPLM/A told PILPG that they sought recourse to an adjudicative body because they believed that the ruling¶ would be enforceable and would be supported by the international community. ¶ Based on the belief that the U.S. legal system promotes the primacy of law and affirms the critical role¶ of adjudicative bodies in a system dedicated to the rule of law, the SPLM/A cited U.S. court decisions in its¶ submissions to the Abyei Arbitration tribunal. The SPLM/A memorials specifically cited this Court, as well¶ as U.S. district and circuit court decisions, to bolster the SPLM/A’s position that the tribunal should respect¶ the finality of the award of an adjudicative body, such as the Abyei Boundaries Commission.2¶ When the Abyei Arbitration tribunal issued its binding decision in July¶ 2009, the arbitration decision also cited this Court’s precedent.3¶ This Court thus played an important role in the peaceful resolution of one of the most contentious¶ issues in the South Sudan peace process.¶ As the foregoing examples illustrate, foreign governments rely on the precedent set by the U.S. and¶ this Court when addressing new and complex issues in times of conflict. Finding for the Petitioners in the¶ present case will reaffirm this Court’s leadership in promoting respect for rule of law in foreign states during¶ times of conflict.

#### That sets a precedent against global secessionism

Cheney 10/31/13 (Catherine, World Politics Review, "Abyei Vote the Latest Opportunity for Brinkmanship Between Sudan, South Sudan," http://www.worldpoliticsreview.com/trend-lines/13343/abyei-vote-the-latest-opportunity-for-brinkmanship-between-sudan-south-sudan)

Some had hoped Abyei could be a bridge between Sudan and South Sudan rather than a source of greater tension, Temin explained, but this is not possible without the buy-in of important constituencies. ¶ What happens next has implications for the wider world, he added, because “situations like these always have the capacity to be sort of precedent-setting.”¶ “People in Abyei talk about Kosovo and East Timor,” he said. “Whatever the next disputed area is, they could be talking about what happened in Abyei.”

#### Impact is global nuclear war

Shehadi 93 (Kamal, Research Associate – International Institute for Strategic Studies, December, Ethnic Self Determination and the Break Up of States, p. 81)

This paper has argued that self-determination conflicts have direct adverse consequences on international security. As they begin to tear nuclear states apart, the likelihood of nuclear weapons falling into the hands of individuals or groups willing to use them, or to trade them to others, will reach frightening levels. This likelihood increases if a conflict over self-determination **escalates into a war between two nuclear states**. The Russian Federation and Ukraine may fight over the Crimea and the Donbass area; and India and Pakistan may fight over Kashmir. Ethnic conflicts may also spread both within a state and from one state to the next. This can happen in countries where more than one ethnic self-determination conflict is brewing: Russia, India and Ethio­pia, for example. The conflict may also spread by contagion from one country to another if the state is weak politically and militarily and cannot contain the conflict on its doorstep. Lastly, there is a real danger that regional conflicts will erupt over national minorities and borders.

#### 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. **CP is misconstrued**

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

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

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

#### No institutional memory

Bruce Ackerman 11, Sterling Professor of Law and Political Science at Yale University, “LOST INSIDE THE BELTWAY: A REPLY TO PROFESSOR MORRISON,” Harvard Law Review Forum Vol 124:13, http://www.harvardlawreview.org/media/pdf/vol124forum\_ackerman.pdf

Which leads to a fundamental question. Morrison relies heavily on the “norms” and “longstanding traditions” of the OLC to serve as a bulwark against presidential overreaching. But given the composition of the Office, precisely who is supposed to be safeguarding this tradition? ¶ If we credit Madison’s maxim, we can’t count on the Administration’s appointees to do the job — “enlightened statesmen” will only sometimes manipulate the political networks required to get these plum jobs. And surely youngish up-and-comers are unlikely repositories of the very complex “tradition” Morrison describes — by definition, it takes a good deal of time to master the practice of providing opinions that, in the words of Jack Goldsmith, are “neither like advice from a private attorney nor like a politically neutral ruling from a court. It is something inevitably, and uncomfortably, in between.”15 As his memoirs suggest, even Goldsmith had trouble enacting this “awkward” role during the nine months he served as head of the OLC before he quit under pressure from the Bush White House.16 It’s a bit much to ask young attorney-advisers to serve as the principal guardians of these “cultural norms.” This puts an enormous burden on the (very) small number of senior counsel. ¶ Morrison assures us “that Senior Counsels play a vital role in OLC precisely because they are such rich repositories of institutional memory.”17 While they surely help the transient- lawyers “resist the importuning of . . . clients”18 in garden variety cases, it is unrealistic to expect them effectively to defend entrenched constitutional principles against high-priority presidential initiatives — especially when political appointees, aided by able attorney-advisers, think up all sorts of clever legal arguments to evade and undercut these principles. ¶ The senior counsel’s position is particularly problematic at present. Granting their role as keepers of institutional memory, precisely what are they supposed to be remembering about the operation of the Office during the Bush years? ¶ To be sure, Goldsmith’s legalistic scruples, and the Abu Ghraib scandal, forced the White House to accept the repudiation of a couple of “torture memos.”19 But as Morrison recognizes, the OLC replaced Yoo’s memos “with a more modestly phrased opinion in late 2004 . . . [which] maintained its basic position on the legality of . . . ‘waterboarding’”20 throughout the rest of the Bush Administration. So if the oldtimers act as memory- keepers, are they supposed to tell the transients that the OLC continued to give the Bush White House what it wanted to the bitter end, merely toning down John Yoo’s extravagant legal arguments?

### Generic Legalism 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. Perm do both

#### 4. External checks are effective

Aziz Z. Huq 12, Assistant Professor of Law, University of Chicago Law School, "Binding the Executive (by Law or by Politics)", May 25, www.law.uchicago.edu/files/file/400-ah-binding.pdf

Paulson ’ s genuflection and Obama ’ s reticence, I will contend here, are symptomatic of our political system ’ s operation rather than being aberration al . It is generally the case that even in the heart of crisis, and even on matters where executive competence is supposedly at an acme , legislators employ formal institutional powers not only to delay executive initiatives but also affirmatively to end presidential policies. 20 Numerous examples from recent events illustrate the point. Congressional adversaries of Obama, for instance, cut off his policy of emptying Guantánamo Bay via appropriations riders. 21 Deficit hawks spent 2011 resisting the President’s solutions to federal debt, while the President declined to short - circuit negotiations with unilateral action. 22 Even in military matters, a growing body of empirical research suggests Congress often successfully influences the course of overseas engagements to a greater degree than legal scholars have discerned or acknowledged. 23¶ That work suggests that the failure of absolute congressional control over military matters cannot be taken as evidence of “the inability of law to constrain the executive ” in more subtle ways (p 5). The conventional narrative of executive dominance , in other words, is at best incomplete and demands supplementing .¶ This Review uses The Executive Unbound as a platform to explore how the boundaries of discretionary executive action are established. As the controversial national security policies of the Bush administration recede in time, the issue of executive power becomes ripe for reconsideration. Arguments for or against binding the executive are starting to lose their partisan coloration. There is more room to investigate the dynamics of executive power in a purely positive fashion without the impinging taint of ideological coloration.¶ Notwithstanding this emerging space for analys i s, t here is still surprising inattention to evidence of whether the executive is constrained and to the positive question of how constraint works. The Executive Unbound is a significant advance because it takes seriously this second “ mechanism question. ” Future studies of the executive branch will ignore its i mportant and trenchant analysis at their peril. 24 Following PV ’ s lead, I focus on the descriptive , positive question of how the executive is constrained . I do speak briefly and in concluding to normative matters . B ut f irst and foremost, my arguments should be understood as positive and not normative in nature unless otherwise noted.¶ Articulating and answering the question “ W hat binds the executive ?” , The Executive Unbound draws a sharp line between legal and political constraints on discretion — a distinction between laws and institutions on the one hand, and the incentives created by political competition on the other hand . While legal constraints usually fail, it argues, political constraints can prevail. PV thus postulate what I call a “strong law/ politics dichotomy. ” My central claim in this Review is that this strong law/politics dichotomy cannot withstand scrutiny. While doctrinal scholars exaggerate law ’s autonomy, I contend, the realists PV underestimate the extent to which legal rules and institutions play a pivotal role in the production of executive constraint. Further, the political mechanisms they identify as substitutes for legal checks cannot alone do the work of regulating executive discretion. Diverging from both legalist and realist positions, I suggest that law and politics do not operate as substitutes in the regulation of executive authority. 25 They instead work as interlocking complements. An account of the borders of executive discretion must focus on the interaction of partisan and electoral forces on the one hand and legal rules. It must specify the conditions under which the interaction of political actors’ exertions and legal rules will prove effective in limiting such discretion.

#### **5.** 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

#### 6. Only interrogating the failures of the American legal system allows us to prevent future institutionalized torture – legal discussions are uniquely critical

Mayerfeld, 7 – Associate Professor of Political Science, University of Washington (Jamie, “Playing by Our Own Rules: How U.S. Marginalization of International Human Rights Law Led to Torture.” 20 Harv. Hum. Rts. J. 89 2007. HeinOnline.)

Americans need to ask themselves how the United States could adopt a policy of torture, and why, in particular, our legal system failed to prevent it. We all know that the terrorist threat made coercive interrogation newly respectable in the eyes of some public officials, that a general climate of fear and anger following the attacks of September 11 weakened public opposi- tion to torture, and that the Republican majority that controlled Congress until January 2007 chose, for both strategic and ideological reasons, to keep loose reins on the executive branch. However, we expect the law to protect fundamental human rights against bureaucratic zeal, partisan calculations, and shifts in public sentiment. The terrorist attacks of September 11 may have increased the temptation to authorize torture, but an effective legal regime is one that prevents torture precisely when its use becomes most tempting. Since we normally expect the law to erect impregnable barriers against the use of torture, we must ask why, in this case, the barriers gave way so easily. What makes the question even more acute is the emphatic prohibition of torture in both domestic and international law. Coverage of the torture outbreak has rightly focused attention on deci- sions by President Bush and his advisors. The Administration authorized physical and psychological coercion to extract information from prisoners, defending its policy with novel legal doctrines and tactics. Its choices, which break with decades of official U.S. policy and have provoked wide- spread shock and dismay among legal scholars and practitioners, are the proximate cause of the torture epidemic. Yet a full explanation of the problem must extend beyond the choices of Administration officials. The American philosophy of government is pre- mised on the Madisonian truth that fundamental rights, beginning with the right against government brutality, must not depend on the individual rectitude of public officials.2 3 Fundamental rights must be insulated from the misguided impulses of political leaders by strong institutional protec- tions. The much-vaunted virtue of the American political system is not the moral infallibility of its public officials, but their voluntary submission to the discipline of wise institutions. This is the familiar theory that former Secretary of Defense Donald Rumsfeld invoked when he told the Congres- sional Armed Services Committees, shortly after the Abu Ghraib revela- tions: "Mr. Chairman, I know you join me today in saying to the world, judge us by our actions, watch how Americans, watch how a democracy deals with the wrongdoing and with scandal and the pain of acknowledging and correcting our own mistakes and our own weaknesses." 24 Yet our polit- ical institutions have not performed as expected: the ability of the Bush Administration to adopt torture, and to maintain its policy in the face of explosive revelations, defies the story Americans tell about themselves as members of a rights-protecting democracy. It is essential that we under- stand why the American legal and political system failed. I shall argue that a principal (though not sole) cause of the failure was the longstanding refusal of the United States to incorporate international human rights law into its legal system. Well before the inauguration of George W. Bush and the events of September 11, the United States chose to loosen the binding force of its international human rights agreements. This choice had fateful consequences when the United States declared a "Global War on Terror" following the September 11 attacks. The U.S. marginalization of international human rights law made it far easier for Bush Administration officials to institutionalize abusive treatment. Major legal obstacles that would otherwise have confronted the Bush Administra- tion had been removed by previous congresses and administrations. The error of the traditional policy should now be manifest. International human rights law anticipates, and can help block, maneuvers like those used by the Bush Administration to violate human rights norms. The les- son of recent experience is that domestic human rights protections need international reinforcement. International human rights law helps fulfill the promises to individual freedom and dignity enshrined in our own Con- stitution. Only through the full adoption of international human rights law can the United States make a genuine commitment to human rights and be held to that commitment.

#### --Torture is a deontological evil that must be rejected

**Gross,** (Oren, Professor, Law, University of Minnesota, MINNESOTA LAW REVIEW, June 20**04**, p. 1492-1493.

Absolutists - those who believe that an unconditional ban on torture ought to apply without exception regardless of circumstances - often base their position on deontological grounds. For adherents of the absolutist view of morality, torture is intrinsically wrong. It violates the physical and mental integrity of the person subjected to it, negates her autonomy, and deprives her of human dignity. It reduces her to a mere object, a body from which information is to be extracted; it coerces her to act in a manner that may be contrary to her most fundamental beliefs, values, and interests, depriving her of any choice and controlling her voice. Torture is also wrong because of its depraving and corrupting effects on individual torturers and society at large. Moreover, torture is an evil that can never be justified or excused. Under no circumstances should the resort to torture be morally acceptable or legally permissible. It is a reprehensible action whose wrongfulness may never be assuaged or rectified morally even if the consequences of taking such action in any particular case are deemed to be, on the whole, good. Indeed, one may argue that the inherent wrongfulness of torture and possible good consequences are incommensurable, i.e., they cannot be measured by any common currency and therefore cannot be compared, or balanced, one against the other. The conclusion drawn from such a claim is that "the wrong of torture can be taken as a trump or side constraint on welfare maximization in all possible cases."

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

#### 8. 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.

**Legal restraints work – the theory of the exception is self-serving and wrong**

William E. **Scheuerman 6**, Professor of Political Science at Indiana University, Carl Schmitt and the Road to Abu Ghraib, Constellations, Volume 13, Issue 1

Yet this argument relies on Schmitt’s controversial model of politics, as outlined eloquently but unconvincingly in his famous Concept of the Political. To be sure, there are intense conflicts in which it is naïve to expect an easy resolution by legal or juridical means. But the argument suffers from a troubling circularity: **Schmitt** occasionally **wants to define “political” conflicts as those irresolvable by legal** or juridical **devices in order** then **to argue against** **legal** or juridical **solutions** to them. **The claim** also **suffers from** a certain **vagueness** and lack of conceptual precision. At times, it seems to be directed against trying to resolve conflicts in the courts or juridical system narrowly understood; at other times it is directed against any legal regulation of intense conflict. The former argument is surely stronger than the latter. After all, **legal devices have undoubtedly played a positive role** **in taming** or at least minimizing the potential dangers of harsh **political antagonisms**. In the Cold War, for example, international law contributed to the peaceful resolution of conflicts which otherwise might have exploded into horrific violence, even if attempts to bring such conflicts before an international court or tribunal probably would have failed.22

Second, Schmitt dwells on the legal inconsistencies that result from modifying the traditional state-centered system of international law by expanding protections to non-state fighters. His view is that irregular combatants logically enjoyed no protections in the state-centered Westphalian model. By broadening protections to include them, international law helps undermine the traditional state system and its accompanying legal framework. Why is this troubling? The most obvious answer is that Schmitt believes that the traditional state system is normatively superior to recent attempts to modify it by, for example, extending international human rights protections to individuals against states. 23 But what if we refuse to endorse his nostalgic preference for the traditional state system? Then a sympathetic reading of the argument would take the form of suggesting that the project of regulating irregular combatants by ordinary law must fail for another reason: it rests on a misguided quest to integrate incongruent models of interstate relations and international law. We cannot, in short, maintain core features of the (state-centered) Westphalian system while extending ambitious new protections to non-state actors.

This is a powerful argument, but it remains flawed. Every modern legal order rests on diverse and even conflicting normative elements and ideals, in part because human existence itself is always “in transition.” When one examines the so-called classical liberal legal systems of nineteenth-century England or the United States, for example, one quickly identifies liberal elements coexisting uneasily alongside paternalistic and authoritarian (e.g., the law of slavery in the United States), monarchist, as well as republican and communitarian moments. The same may be said of the legal moorings of the modern welfare state, which arguably rest on a hodgepodge of socialist, liberal, and Christian and even Catholic (for example, in some European maternity policies) programmatic sources. In short, **it is by no means self-evident that trying to give coherent legal form to a transitional** political and social **moment is always doomed to fail**. Moreover, there may be sound reasons for claiming that the contemporary transitional juncture in the rules of war is by no means as incongruent as Schmitt asserts. In some recent accounts, **the general trend** towards extending basic protections to non-state actors **is** plausibly interpreted in a more **positive** – **and by no means incoherent** – light.24

Third, Schmitt identifies a deep tension between the classical quest for codified and stable law and the empirical reality of a social world subject to permanent change: “The tendency to modify or even dissolve classical [legal] concepts…is general, and in view of the rapid change of the world it is entirely understandable” (12). Schmitt’s postwar writings include many provocative comments about what contemporary legal scholars describe as the dilemma of legal obsolescence. 25 In The Partisan, he suggests that the “great transformations and modifications” in the technological apparatus of modern warfare place strains on the aspiration for cogent legal norms capable of regulating human affairs (17; see also 48–50). Given the ever-changing character of warfare and the fast pace of change in military technology, it inevitably proves difficult to codify a set of cogent and stable rules of war. The Geneva Convention proviso that legal combatants must bear their weapons openly, for example, seems poorly attuned to a world where military might ultimately depends on nuclear silos buried deep beneath the surface of the earth, and not the success of traditional standing armies massed in battle on the open field. “Or what does the requirement mean of an insignia visible from afar in night battle, or in battle with the long-range weapons of modern technology of war?” (17).

As I have tried to show elsewhere, these are powerful considerations deserving of close scrutiny; Schmitt is probably right to argue that the enigma of legal obsolescence takes on special significance in the context of rapid-fire social change.26 Unfortunately, he seems uninterested in the slightest possibility that we might successfully adapt the process of lawmaking to our dynamic social universe. To be sure, he discusses the “motorization of lawmaking” in a fascinating 1950 publication, but only in order to underscore its pathological core.27 Yet **one** possible **resolution** of the dilemma he describes **would be** to figure how **to reform the process** whereby rules of war are adapted to novel changes in military affairs in order **to minimize the danger of** anachronistic or **out-of-date law. Instead, Schmitt** simply **employs the dilemma of legal obsolescence as a battering ram** against the rule of law and the quest to develop a legal apparatus suited to the special problem of irregular combatants.

**Legal norms don’t cause wars and the alt can’t effect liberalism**

David **Luban 10**, law prof at Georgetown, Beyond Traditional Concepts of Lawfare: Carl Schmitt and the Critique of Lawfare, 43 Case W. Res. J. Int'l L. 457

Among these associations is the positive, constructive side of politics, the very foundation of Aristotle's conception of politics, which Schmitt completely ignores. Politics, we often say, is the art of the possible. It is the medium for organizing all human cooperation. Peaceable civilization, civil institutions, and elemental tasks such as collecting the garbage and delivering food to hungry mouths all depend on politics. Of course, peering into the sausage factory of even such mundane municipal institutions as the town mayor's office will reveal plenty of nasty politicking, jockeying for position and patronage, and downright corruption. Schmitt sneers at these as "banal forms of politics, . . . all sorts of tactics and practices, competitions and intrigues" and dismisses them contemptuously as "parasite- and caricature-like formations." n55 The fact is that **Schmitt has nothing** whatever **to say about the constructive side of politics**, and his entire theory focuses on enemies, not friends. In my small community, political meetings debate issues as trivial as whether to close a street and divert the traffic to another street. It is hard to see mortal combat as even a remote possibility in such disputes, and so, in Schmitt's view, they would not count as politics, but merely administration. Yet issues like these are the stuff of peaceable human politics.

Schmitt, I have said, uses the word "political" polemically--in his sense, politically. I have suggested that his very choice of the word "political" to describe mortal enmity is tendentious, attaching to mortal enmity Aristotelian and republican associations quite foreign to it. But the more basic point is that Schmitt's critique of humanitarianism as political and polemical is itself political and polemical. In a word, the critique of lawfare is itself lawfare. It is self-undermining because to the extent that it succeeds in showing that lawfare is illegitimate, it de-legitimizes itself.

What about the merits of Schmitt's critique of humanitarianism? His argument is straightforward: either humanitarianism is toothless and [\*471] apolitical, in which case ruthless political actors will destroy the humanitarians; or else humanitarianism is a fighting faith, in which case it has succumbed to the political but made matters worse, because wars on behalf of humanity are the most inhuman wars of all. Liberal humanitarianism is either too weak or too savage.

The argument has obvious merit. When Schmitt wrote in 1932 that wars against "outlaws of humanity" would be the most horrible of all, it is hard not to salute him as a prophet of Hiroshima. The same is true when Schmitt writes about the League of Nations' resolution to use "economic sanctions and severance of the food supply," n56 which he calls "imperialism based on pure economic power." n57 Schmitt is no warmonger--he calls the killing of human beings for any reason other than warding off an existential threat "sinister and crazy" n58 --nor is he indifferent to human suffering.

But **international** humanitarian law **and criminal law are not the same thing as wars to end all war or humanitarian military interventions, so Schmitt's** important moral **warning** against ultimate military self-righteousness **does not** really **apply**. n59 Nor does "bracketing" war by humanitarian constraints on war-fighting presuppose a vanished order of European public law. The fact is that in nine years of conventional war, the United States has significantly bracketed war-fighting, even against enemies who do not recognize duties of reciprocity. n60 This may frustrate current lawfare critics who complain that American soldiers in Afghanistan are being forced to put down their guns. Bracketing warfare is a decision--Schmitt might call it an existential decision--that rests in part on values that transcend the friend-enemy distinction. **Liberal values are not alien extrusions into politics** or evasions of politics; **they are part of politics, and**, as Stephen Holmes argued against Schmitt, **liberalism has proven remarkably strong, not weak**. n61 We could choose to abandon liberal humanitarianism, and that would be a political decision. It would simply be a bad one.

#### 9. 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.

#### 10. Liberalism is inevitable

Sparer ‘84

[Ed, Prof. Law and Soc Welfare @ Pennsylvania, “Fundamental Human Rights, Legal Entitlements, and the Social Struggle: A Friendly Critique of the Critical Legal Studies Movement,” 36 Stan. L. Rev. 509, January, ln//uwyo-ajl]

The thrust of CLS critique is devoted, in turn, to the exposure of the contradictions in liberal philosophy and law. This strand of the Critical legal critique is quite powerful and makes a much-needed contribution. In my view, however, it suffers from two general problems. First, the critique lends itself to exaggeration. This observation may be appreciated by considering what happens when Critical legal theorists themselves make tentative gestures at the social direction in which we should move. Such gestures, even from the most vigorous critics of liberalism, do not escape from liberalism and, indeed, liberal rights theory. Nevertheless, those gestures have great merit, particularly because of their use of liberal rights. For example, Frug, while expounding his vision of the city as a site of localized power and participatory democracy, attacks liberal theory and its dualities as an obstacle to his vision. n19 At the same time, without [\*518] acknowledging the significance of what he is doing, Frug relies on the liberal image of law and rights to defend the potential of his vision. He writes: It should be emphasized that participatory democracy on the local level need not mean the tyranny of the majority over the minority. Cities are units within states, not the state itself; cities, like all individuals and entities within the state, could be subject to state-created legal restraints that protect individual rights. Nor does participatory democracy necessitate the frustration of national political objectives by local protectionism; participatory institutions, like others in society, could still remain subject to general regulation to achieve national goals. The liberal image of law as mediating between the need to protect the individual from communal coercion and the need to achieve communal goals could thus be retained even in the model of participatory democracy. n20

#### 11. Alt Can’t solve --Appeals for institutional restrain are a crucial supplement to political resistance to executive power.

David COLE Law @ Georgetown ’12 “The Politics of the Rule of Law: The Role of Civil Society in the Surprising Resilience of Human Rights in the Decade after 9/11” http://www.law.uchicago.edu/files/files/Cole%201.12.12.pdf p. 51-53

As I have shown above, **while political forces played a significant role in checking** President **Bush**, what was significant was the particular substantive content of that politics; **it was not just any political pressure**, **but pressure to maintain** fidelity to **the rule of law**. **Politics standing alone is as likely to fuel as to deter executive abuse; consider the lynch mob, the Nazi Party** in Germany, or **xenophobia** more generally. **What we need if we are to check abuses of executive power is a politics that champions the rule of law.** Unlike the politics Posner and Vermeule imagine, **this** type of **politics cannot be segregated neatly from the law**. On the contrary, **it will often coalesce around a distinctly legal challenge, objecting to departures from distinctly legal norms**, heard in a court case, as we saw with Guantanamo. **Congress’s actions make clear that had Guantanamo been left to the political process, there would have been few if any advances**. **The litigation generated and concentrated political pressure on claims for a restoration of the values of legality,** and, as discussed above, **that pressure then played a critical role in the litigation’s outcome, which in turn affected the political pressure for reform. T**here is, to be sure, something paradoxical about this assessment. The rule of law, the separation of powers, and human rights are designed to discipline and constrain politics, out of a concern that pure majoritarian politics, focused on the short term, is likely to discount the long-term values of these principles. Yet without a critical mass of political support for these legal principles, they are unlikely to be effective checks on abuse, for many of the reasons Posner andVermeule identify. **The answer, however, is not to abandon the rule of law for politics, but to develop and nurture a political culture that values the rule of law itself.** **Civil society organizations devoted to such values**, **such as Human Rights Watch, the Center for Constitutional Rights, and the American Civil Liberties Union, play a central role in facilitating, informing, and generating that politics**. Indeed, **they have no alternative.** Unlike governmental institutions, civil society groups have no formal authority to impose the limits of law themselves. Their recourse to the law’s limits is necessarily indirect: they can file lawsuits seeking judicial enforcement, lobby Congress for statutory reform or other legislative responses, or seek to influence the executive branch. **But they necessarily and simultaneously pursue these goals through political avenues – by appealing to the public for support, educating the public, exposing abuses, and engaging in public advocacy around rule-of-law values**. Unlike ordinary politics, which tends to focus on the preferences of the moment, **the politics of the rule of law is committed to a set of long-term principles.** **Civil society organizations are uniquely situated to bring these long-term interests to bear on the public debate.** Much like a constitution itself, civil society groups are institutionally designed to emphasize and reinforce our long-term interests. When the ordinary political process is consumed by the heat of a crisis, organizations like the ACLU, Human Rights First, and the Center for Constitutional Rights, designed to protect the rule of law, are therefore especially important. While Congress and the courts were at best compromised and at worst complicit in the abuses of the post-9/11 period, civil society performed admirably. The Center for Constitutional Rights brought the first lawsuit seeking habeas review at Guantanamo, and went on to coordinate a nationwide network of volunteer attorneys who represented Guantanamo habeas petitioners. The ACLU filed important lawsuits challenging secrecy and government excesses, and succeeded in disclosing many details about the government’s illegal interrogation program. Both the ACLU and CCR filed lawsuits and engaged in public advocacy on behalf of torture and rendition victims, and challenging warrantless wiretapping. Human Rights Watch and Human Rights First wrote important reports on detention, torture, and Guantanamo, and Human Rights First organized former military generals and admirals to speak out in defense of humanitarian law and human rights. These efforts are but a small subset of the broader activities of civil society, at home and abroad, that helped to bring to public attention the Bush administration’s most questionable initiatives, and to portray the initiatives as contrary to the rule of law. At their best, civil society organizations help forge a politics of the rule of law, in which **there is a symbiotic relationship between politics and law**: **the appeal to law informs a particular politics, and that politics reinforces the law’s appeal, in a mutually reinforcing relation**. **Posner and Vermeule understand the importance of politics as a checking force in the modern world, but fail to see the critical qualification that the politics must be organized around a commitment to fundamental principles of liberty, equality, due process, and the separation of powers** – in short, the rule of law. Margulies and Metcalf recognize that politics as much as law determines the reality of rights protections, but fail to identify the unique role that civil society organizations play in that process**. It is not that the “rule of politics” has replaced the “rule of law,” but that, properly understood, a politics of law is a critical supplement to the rule of law.** We cannot survive as a constitutional democracy true to our principles without both. And our survival turns, not only on a vibrant constitution, but on a vibrant civil society dedicated to reinforcing and defending constitutional values.

#### 12. Can’t result in the aff – 1AC Babcock says legal checks are key – political action is insufficient

### Deference Defense 2AC

#### The President can still do what he wants during emergencies – it’s a question of review years later

Jinks & Katyal 7 -- \*Assistant Professor of Law, University of Texas School of Law AND\*\* Professor of Law, Georgetown University Law Center (Derek and Neal Kumar, 2007, "Disregarding Foreign Relations Law," Yale Law Journal 116 p. 1230, SSRN)

One common objection to our line of thinking is that the President must enjoy substantial discretion to respond to the sort of crises that might arise in the foreign relations realm.93 This is certainly an important point, but it should not be overstated. **No serious person contends that the President’s powers in an emergency are the same as in a nonemergency**. The question Posner and Sunstein are addressing, we take it, is simply how courts should view presidential decisions (typically, years later). For example, if a court received a temporary restraining order request in the midst of a true emergency when Congress could not plausibly respond, of course deference to the President would be appropriate unless the claims being made by the executive were thoroughly outlandish. The rest of the time—the more than 99.9%—the President’s ability to respond in an emergency is beside the point. As long as courts are not enjoining executive action (**an exceptionally rare event**), the President should be able to take the action he deems necessary in a crisis and face the consequences in the courts later. That approach **permits the President to act quickly** but does not bestow on him a blank check to disregard law in the executive-constraining zone. After all, much of the law in question is expressly designed to condition the exercise of executive power in times of national crisis. For example, international humanitarian law regulates the treatment of captured enemy fighters and civilians in times of war.94 The Uniform Code of Military Justice regulates the administration of military courts—a matter that routinely, if not always, implicates national security—and it does so even during wartime.95 The War Crimes Act of 1996 criminalizes violations of various treaty provisions that are only applicable in times of war.96 When the object of the law in question is to regulate the government’s response to national security challenges, **the bare fact of a crisis does not provide a convincing rationale for greater deference**. The rationale instead has to center on the raw ability of Congress to act. When Congress can act, and can respond to erroneous court decisions that restrict the President’s power, the case for deference is not significantly enhanced by pointing to a “crisis.”

#### **Doesn’t hurt readiness- will still be able to respond to crisis**

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."

#### Judges can handle genuine secrets discreetly

Yakamoto 5 (Eric, Prof of Law @ Harvard, Law and Contemporary Problems, V. 68, Spring)

In this light, the fourth task is for the court to carefully and openly scrutinize executive actions with dual goals in mind: to afford the executive broad leeway in most of its effort to protect the nation's people, and simultaneously to call the executive to account publicly for apparent transgressions. And, as Judge Doumars observed in *Hamdi* and as the Second Circuit echoed in *Padilla*, when those transgressions curtail fundamental liberties under the possibly false mantle of national security, the call for an accounting requires the executive to proffer bona fide evidence of the danger posed by those targeted and the appropriateness of the government's restrictions. **Genuine secrets**, of course, **can be handled discreetly** -- for example, through in-camera review and under seal. But an executive's bald claims of "confidentiality" or "security risk" should not trigger a hands-off judicial posture.

#### We control the internal link – middle east oil dependency tanks readiness

#### Judicial deference justifies military medical and bioweapons research

Parasidis 12 (Efthimios, Assistant Professor of Law, Center for Health Law Studies, Saint Louis University School of Law, 2012, "Justice and Beneficence in Military Medicine and Research" Ohio State Law School, Lexis)

The military has long nurtured a culture and identity that is fundamentally distinct from civil society, n522 and the U.S. government has a history of bending [\*792] and breaking the law during times of war. n523 While the military has traditionally enjoyed great deference from civilian courts in the United States, n524 military discipline and national security interests should not grant government officials carte blanche to violate fundamental human rights. n525 To the contrary, Congress and the courts should work to ensure that military and intelligence agencies remain subordinate to the democratic rule of law. n526 The motto of the American military physician is "to conserve the fighting force," yet the last decade has seen a notable shift in emphasis to enhancing the fighting force through novel applications of biomedical enhancements. n527 The nefarious conduct of military officials during the course of the mustard gas, radiation, biological warfare, and psychotropic drug experiments provides ample evidence of the "lies and half-truths" that the DoD has utilized in the name of national security. n528 Indeed, the Army Inspector General has acknowledged the "inadequacy of the Army's institutional memory" regarding experimental research. n529 When one considers socio-economic dimensions of the armed forces, this history of neglect has served to further societal inequalities. n530 As a judge on the Sixth Circuit, and former Commander in Chief [\*793] of the Ohio National Guard explains, "in a democracy we have far more to fear from the lack of military accountability than from the lack of military discipline or aggressiveness." n531

#### That risks bioweapons use—theft, arms racing, tradeoff

H. Patricia Hynes, retired Professor, Environmental Health, Boston University, “Biological Weapons: Bargaining with the Devil,” TRUTHOUT, 8—18—11, http://www.truth-out.org/news/item/2693:biological-weapons-bargaining-with-the-devil

The bullish climate of the "war on terrorism" set off a massive flow of federal funding for research on live, virulent bioweapons' organisms (also referred to as biodefense, bioterrorism and biosafety organisms) to federal, university and private laboratories in rural, suburban and urban areas. Among the federal agencies building or expanding biodefense laboratories are the Departments of Defense (DoD), Homeland Security, State and Agriculture; the Environmental Protection Agency; and the National Institutes of Health (NIH). A new network, comprised of two large national biowarfare laboratories at BU and University of Texas, Galveston medical centers, more than a dozen small regional laboratories and ten Regional Centers of Excellence for Biodefense and Emerging Infectious Diseases Research, was designed for funding by the National Institute for Allergy and Infectious Diseases, a division of NIH. The validation offered by the federal health research agency for ramped-up biological warfare research is the dual use of the research results: "better vaccines, diagnostics and therapeutics against bioterrorist agents but also for coping with naturally occurring disease." Today, in dozens of newly sprung laboratories, research on the most lethal bacteria and viruses with no known cure is being conducted in an atmosphere of secrecy, with hand-picked internal review boards and little, if any, public oversight or accountability. Fort Detrick, Maryland, a longstanding military base and major government research facility, is the site of the largest biodefense lab being built in the United States. Here, biowarfare pathogens will be created, including new genetically engineered viruses and bacteria, in order to simulate potential bioweapons attacks by terrorist groups. Novel, lethal organisms and methods of delivery in biowarfare will be tested, all rationalized by the national security need to study them and develop a figurative bioshield against them. In fact, Fort Detrick's research agenda - modifying and dispersing lethal and genetically modified organisms - has "unmistakable hallmarks of an offensive weapons program" ... "in essence creating new threats that we're going to have to defend ourselves against" - threats from accidents, theft of organisms and stimulus of a bioarms race.(3) Between 2002 and 2009, approximately 400 facilities and 15,000 people were handling biological weapons agents in sites throughout the country, in many cases unbeknownst to the local community. The marathon to spend nearly $60 billion since 2002 on biological weapons research has raised serious concerns for numerous scientists and informed public critics. Among these are: runaway biodefense research without an assessment of biowarfare threat and the need for this research; (See the Sunshine Project web site for the most comprehensive map of biodefense research sites through 2008 in the United States ) militarization of biological research and the risk of provoking a biological arms race; neglect of vital public health research as a tradeoff for enhanced biodefense research; lack of standardized safety and security procedures for high-risk laboratories; increased risk of accident and intentional release of lethal organisms with the proliferation of facilities and researchers in residential communities; lack of transparency and citizen participation in the decision-making process; and vulnerability of environmental justice (i.e., low income and minority) communities to being selected for the location of these high-risk facilities. Is this federal research agenda "the biological equivalent of our misadventure in Iraq?" An expert on biological weapons at the University of California Davis, Mark Wheelis, contends that a "mass-casualty bioterrorist attack" is unlikely and that "plastering the country" with bioweapons laboratories leaves the country with a weakened public health research infrastructure and, thus, less secure. The Government Accounting Office (GAO) and many others have drawn the same conclusion. In May 2009, a study of security in DoD biodefense laboratories determined that the security systems of high biocontainment laboratories cannot protect against theft of bioweapons agents. Soon after, a Washington Post story revealed that an inventory of potentially deadly pathogens at the government's premier bioweapons research laboratory at Fort Detrick, Maryland, uncovered that more than 9,000 vials were missing. In testimony to a House Committee hearing on the proliferation of bioweapons laboratories, Nancy Kingsbury of the GAO revealed that expansion of bioweapons laboratories has been "so uncoordinated that no federal agency knows how many exist"; nor, she added, is there any sense among federal agencies of how many are needed, of their operational safety and of the cumulative risks they pose to the public. Keith Rhodes, the GAO's chief technologist, testified in the same October 2007 Congressional hearing "'we are at greater risk today' of an infectious disease epidemic because of the great increase in biolaboratories and the absence of oversight they receive." As many have gravely observed, the biodefense build-up means a huge number of people has access to extremely lethal material.

#### Bioweapons cause extinction

Anders **Sandberg** et al., James Martin Research Fellow, Future of Humanity Institute, Oxford University, "How Can We Reduce the Risk of Human Extinction?" BULLETIN OF THE ATOMIC SCIENTISTS, 9-9-**08**, http://www.thebulletin.org/web-edition/features/how-can-we-reduce-the-risk-of-human-extinction, accessed 5-2-10.

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

### Bond Thumper 2AC

#### Court will rule for Bond – thumps the DA

Severino 11/5/13 (Carrie, National Review, "Re: Oral Argument in Bond v. United States," http://www.nationalreview.com/bench-memos/363155/re-oral-argument-bond-v-united-states-carrie-severino)

This morning the Supreme Court held oral arguments in Bond v. US, in what looked to be yet another uphill argument for the federal government.¶ Today’s arguments didn’t garner the coverage in the media that some of the “sexier” issues have this term, and had a surprisingly short line for both public and Supreme Court Bar seats. But the collection of international-law scholars present and even the rare visit by retired justice Sandra Day O’Connor hinted at its real significance.¶ The case, which Ed previewed here, and in which my organization filed an amicus brief, deals with the scope of the treaty power, or rather, whether Congress’ power to enact laws can be expanded by the ratification of a treaty.¶ The government claims that Congress may make laws to effect non-self-executing treaties regardless of whether it had independent Article I power to enact those laws. Lawyers for Ms. Bond, defendant in the case, claim that the federal government cannot make laws normally within the state police powers without some specific nexus to proper federal interests, and a treaty doesn’t get you out of that requirement.¶ The issues may seem arcane, but the importance of vigilantly maintaining the constitutional limits on government power cannot be overstated. Large portions of the argument focused on the difficulty in drawing a line to maintain any limits on government power if the administration’s argument were to prevail.¶ The absurd consequences of the government’s position are front and center in the case at hand, in which a woman who was trying to poison her husband’s mistress was prosecuted under a law implementing a chemical-weapons treaty. Justices Kennedy and Alito each mentioned how bizarre it was that the government made a federal case out of what was literally a domestic dispute. Justice Alito also pointed out the the law’s terms were broad enough to encompass him handing out Halloween candy because chocolate is a toxic chemical, at least to dogs, and Justice Breyer noted that the terms of the law would seem to criminalize actions long assumed to be purely the subject of state law, such as arson and poisoning.¶ The lineup after today’s argument seems to be against the federal government, with only Justices Kagan, Sotomayor, and Ginsburg defending a broad interpretation of the treaty power. The three female justices claimed the text of the statute at issue simply mirrored the language in a valid chemical-weapons treaty, and questioned how the treaty could be valid while the statute not. (Paul Clement, arguing for Ms. Bond, along with Justice Scalia, pushed back against the suggestion that the language was identical.). Justice Kagan seemed to be the strongest supporter of the position held by her successor, Solicitor General Verilli, and the government. She attacked Bond on an number of fronts, arguing that the case is equivalent to Missouri v. Holland, the one major precedent in this area of law that concluded almost offhand that if a treaty were valid, it’s enacting legislation would be. She also pushed it onto conservatives’ own turf to argue that the original understanding of the treaty power was broad, citing debates among the Framers as to whether or not to include subject-matter limitations on treaties. (They ultimately chose not to.)¶ The biggest pushback against the government came from the justices’ concern that the government’s position was without any real limit. That seemed to be Justice Breyer’s major concern, and he repeatedly returned to the problem of allowing a treaty passed by the president and the Senate to expand constitutional power. He suggested several possible ways to limit the government’s interpretation, either by limiting the range of chemicals covered by domestic legislation to those listed in the treaty itself, or by reading the treaty only to authorize legislation about “warlike” use of chemicals. But each time, the solicitor general resisted a limitation to the government’s authority, even suggesting that the court would seriously undermine our foreign relations if it did anything else.

### Greece Thumper 2AC

#### Town of Greece decks the DA – overturns precedent and highly controversial

Hudson Nov 13 (David, Contributor @ ABA Journal, "Another Look at '10 Tortured Words': The establishment clause is still a contentious battle among the justices," 99 A.B.A.J. 15, lexis)

The establishment clause arguably has generated more controversy than any other phrase in the First Amendment--or perhaps even in the rest of the Bill of Rights. As a result, the U.S. Supreme Court's church-state jurisprudence is labyrinthine and complex. In 2011, Justice Clarence Thomas bluntly declared establishment clause law to be "in shambles." Designed to provide a degree of separation between church and state, the clause has generated a litany of 5-4 or 6-3 Supreme Court decisions since the late 1940s.¶ Nevertheless, the Supreme Court once again will wade into the rocky waters of the establishment clause Nov. 6 when it hears oral arguments in Town of Greece v. Galloway. The court will determine whether a New York town's practice of having prayer before town board meetings violates the establishment clause. For years the town of Greece, near Rochester, began town meetings with a moment of silence. But in 1999, the town began offering clergy-led prayer. The clergy were almost always of the Christian faith.¶ Two town residents, Susan Galloway and Linda Stephens, complained to town officials about the practice in September 2007. The town continued the prayer practice but expanded the range of prayer givers to include a Wiccan priestess, a chairman of the local Baha'i congregation and a lay Jewish man. But the vast majority of the prayers were Christian.¶ Galloway and Stephens sued in federal district court in February 2008, contending the prayer practice affiliated the town with Christianity and promoted sectarian beliefs. A federal district court dismissed the plaintiffs' claims in August 2010, writing that "the town's willingness to rotate the prayer opportunity amongst various denominations, each with their own particular beliefs, belies any attempt to proselytize or advance any one, or to disparage any other, faith or belief."¶ However, in May 2012 a three-judge panel of the 2nd U.S. Circuit Court of Appeals at New York City unanimously reversed the decision. "We conclude, on the record before us, that the town's practice must be viewed as an endorsement of a particular religious viewpoint," wrote Appellate Judge Guido Calabresi for the panel. "We conclude that an objective, reasonable observer would believe that the town's prayer practice had the effect of affiliating the town with Christianity."¶ ¶ NEW GROUND FOR SOME¶ Town of Greece represents the first opportunity for several justices to address an establishment clause case. Neither Chief Justice John G. Roberts Jr. nor Justices Elena Kagan, Sonia Sotomayor or Samuel A. Alito Jr. were on the court for the last major establishment clause cases, Van Orden v. Perry and McCreary County v. ACLU. Those cases, on displaying the Ten Commandments on municipal grounds, were decided in 2005.¶ "It is hard to anticipate the breakdown of the court's ruling since many members of the current court have not had a chance to opine on an establishment clause case involving something like legislative prayer," says Luke Goodrich, deputy general counsel for the conservative Becket Fund for Religious Liberty.¶ The case relies on the Supreme Court's 1983 decision in Marsh v. Chambers, in which the high court upheld the Nebraska legislature's policy of beginning legislative sessions with chaplain-led prayer. "The opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country," wrote Chief Justice Warren Burger for the majority.¶ "This is a very different factual situation than Marsh, where it was one minister delivering nonsectarian prayers," says First Amendment expert Erwin Chemerinsky, dean of the University of California at Irvine School of Law. "Here, the town invited ministers who routinely gave prayers that were explicitly Christian. Marsh does not permit this; I always read Marsh as permitting nonsectarian prayers. That is not this case. Virtually every prayer had been delivered by a Christian minister, and the prayers usually had an explicit Christian content."¶ Jeremy Learning, director of communications at the progressive American Constitution Society, agrees with Chemerinsky's assessment. "The town of Greece's policy on prayer at its public meetings was carried out in a way that clearly was all about Christian prayer," he says. "Judge Calabresi noted there was nothing neutral about the town officials' preference for invocations--they were all practically Christian."¶ Instead of Marsh, respondents Galloway and Stephens would prefer to use a different establishment clause test, such as the endorsement test, which asks whether a reasonable observer familiar with the history of the town board's prayer practice would view the town as impermissibly endorsing Christianity.¶ However, other experts view the case much differently. "The 2nd Circuit in this case seemed clearly hostile to the idea of legislative prayer," says Goodrich of the Becket Fund, which filed an amicus brief in support of the town. "The court's decision did not provide clear guidance for towns and cities. If the Supreme Court adopted a rationale like the 2nd Circuit, it would be very damaging to religious freedom."¶ Another key question is what the word affiliate means in Calabresi's statement that prayer practice affiliates the town with Christianity, says John W. Whitehead, founder and president of the Rutherford Institute, a Charlottesville, Va.-based group that provides legal services in the defense of religious and civil liberties and that also filed an amicus brief in support of the town. "I agree that the government should not promote a particular religion, but the facts in this case do not indicate that occurred."¶ He adds, "I think there is a good chance that the U.S. Supreme Court will rule in favor of the town in this case unless the justices just reverse precedent. If the court follows Marsh, the town's practice will be upheld."¶ ¶ BIG CHANGE POSSIBLE¶ The court could also speak more broadly and shape its establishment clause jurisprudence quite differently.¶ "I think that there are five votes on the current court to change the law of the establishment clause," Chemerinsky says. "Town of Greece and its amici are using this case as the vehicle for urging the court to do so. I am very concerned that there are five votes to shift to the 'coercion test'--that the government violates the establishment clause only if it coerces religious participation."¶ Goodrich hopes the court will use the case as a vehicle to expand the role of history and tradition in establishment clause cases, rather than use it as a test that asks whether a reasonable observer would find that a town endorsed or affiliated itself with a particular religion.¶ At the founding, he says, establishment of religion consisted of whether the government would financially support the church, control its doctrine and personnel, coerce religious beliefs and practices, and assign its important civil functions.¶ "Because legislative prayer does not fall within any of these categories, it is not an establishment of religion," Goodrich says. "By basing its decision on the historical meaning of the establishment clause, rather than the endorsement test, the Supreme Court would place its church-state jurisprudence on much firmer legal grounds, and would give badly needed guidance to the lower courts."¶ But Leaming of the American Constitution Society wonders why the Supreme Court decided to hear this case. "Was it to uphold Judge Calabresi's decision on a New York town's prayer policy or slightly tweak it? I would guess not. I think instead you may have a chief justice who sees enough votes to change federal court precedent on prayer or religious activity in the public square."¶ He adds that "the Roberts court is a radically right-wing court and has shown little concern with tossing precedent aside in numerous areas, such as First Amendment jurisprudence. So at the end of the day, I think we are looking at a disappointment for those who support a sound separation between government and religion. It could be a decision that redefines neutrality or at least broadens it a bit, to find other types of religious expression in the public square, and in particular at government functions, to be innocuous expressions or nods to majority whims or tastes."

Chemerinsky = Dean @ UC-Irvine School of Law

### 2AC Link N/U

#### Obama is already spending PC on ending indefinite detention – state of the union

Gerstein 1/28 [,Josh. White House reporter for POLITICO, specializing in legal and national security issues. “State of the Union Guantanamo Bay Prison” January 28, 2014. http://www.politico.com/story/2014/01/state-of-the-union-guantanamo-bay-prison-102765.html

President Barack Obama used his State of the Union address Tuesday to put new urgency behind his drive to close the Guantanamo Bay prison, raising the issue before a joint session of Congress for the first time in nearly five years. “With the Afghan war ending, this needs to be the year Congress lifts the remaining restrictions on detainee transfers and we close the prison at Guantanamo Bay – because we counter terrorism not just through intelligence and military action, but by remaining true to our Constitutional ideals, and setting an example for the rest of the world,” Obama was to say, according to his prepared remarks. His high-profile mention of the issue was notable not just because he did not bring up the issue during his four previous State of the Union addresses, but because any discussion of the subject is a reminder of one of the most obvious broken promises of Obama’s early presidency: his vow to close the prison within his first year in office. “Guantanamo will be closed no later than one year from now,” Obama declared as he signed an executive order in the Oval Office on the subject on the first full day of his presidency. Obama never made that one-year pledge in front of Congress, but did speak in his February 2009 speech there — one not considered a State of the Union — of having ordered the closing of the prison. The president announced the plan to close the prison in a year confidently and with little controversy, but essentially abandoned it after lawmakers put up resistance to bringing detainees to the U.S and White House aides decided to focus on other priorities like health care reform and the sluggish economy. During his first term, Obama grudgingly signed a series of bills containing language making it virtually impossible to move detainees from Guantanamo to the U.S. and making it difficult to transfer detainees to other countries without extraordinary confidence they would not later engage in terrorism. This essentially stalled the closure process. However, late last year, Congress passed a defense bill that slightly eased the transfer restrictions. The effort to shrink Gitmo’s ranks has also gained a small amount of momentum in recent months, with eight prisoners sent home or elsewhere abroad since August. Obama’s comments Tuesday were in line with those of some legal scholars, who’ve argued that the legal basis for holding the men at Guantanamo will erode or disappear after the U.S. is no longer involved in active combat in Afghanistan —something the president has pledged to bring to an end this year. Courts have upheld the detentions at Guantanamo under the Authorization for Use of Military Force passed by Congress three days after the Sept. 11, 2001, terrorist attacks. That resolution refers to the “nations, organizations, or persons he determines planned, authorized, committed, or aided” those strikes.

### 2AC Iran Sanctions

**Zero risk of Israeli strike on Iran -**this impact is a huge joke – any evidence to the contrary is based on Israel fearmongering in order to increase pressure on the US

**Rubin, ‘12** – professor at the Interdisciplinary Center in Herzliya, Israel, the Director of the Global Research and International Affairs (GLORIA) Center, and a Senior Fellow at the International Policy Institute for Counterterrorism (Barry, “[Israel Isn’t Going to Attack Iran and Neither Will the United States](http://pjmedia.com/barryrubin/2012/01/26/israel-is-not-about-to-attack-iran-and-neither-is-the-united-states-get-used-to-it/).” http://pjmedia.com/barryrubin/2012/01/26/israel-is-not-about-to-attack-iran-and-neither-is-the-united-states-get-used-to-it/)

The radio superhero The Shadow had the power to “cloud men’s minds.” But nothing clouds men’s minds like anything that has to do with Jews or Israel. This year’s variation on that theme is the idea that Israel is about to attack Iran. Such a claim repeatedly appears in the media. Some have criticized Israel for attacking Iran and turning the Middle East into a cauldron of turmoil (not as if the region needs any help in that department) despite the fact that it hasn’t even happened. On the surface, of course, there is apparent evidence for such a thesis. Israel has talked about attacking Iran and one can make a case for such an operation. Yet any serious consideration of this scenario — based on actual research and real analysis rather than what the uninformed assemble in their own heads or Israeli leaders sending a message to create a situation where an attack isn’t necessary — is this: It isn’t going to happen. Indeed, the main leak from the Israeli government, by an ex-intelligence official who hates Prime Minister Benjamin Netanyahu, has been that the Israeli government already decided not to attack Iran. He says that he worries this might change in the future but there’s no hint that this has happened or will happen. Defense Minister Ehud Barak has publicly denied plans for an imminent attack as have other senior government officials. Of course, one might joke that the fact that Israeli leaders talk about attacking Iran is the biggest proof that they aren’t about to do it. But Israel, like other countries, should be subject to rational analysis. Articles written by others are being spun as saying Israel is going to attack when that’s not what they are saying. I stand by my analysis and before December 31 we will see who was right. I’m not at all worried about stating very clearly that Israel is not going to go to war with Iran. So why are Israelis talking about a potential attack on Iran’s nuclear facilities? Because that’s a good way – indeed, the only way Israel has — to pressure Western countries to work harder on the issue, to increase sanctions and diplomatic efforts. If one believes that somehow pushing Tehran into slowing down or stopping its nuclear weapons drive is the only alternative to war, that greatly concentrates policymakers’ minds. Personally, I don’t participate — consciously or as an instrument — in disinformation campaigns, even if they are for a good cause. Regarding [Ronen Bergman’s article in the New York Times](http://www.nytimes.com/2012/01/29/magazine/will-israel-attack-iran.html?pagewanted=all), I think the answer is simple: Israeli leaders are not announcing that they are about to attack Iran. They are sending a message that the United States and Europe should act more decisively so that Israel does not feel the need to attack Iran in the future. That is a debate that can be held but it does not deal with a different issue: Is Israel about to attack Iran? The answer is “no.”

#### Even if - Obama will bypass Congress

Tobin 1/21 -- Senior Online Editor of Commentary magazine (Johnathan S., 2014, "Will Obama Bypass Congress on Iran?" http://www.commentarymagazine.com/2014/01/21/will-obama-bypass-congress-on-iran-sanctions/)

But the current uphill struggle by a majority of the Senate to ensure that the end of the current talks doesn’t lead to a collapse of the sanctions **may be only a sideshow** to the real fight over Iran that lies ahead in 2014. As the Washington Free Beacon reports, the administration is **thinking ahead** to the next step in the debate over Iran and exploring the possibility of lifting sanctions without congressional approval. Congressional insiders say that the White House is worried Congress will exert oversight of the deal and demand tougher nuclear restrictions on Tehran in exchange for sanctions relief. Top White House aides have been “talking about ways to do that [lift sanctions] without Congress and we have no idea yet what that means,” said one senior congressional aide who works on sanctions. “They’re looking for a way to **lift them by** fiat, overrule U.S. law, drive over the sanctions, and **declare that they are lifted**.” Although only Congress has the power to revoke the sanctions it has enacted, this is **not a far-fetched scenario**. It is entirely possible that the president may wish to end sanctions on his own.

That could come as the result of a nuclear deal that failed to satisfy those who rightly worry about the possibility of an agreement that left Iran with its nuclear infrastructure intact. Or it might be part of a further effort to appease Tehran by scaling back sanctions in order to entice it to sign a deal. And the president believes he can achieve these ends by **executive action** that would come dangerously close to unconstitutional behavior, but for which Congress might have no remedy. The key to any unilateral action by the president on sanctions is effective enforcement. It has long been understood by insiders that the U.S. government has only selectively enforced the existing sanctions on Iran. In 2010, the New York Times reported that more than 10,000 exemptions had already been granted by the Treasury Department to companies wishing to transact business with Iran. Since then there have been worries that the administration has been slow to open new cases by which suspicious economic activity with Iran could be proscribed. As the Washington Institute for Near East Policy noted in a paper published in November 2013, **the president can legitimize a policy of non-enforcement by the granting of waivers that could effectively gut any and all sanctions enacted by Congress**. The only effective check on such a decision would be the political firestorm that would inevitably follow a relaxation of the sanctions that would be accurately viewed as a craven offering to the ayatollahs and also an affront to both Congress and America’s Middle East allies such as Israel and Saudi Arabia that rightly fear a nuclear Iran. The administration has already made clear on other contentious issues, such as the application of immigration law, that it will **only enforce laws with which it agrees**. This is clearly unconstitutional, but as we have already seen with the president’s unilateral actions on immigration, Congress cannot prevent him from doing what he likes in these matters. The same might be true on Iran sanctions, especially if he is prepared to double down on inflammatory arguments falsely labeling sanctions proponents as warmongers. Having begun the process of loosening sanctions on Iran with the interim deal signed in November and seemingly intent on promoting a new détente with Tehran, it requires no great leap of imagination to envision the next step in this process. Unless the president produces a deal that truly ends the Iranian nuclear threat—something that would require the dismantling of Iran’s facilities and ensuring it could not possibly continue enriching uranium or building plutonium plants—a confrontation with Congress is likely. In that event, it appears probable that the president will choose to run roughshod over the will of Congress and the rule of law.

#### PC is low

Antle 1/30

[James, National Interest, Obama's Big Ideas Problem, 1/30/14, <http://nationalinterest.org/commentary/obamas-big-ideas-problem-9788>]

Obama may not have said anything as over the top as “Axis of Evil,” but the American people are tuning him out just as quickly as they did Bush—outside the respective parties’ adoring base voters. What’s left is just a defense of what’s come before. “More than 9 million Americans have signed up for private health insurance or Medicaid coverage—9 million,” Obama said. “And here's another number: zero. Because of this law, no American, none, zero, can ever again be dropped or denied coverage for a pre-existing condition like asthma or back pain or cancer.” In all that Obamacare bean-counting, the president did not separate the Medicaid enrollments from private insurance sign-ups. He did not quantify how many people who chose a plan through the exchanges have actually paid. He did not acknowledge that, at the beginning of the year, more people received cancellation notices than enrolled in new private plans. And he did not point out how many of the 9 million represent a dent in the previously uninsured population versus churn from old plans to new Obamacare-compliant ones. “Now, I do not expect to convince my Republican friends on the merits of this law,” Obama quipped, before asking the GOP to avoid “another forty-something votes to repeal a law that's already helping millions of Americans.” Vulnerable Senate Democrats up for reelection this year, like Arkansas’ Mark Pryor and Louisiana’s Mary Landrieu, might welcome a chance to cast forty-something repeal votes before November. And note the president’s Republican friend who went unmentioned. Tom Coburn has been in the news this week for two reasons. One is that the Oklahoma senator, who is battling prostate cancer, says he lost coverage for his oncologist due to the new law. The second is that he joined with two other Republican senators to introduce a detailed Obamacare alternative. Both facts were ignored in the president’s speech. Obamacare has consumed Obama’s presidency. Health care reform and the nearly $1 trillion stimulus package depleted much of his political capital before his first term was even up. It certainly **sapped the Democratic congressional leadership’s willingness to expose their members to risk.** So the president got the healthcare bill he wanted, or at least a Mitt Romney-like version he could live with. Since then it’s been sequestration and a top Clinton tax rate that ensnares fewer high earners than when Bill Clinton was president. Maybe Obama should have stuck to school uniforms.

#### Minimum wage thumps

Kaplan 1/29

[Rebecca, CBS News, Obama kicks off State of the Union action with minimum wage push, 1/29/14, <http://www.cbsnews.com/news/obama-kicks-off-state-of-the-union-action-with-minimum-wage-push/>]

President Obama used the first stop on his post-2014 State of the Union tour to press Congress to “give America a raise” by increasing the minimum wage. Against the backdrop of Costco, the wholesale retailer where Mr. Obama said wages start at $11.50 an hour, Mr. Obama urged states and companies to follow their lead to improve productivity and sales because workers will have more to spend. “It will give more businesses more customers with more money to spend…everybody does better,” the president said. Mr. Obama has promised to pay special attention to income inequality and limited upward mobility this year, **starting with issues like increasing the minimum wage that enjoy broad popular support**. A CBS News poll conducted last week found that more than seven in 10 Americans favor raising the minimum wage from $7.25 to $10.10 per hour, the target figure in legislation from Sen. Tom Harkin, D-Iowa, and Rep. George Miller, D-Calif., that Mr. Obama is supporting. On Tuesday, the president announced he would raise the minimum wage for new federal contract workers to $10.10 per hour. It was a move that quickly drew criticism from Republicans, both for the **brash display of executive power** and because many say that such a move will push businesses to cut jobs.

#### Negotiations will inevitably fail – nonprolif experts agree

Christian Science Monitor 12/18/13 ("Senators, defying White House, push a new Iran sanctions bill," http://www.csmonitor.com/USA/Foreign-Policy/2013/1219/Senators-defying-White-House-push-a-new-Iran-sanctions-bill)

Success in those negotiations was always considered a long shot by some nuclear proliferation experts who think it will be difficult to reconcile Iran’s nuclear demands with the bottom-line requirements of the international community. But new US sanctions just as talks on a final deal really get going seem likely to make a long shot that much less reachable.

#### Aff allows Obama to shift blame onto the court

Whittington 5 (Keith E., Cromwell Professor of Politics – Princeton University, ““Interpose Your Friendly Hand”: Political Supports for the Exercise of Judicial Review by the United States Supreme Court”, American Political Science Review, 99(4), November, p. 585, 591-592)

Political leaders in such a situation will have reason to support or, at minimum, tolerate the active exercise of judicial review. In the American context, the presidency is a particularly useful site for locating such behavior. The Constitution gives the president a powerful role in selecting and speaking to federal judges. As national party leaders, presidents and presidential candidates are both conscious of the fragmented nature of American political parties and sensitive to policy goals that will not be shared by all of the president’s putative partisan allies in Congress. We would expect political support for judicial review to make itself apparent in any of four fields of activity: (1) in the selection of “activist” judges, (2) in the encouragement of specific judicial action consistent with the political needs of coalition leaders, (3) in the congenial reception of judicial action after it has been taken, and (4) in the public expression of generalized support for judicial supremacy in the articulation of constitutional commitments. Although it might sometimes be the case that judges and elected officials act in more-or-less explicit concert to shift the politically appropriate decisions into the judicial arena for resolution, it is also the case that judges might act independently of elected officials but nonetheless in ways that elected officials find congenial to their own interests and are willing and able to accommodate. Although Attorney General Richard Olney and perhaps President Grover Cleveland thought the 1894 federal income tax was politically unwise and socially unjust, they did not necessarily therefore think judicial intervention was appropriate in the case considered in more detail later (Eggert 1974, 101– 14). If a majority of the justices and Cleveland-allies in and around the administration had more serious doubts about the constitutionality of the tax, however, the White House would hardly feel aggrieved. We should be equally interested in how judges might exploit the political space open to them to render controversial decisions and in how elected officials might anticipate the utility of future acts of judicial review to their own interests.

[CONTINUES]

There are some issues that politicians cannot easily handle. For individual legislators, their constituents may be sharply divided on a given issue or overwhelmingly hostile to a policy that the legislator would nonetheless like to see adopted. Party leaders, including presidents and legislative leaders, must similarly sometimes manage deeply divided or cross-pressured coalitions. When faced with such issues, elected officials may actively seek to turn over controversial political questions to the courts so as to circumvent a paralyzed legislature and avoid the political fallout that would come with taking direct action themselves. As Mark Graber (1993) has detailed in cases such as slavery and abortion, elected officials may prefer judicial resolution of disruptive political issues to direct legislative action, especially when the courts are believed to be sympathetic to the politician’s own substantive preferences but even when the attitude of the courts is uncertain or unfavorable (see also, Lovell 2003). Even when politicians do not invite judicial intervention, strategically minded courts will take into account not only the policy preferences of well-positioned policymakers but also the willingness of those potential policymakers to act if doing so means that they must assume responsibility for policy outcomes. For cross-pressured politicians and coalition leaders, shifting blame for controversial decisions to the Court and obscuring their own relationship to those decisions may preserve electoral support and coalition unity without threatening active judicial review (Arnold 1990; Fiorina 1986; Weaver 1986). The conditions for the exercise of judicial review may be relatively favorable when judicial invalidations of legislative policy can be managed to the electoral benefit of most legislators. In the cases considered previously, fractious coalitions produced legislation that presidents and party leaders deplored but were unwilling to block. Divisions within the governing coalition can also prevent legislative action that political leaders want taken, as illustrated in the following case.

#### Deal is impossible- Reid won’t bring it to a vote and no support

Johnson 1/29

[Luke, Huffington Post, Senate Democrats Back Off Iran Sanctions Vote, 1/29/14, <http://www.huffingtonpost.com/2014/01/29/senate-democrats-iran-vote_n_4688110.html>]

A controversial Iran sanctions bill is losing steam in the Senate, where at least three of its own Democratic cosponsors are warning that pushing the legislation now could thwart delicate international negotiations. "Now is not the time for a vote on the Iran sanctions bill," Sen. Chris Coons (D-Del.) said at a Wednesday event hosted by Politico. Coons said he still supports the measure, which would increase sanctions on Iran unless its government agrees to restrictions on its programs that go far beyond the demands of any of the countries involved in the talks. But he acknowledged that moving the bill now would interfere with a deal in place between Iran and six world powers, including the United States. Under that six-month deal, Iran has agreed to scale back its uranium enrichment in exchange for sanctions relief. Iranian leaders have already warned that congressional action involving new sanctions would sink the current deal, which would leave the U.S. with few options for resolving concerns with Iran other than going to war. "I think, to the extent that we simply excite the distance and the tension between the Congress and administration on this, that doesn't serve our shared view of making certain that Iran does not acquire a nuclear weapons capability," Coons said. Sen. Kirsten Gillibrand (D-N.Y.), a cosponsor of the sanctions bill, said in a statement to HuffPost on Wednesday, “After speaking with the President, I am comfortable giving him the additional time requested before this bill goes to the floor." Sen. Joe Manchin (D-W.Va.) echoed those sentiments Tuesday night. "I did not sign it with the intention that it would ever be voted upon or used upon while we were negotiating," Manchin said on MSNBC. "I signed it because I wanted to make sure the president had a hammer if he needed it and showed them how determined we were to do it and use it if we had to." He added that it’s better to "give peace a chance." The shifts signal a slowing in momentum for the bill among Democrats, who have faced a full-court press from a number of top administration officials, including President Barack Obama and Secretary of State John Kerry. During Tuesday night’s State of the Union address, Obama vowed to veto the bill if it landed on his desk and urged Congress to let international talks play out. It’s already clear that Congress is reluctant to proceed on the issue. Senate Majority Leader Harry Reid (D-Nev.) has signaled an **unwillingness to bring the sanctions bill to a vote**, and in the House, party leaders have been meeting privately for weeks to figure out how to proceed. Talk in that chamber has centered on the possibility of voting on a non-binding resolution that would allow lawmakers to lay out their preferred endgame in Iran negotiations.

#### Plan’s announced in June

The Hill 13 (6/9, Staffwriter Sam Baker “Decision on gay marriage highlights Supreme Court’s term” <http://thehill.com/homenews/news/304225-decision-on-gay-marriage-highlights-supreme-courts-summer-term#ixzz2gJR8Vkpt>)

The marriage rulings will likely be the last ones released before the justices leave town for summer vacations and teaching positions, although the specific timing is hard to predict. The court doesn’t announce when specific decisions are coming, or even set a fixed end date by which all decisions will be released. But the last rulings, which are usually the most controversial, tend to come out at the end of June. (The court’s ruling on ObamaCare, for example, was released June 28.)

#### No link – the plan is a form of stealth overruling that avoids public scrutiny

Friedman 10 (Barry, Prof of Law @ NYU, "The Wages of Stealth Overruling (With Particular

Attention to Miranda v. Arizona), http://georgetownlawjournal.org/files/pdf/99-1/Friedman.pdf)

There is one quite persuasive—perhaps even obvious—explanation that remains for why Justices engage in stealth overruling: avoiding the publicity¶ attendant explicit overruling.185Although public opinion is not often given as a¶ basis for the Court’s decisions, it has played a role with regard to stare decisis.¶ As we have seen, part of the concern about overruling in constitutional cases is¶ the way the public will perceive the decision, especially if it appears fueled by¶ little else but a membership change on the Court.186 This point was poignantly¶ made in Planned Parenthood of Southeastern Pennsylvania v. Casey.¶ 187 The¶ joint opinion of Justices Kennedy, O’Connor, and Souter dwelt in somewhat¶ agonized terms with the crisis of legitimacy the Court would experience if it¶ overruled Roe; they concluded that a “terrible price would be paid for overruling.”188 Although the analysis was somewhat muddled, the conclusion was¶ almost certainly correct. Casey was a case of extremely high salience, and the¶ Justices had seen ample evidence of the uproar that would attend a decision to¶ overrule Roe v. Wade.¶ 185. See Peters,supra note 8, at 1090 (noting public scrutiny provides an “incentive for the Court to¶ overrule precedents it believes to be wrong without being seen to do so”).¶ 186. See supra note 142 and accompanying text.¶ 187. 505 U.S. 833 (1992).¶ 188. Id. at 864; see also Moragne v. States Marine Lines, Inc., 398 U.S. 375, 403 (1970) (favoring¶ respect for precedent given “the necessity of maintaining public faith in the judiciary as a source of¶ impersonal and reasoned judgments”).

#### Not intrinsic – no reason a logical decision maker couldn’t do both

#### Iran won’t agree – won’t budge on enrichment

Peng, 11/15 (Fu, “ Iran says "no chance of success" for nuclear talks if rights not recognized” <http://news.xinhuanet.com/english/world/2013-11/15/c_132891995.htm>)

TEHRAN, Nov. 15 (Xinhua) -- **Iranian foreign minister said** **Friday that if his country's nuclear rights are not recognized in the nuclear talks, there would be no chance of success for the negotiations**, semi-official Mehr news agency reported. "Any agreement which does not satisfy Iran and does not recognize Iran's (nuclear) rights and is not based on mutual respect, has no chance for success," Foreign Minister Maohammad- Javad Zarif was quoted as saying. Officials from Iran and the P5+1 group, namely Britain, China, France, Russia and the United States plus Germany, will resume negotiations over Iran's disputed nuclear program in Geneva on Nov. 20 after an initial round of talks ended last week without an agreement. **Iran insists on uranium enrichment activities on its soil, while the West and Israel push for a halt to them and oxidation or shipment of its high-grade stockpile of enriched uranium abroad.**

#### No internal link – no risk of Iranian breakout proliferation – they lack the capability and cash

Lambers 14 (William Lambers, graduate of the College of Mount St. Joseph in Ohio, writer for The Huffington Post, “Nuclear Peace Emerging in the Middle East,” 1-2-14, http://www.huffingtonpost.com/william-lambers/nuclear-peace-middle-east\_b\_4485847.html)

Last year ended with some momentum toward ending the standoff over Iran's nuclear program. If a comprehensive agreement can be forged this year, it will be a major step toward freeing the world of the costly and dangerous burden of nuclear weapons. Iran has suffered from sanctions for failing to live up to obligations under the Nuclear Non-Proliferation Treaty. A report from the International Federation of Human Rights stated the consequences for the Iranian people: "Unemployment is on the rise, inflation is at unprecedented levels and most people have to combine several jobs because the minimum wage is insufficient to counterbalance inflation. Iran's population is experiencing an increasing income gap between rich and poor." Iran cannot afford to be diverting precious resources to the pursuit of nuclear weapons. As President Obama said, "Iran must know that security and prosperity will never come through the pursuit of nuclear weapons -- it must be reached through fully verifiable agreements that make Iran's pursuit of nuclear weapons impossible."

#### PC not Key

AP 13 (Associated Press, “Top Democrat presses Obama on Iran sanctions,” 12-28-13,

http://www.tehrantimes.com/politics/113124-top-democrat-presses-obama-on-iran-sanctions-)

TEHRAN – U.S. President Barack Obama faced mounting bipartisan pressure on Friday to drop his resistance to an Iran sanctions bill after Tehran announced that it is building a new generation of centrifuges to enrich uranium, Fox News reported. One of the president's top Democratic allies is leading the charge for Congress to pass sanctions legislation, despite the president's pleas to stand down. Senate Foreign Relations Committee Chairman Bob Menendez, D-N.J., told Fox News that the "Iranians are showing their true intentions" with their latest announcement. "If you're talking about producing more advanced centrifuges that are only used to enrich uranium at a quicker rate... the only purposes of that and the only reason you won't give us access to [a military research facility] is because you're really not thinking about nuclear power for domestic energy -- you're thinking about nuclear power for nuclear weapons," he claimed. Menendez was reacting after Iran's nuclear chief Ali Akbar Salehi said late on Thursday that the country is building a new generation of centrifuges for uranium enrichment. He said the system still needs further tests before the centrifuges can be mass produced. Iran, as part of a six-month nuclear deal with the U.S. and other world powers, agreed not to bring new centrifuges into operation during that period. But the deal does not stop it from developing centrifuges that are still in the testing phase. On Friday, the Embassy of Israel in Washington released a statement reiterating their call for Iran to halt enrichment and remove the infrastructure behind it. Menendez said he, like the president, wants to test the opportunity for diplomacy. "The difference is that we want to be ready should that diplomacy not succeed," the senator said. "It's getting Congress showing a strong hand with Iranians at the same time that the administration is seeking negotiation with them. I think that that's the best of all worlds." Obama would not appear to agree. At his year-end news conference, the president tried to push back on those advocating new legislation by insisting the tentative deal with Iran has teeth. "Precisely because there are verification provisions in place, we will have more insight into Iran's nuclear program over the next six months than we have previously," Obama said. "We'll know if they are violating the terms of the agreement. They're not allowed to accelerate their stockpile of enriched uranium." Obama argues that Congress could step in at any time to approve new sanctions if Iran violates the terms of the agreement. Further, he argues that legislation at this stage could imperil the hard-fought Geneva deal. But sponsors of the legislation in the Senate, which would only trigger sanctions if Iran violates the interim deal or lets it expire without a long-term accord, say the legislation would do just the opposite -- put added pressure on Iran to rein in its nuclear program. A total of 47 co-sponsors are now behind the legislation introduced by Menendez and Sen. Mark Kirk, R-Ill. Supporters are hoping to reach a 67-member, veto-proof majority. U.S. State Department spokeswoman Marie Harf said Friday that all parties will be resuming negotiations after the holidays. She added, "It's important to remember what's at stake if Iran does not choose the path this diplomatic process lays out for them.”

#### Talks will fail – Iran subverts diplomatic efforts

Abrams 14( Elliot, Senior Fellow for Middle Eastern Studies at the Council on Foreign Relations, “Iran Continues Subversion Despite the Nuclear Negotiations,” 1-3-14,

<http://blogs.cfr.org/abrams/2014/01/03/iran-continues-subversion-despite-the-nuclear-negotiations/>)

The Obama administration is fighting strongly to prevent Congress from adopting new sanctions legislation that would go into effect one year from now if, and only if, the nuclear negotiations fail or Iran cheats on its commitments. It seems that adopting such legislation would anger the Iranian regime, and would be contrary to the spirit of the talks. Or something like that. But while we are told to walk on eggshells lest we offend the delicate Iranians, they continue to subvert their neighbors. Not for them this idea that, because there are talks, they should stop shipping arms. Syria is the obvious case, but now we have a new one: Bahrain. This week Bahraini authorities discovered “plastic explosives, detonators, bombs, automatic rifles and ammunition” which “were found in a warehouse and onboard a boat intercepted as it was heading to the country.” To be more precise, Gulf News reported that Iranian-made explosives, Syrian bomb detonators, Kalashnikovs, C-4 explosives, Claymores, hand grenades, a PK machine gun, circuit boards for use in bomb making, armour-piercing explosives, TNT and a raft of other materials used to manufacture bombs were discovered. Is this just propaganda from the Government of Bahrain? No; I’ve checked with US authorities and these reports are accurate. This is of course very worrying for Bahrain; an Iranian campaign of subversion and terrorism could turn the tiny country into a war zone. I’ve written on this site many times about the need for progress in negotiations between the royal family and the majority-Shia population (most recently here), but obviously the Iranian subversion is not an effort to promote peace and democracy in Bahrain. It is among other things an effort to tell the Gulf Arab states that Iran can make their lives miserable if they continue to oppose its policies. It is striking that at the very moment when the Obama administration is pleading with Congress to be very careful in its behavior, the Iranian regime has no fears and no hesitation to engage in this subversion. They must have calculated that the Obama administration is so committed to these nuclear talks, and so committed to the “Rouhani narrative” –that Rouhani is a moderate and we must help him succeed– that nothing they do will affect administration policy. Sadly, and dangerously, they appear to be right. Not these arms shipments to Bahrain, nor shipments early last year to Yemen, nor the famous plot to blow up the Saudi ambassador in a restaurant in Washington, D.C. have had the slightest impact on administration policy. This helps explain why the Arabs are so nervous: they see the United States hell-bent on a nuclear deal and willing to ignore everything else the Iranian regime is doing. It’s an analogue to Obama policy in Syria, where we have embraced a deal on chemical weapons that leaves Assad free to murder as many people as he likes as long as he does not use that one method. For a couple of years after the protests began in Bahrain, Iran limited itself to broadcasting nasty material in Arabic, and did not try to subvert the country. U.S. officials repeatedly told me we simply had no evidence of armed subversion. Well, now we do. What will the American reaction be? Nothing– you see, this is a delicate moment and we don’t want to upset the nuclear talks. One can only imagine the satisfied laughter such a position causes in Tehran. And the fear it engenders in capitals like Manama, Riyadh, and Abu Dhabi.

#### Vote no – plan’s been introduced so backlash is inevitable

#### Proliferation does not escalate to war. It de-escalates conflicts

**Tepperman**, 9/7/**2009** (John - journalist based in New York Cuty, Why obama should learn to love the bomb, Newsweek, p.lexis)

**A growing and compelling body of research** suggests that nuclear weapons may not, in fact, make the world more dangerous, as Obama and most people assume. The bomb may actually make us safer. In this era of rogue states and transnational terrorists, that idea sounds so obviously wrongheaded that few politicians or policymakers are willing to entertain it. But that's a mistake. Knowing the truth about nukes would have a profound impact on government policy. Obama's idealistic campaign, so out of character for a pragmatic administration, may be unlikely to get far (past presidents have tried and failed). But it's not even clear he should make the effort. There are more important measures the U.S. government can and should take to make the real world safer, and these mustn't be ignored in the name of a dreamy ideal (a nuke-free planet) that's both unrealistic and possibly undesirable. The argument that nuclear weapons can be agents of peace as well as destruction rests on two deceptively simple observations. First, nuclear weapons have not been used since 1945. Second, there's never been a nuclear, or even a nonnuclear, war between two states that possess them. Just stop for a second and think about that: it's hard to overstate how remarkable it is, especially given the singular viciousness of the 20th century. As Kenneth Waltz, the leading "nuclear optimist" and a professor emeritus of political science at UC Berkeley puts it, "We now have 64 years of experience since Hiroshima. It's striking and against all historical precedent that for that substantial period, there has not been any war among nuclear states." To understand why--and why the next 64 years are likely to play out the same way--you need to start by recognizing that all states are **rational on some basic level**. Their leaders may be stupid, petty, venal, even evil, but they tend to do things only when they're **pretty sure they can get away with them**. Take war: a country will start a fight only when it's almost certain it can get what it wants at an acceptable price. **Not even Hitler or Saddam** waged wars they didn't think they could win. The problem historically has been that leaders often make the **wrong gamble and underestimate** the other side--and millions of innocents pay the price. Nuclear weapons change all that by making the costs of war **obvious**, inevitable, **and unacceptable**. Suddenly, when both sides have the ability to turn the other to ashes with the push of a button--and everybody knows it--the basic math shifts. Even the **craziest tin-pot dictator** is forced to accept that war with a nuclear state is **unwinnable** and thus not worth the effort. As Waltz puts it, "**Why fight if you can't win and might lose everything**?" Why indeed? The iron logic of deterrence and mutually assured destruction is so compelling, it's led to what's known as the nuclear peace: the virtually unprecedented stretch since the end of World War II in which all the world's major powers have avoided coming to blows. They did fight proxy wars, ranging from Korea to Vietnam to Angola to Latin America. But these never matched the furious destruction of full-on, great-power war (World War II alone was responsible for some 50 million to 70 million deaths). And since the end of the Cold War, such bloodshed has declined precipitously. Meanwhile, the nuclear powers have scrupulously avoided direct combat, and there's very good reason to think they always will. There have been some near misses, but a close look at these cases is fundamentally reassuring--because in each instance, very different **leaders all came to the same safe conclusion**. Take the mother of all nuclear standoffs: the Cuban missile crisis. For 13 days in October 1962, the United States and the Soviet Union each threatened the other with destruction. But both countries soon stepped back from the brink when they recognized that a war would have **meant curtains** for everyone. As important as the fact that they did is the reason why: Soviet leader Nikita Khrushchev's aide Fyodor Burlatsky said later on, "It is impossible to win a nuclear war, and both sides realized that, maybe for the first time." The record since then shows the same pattern repeating: nuclear-armed enemies slide toward war, **then pull back**, always for the same reasons. The best recent example is India and Pakistan, which fought three bloody wars after independence before acquiring their own nukes in 1998. Getting their hands on weapons of mass destruction didn't do anything to lessen their animosity. But it did **dramatically mellow their behavior**. Since acquiring atomic weapons, the two sides have never fought another war, **despite severe provocations** (like Pakistani-based terrorist attacks on India in 2001 and 2008). They have skirmished once. But during that flare-up, in Kashmir in 1999, both countries were careful to keep the fighting limited and to avoid threatening the other's vital interests. Sumit Ganguly, an Indiana University professor and coauthor of the forthcoming India, Pakistan, and the Bomb, has found that on both sides, officials' thinking was strikingly similar to that of the Russians and Americans in 1962. The prospect of war brought Delhi and Islamabad face to face with a nuclear holocaust, and leaders in each country did what they had to do to avoid it.

#### Huge controversial decisions coming now – abortion, establishment clause, campaign finance, aff action

Eastman 10/5/13 (John, professor and former dean at Chapman University's Dale E. Fowler School of Law, "Controversy again on docket for Supreme Court," http://www.latimes.com/opinion/commentary/la-oe-eastman-supreme-court-preview-20131006,0,5689006.story)

The Supreme Court convenes for its new term Monday, the first Monday in October. It is hard to imagine how the coming term could possibly compare with the highly contentious and high-profile decisions of the last two: Obamacare in 2012, and the same-sex marriage cases this June. Yet there are several cases among the 52 already on the court's docket that have landmark potential and will certainly be contentious, covering subjects such as abortion, campaign finance, legislative prayer and affirmative action. The court seems increasingly to be at the center of every national controversy.¶ On the second day of oral argument, for example, the court will consider in McCutcheon vs. FEC the constitutionality of aggregate donation caps on political donors. This is somewhat of a follow-on case to Citizens United, so all of the controversy still swirling around that case is likely to be repeated here.¶ Federal law limits contributions to candidates to $2,500, which the Supreme Court has previously upheld because of the important governmental interest in preventing quid-pro-quo corruption, but it also imposes an aggregate cap of $46,500 on total donations to all candidates, which does not further that interest at all (or at most only marginally). The aggregate cap simply prevents a donor from providing maximum $2,500 contributions to 20 or more candidates. The goal seems to be to lessen the political speech of wealthy donors, a "level-the-playing-field" purpose that has been repeatedly rejected by the Supreme Court, and rightly so; the 1st Amendment does not allow government to restrict the speech of some to enhance the relative weight of others' speech.¶ Two abortion cases may make this one of the most significant terms for the issue in decades. One, Cline vs. Oklahoma Center for Reproductive Justice, challenges Oklahoma's law requiring that abortion-inducing drugs be administered only according to the guidelines on FDA-approved labels. That case is on hold pending a request to the Oklahoma Supreme Court about the proper interpretation of the Oklahoma law.¶ Another, Horne vs. Isaacson, was filed last week. It asks the court to review the U.S. 9th Circuit Court of Appeals' decision holding unconstitutional Arizona's decision to regulate non-emergency abortions after 20 weeks because of legislative findings that a fetus feels pain by that point in a pregnancy. If the court accepts the case, we'll have oral argument in the spring and perhaps a dramatic abortion decision by June; the petition asks the court to revisit Roe vs. Wade, if existing precedent does not permit a state to protect against fetal pain.¶ The establishment clause is also again on the docket. Town of Greece vs. Galloway explores whether an invocation before a city council meeting that mentioned Jesus Christ violates the church/state separation. The Supreme Court has previously upheld legislative prayer but cautioned against prayer that proselytizes. The lower court in this case found that the mere mention of the name of Jesus Christ crossed that ephemeral line, contrary to a long historical tradition. The Supreme Court is poised to make significant revision of its establishment clause jurisprudence, which has become increasingly hostile to religion in recent years. This case provides a suitable vehicle to start moving away from that hostility, and the notorious case that engendered the hostility, Lemon vs. Kurtzman, may be on the chopping block. One can only hope.¶ And after the somewhat stillborn decision last term in the University of Texas affirmative action case, Schuette vs. Coalition to Defend Affirmative Action will give the court another opportunity to confront race-based admissions, albeit from the other side of the coin. After a University of Michigan Law School race-based admissions plan was upheld a decade ago as barely constitutional, voters in Michigan decided to ban the use of race in admissions altogether. The Coalition to Defend Affirmative Action By Any Means Necessary — its name reveals a lot about its tactics — contended that the state's requirement that every student be treated equally without regard to skin color violated the Constitution's requirement that everyone be treated equally. The 6th Circuit agreed with that "impeccable" logic, and it is now up to the Supreme Court to restore some semblance of sanity to its equal protection jurisprudence.

# 1AR

### 1AR Mayerfield extension

#### They’ve conceded that indefinite detention is a form of torture – that’s Mayerfield - also that we must work within the law to prevent future institutionalized torture

#### Indefinite detention is a form of torture – it rises to the level of cruel, degrading treatment that produces feelings of absolute despair and powerlessness

Goering 13 (Curt, executive director of the Center for Victims of Torture, "End indefinite detention now," http://thehill.com/blogs/congress-blog/homeland-security/313761-end-indefinite-detention-now)

Indefinite detention is an unlawful practice that rises to the level of cruel, inhuman and degrading treatment in direct violation of U.S. laws and our obligations under international laws, including the UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, signed by the United States 25 years ago during President Reagan’s final year in office.¶ Placing prisoners in custody indefinitely without charge or trial has absolutely no place in our laws. As Sen. Patrick Leahy (D-Vt.) said during the hearing, “Countries that champion the rule of law and human rights do not lock away prisoners indefinitely without charge or trial.”¶ We oppose indefinite detention on behalf of torture survivors, because among those we care for are survivors who have suffered while being imprisoned without charge or trial and without being told when, if ever, they might be released.¶ From our experience healing survivors of torture and war related atrocities, we know indefinite detention causes severe, prolonged and harmful health and mental health problems for those imprisoned. Our intensive work with individual torture survivors, combined with medical literature that documents the damaging physical and psychological effects of indefinite detention, causes us to oppose this practice. For example, research by Physicians for Human Rights has found that the effects of indefinite detention include depression and suicide; Post Traumatic Stress Disorder; and damage to the body’s immune, cardiovascular and central nervous systems.¶ Many of the survivors we serve who were imprisoned without trial or charge speak of the absolute despair they felt, never knowing if their detention would come to an end. CVT clinicians who work with survivors of torture that have been indefinitely detained tell us that with no defined end, survivors feel there is no guarantee there will ever be an end. This creates severe, chronic emotional distress: hopelessness, debilitation, uncertainty, and powerlessness. The hunger strike among the detainees at Guantanamo underscores the despair among prisoners facing indefinite detention. Hunger strikes are a form of expression by individuals who have no other way of making their demands known.

**Torture dehumanizes victim and torturer alike – Only finding ways to publically expose and repair the social harms created by torture can break the cycle of vengeance that threatens to collapse the social order – turns your V2L impacts**

**Chanbonpin 11** (Kim, Assistant Professor of Law at John Marshall Law School, “"We Don't Want Dollars, Just Change": Narrative Counter-Terrorism Strategy, an Inclusive Model for Social Healing, and the Truth About Torture Commission”, 6 Nw. J. L. and Soc. Pol'y 1, Winter, L/N)

Torture by government (even on non-citizens) represents a breach of social and legal norms that injures not only individuals, but society as a whole. Torture, almost by definition, requires the dehumanization of all parties involved. n21 When a person is tortured, he is **robbed of his very humanity**. As Professors J. Jeremy Wisnewski and R.D. Emerick assert: "The very thing that constitutes us--the fact that we are agents capable of exercising our autonomy in the world--is what we are deprived of when we are subjected to torture." n22 A torture victim's psychic and physical associations with the social world around him are disrupted by the abuse and, once broken, those bonds are nearly irreparable. n23 Nor does the torturer escape from the experience unharmed. To be successful at his task, the agent of torture has been desensitized to violence and cruelty. n24 [\*7] The torturer must adopt the fiction that his victim has ceased to be worthy of humane treatment and dignity. n25 This fantasy wreaks havoc on basic epistemological notions of humanity shared by people as social beings. n26 As former United Nations Secretary-General Kofi Annan has observed, "Torture is an atrocious violation of human dignity. It dehumanizes both the victim and the perpetrator." n27 Therefore, both the tortured and the torturers require some repair, some healing, some renewal of their humanity. Furthermore, the U.S. public has also been adversely impacted by the government's torture policies. As targets of the terrorist attacks on September 11, 2001, as witnesses of the photos of detainee abuse at Abu Ghraib, as readers of the series of Office of Legal Counsel (OLC) memos (collectively, the Torture Memos) authorizing torturous interrogation methods, the U.S. body politic is also in need of repair and healing. The aim of the redress project I propose in this Article, then, is to seek out ways to publicly repair those social harms.

This Article posits that the post-9/11 torture program has--in addition to individual and corporeal wounds--created social wounds. Radiating beyond the particular injuries suffered by individual victims of torture is a broader social trauma. The violation of domestic and international laws prohibiting torture represents a breach of social and legal norms that has injured society as a whole. Other scholars have described the special dangers associated with injuries wrought by widespread, systematic human rights abuses. For one, when government is responsible for transgressing its own laws, it is deeply unsettling because it demonstrates government's potential to deviate from the established social order again in the future. In addition, violent abuses such as torture tend to create and perpetuate a continuing cycle of vengeance and retribution. n28 The project of social healing, then, is to break that cycle and find ways to publicly repair social harms

#### Even if our attempts to eliminate torture fail, speaking out against it still reorients us in a moral way – our ethics matter

Bangert 5 (Bryon Bangert, Research Associate at the Poynter Center for the Study of Ethics and American Institutions and Ph.D. in Religious Ethics from Indiana University, “The Tortured Logic of Torture,” June 20, <http://www.bloomington.in.us/~bbangert/torture.pdf>)

Precisely because torture is generally practiced in secret**,** shuttered from public scrutiny in all kinds of ways, we must ask whether it is beyond the reach of legal and moral constraint.Does it do any good to be morally opposed to torture? Can we hope someday to prevent the practice in fact as well as in law? Or must we, to the contrary, contemplate a future in which rogue terrorists or other enemies of the state are bound to present us someday with a real, live, ticking bomb scenario, the likes of which will require that our military and intelligence forces have honed their skills at interrogatory torture to the nth degree if some unimaginable catastrophe is to be avoided? Must a very calculated discretion become the unspoken part of official U.S. policy 69 regarding torture? That is to say, is Bowden right that we must publicly condemn torture as immoral, but wisely and discreetly continue to practice it when circumstances demand**?** ¶ It should be transparent by now that I want to answer this question in the negative, but also that I do not want to appear the fool. Human beings are capable of enormous evil. One dare not be sanguine about the efficacy of moral prohibitions against violence, terrorism, or torture. But one must also wonder whether the fearful effort to save ourselves from the rogue terrorist and [their] ticking bomb, poison gas, or deadly virus, does not threaten an even greater terror. It is wishful thinking to believe that, in a free and open democratic society, it will ever be possible completely to insure our safety against the worst designs of the most determined terrorist. But we run the risk of destroying all that really matters most in civilization by sanctionging inhumane measures to save it from destruction at the hands of others. Can we really believe that a free, open, democratic society can flourish in tandem with a sustained, intentional, covert intelligence gathering apparatus that is prepared to torture human beings in secret, without legal sanction, without legal recourse, indefinitely, out of fear and on the chance that they may provide some information that will diminish the risks to our physical security? In a society that knowingly tolerates, despite legal sanctions, the covert, unchecked, unofficially endorsed practice of torture, **every citizen bears** some **responsibility.**

Every citizen is also a potential “detainee.”¶ How we think about torture, and what we are prepared to do about it, finally comes down to the question of the kind of world in which we want to live. It is hardly in our power to secure such a world for ourselves, but it is not beyond our power to orient ourselves one way rather than another, and to make some not insignificant gestures toward the world we want to inhabit. Even lip service is not a morally inconsequential act. It is hard to resist the influence of one’s own words, even when spoken without real conviction. To continue to speak against torture, and to continue to maintain in public and political life that torture is wrong, immoral, and never to be legally sanctioned or permitted, will have its effect on moral sensibilities. ¶ To say that torture is always wrong, and if possible to believe it, will serve as a restraint against any contrary impulses we may have to give it sanction or justification**. ¶** In short, although it is hypocrisy to condemn torture while equivocating over its meaning, as the Bush administration has done in its attempt to make some forms of torture permissible, hypocrisy in this case seems preferable to an outright defense or allowance of torture. A more morally serious consideration of torture will lead us beyond such hypocrisy. In light of the foregoing argument, to condemn torture with genuine conviction, despite not knowing whether there might be some circumstance in which that conviction could be overruled, must be regarded as a moral obligation. It is a crucial gesture toward the creation of the sort of world that must exist if human beings are not to be destroyed by turning against themselves. Torture entails self destruction, for both the tortured and the torturer. It is not only the tortured, but also the torturer, who is driven by the dynamics of the torture situation to turn against self, to act in ways that consume and destroy his or her own humanity. We must remain unequivocal in our moral objection to torture. ¶ (This evidence has been gender paraphrased).

### 1AR legalism

#### The Alt’s prioritization of politics over law encourages violence

David **COLE** Law @ Georgetown ’**12** “The Politics of the Rule of Law: The Role of Civil Society in the Surprising Resilience of Human Rights in the Decade after 9/11” http://www.law.uchicago.edu/files/files/Cole%201.12.12.pdf p. 44-49

If political pressure from civil society, rather than the force of law itself or the separation of powers, is to be credited for the partial restoration of the rule of law in the decade afterSeptember 11, then it is essential that we understand how that politics works. In my view, it is a particular politics – a politics of the rule of law – that is required. And civil society has a peculiar role to play in facilitating and propagating that politics. Thus, a robust civil society devoted to the rule of law may be as important as the more formal elements of the rule of law in checking executive abuse. At the same time, as the Guantanamo cases illustrate, there is a complex interrelationship between this type of politics and more formal legal constraints. Legal disputes form the focal point for political organizing and advocacy for claims founded on rule-of-law values, and that organizing and advocacy in turn can affect the outcomes of legal disputes.

Politics, however, is not sufficient on its own. In The Executive Unbound, Eric Posner and Adrian Vermeule maintain that a robust political process is sufficient to deter executive abuse in times of crisis. They argue that in the modern era, the rule of law cannot effectively constrain the executive, especially in emergencies, but that the executive is sufficiently limited by political checks. 82

82 Eric Posner and Adrian Vermeule, The Executive Unbound: After the Madisonian Republic (2010). At first glance the past decade seems to vindicate Posner and Vermeule’s views, as political forces were more effective at checking the president than were Congress or the judiciary. But Posner and Vermeule’s valorization of politics over law overstates the power of politics, understates the force of law, and misses the complicated and essential interplay between the two. Posner and Vermeule may be right that the law alone is not enough, but they fail to see that politics alone is at least as wanting. In the end, the rule of law and politics must work in tandem. When they do, as they arguably did to an important extent in the wake of September 11, they can mount a significant defense of basic human rights and the rule of law against executive overreaching. To Posner and Vermeule, the rule of law and the separation of powers are, for all practical purposes, defunct. In their view, the modern executive cannot possibly be constrained by the legislative and judicial branches, or even by law itself. Like many commentators before them, they attribute this development largely to the growth of the administrative state and to the near constant state of emergency in which modern American government now seems to operate. 83 As a practical matter, the vast and complex matters subject to federal regulation require Congress to cede control to the executive, through broad delegations of authority to administrative agencies. Members of Congress lack the time and experience to micromanage such diverse matters as energy, commerce, transportation, telecommunications, the environment, and immigration. And the executive vastly outnumbers the other branches; about 98 percent of the federal government’s nearly two million employees work in the executive branch. Globalization exacerbates these trends, as the president is the nation’s primary voice abroad, and increasingly addressing our own social problems requires coordination across borders. In emergencies, the executive’s characteristics of speed, flexibility, unified command, and secrecy are especially valued, so Congress tends to delegate even more broadly, and courts in turn typically defer to executive action. Under these conditions, Posner and Vermeule maintain, it’s just not feasible for the other two branches to keep effective tabs on what the executive is up to. But where other commentators view these developments as profound challenges to our constitutional order, Posner and Vermeule insist that they are of little concern because political constraints on the executive render the rule of law unnecessary. That view, however, both underestimates the constraining force of law and overestimates the extent of political limits onexecutive overreaching. Dismissing the role of law, Posner and Vermeule sweepingly claim, sounding almost like critical legal studies scholars, that law is so indeterminate and manipulable as to constitute only a “façade of legality.” 85 But in assessing law’s effect, they look almost exclusively to formal indicia – statutes and court decisions. That approach disregards the possibility that law has a disciplining function long before cases get to court, and even when no case is ever filed, a reality to which anyone who has worked in the executive branch will attest. Executive officials generally cannot know in advance whether court review will be strict or deferential, and that uncertainty itself has a deterrent effect on the choices they make. There are plenty of reasons why executive lawyers generally take legal limits seriously: they take an oath and are acculturated to do so, they know that claims of illegality can undermine their programmatic objectives, and they cannot predict when they will end up in court. Similarly, in focusing on statutes and their enforcement by courts, Posner and Vermeule disregard the considerable checking function that Congress plays through means short of formal statutes, such as by holding oversight hearings, requesting information about or investigations of doubtful executive practices, or restricting federal expenditures. President Obama, who has had to fight tooth and nail with an obstructionist Congress on his every initiative, from economic reform to health care to closing Guantanamo, would certainly be surprised to learn that his power is “unbound.” At the same time, Posner and Vermeule have an unrealistically romantic view of the constraining force of politics. The “politics” they identify consists solely of the fact that presidents must worry about election returns, and must cultivate credibility and trust among the electorate. There are several reasons to doubt that these political realities are sufficient to guard against executive overreaching. First, and most fundamentally, while the democratic process is well designed to protect the majority’s rights and interests, it is terrible at protecting the rights of minorities, and even worse at protecting the rights of foreign nationals, who have no say in the political process. In times of crisis, the executive nearly always selectively sacrifices the rights of foreign nationals, often defending its actions by claiming that “they” don’t deserve the same rights that “we” do. To say the rule of law is superfluous because we have elections is to relegate foreign nationals, and minorities generally, to largely unchecked abuse. The political process did nothing to protect the foreign nationals rounded up during the Palmer Raids of 1919, the Japanese nationals and Japanese Americans interned during World War II, or the Arab and Muslim immigrants detained and abused after September 11Second, the ability of the political process to police the executive is hampered by secrecy. Much of what the executive does, especially in times of crisis, is secret, and even when some aspects of executive action are public, its justifications often rest on grounds that are assertedly secret. Courts and Congress have at least some ability

to pierce that veil and to insist on accountability. Absent legal rights, such as those created by the Freedom of Information Act, the public has virtually no ability to do so. Third, the political process is a blunt-edged sword. Presidential elections occur only once every four years, and necessarily encompass a broad range of issues. They are therefore unlikelyto be effective at addressing specific abuses of power. Voters’ concerns about abstract institutional issues such as executive power may clash with their interests on the substantive merits of particular issues, such as whether to use military force in support of Libyan rebels. There is no guarantee that citizens will separate these issues in their minds, and no reason to believe that if they do so, they will favor abstract institutional concerns over specific policy preferences. Fourth, the political process is notoriously focused on the short term, while structural issues of separation of powers generally serve long-term values. It was precisely because ordinary politics tend to be short-sighted that the framers adopted a constitutional democracy. A constitution identifies those values that society understands as important to preserve for the long term, but knows it will be tempted to sacrifice in the short term. If ordinary politics were sufficient to protect such concerns, we would not need a constitution in the first place.

#### We must recognize the limitations of law while using it as a strategy for survival.

Ruthann Robson, Professor of Law, CUNY Law School, New York, Lesbian (Out)law, 1992, p. 89-90

Yet these legal strategies can also afford concrete improvements as we live our lives within the dominant culture. They can even make us validate our own experiences because they have been recognized by the law. Within our own communities, theories, and relationships, the implementation of equality in the form of antidiscrimination rules of law would bring out change. Gone would be the Latina Lesbian Caucus, womenonly space, sliding scales, anthologies of older lesbians. If we accepted the rule of law as the rule of lesbianism, we would not discriminate between lesbians and nonlesbians. For many of us, this is unacceptable. I am not proposing that we must either totally adopt antidiscrimination discourse into all facets of our lives, or we must totally abandon it as a legal strategy. Such a duality is a false one. We are not hypocritical, inconsistent, or contradictory if we recognize antidiscrimination as a potential strategy for legal change, yet recognize its limitations. Our desires are as complex as we are. Concepts such as equality and antidiscrimination cannot fulfill our desires. Yet we can use these legal notions to effect the type of legal change that can facilitate our survival. Our formidable task is strategizing, theorizing, and actualizing our own desires against a legal background of discrimination, all the while resisting our own domestication.

#### Appeals for institutional restrain are a crucial supplement to political resistance to executive power – any other interpretation fails

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As I have shown above, **while political forces played a significant role in checking** President **Bush**, what was significant was the particular substantive content of that politics; **it was not just any political pressure**, **but pressure to maintain** fidelity to **the rule of law**. **Politics standing alone is as likely to fuel as to deter executive abuse; consider the lynch mob, the Nazi Party** in Germany, or **xenophobia** more generally. **What we need if we are to check abuses of executive power is a politics that champions the rule of law.** Unlike the politics Posner and Vermeule imagine, **this** type of **politics cannot be segregated neatly from the law**. On the contrary, **it will often coalesce around a distinctly legal challenge, objecting to departures from distinctly legal norms**, heard in a court case, as we saw with Guantanamo. **Congress’s actions make clear that had Guantanamo been left to the political process, there would have been few if any advances**. **The litigation generated and concentrated political pressure on claims for a restoration of the values of legality,** and, as discussed above, **that pressure then played a critical role in the litigation’s outcome, which in turn affected the political pressure for reform. T**here is, to be sure, something paradoxical about this assessment. The rule of law, the separation of powers, and human rights are designed to discipline and constrain politics, out of a concern that pure majoritarian politics, focused on the short term, is likely to discount the long-term values of these principles. Yet without a critical mass of political support for these legal principles, they are unlikely to be effective checks on abuse, for many of the reasons Posner andVermeule identify. **The answer, however, is not to abandon the rule of law for politics, but to develop and nurture a political culture that values the rule of law itself.** **Civil society organizations devoted to such values**, **such as Human Rights Watch, the Center for Constitutional Rights, and the American Civil Liberties Union, play a central role in facilitating, informing, and generating that politics**. Indeed, **they have no alternative.** Unlike governmental institutions, civil society groups have no formal authority to impose the limits of law themselves. Their recourse to the law’s limits is necessarily indirect: they can file lawsuits seeking judicial enforcement, lobby Congress for statutory reform or other legislative responses, or seek to influence the executive branch. **But they necessarily and simultaneously pursue these goals through political avenues – by appealing to the public for support, educating the public, exposing abuses, and engaging in public advocacy around rule-of-law values**. Unlike ordinary politics, which tends to focus on the preferences of the moment, **the politics of the rule of law is committed to a set of long-term principles.** **Civil society organizations are uniquely situated to bring these long-term interests to bear on the public debate.** Much like a constitution itself, civil society groups are institutionally designed to emphasize and reinforce our long-term interests. When the ordinary political process is consumed by the heat of a crisis, organizations like the ACLU, Human Rights First, and the Center for Constitutional Rights, designed to protect the rule of law, are therefore especially important. While Congress and the courts were at best compromised and at worst complicit in the abuses of the post-9/11 period, civil society performed admirably. The Center for Constitutional Rights brought the first lawsuit seeking habeas review at Guantanamo, and went on to coordinate a nationwide network of volunteer attorneys who represented Guantanamo habeas petitioners. The ACLU filed important lawsuits challenging secrecy and government excesses, and succeeded in disclosing many details about the government’s illegal interrogation program. Both the ACLU and CCR filed lawsuits and engaged in public advocacy on behalf of torture and rendition victims, and challenging warrantless wiretapping. Human Rights Watch and Human Rights First wrote important reports on detention, torture, and Guantanamo, and Human Rights First organized former military generals and admirals to speak out in defense of humanitarian law and human rights. These efforts are but a small subset of the broader activities of civil society, at home and abroad, that helped to bring to public attention the Bush administration’s most questionable initiatives, and to portray the initiatives as contrary to the rule of law. At their best, civil society organizations help forge a politics of the rule of law, in which **there is a symbiotic relationship between politics and law**: **the appeal to law informs a particular politics, and that politics reinforces the law’s appeal, in a mutually reinforcing relation**. **Posner and Vermeule understand the importance of politics as a checking force in the modern world, but fail to see the critical qualification that the politics must be organized around a commitment to fundamental principles of liberty, equality, due process, and the separation of powers** – in short, the rule of law. Margulies and Metcalf recognize that politics as much as law determines the reality of rights protections, but fail to identify the unique role that civil society organizations play in that process**. It is not that the “rule of politics” has replaced the “rule of law,” but that, properly understood, a politics of law is a critical supplement to the rule of law.** We cannot survive as a constitutional democracy true to our principles without both. And our survival turns, not only on a vibrant constitution, but on a vibrant civil society dedicated to reinforcing and defending constitutional values.