## 1AC Round 5 Kentucky

### Terror

#### Indefinite detention hurts the war on terror – impedes intelligence gathering, destroys credibility, and alienates key allies

Hathaway, et al, ’13 [Oona (Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School); Samuel Adelsberg (J.D. candidate at Yale Law School); Spencer Amdur (J.D. candidate at Yale Law School); Freya Pitts (J.D. candidate at Yale Law School); Philip Levitz (J.D. from Yale Law School); and Sirine Shebaya (J.D. from Yale Law School), “The Power To Detain: Detention of Terrorism Suspects After 9/11”, The Yale Journal of International Law, Vol. 38, 2013]

The least contested bases for detention authority in any context are postconviction criminal detention and pre-verdict detention for those who pose a risk of flight. It is often assumed that such criminal detention is ill-suited to terrorists. However, with very little fanfare, federal district court dockets have been flush with terrorism cases over the past decade. Strikingly, during the first two years of Barack Obama’s presidency, the annual number of terrorism prosecutions doubled, while the conviction rate for the nearly 500 cases has stayed constant at around 90 percent. 233 One reason for this increase in prosecutions is the recognition by both the Bush and Obama Administrations that trying suspected terrorists in criminal courts has certain strategic and moral advantages in the fight against terrorism. Predictability Post-conviction detention of terrorists after prosecution in federal court provides a level of predictability that is absent in the military commission system. Federal courts have years of experience trying and convicting dangerous criminals, including international terrorists, and the rules are well established and understood. The current military commission system, on the other hand, is an untested adjudicatory regime with no established jurisprudence to guide the parties and judges.234 As discussed above, conviction rates in terrorism trials have been close to 90% since 2001, despite a huge increase in the absolute number of such prosecutions. The military commissions, by contrast, have convicted three people since 2001, and three more have pled guilty.235 Several defendants had their charges dropped,236 and others have been charged but not tried.237 Their procedures have been challenged at every stage, and it is unclear what their final form will ultimately look like. The commissions’ track record is short, and in light of their mixed results thus far, their future performance is uncertain. Furthermore, those who have been convicted by the commissions have received extremely short sentences.238 By contrast, favorable sentencing guidelines in federal terrorism trials allow the government to incapacitate dangerous individuals for long periods of time, if not for the life of the defendant.239 While it is difficult to estimate the counterfactual results were the defendants in each case to have been tried in the other system, it is clear that the military commission system is highly unproven and unpredictable compared to the federal courts.240 2. Fairness and Legitimacy Federal courts are also fairer and more legitimate fora than military commissions. The procedural protections they offer are the source of their legitimacy, and they reduce the risk of error.241 At every turn, the military commissions’ deviations from established criminal procedure has been challenged—sometimes successfully.242 Even where commission procedures are constitutional, they are not widely accepted, and are a novel judicial framework.243 Federal criminal procedure, on the other hand, is as legitimate a criminal process as we have. Both acceptance and accuracy are important to the fight against terrorism. As several successful habeas corpus petitions have demonstrated, insufficient procedural protections create a real danger of erroneous imprisonment for extended periods.244 Meanwhile, local populations are more likely to cooperate in policing when they believe they have been treated fairly.245 The understanding that a more legitimate detention regime will be a more effective one is echoed in statements from within the Department of Defense and the White House.246 3. Strategic Advantages Furthermore, our allies in the fight against terrorism also recognize and respond to the difference in legitimacy and fairness between civilian and military courts. Increased international cooperation is another advantage of criminal prosecution. Many of our key allies have been unwilling to cooperate in cases involving law of war detention or prosecution but have cooperated in criminal law prosecution. In fact, many of our extradition treaties, including those with allies such as India and Germany, forbid extradition when the defendant will not be tried in a criminal court.247 This issue has played out in practice several times. An al-Shabaab operative was recently extradited from the Netherlands only after assurances from the United States that he would be prosecuted in criminal court.248 Two similar cases arose in 2007,249 and several more are pending.250 The use of military commissions may similarly hinder other kinds of international prosecutorial cooperation, such as testimony- and evidence-sharing. Finally, the criminal justice system is simply a more agile and versatile prosecution forum. Federal jurisdiction offers an extensive variety of antiterrorism statutes that can be marshaled to prosecute terrorist activity committed outside the United States, and subsequently to detain those who are convicted.251 This greater variety of offenses—military commissions can only punish a narrow set of traditional offenses against the laws of war252 —offers prosecutors important flexibility. For instance, it might be very difficult to prove al Qaeda membership in an MCA prosecution or a law-of-war habeas proceeding; but if the defendant has received training at a terrorist camp or participated in a specific terrorist act, federal prosecutors may convict under various statutes tailored to more specific criminal behavior.253 The federal criminal system also allows for more flexible interactions between prosecutors and defendants. Proffer and plea agreements are powerful incentives for defendants to cooperate, and often lead to valuable intelligence-gathering. The legitimacy and consistency of the federal courts, discussed above, also push defendants to cooperate, which in turn produces more intelligence over the course of prosecution.254

#### Indefinite detention creates recruitment propaganda 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.

#### Terrorist organizations are gaining strength now

**Evans 13**(Andrew, quoting: Derek Chollet, assistant secretary of Defense for International Security Affairs and Michael Sheehan, assistant secretary of Defense for Special Operations/Low Intensity Conflict and Interdependent Capabilities, “Al Qaeda growing threat in Middle East, Obama officials say”, http://freebeacon.com/the-tide-of-war-is-rising/, 4/10/13)

Defense and military officials testified that al Qaeda is gaining a foothold in several areas throughout the Middle East and Northern Africa in a hearing before a subcommittee of the Senate Armed Services Committee Tuesday afternoon. The terrorist organization is seeking to exploit the upheaval in the Middle East following uprisings over the past two years that overthrew many longstanding governments across the region, testified Derek Chollet, assistant secretary of Defense for International Security Affairs. Chollet also said the administration is worried about the possibility that al Qaeda could establish strongholds in multiple countries, including Syria and Mali. When pressed by Sen. John McCain (R., Ariz.), Michael Sheehan, assistant secretary of Defense for Special Operations/Low Intensity Conflict and Interdependent Capabilities, said al Qaeda affiliates are gaining strength in Syria. Sheehan and McCain differed in their respective assessments of al Qaeda’s capacity in Libya during an acrimonious exchange. Sheehan asserted al Qaeda has “failed to demonstrate strategic capability in those new areas” such as Libya that are outside of their traditional strongholds. “I just came from Libya, Mr. Sheehan,” McCain said. “I just came from there. That is patently false. That is a false statement.” Al Qaeda remains strong in the mountains between Afghanistan and Pakistan as well as in Yemen, Sheehan said. He argued that the military has had great success in targeting and eliminating the terrorist organization’s leadership. When asked by McCain, Sheehan refused to answer whether he would support arming the Syrian opposition, saying he would rather discuss that issue in the closed session that immediately followed the open hearing. “The American people should not know how the members of our Department of Defense feel about an issue of the slaughter of 70,000 or more people, millions of refugees?” McCain asked in response. Chollet testified that the U.S. government is supplying the Syrian opposition with “non-lethal” support. He also said al Qaeda is losing the “hearts and minds” of the Syrian people. Sen. Deb Fischer (R., Neb.) expressed concern that the American military is spread too thinly across the globe, a concern that Adm. William McRaven, commander of the U.S. Special Operations Command, rejected. “I’m not sure that I think we’re spread to thin,” McRaven said, noting that on any given day the United States has special operations forces in 70 to 90 countries. Sheehan said United Nations forces, which will likely replace the French forces currently in Mali, will not be able to take on the al Qaeda affiliate there and root it out. That will be a job for other, better equipped forces, like French forces with U.S. support, Sheehan said. McCain returned to the issue of America’s policy toward Syria at the end of the hearing. “The reality on the ground is that arms and people are flowing freely all across North Africa, and many of them are coming in to Syria,” he said. “The situation continues to become more radicalized in Syria as 80,000 more people have been massacred while we sit by and watch and figure out reasons why we can’t intervene,” McCain said.

#### 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

Nathan Myhrvold '13, 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.

#### Only by ending indefinite detention, thus increasing US legitimacy and winning hearts and minds, can we win the war on terror

Spaulding 9 (Suzanne E., counsel of record, AMICI CURIAE OF FORMER NATIONAL SECURITY OFFICIALS AND COUNTERTERRORISM EXPERTS IN SUPPORT OF PETITIONER, http://www.cnss.org/data/files/DetentionDue\_Process/Enemy\_Combatants/AlMarri\_v\_Spagone\_Amicus\_Brief\_1.28.09.pdf)

Imprisonment without trial of individuals seized inside the United States promotes the false narrative of a United States engaged in a war on Islam and Muslims, which the terrorists exploit for recruitment. Seizing individuals off the streets of America, declaring them enemy combatants, and asserting the right to keep them locked up indefinitely, with no formal charges or trial, is so far outside the traditions of fundamental fairness on which this Nation was founded that it perpetuates the perception generated by al Qaeda that we have abandoned our commitment to the rule of law. We recognize that the security threat springs from the terrorists: U.S. policies and actions in no way justify the conduct of the terrorists. But the perception that the United States is failing to act in accordance with its fundamental values feeds the terrorist narrative, and thus undermines our efforts to confront the terrorist threat.12 The significance of this dynamic is now broadly understood. As Retired General Wesley Clark said in an article about this very case: [Treating al-Marri as an enemy combatant] endangers our political traditions and our commitment to liberty, and further damages America’s legitimacy in the eyes of others. . . . We train our soldiers to respect the line between combatant and civilian. Our political leaders must also respect this distinction, lest we unwittingly endanger the values for which we are fighting, and further compromise our efforts to strengthen our security. Wesley K. Clark & Kal Raustiala, Why Terrorists Aren’t Soldiers, N.Y.Times, Aug. 8, 2007, at A19. Jeffrey H. Smith, former CIA General Counsel, testified before the Senate Armed Services Committee in 2007: “In our efforts to get tough with the terrorists we have strayed from some of our fundamental principles and undermined 60 years of American leadership in the law of war. In six short years, our disregard for the rule of law has undermined our standing in the world and, with it, our ability to achieve our objectives in the broader war.” Meeting to Receive Testimony on Legal Issues Regarding Individuals Detained by the Department of Defense as Unlawful Enemy Combatants: Hearing Before the S. Comm. on Armed Services, 110th Cong. 3 (Apr. 26, 2007) (statement of Jeffrey H. Smith, Senior Partner, Arnold & Porter LLP), available at http://armedservices.senate.gov/statemnt/2007/April/Smith%2004- 26-07.pdf. One reason the United States does not face the level of homegrown terrorism threat that Europe has experienced is that immigrants are better integrated into American society. See James Fallows, Declaring Victory, The Atlantic, Sept. 2006, at 60 (“Something about the Arab and Muslim immigrants who have come to America, or about their absorption here, has made them basically similar to other well-assimilated American ethnic groups – and basically different from the estranged Muslim underclass of much of Europe.”). Working with these Muslim communities in the United States, and building trust, is one of the most promising avenues for deterring young people from extremism. See Muslim Public Affairs Council, The Impact of 9/11 on Muslim American Young People 1 (June 2007) (“The more narrow the orbit of acceptance is toward young Muslims who are traversing the various stages of adolescence toward becoming young professionals, the more likely we will begin to see serious cases of radicalization that can evolve into trends.”), available at <http://www.mpac.org/publications/youth-> paper/MPAC-Special-Report--Muslim-Youth.pdf.13 See also Stephen Magagnini, Local FBI chief rebuilds trust with Muslim leaders, Sacramento Bee, Dec. 1, 2008, available at http://www.sacbee.com/101/story/1438316.html. Policies that drive a wedge between these communities and the government or the rest of society frustrate efforts aimed at increasing trust and understanding and, instead, increase a sense of alienation. In 2008, the Department of Homeland Security issued a memorandum that reflects how seriously those with responsibility for protecting the territory and people of the United States take the battle for hearts and minds. It concludes that “Bin Laden and his followers will succeed if they convince large numbers of people that America and the West are at war with Islam and that a ‘clash of civilizations’ is inherent.” Memorandum from the U.S. Dep’t of Homeland Security, Terminology to Define the Terrorists: Recommendations from American Muslims 7 (Jan. 2008). The DHS memorandum mphasized the importance of conveying the message that “Muslims have been, and will continue to be part of the fabric of our country. . . . We must emphasize that Muslims are not ‘outsiders’ looking in, but are an integral part of America and the West.” Id. at 8. This essential message is dramatically undermined by seizing and indefinitely detaining Muslims inside the United States on the basis of an executive branch allegation that they are enemy combatants. While this policy may not expressly target Muslims, it has been applied only against Muslims, as have nearly all of the harsh policies adopted after 9/11.14 This fuels the terrorist narrative of a war on Islam. The DHS memorandum clearly explains the danger inherent in inadvertently reinforcing al Qaeda’s propaganda. “Bin Laden’s narrative presumes a war against Islam and rampant mistreatment of Muslims by the American and other Western governments. Extremist recruiters argue that Muslims should segregate from the larger society; moreover, their recruitment pitch depends on isolation.” Memorandum from the U.S. Dep’t of Homeland Security, Terminology to Define the Terrorists: Recommendations from American Muslims 8 (Jan. 2008). The terrorist seeks to undercut an individual’s sense of identity as a Muslim citizen of a state that values fair treatment and protects fundamental human rights. Policies that appear to accord Muslim suspects less than full equality under the law reinforce this dangerous and misleading message. See Islamic Extremism in Europe: Hearing Before the Subcomm. on European Affairs of the S. Foreign Relations Comm., 109th Cong. 7 (Apr. 5, 2006) (statement of Daniel Fried, Assistant Secretary of State for European Affairs), available at http://foreign.senate.gov/testimony/2006/FriedTestimony060405.pdf (“[W]e must also intensify our efforts to counter the extremist ideas that drive Islamic terrorism. . . . It . . . requires us to demonstrate through our own nation’s experience that Muslims can be patriotic, democratic, and religious at the same time.”). Senior Counterterrorism Analyst Gina Bennett, until recently the Deputy National Intelligence Officer for Transnational Threats, first highlighted the national security risk of a double standard in an intelligence assessment written back in 1993, which also provided the first serious warning about Usama Bin Laden. That assessment, titled “The Wandering Mujahidin: Armed and Dangerous,” concludes: “The growing perception by Muslims that the U.S. follows a double standard with regard to Islamic issues – particularly in Iraq, Bosnia, Algeria, and the Israelioccupied territories – heightens the possibility that Americans will become the targets of radical Muslims’ wrath. Afghan war veterans, scattered through the world, could surprise the U.S. with violence in unexpected locales.” Gina Bennett, The Wandering Mujahidin: Armed and Dangerous, Weekend Edition (U.S. Dep’t of State, Bureau of Intelligence and Research), Aug. 21-22, 1993, at 5, available at http://www.nationalsecuritymom.com/3/WanderingM ujahidin.pdf. The foresight of this analysis was tragically proven on September 11, 2001. The danger to Americans of sending a message that the United States has a double standard for Muslims can no longer be viewed as hypothetical. Nor is the impact of such messages considered hypothetical by those serving in Iraq and Afghanistan. As former Navy General Counsel Alberto Mora has testified, “there are serving U.S. flag-rank officers who maintain that the first and second identifiable causes of U.S. combat deaths in Iraq – as judged by their effectiveness in recruiting insurgent fighters into combat – are, respectively the symbols of Abu Ghraib and Guantánamo.” Hearing on the Treatment of Detainees in U.S. Custody Before the S. Comm. on Armed Services, 110th Cong. 5 (June 17, 2008) (statement of Alberta Mora, General Counsel, Dep’t of the Navy), available at http://armedservices.senate.gov/statemnt/2008/June/Mora%2006- 17-08.pdf. Again, harsh policies and actions that were directed only against Muslims fueled recruitment efforts, with direct and deadly consequences. b. Military detention of Mr. al-Marri feeds the false narrative that the terrorists are holy warriors. By treating a terrorism suspect apprehended within the United States as an “enemy combatant,” rather than as a criminal suspect, we grant the suspect the very status a terrorist seeks, a status widely honored by those to whom terrorists propound their narrative. See Memorandum from the U.S. Dep’t of Homeland Security, Terminology to Define the Terrorists: Recommendations from American Muslims 9 (Jan. 2008) (“Words matter. The terminology the [United States] uses should convey the magnitude of the threat we face, but also avoid inflating the religious bases and glamorous appeal of the extremists’ ideology. Instead, [United States’] terminology should depict the terrorists as the dangerous cult leaders they are. They have no honor, they have no dignity, and they offer no answers. While acknowledging that they have the capacity to destroy, we should constantly emphasize that they cannot build societies, and do not provide solutions to the problems people across the globe face.”). The dilemma we create for ourselves takes on particular force where, as here, military imprisonment is indefinite.15 As a military captive, the terrorism suspect is the continuing object of our own military force, and by imposing that force for an indefinite period of time, we continue to validate the terrorist narrative of the warrior and martyr. The prisoner may be regularly, if not constantly, in the public’s mind, always available as a source of inspiration. For example, a relatively insignificant Sudanese cameraman named Sami al Hajj became famous around the world by the mere fact of his long impris-onment at Guantanamo Bay as an enemy combatant. His captivity was regularly reported by al Jazeera and other Arabic news outlets, and closely followed by the more than a billion people reached by those outlets. See, e.g., Profile: Sami al-Hajj, Al Jazeera, May 2, 2008, available at http://english.aljazeera.net/news/americas/2008/05/200 861505753353325.html; Sami al-Hajj Hits Out at U.S. Captors, Al Jazeera, May 31, 2008, available at http://english.aljazeera.net/news/africa/2008/05/20086 150155542220.html. In contrast, treating the terrorism suspect seized in the United States as a criminal suspect pursuant to statutes that proscribe engagement in terrorist activity focuses the narrative on the alleged terrorist activity, rather than his status as “warrior,” thereby deconstructing the terrorist narrative. The heroism of armed conflict against the enemy becomes the cowardice of anonymous violence against innocent victims. The aspiring member of a great army, when isolated to his crime, becomes a small-minded individual. About a warrior held in a military prison an extravagant mythology may be erected; but the fellow in the dock of a public trial, forced to witness the deliberate presentation of evidence of his cowardice becomes pathetic. His narrative loses the power to inspire. Like Ramzi Yousef, Fawaz Yunis, and many others convicted of terrorist acts in U.S. courts, he may soon be forgotten. Thus, the Director of National Intelligence’s National Counterterrorism Center has urged intelligence professionals to Never use the terms “jihadist” or “mujahideen” in conversation to describe the terrorists. A mu-ahed, a holy warrior, is a positive characterization in the context of a just war. . . . Calling our enemies jihadists and their movement a global jihad unintentionally legitimizes their actions. Counterterrorism Communications Center, National Counterterrorism Center, Office of the Director of National Intelligence, Words that Work and Words that Don’t: A Guide for Counterterrorism Communication, March 14, 2008, at 2; see also Memorandum from the U.S. Dep’t of Homeland Security, Terminology to Define the Terrorists: Recommendations from American Muslims 3 (Jan. 2008) (“The consensus is that we must carefully avoid giving bin Laden and other al-Qaeda leaders the legitimacy they crave, but do not possess, by characterizing them as religious figures, or in terms that may make them seem to be noble in the eyes of some.”). General Clark has also made this point: By treating such terrorists as combatants . . . we accord them a mark of respect and dignify their acts. And we undercut our own efforts against them in the process. . . . If we are to defeat terrorists across the globe, we must do everything possible to deny legitimacy to their aims and means, and gain legitimacy for ourselves. . . . . [T]he more appropriate designation for terrorists is not “unlawful combatant” but the one long used by the United States: “criminal.” Wesley K. Clark & Kal Raustiala, Why Terrorists Aren’t Soldiers, N.Y.Times, Aug. 8, 2007, at A19. In sum, the government’s argument that national security concerns justify and require the indefinite emilitary imprisonment of Mr. al-Marri as an enemy combatant is precisely backwards. Using the paradigm of the “war on terror” and the label “enemy combatant” to justify the indefinite military detention of individuals seized inside the United States does not preserve our national security; it threatens it. Unwavering Commitment To America’s Fundamental Values Makes Our Nation Strong And Is Essential To Protect The Nation Against The Terrorist Threat. Discrediting the terrorist narrative and offering a positive alternative – i.e., a narrative of equality, justice, and commitment to the rule of law – is critical to effective counterterrorism strategy. The national security benefits of adhering to our fundamental principles are broadly understood. See Office of the Executive, National Strategy for Combating Terrorism, 2 (Feb. 2003) (The Bush Administration declared, in the 2003 National Strategy for Combating Terrorism, “We will use the power of our values to shape a free and more prosperous world. We will employ the legitimacy of our government and our cause to craft strong and agile partnerships.”); Michael German, Squaring the Error, in Law vs. War: Competing Approaches to Fighting Terrorism 11, 15-16 (Strategic Studies Institute, U.S. Army War College, 2005) (“This is a battle for legitimacy, and as such, it is one that we should easily win. As an open and free democracy regulated by the rule of law, we offer a future of peace and prosperity that the jihadist movement does not. . . . Respect for the rule of law, international conventions, and treaty obligations will not make us weaker, it will engender international cooperation and good will that make it impossible for extremist movements to prosper.”), available at http://www.strategicstudiesinstitute.army.mil/pubs/di splay.cfm?pubID=613; Dr. Kenneth Payne, Waging Communication War, Parameters: U.S. Army War College Quarterly, Summer 2008, at 37, 45 (“[E]ffective communication rests on credibility; communications that are not believed are simply hot air.”). Ultimately, the most credible voices revealing the emptiness of the terrorist narrative will be Muslim voices. However, these voices are more likely to be heard if American policies do not hand a megaphone to al Qaeda and their ilk. The reality of a United States that is willing to fairly prosecute the terrorism suspect in a public trial will diminish and discredit the terrorists’ lies and strengthen the credibility of the counter-narrative. This is how violent extremism will ultimately be defeated. In the words of President Obama, “We know that **to be truly secure, we must adhere to our values as vigilantly as we protect our safety – with no exceptions**.” President-Elect Barack Obama, Remarks at Announcement of Intelligence Team (Jan. 9, 2009). CONCLUSION The decision in this case will reinforce one of two narratives – our own or the terrorist’s – and thereby either aid or encumber the Nation’s ongoing counterterrorism efforts. The Court should reverse.

### Plan

#### The United States federal judiciary should affirm the United States District Court for the Southern District of New York's ruling against the indefinite detention provisions of the National Defense Authorization Act.

### Independent Judiciary

#### Now is the key time for judicial independence movements globally

Radio Free Europe 7/25/13 (Interview with US Supreme Court Justice Elena Kagan, "U.S. Supreme Court Justice Elena Kagan: 'There Are Always Bumps In The Road'," http://www.rferl.org/content/us-supreme-court-justice-elena-kagan-interview/25056808.html)

The nine judges of the United States Supreme Court have no armies, no police, and no budgetary authority at their disposal. But nevertheless, for more than two centuries, the court has been the undisputed watchdog of the U.S. Constitution. That role has often forced judges to stand toe-to-toe with powerful American presidents -- from Thomas Jefferson to Barack Obama -- striking down laws and executive actions that exceed their constitutional authority. ¶ How did the U.S. Supreme Court establish and preserve its independent role? And are there any lessons that can be derived from this experience for countries struggling to establish the rule of law and independent judiciaries?¶ In an exclusive interview at RFE/RL's Prague headquarters, correspondent Brian Whitmore spoke with U.S. Supreme Court Justice Elena Kagan about these issues. Prior to taking her lifetime seat on the Supreme Court in 2010, Kagan served as solicitor-general in the Obama administration and as dean of the Harvard Law School.¶ RFE/RL: Let's start with the very basics. Many of the countries RFE/RL broadcasts to are trying -- with varying degrees of success -- to develop independent judiciaries. Some say they are, but really aren't. Some are sincerely trying to, but have thus far been unsuccessful. And a rare few have been fairly successful. How did an independent judiciary really develop in the United States? What were the main bumps in the road? Are there lessons from the early years of the republic that would be useful for countries currently struggling to form independent judiciaries? Was it the brilliance of the founders, like we're taught in civics class, or did we just get lucky?¶ Elena Kagan: Well, we did get lucky. But we also had people who demonstrated enormous skill and wisdom in order to get to the point we're at now. And we're not perfect either, and there are always bumps in the road, and there's always more that can be done to establish a rule-of-law system and an independent judiciary.¶ But we had a number of factors working in our favor in the United States, and not every country has this. And so the lessons that you can draw from country to country are real, but they are limited. You can draw some lessons, but every country's experience is going to be different because every country's traditions and history is different.¶ But in the United States, even before the revolution, there was a very strong commitment to judicial systems and to the rule of law. This was part of the heritage the United States inherited from England and its common-law system. And in the revolutionary period there was a great deal of influence on some structural matters that have been integral to an independent judiciary. There was the separation of powers, so the judiciary stood separate from both the legislature and the executive. There was also a real commitment in the founding period -- the revolution and the development of our constitution -- to federalism, so it wasn't all about the national government. It was about the states; individual states had extensive powers as well. So that meant that there were real checks and balances built into our government that facilitated the development of an independent judiciary.¶ And finally, we had some very wise leaders at the start of our history. This includes someone most nonlawyers don't know about. Everybody knows about [Presidents] Thomas Jefferson and James Madison. But the person who really founded, if you will, our judicial system, founded the concept of judicial review of executive and legislative action, was a very early chief justice named John Marshall, who served as the chief justice of the United States Supreme Court for several decades (1801-1835) and who, more than any single person in the United States, managed to ensure that the courts were an important and independent player in the American governmental process.¶ RFE/RL: Can you point to some important formative experiences in the early years of U.S. history that established an independent judiciary?¶ Kagan: Well, I think that people think the most formative experience was a judicial case that started out as a very unimportant judicial case. It's called Marbury v. Madison and it was a case that John Marshall really used to establish the principle that a court could invalidate legislative or executive action if that action infringed on the constitution. That was a new and revolutionary concept.¶ Our constitution itself does not set forth a system of judicial review. There is no provision of our constitution that says the courts will have the power to invalidate executive or legislative action that violates the constitution. So John Marshall really had to create that power for himself. And he used this case of Marbury v. Madison, a case that involved whether the proper judicial commission was given to a man named Mr. Marbury by Thomas Jefferson. And John Marshall said it was not, but he did it in a very clever way that established the principle but at the same time was not too threatening to President Jefferson and, indeed, gave President Jefferson part of what he wanted. From that moment, the system of judicial review was never really questioned in American history.¶ (Editor's Note: Marbury v. Madison was a landmark ruling in 1803 that established the Supreme Court's power to overturn actions by the executive and legislative branch.)¶ RFE/RL: Did this have more to do with the American political culture or institutions?¶ Kagan: Well, culture and institutions are related. And certainly there was something in the political culture that allowed John Marshall to do what he did, which was to say that somebody has to be the supreme guardian of the constitution and that role falls to the courts. It falls to the courts to say when Congress or the executive branch -- in our case, the president -- violates the constitution.¶ You can imagine that there were many people who were not so happy about that principle, who thought that the courts had no special role in this area and that the Congress and the president were as good as the courts were in determining what did and didn't violate the constitution. Marshall said there had to be somebody who ultimately sets the rules of the road and determines when the constitution is violated, and that falls to the courts.¶ And, as I said, there have been plenty of times when actors questioned that, including heroes of American history. Abraham Lincoln was never a great fan of judicial review. But for the most part, it has stuck as an important part of our political system. In the end the courts get to say whether Congress or the president have exceeded their powers.¶ RFE/RL: So this was a pivotal moment. The history of the United States could have gone down a different path if not for Marbury v. Madison?¶ Kagan: I'm sure that is true. But at the same time, it's important to say that courts only gain respect, and their judgments are only acceded to, if they use their powers wisely. So judicial restraint is a very significant part of judicial review. Just as the courts can say when the executive or legislative branches have overstepped their powers, the courts have to ensure that they don't overstep their own powers. The system only works if the courts don't unwisely or unduly step on the prerogatives of the other players in the government.¶ RFE/RL: The problems of the judiciary in most of the countries we broadcast to are remarkably similar. I wanted to go through some of them and get you to address them. Were there ever similar issues in U.S. history? If so, how were they addressed? If not, as a legal scholar, how do you think they might be addressed? First, there is the issue of what the Russians call "telephone justice." In theory, this means that in all important cases, the judge hearing the case gets a phone call from the executive branch or its proxy spelling out how he or she is supposed to rule. How do you build an independent judiciary in societies where this is common practice?¶ Kagan: If we did [have such issues], those would have been understood as abuses of the system and violative of the rules of the system. That is the very opposite of a system founded on the rule of law, which says the way a judge decides a case, the way a court decides a case, is by virtue of legal principle, not by virtue of legal power, by who called him and said this is how we want the case to turn out.¶ The independence of a judiciary can in some sense be measured by its ability and willingness to challenge the powers that be and say they've overstepped their role and to hold them to account, not to accede to everything that the powers that be want.

#### Current deference to the executive over detention policy has downed judicial independence

McCormack 8/20/13 (Wayne, E. W. Thode Professor of Law at the University of Utah S.J. Quinney College of Law, "U.S. Judicial Independence: Victim in the “War on Terror”," https://today.law.utah.edu/projects/u-s-judicial-independence-victim-in-the-war-on-terror/)

One of the principal victims in the U.S. so-called “war on terror” has been the independence of the U.S. Judiciary. Time and again, challenges to assertedly illegal conduct on the part of government officials have been turned aside, either because of overt deference to the Government or because of special doctrines such as state secrets and standing requirements. The judiciary has virtually relinquished its valuable role in the U.S. system of judicial review. In the face of governmental claims of crisis and national security needs, the courts have refused to examine, or have examined with undue deference, the actions of government officials.¶ The U.S. Government has taken the position that inquiry by the judiciary into a variety of actions would threaten the safety of the nation. This is pressure that amounts to intimidation. When this level of pressure is mounted to create exceptions to established rules of law, it undermines due process of law. Perhaps one or two examples of Government warnings about the consequences of a judicial decision would be within the domain of legal argument. But a long pattern of threats and intimidation to depart from established law undermines judicial independence. That has been the course of the U.S. “war on terror” for over a decade now.¶ Here are some of the governmental actions that have been challenged and a brief statement of how the Courts responded to Government demands for deference.¶ 1. Guantanamo.¶ In Boumediene v. Bush,1 the Supreme Court allowed the U.S. to detain alleged “terrorists” under unstated standards to be developed by the lower courts with “deference” to Executive determinations. The intimidation exerted on the Court was reflected in Justice Scalia’s injudicious comment that the Court’s decision would “surely cause more Americans to be killed.”¶ 2. Detention and Torture¶ Khalid El-Masri2 claimed that he was detained in CIA “black sites” and tortured – case dismissed under the doctrine of “state secrets privilege.” (SSP)¶ Maher Arar3 is a Canadian citizen who was detained at Kennedy Airport by U.S. authorities, shipped off to Syria for imprisonment and mistreatment, and finally released to Canadian authorities – case dismissed under “special factors” exception to tort actions for violations of law by federal officials – awarded $1 million by Canadian authorities.¶ Jose Padilla4 was arrested deplaning at O’Hare Airport, imprisoned in the U.S. for four years without a hearing and allegedly mistreated in prison – case dismissed on grounds of “good faith” immunity.¶ Binyam Mohamed5 was subjected to “enhanced interrogation techniques” at several CIA “black sites” before being repatriated to England, which awarded him £1 million in damages – U.S. suit dismissed under SSP.¶ 1 553 U.S. 723 (2008).¶ 2 El-Masri v. United States, 479 F.3d 296 (4th Cir. 2007).¶ 3 Arar v. Ashcroft, 414 F. Supp. 2d 250 (E.D.N.Y. 2005), aff’d by 585 F.3d 559 (2009).¶ 4 Padilla v. Yoo, 678 F.3d 748 (9th Cir. 2012).¶ 5 Mohamed v. Jeppesen Dataplan, 614 F.3d 1070 (9th Cir. en banc 2010) damages – U.S. suit dismissed under SSP.¶ 3. Unlawful Detentions¶ Abdullah Al-Kidd6 arrested as a material witness, held in various jails for two weeks, and then confined to house arrest for 15 months – suit dismissed on grounds of “qualified immunity” and apparent validity of material witness warrant.¶ Ali Al-Marri was originally charged with perjury, then detained as an enemy combatant, for a total detention of four years before the Fourth Circuit finally held that he must be released or tried.7¶ Javad Iqbal8 was detained on visa violations in New York following 9/11 and claimed he was subjected to mistreatment on the basis of ethnic profiling – suit dismissed on grounds that he could not prove Attorney General authorization of illegal practices and court’s unwillingness to divert attention of officials away from national security.¶ Osama Awadallah9 was taken into custody in Los Angeles after his name and phone number were found on a gum wrapper in the car of one of the 9/11 hijackers – charged with perjury before grand jury and held as material witness – Second Circuit reversed district court ruling on abuse of the material witness statute¶ 4. Unlawful Surveillance¶ Amnesty International10 is one of numerous organizations that brought suit believing that its communications, especially with foreign clients or correspondents had been monitored by the National Security Agency – suit dismissed because the secrecy of the NSA spying program made it impossible to prove that any particular person or group had been monitored. The validity of the entire Foreign Surveillance Act (FISA) rests on the “special needs” exception to the Fourth Amendment, a conclusion that was rejected by one district court although accepted by others.¶ 5. Targeted Killing¶ Anwar Al-Awlaki (or Aulaqi)11 was reported by press accounts as having been placed on a “kill list” by President Obama – suit by his father dismissed on grounds that Anwar himself could come forward and seek access to U.S. courts – not only Anwar but his son were then killed in separate drone strikes.¶ 6. Asset Forfeiture¶ 6 Al-Kidd v. Ashcroft, 580 F.3d 949, 951-52 (9th Cir. 2009).¶ 7Al-Marri v. Wright, 487 F.3d 160 (4th Cir. 2007).¶ 8 Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009)¶ 9 United States v. Awadallah, 349 F.3d 42 (2d Cir. 2003); see also In re Grand Jury Material Witness Detention, 271 F. Supp. 2d 1266 (D. Or. 2003); In re Application of U.S. for a Material Witness Warrant, 213 F. Supp. 2d 287 (S.D. N.Y. 2002).¶ 10 Clapper v. Amnesty Int'l USA, 133 S. Ct. 1138 (2013).¶ 11 Al-Aulaqi v. Obama, 727 F. Supp. 2d 1 (D.D.C. 2010)¶ Both Al Haramain Islamic Foundation12 and KindHearts for Charitable Humanitarian Development13 have been found by the Department of Treasury to be fronts for raising money for Hamas, and their assets have been blocked – despite findings of due process violations by the lower courts, the blocking of assets has been upheld on the basis that their support for terrorist activities is public knowledge.¶ Avoiding Accountability¶ The “head in the sand” attitude of the U.S. judiciary in the past decade is a rather dismal record that does not fit the high standard for judicial independence on which the American public has come to rely. Many authors have discussed these cases from the perspective of civil rights and liberties of the individual. What I want to highlight is how undue deference to the Executive in “time of crisis” has undermined the independent role of the judiciary. Torture, executive detentions, illegal surveillance, and now killing of U.S. citizens, have all escaped judicial review under a variety of excuses.¶ To be clear, many of the people against whom these abuses have been levied are, or were, very dangerous if not evil individuals. Khalid Sheikh Muhamed and Anwar al-Aulaqi should not be allowed to roam free to kill innocent civilians. But hundreds of years of history show that there are ways of dealing with such people within the limits of restrained government without resort to the hubris and indignity of unreviewed executive discretion. The turning of blind eyes by many, albeit not all, federal judges is a chapter of this history that will weigh heavily against us in the future.¶ No judge wants to feel responsible for the deaths of innocents. But moral responsibility for death is with those who contribute to the act. Meanwhile the judge has a moral responsibility for abuses by government of which the judiciary is a part. ¶

#### Transitioning countries model US Judicial Review and Separation of Powers

Stumpf 13

[István , Justice on the Constitutional Court of Hungary, Model, Resource, or Outlier? What Effect Has the U.S. Constitution Had on the Recently Adopted Constitutions of Other Nations?, 5/29/13, <http://www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations>]

In summary, let me say that Hungary, of course, has different legal traditions from that of the United States. The American Founding could start from scratch; no continental European nation has had an opportunity to do that. In the last 20 years, Hungarian legal scholars and practitioners have developed much stronger ties with European academia—the German influence is particularly strong—but as you have seen, there is a very strong interest in the American constitutional heritage, and we **should by no means underestimate the United States Constitution as a model for other nations.** The basic notions of rule of law, separation of powers, natural law, judicial review, and human rights came to life thanks to the example of the United States in the last 225 years, which in turn has influenced the entirety of Western civilization, including Hungary. The theoretical foundations of American constitutionalism, the works of American legal scholars, and the practice of the U.S. Supreme Court are valuable resources and strong points of reference for lawyers in Hungary and all over the world. I am confident that it is for the benefit of the American academia to study from time to time how the concepts and institutions of American constitutionalism flourish or face difficulties in other countries. It is an honor for me to be here and take part in this conversation. As Hungary sets out to solidify its commitment to truths that are self-evident, to the protection of unalienable rights, to a limited but effective government, and to a renewed constitutionalism, I am convinced that we may in the future inspire one another. Let me close with this thought: There is much talk about a post-American era and American decline. As a young scholar visiting America since the 1980s, I got to know this country through road trips across the heartland as well as Ivy League university lecture halls, and I can tell you that the ideals of the Founding Fathers, the principles of the U.S. Constitution, and the Declaration of Independence were not and are not in decline. On the contrary, democracies around the world, old and new, need them now more than ever. As Chief Justice John Marshall said, “The people made the Constitution, and the people can unmake it. It is the creature of their own will, and lives only by their will.”

#### Now is the key time – Egypt will model US judiciary in the wake of its overthrow of Morsi

Krayewski 13 (July 9, Ed, assistant editor at *Reason* and former producer for Fox and NBC, http://reason.com/archives/2013/07/09/egypt-should-adopt-the-us-constitution)

In theory, a constitution governs the relationship between the state and the people. Constitutions can be stocked with positive rights, in which the government promises to provide something, or negative rights, in which the government refrains from interfering. The Egyptian constitution somehow managed to turn even the rights of the press into a statement of obligation, requiring the media to "contribute to shaping and directing [public opinion] in accordance with the basic principles of the State and society." When she was in Egypt last year, Justice Ruth Bader Ginsberg told Egyptians that while the U.S. Constitution contained “grand general ideas,” she wouldn’t look to it in drafting a constitution today because of its exclusion of so many groups at the beginning. Instead, she called South Africa’s constitution a “really great piece of work” to learn from. Yet while the South African government boasts that its constitution “enjoys high acclaim internationally,” the African National Congress’s emerging de facto one-party rule is an obstacle to the country becoming a stable democracy. When the ANC ousted Thabo Mbeki as the party’s president, effectively vetoing his attempt to seek a third term, the ANC itself had to become a check on power; a more robust opposition is necessary. Here, despite Justice Ginsberg’s dismissal, the U.S. Constitution could offer a model for Egyptians. Its system of checks and balances has lasted more than 200 years. Yes, it failed to fully apply the principle of legal equality; it was a flawed document from a flawed time that was improved as its society evolved. Yet the fundamental mechanics of America’s federal government have been the same through more than two centuries of relative political stability. (The great exception to that stability, of course, is the Civil War. But we came out of that conflict with more improvements to the Constitution: The Thirteenth, Fourteenth, and Fifteenth Amendments were the most important additions to the document outside the original Bill of Rights.) Many of our constitutional rights are now under assault—the First Amendment, the Second Amendment, the Fourth Amendment, even the Third Amendment. Yet the rights enshrined in those articles are still there to put up a fight about. And despite the ruling party's constant protests about an “obstructionist” Congress, the legislature's ability to thwart an often unpopular presidential agenda is actually a constitutional feature in action. And it might be what Egypt needs. Rather than seeking to draft a constitution that outlines what government ought to do for (and to) people, Egyptians need a constitution that limits the power of government. The Muslim Brotherhood was targeted by the Egyptian state throughout the rule of Nasser, Sadat, and Mubarak; it in turn was overthrown largely on the perception that it was imposing an Islamist agenda on the Egyptian State. Though modern Egyptian constitutions have declared Islam as the religion of the nation and the latest one called on it as a source of law, Egyptians may find a constitution that protects the state from the mosque and the mosque from the state works better. Such a separation could both protect the Muslim Brotherhood from government persecution and also prevent it from trampling on the rights of women and non-Muslims. Drafting a constitution and establishing democratic institutions is no easy task. The coup itself came in the context of a popular revolt, a right implied in the Second Amendment of the U.S. Constitution and mentioned explicitly in a number of state constitutions. The anti-Morsi protests that preceded the president's overthrow were backed by petitions with more than 22 million signatures, far more than the number of votes received by either Morsi or the 2012 constitution. Insofar as the government’s core function is the protection of rights (from itself), the military arguably performed that role in deposing the president. What came after, however, illustrates the importance of also bringing the military within a constitutional regime of checks and balances. The armed forces' all-too-familiar crackdown on the Muslim Brotherhood, which included the killing yesterday of 51 pro-Morsi supporters, is just the kind of display of excessive and unaccountable power that sparked Egypt's contemporary revolutionary fervor in the first place. And the crackdown follows a decades-long pattern of repression that put the Muslim Brothers in a strong position to curry public favor and take political advantage of a democratic moment. Mercifully, Egypt’s experiment with democracy has not yet ended with a return to one-man, or one-party, rule. As Egyptians move to restart the process of drafting a constitution, they could look to America’s and consider whether they might be able to secure a republic capable of protecting them from the excesses of either democratic or undemocratic institutions.

#### Consolidation of power to the executive in Egypt ensures continued instability

Ackerman 13

[Bruce, Sterling Professor of Law and Political Science, Yale University,To Save Egypt, Drop the Presidency, 7/10/13, <http://www.nytimes.com/2013/07/11/opinion/to-save-egypt-drop-the-presidency.html?pagewanted=all&_r=1&>]

AS violence escalates, Egypt’s military is trying to bridge a widening political gap by promising a rapid return to civilian rule. But its gesture of accommodation does not get to the heart of the problem: the presidential system, inherited from the Mubarak era, virtually guarantees a repetition of the tragic events of the past year. A democratic breakthrough requires a more fundamental constitutional redesign, in which the contending sides compete for power in a European-style parliamentary system. If Egypt had made that switch in the interim Constitution adopted two years ago, or in the revisions that Mohamed Morsi, as president, rammed through last year, it could well have avoided the current upheaval and bloodshed in the first place. The presidency is a winner-take-all office. This may be acceptable in countries like the United States, where well-organized parties contend for the prize. But it is a recipe for tyranny in places like Egypt, where Islamists have powerful organizational advantages in delivering the vote. Because their opponents will have great difficulties uniting behind a single candidate, Islamists could probably parlay their strong minority support into another presidential victory. To prevent that result, it is predictable that the military will suppress the political efforts of the Muslim Brotherhood and similar groups — transforming the next election into a democratic farce. The next president would not only emerge with an illegitimate mandate. His victory would convert the Islamists into undying opponents of the regime. **Only a parliamentary system provides a realistic path to a more stable, inclusive future**. Even if Islamist parties won a substantial share of the vote, they would not be able to monopolize power. Consider the Brotherhood’s best-case scenario: Although millions of Egyptians took part in the street demonstrations that preceded President Morsi’s ouster, the Muslim Brotherhood could still win a quarter of the seats in the parliamentary elections, with the more orthodox Salafists gaining another 15 percent. In contrast, the non-Islamist forces are fractured into a number of different factions, ranging from Christian to social democratic. Although the Brotherhood might well emerge with more seats than any other single party, its non-Islamist opponents might nevertheless cobble together a governing coalition. Even if its opponents failed, the Brotherhood could not form a coalition either, unless it reached out to some secularists for support — especially since the Brotherhood could not count on the Salafists to always back it. Under either scenario, Islamists would remain a significant factor in the political game, as they deserve to be in a democracy; their influence would undercut the arguments of religious zealots who claim that democracy is a sham. But this need for cooperation across the religious-secular divide wouldn’t be met under any presidential scenario. Once the military assures the election of an acceptable president, Islamists would probably walk out of the legislature. Even if they remained, they would predictably use their parliamentary platform to denounce Mr. Morsi’s replacement as illegitimate. If they tried to block legislation, the new president could push through his program without their support by greasing the wheels with political patronage and outright corruption. If that failed, he could make aggressive use of his executive powers — generating cycles of alienation that would, over time, undermine the very ideal of democracy. Parliamentary government is no cure-all, but a good design can remedy the most serious pathologies. Some systems, like the Italian, require a government to fall whenever a majority of representatives votes “no confidence” — leading to notorious episodes of instability. Others, like the German system, keep the old government in power until the new majority can actually agree on a replacement. That is by far the better approach for Egypt. While momentary majorities may say no to government initiatives, they should show that they have the sustained support of Parliament as a body before they can establish themselves in power. Egypt’s future will depend on the statesmanship of its leaders and the effectiveness of its policies. But a decisive move in the direction of a well-designed parliamentary democracy would create a constitutional order that encourages democrats of all persuasions to reach out to one another. The military’s current transition plan doesn’t contemplate such a breakthrough. But it doesn’t preclude it either. The “constitutional declaration” issued by the provisional president, Adli Mansour, establishes a committee of 10 jurists to propose constitutional amendments that will set the stage for a new round of elections. Before these proposals are presented to the voters in a referendum, they must be vetted by a 50-person committee appointed by social and governmental institutions, as well as by the provisional government. The timeline set by the military **invites discussion of the fundamental issue**. It schedules the new amendments to go before the people in about three months, followed within two more months by parliamentary elections. It then provides for the new parliament to call for presidential elections during the first week of its session. Given this sequence, reformers can simply argue for the elimination of the final stage in the process, demanding that the military turn over power to civilians once a governing coalition gains the support of a parliamentary majority. In making this move, the protagonists would not simply be aping European models. They would be taking sides in a vibrant debate within the Islamic world. When Turks mobilized in protest against their government last month, one of their larger grievances was Prime Minister Recep Tayyip Erdogan’s effort to replace Turkey’s system of parliamentary government, through a constitutional amendment that would allow him to gain direct election as a powerful president. The demonstrators rightly saw this as a move by Mr. Erdogan to consolidate his power, and their mass opposition may well have put an end to his authoritarian initiative. **The question now is whether Egyptians will join in this broader popular movement to repudiate presidentialism**, before it dooms their country’s great experiment in democracy.

#### Egyptian instability spills over throughout the region

Friedman 13

[Thomas, Pulitzer Prize Winning Foreign Affairs Correspondent for the New York Times, Egypt at the Edge, 7/9/13, <http://www.nytimes.com/2013/07/10/opinion/friedman-egypt-at-the-edge.html?>]

In every civil war there is a moment before all hell breaks loose when there is still a chance to prevent a total descent into the abyss. Egypt is at that moment. The Muslim holy month of Ramadan starts this week, and it can’t come too soon. One can only hope that the traditional time for getting family and friends together will provide a moment for all the actors in Egypt to reflect on how badly they’ve behaved — all sides — and opt for the only sensible pathway forward: national reconciliation. I was a student at the American University in Cairo in the early 1970s and have been a regular visitor since. I’ve never witnessed the depth of hatred that has infected Egypt in recent months: Muslim Brotherhood activists throwing a young opponent off a roof; anti-Islamist activists on Twitter praising the Egyptian army for mercilessly gunning down supporters of the Brotherhood in prayer. In the wake of all this violent turmoil, it is no longer who rules Egypt that it is at stake. It is Egypt that is at stake. This is an existential crisis. **Can Egypt hold together and move forward as a unified country** or will it be torn asunder by its own people, like Syria? **Nothing is more important in the Middle East today**, because when the stability of modern Egypt is at stake — sitting as it does astride the Suez Canal, the linchpin of any Arab peace with Israel and knitting together North Africa, Africa and the Middle East — the stability of the whole region is at stake.

#### Egyptian instability causes conflict in the Mediterranean, Africa, and Middle East --- collapsing the Suez Canal

Copley 11 (Gregory O., Editor – Global Information System and Defense & Foreign Affairs Strategic Policy, “Strategic Ramifications of the Egyptian Crisis”, World Tribune, 2-1, http://www.worldtribune.com/worldtribune/ WTARC/2011/me\_egypt0088\_02\_01.asp)

In the preface to the Defense & Foreign Affairs Handbook on Egypt, in 1995, I noted: If Egypt remains strong, and in all senses a power in its regional contexts, then world events will move in one direction. If Egypt's strength is undermined, then world events (and not merely those of the Middle East) will move along a far more uncertain and violent path. It is significant that Egypt began to fail to be strong, internally, within a few years of that 1995 book. It became less resilient as Mubarak became more isolated and the inspiration offered by Sadat began to erode. This resulted in the rise in Egypt of the Islamists who had killed Sadat, and the growing empowerment of the veteran Islamists from the Afghan conflict, including such figures as Osama bin Laden (who had spent considerable time living in Egypt), and Ayman al-Zawahiri, et al. The reality was that Mubarak's management-style presidency could not offer the requisite hope because hope translates to meaning and identity to Egyptian society as it was transitioning from poverty and unemployment to gradually growing wealth. What are the areas of strategic concern, then, as Egypt transforms? The following are some considerations: -- Security and stability of Suez Canal sea traffic: Even temporary disruption, or the threat of disruptions, to traffic through the Suez Canal would disturb global trade, given that the Canal and the associated SUMED pipeline (which takes crude oil north from the Red Sea to the Mediterranean) are responsible for significant volumes of world trade, including energy shipments. Threats of delays or closure of the Canal and/or the SUMED, or hints of increased danger to shipping, would significantly increase insurance costs on trade, and would begin to have shippers consider moving Suez traffic, once again, to the longer and more expensive Cape of Good Hope seaway. -- Disruption of Nile waters negotiations and matters relating: Egypt's support for the emerging independence of South Sudan was based on that new state s control over a considerable stretch of the White Nile, at a time when Egypt has been attempting to dominate new treaty discussions regarding Nile (White and Blue Nile) water usage and riparian rights. Already, Egyptian ability to negotiate with the Nile River states has entered an hiatus, and unless the Egyptian Government is able to re-form quickly around a strong, regionally-focused model, Egypt will have lost all momentum on securing what it feels is its dominance over Nile water controls. In the short term, the Egyptian situation could provide tremors into northern and South Sudan, and in South Sudan this will mean that the U.S., in particular, could be asked to step up support activities to that country's independence transition. Such a sudden loss of Egypt's Nile position will radically affect its long-standing proxy war to keep Ethiopia which controls the headwaters and flow of the Blue Nile, the Nile's biggest volume input landlocked and strategically impotent. This means that Egypt's ability to block African Union (AU) and Arab League denial of sovereignty recognition of the Republic of Somaliland will decline or disappear for the time being. Already Egypt's influence enabled an Islamist takeover of Somaliland, possibly moving that state toward re-integration with the anomic Somalia state. Equally importantly, the interregnum in Egypt will mean a cessation of Cairo's support for Eritrea and the proxy war which Eritrea facilitates but which others, particularly Egypt, pay against Ethiopia through the arming, logistics, training, etc., of anti-Ethiopian groups such as the Oromo Liberation Front (OLF), the Ogaden National Liberation Front (ONLF), etc. -- Overall security of the Red Sea states and SLOC: Egypt has been vital to sustaining the tenuous viability of the state of Eritrea, because Cairo regarded Eritrean loyalty as a key means of sustaining Egyptian power projection into the Red Sea (and ensuring the security of the Red Sea/Suez Sea Lane of Communication), and to deny such access to Israel. Absent Egyptian support, the Eritrean Government of President Isayas Afewerke will begin to feel its isolation and economic deprivation, and may well, on its own, accelerate new pressures for conflict with Ethiopia to distract local populations from the growing deprivation in the country. -- The Israel situation: A protracted interregnum in Egypt, or a move by Egypt toward Islamist or populist governance could bring about a decline in the stability of the Egypt-Israel peace agreement, and provide an opening of the border with the Hamas-controlled Gaza region of the Palestinian Authority lands. This would contribute to the ability of Iran to escalate pressures on Israel, and not only further isolate Israel, but also isolate Jordan, and, to an extent, Saudi Arabia. The threat of direct military engagement between Israel and Egypt may remain low, but a move by Egypt away from being a predictable part of the regional peace system would, by default, accelerate the growth of the Iran-Syria-Hizbullah-Hamas ability to strategically threaten Israel. Moreover, the transforming situation would also inhibit the West Bank Palestinian Authority Government. -- Eastern Mediterranean stability: The instability, and the possible move toward greater Islamist influence, in Egypt reinforces the direction and potential for control of the regional agenda by the Islamist Government of Turkey. It is certainly possible that the transformed mood of the Eastern Mediterranean could inhibit external investment in the development of the major gas fields off the Israeli and Cyprus coasts. This may be a gradual process, but the overall sense of the stability of the region particularly if Suez Canal closure or de facto closure by any avoidance of it by shippers due to an Islamist government in Cairo would be jeopardized if the area is no longer the world s most important trade route. -- Influence on Iran's position: It should be considered that any decline in Egypt's ability to act as the major influence on the Arab world enhances Iran's de facto position of authority in the greater Middle East. It is true that Egypt's position has been in decline in this regard for the past decade and more, and that even Saudi Arabia has worked, successfully to a degree, to compete with Egypt for regional (ie: Arab) leadership. Without strong Egyptian leadership, however, there is no real counterweight to Iran's ability to intimidate. During the period of the Shah's leadership in Iran (until the revolution of 1979 and the Shah's departure, ultimately to his death and burial, ironically, in Cairo), Iran and Egypt were highly compatible strategic partners, stabilizing the region to a large degree. The Shah's first wife was Egyptian. Absent a strong Egypt (and, in reality, we have been absent a strong Egypt for some years), we can expect growing Iranian boldness in supporting such groups as those fighting for the so-called Islamic Republic of Eastern Arabia. -- U.S. interests: A stable Egypt is critical for the maintenance of U.S. strategic interests, given its control of the Suez; its partnership in the peace process with Israel; and so on. Why, then, would the Barack Obama administration indicate that it would support the masses in the streets of Egyptian cities at this point. There is no question that Washington has supported moves to get Mubarak to provide for a smooth succession over recent years: that would have been beneficial for Egypt as well as for the U.S. But for the U.S. to actively now support as Barack Obama has done the street over orderly transition of power lacks strategic sense. It is true that the State Dept., and even the strategically-challenged Vice President Joe Biden, have urged caution on the Egyptian people, but Obama has effectively contradicted that approach, as he did in Tunisia, where he literally supported the street revolution against its president earlier in January. If Egypt moves to anti-Western, anti-U.S. governance, the U.S. will be required to re-think its entire strategic approach to the Middle East, Africa, and the projection of power through the Eastern Mediterranean and into the Indian Ocean. It would give a strong boost of importance to the U.S. Pacific Fleet, which is responsible for U.S. projection the Indian Ocean. CENTCOM (Central Command) would need to be re-thought, as would USAFRICOM (U.S. African Command). -- Impact on the U.S. positions in Iraq, Afghanistan, and Pakistan: The loss of Egypt and the questionable ability which the U.S. could have over projection through the Suez Canal if it came to that would certainly impact U.S. ability to support the final military operations it has in Iraq, and Afghanistan. A loss (or jeopardizing) of U.S. military access via Egyptian-controlled areas such as the Red Sea/Suez would absolutely fragment the way in which the U.S. can project power globally. Even the accession of an Islamist state in Egypt, as opposed to closure of the Suez Canal, would achieve much of this. What is clear is that the U.S. did not adequately prepare for the end of the Mubarak era, even though it was absolutely obvious that it was coming. Now, only by luck will the U.S. see the Egyptian armed forces re-assert control over Egypt and introduce a new generation of leadership to bridge the transition until the re-emergence of a charismatic leader.

#### Middle East war causes global nuclear war

Primakov 9 (Yevgeny, President of the Chamber of Commerce and Industry – Russian Federation, Member – Russian Academy of Science, “The Middle East Problem in the Context of International Relations”, Russia in Global Affairs, 3, July/September, http://eng.globalaffairs.ru/number/n\_13593)

The Middle East conflict is unparalleled in terms of its potential for spreading globally. During the Cold War, amid which the Arab-Israeli conflict evolved, the two opposing superpowers directly supported the conflicting parties: the Soviet Union supported Arab countries, while the United States supported Israel. On the one hand, the bipolar world order which existed at that time objectively played in favor of the escalation of the Middle East conflict into a global confrontation. On the other hand, the Soviet Union and the United States were not interested in such developments and they managed to keep the situation under control. The behavior of both superpowers in the course of all the wars in the Middle East proves that. In 1956, during the Anglo-French-Israeli military invasion of Egypt (which followed Cairo’s decision to nationalize the Suez Canal Company) the United States – contrary to the widespread belief in various countries, including Russia – not only refrained from supporting its allies but insistently pressed – along with the Soviet Union – for the cessation of the armed action. Washington feared that the tripartite aggression would undermine the positions of the West in the Arab world and would result in a direct clash with the Soviet Union. Fears that hostilities in the Middle East might acquire a global dimension could materialize also during the Six-Day War of 1967. On its eve, Moscow and Washington urged each other to cool down their “clients.” When the war began, both superpowers assured each other that they did not intend to get involved in the crisis militarily and that that they would make efforts at the United Nations to negotiate terms for a ceasefire. On July 5, the Chairman of the Soviet Government, Alexei Kosygin, who was authorized by the Politburo to conduct negotiations on behalf of the Soviet leadership, for the first time ever used a hot line for this purpose. After the USS Liberty was attacked by Israeli forces, which later claimed the attack was a case of mistaken identity, U.S. President Lyndon Johnson immediately notified Kosygin that the movement of the U.S. Navy in the Mediterranean Sea was only intended to help the crew of the attacked ship and to investigate the incident. The situation repeated itself during the hostilities of October 1973. Russian publications of those years argued that it was the Soviet Union that prevented U.S. military involvement in those events. In contrast, many U.S. authors claimed that a U.S. reaction thwarted Soviet plans to send troops to the Middle East. Neither statement is true. The atmosphere was really quite tense. Sentiments both in Washington and Moscow were in favor of interference, yet both capitals were far from taking real action. When U.S. troops were put on high alert, Henry Kissinger assured Soviet Ambassador Anatoly Dobrynin that this was done largely for domestic considerations and should not be seen by Moscow as a hostile act. In a private conversation with Dobrynin, President Richard Nixon said the same, adding that he might have overreacted but that this had been done amidst a hostile campaign against him over Watergate. Meanwhile, Kosygin and Foreign Minister Andrei Gromyko at a Politburo meeting in Moscow strongly rejected a proposal by Defense Minister Marshal Andrei Grechko to “demonstrate” Soviet military presence in Egypt in response to Israel’s refusal to comply with a UN Security Council resolution. Soviet leader Leonid Brezhnev took the side of Kosygin and Gromyko, saying that he was against any Soviet involvement in the conflict. The above suggests an unequivocal conclusion that control by the superpowers in the bipolar world did not allow the Middle East conflict to escalate into a global confrontation. After the end of the Cold War, some scholars and political observers concluded that a real threat of the Arab-Israeli conflict going beyond regional frameworks ceased to exist. However, in the 21st century this conclusion no longer conforms to the reality. The U.S. military operation in Iraq has changed the balance of forces in the Middle East. The disappearance of the Iraqi counterbalance has brought Iran to the fore as a regional power claiming a direct role in various Middle East processes. I do not belong to those who believe that the Iranian leadership has already made a political decision to create nuclear weapons of its own. Yet Tehran seems to have set itself the goal of achieving a technological level that would let it make such a decision (the “Japanese model”) under unfavorable circumstances. Israel already possesses nuclear weapons and delivery vehicles. In such circumstances, the absence of a Middle East settlement opens a dangerous prospect of a nuclear collision in the region, which would have catastrophic consequences for the whole world. The transition to a multipolar world has objectively strengthened the role of states and organizations that are directly involved in regional conflicts, which increases the latter’s danger and reduces the possibility of controlling them. This refers, above all, to the Middle East conflict. The coming of Barack Obama to the presidency has allayed fears that the United States could deliver a preventive strike against Iran (under George W. Bush, it was one of the most discussed topics in the United States). However, fears have increased that such a strike can be launched by Israel, which would have unpredictable consequences for the region and beyond. It seems that President Obama’s position does not completely rule out such a possibility.

#### Impact D doesn’t apply to Mideast

Russell 9 James, Senior Lecturer Department of National Security Affairs, Spring, “Strategic Stability Reconsidered: Prospects for Escalation and Nuclear War in the Middle East” Security Studies Center Proliferation Papers, http://www.analyst-network.com/articles/141/StrategicStabilityReconsideredProspectsforEscalationandNuclearWarintheMiddleEast.pdf

Strategic stability in the region is thus undermined by various factors: (1) asymmetric interests in the bargaining framework that can introduce unpredictable behavior from actors; (2) the presence of non-state actors that introduce unpredictability into relationships between the antagonists; (3) incompatible assumptions about the structure of the deterrent relationship that makes the bargaining framework strategically unstable; (4) perceptions by Israel and the United States that its window of opportunity for military action is closing, which could prompt a preventive attack; (5) the prospect that Iran’s response to pre-emptive attacks could involve unconventional weapons, which could prompt escalation by Israel and/or the United States; (6) the lack of a communications framework to build trust and cooperation among framework participants. These systemic weaknesses in the coercive bargaining framework all suggest that escalation by any the parties could happen either on purpose or as a result of miscalculation or the pressures of wartime circumstance. Given these factors, it is disturbingly easy to imagine scenarios under which a conflict could quickly escalate in which the regional antagonists would consider the use of chemical, biological, or nuclear weapons. It would be a mistake to believe the nuclear taboo can somehow magically keep nuclear weapons from being used in the context of an unstable strategic framework. Systemic asymmetries between actors in fact suggest a certain increase in the probability of war – a war in which escalation could happen quickly and from a variety of participants. Once such a war starts, events would likely develop a momentum all their own and decision-making would consequently be shaped in unpredictable ways. The international community must take this possibility seriously, and muster every tool at its disposal to prevent such an outcome, which would be an unprecedented disaster for the peoples of the region, with substantial risk for the entire world.

#### Shutdown of the Suez Canal causes economic collapse

**PE 11** (Peak Effect, “Suez Canal Oil Choke Point,” 1-29, http://www.thepeakeffect.com/2011/01/suez-canal-oil-choke-point.html)

Why the recent developments in Egypt can send the world in recession or worst. Egypt can seem a Middle East or North African problem catching our headlines for few days and then disappearing but in reality depending on how this revolution will develop can practically bring the entire world in recession. Why Egypt is vital to the global economy is due to the Suez Canal, even if not that important today as it used to be it still represents one of the main oil choke-points in the world. Petroleum (both crude oil and refined products) accounted for 16 percent of Suez cargos, measured by cargo tonnage, in 2009. An estimated 1.0 million bbl/d of crude oil and refined petroleum products flowed northbound through the Suez Canal to the Mediterranean Sea in 2009, while 0.8 million bbl/d travelled southbound into the Red Sea. With only 1,000 feet at its narrowest point, the Canal is unable to handle the VLCC (Very Large Crude Carriers) and ULCC (Ultra Large Crude Carriers) class crude oil tankers. The 200-mile long SUMED Pipeline, or Suez-Mediterranean Pipeline provides an alternative to the Suez Canal for those cargos too large to transit the Canal. The pipeline moves crude oil northbound from the Red Sea to the Mediterranean Sea, and is owned by Arab Petroleum Pipeline Co., a joint venture between the Egyptian General Petroleum Corporation (EGPC), Saudi Aramco, Abu Dhabi’s ADNOC, and Kuwaiti companies. Closure of the Suez Canal and the SUMED Pipeline would divert tankers around the southern tip of Africa, the Cape of Good Hope, adding 6,000 miles to transit. Even a temporary blockade of the flow of oil would cause oil prices to spiral upwards, yesterday as news from Egypt were coming through the price of oil went above $100 immediately. A longer disruption could case an already weak economy to down spiral in recession. Currently the most worrisome scenario is in Europe since it is more affected by a possible blockade of the Suez Canal. The question is, if this happen what Europe will do about it, it will start a military intervention as in the Suez Crisis in 1956 to re-establish transit and vital energy supplies, any alternative route or source is not viable at the moment in the short and medium term and waiting too much to re-establish supplies would cause devastating damage to an already feeble economy.

#### Decline cause miscalculation and conflict – prefer statistically significant evidence

**Royal 10** (Jedediah, Director of Cooperative Threat Reduction – U.S. Department of Defense, “Economic Integration, Economic Signaling and the Problem of Economic Crises”, Economics of War and Peace: Economic, Legal and Political Perspectives, Ed. Goldsmith and Brauer, p. 213-215)

Less intuitive is how periods of economic decline may increase the likelihood of external conflict. Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defence behaviour of interdependent states. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level, Pollins (2008) advances Modelski and Thompson's (1996) work on leadership cycle theory, finding that rhythms in the global economy are associated with the rise and fall of a pre-eminent power and the often bloody transition from one pre-eminent leader to the next. As such, exogenous shocks such as economic crises could usher in a redistribution of relative power (see also Gilpin. 1981) that leads to uncertainty about power balances, increasing the risk of miscalculation (Feaver, 1995). Alternatively, even a relatively certain redistribution of power could lead to a permissive environment for conflict as a rising power may seek to challenge a declining power (Werner. 1999). Separately, Pollins (1996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown. Second, on a dyadic level, Copeland's (1996, 2000) theory of trade expectations suggests that 'future expectation of trade' is a significant variable in understanding economic conditions and security behaviour of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases**,** as states will be inclined to use force to gain access to those resources. Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states.4 Third, others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) find a strong correlation between internal conflict and external conflict, particularlyduring periods of economic downturn. They write: The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favour. Moreover, the presence of a recession tends to amplify the extent to which international and external conflicts self-reinforce each other. (Blomberg & Hess, 2002. p. 89) Economic decline has also been linked with an increase in the likelihood of terrorism (Blomberg, Hess, & Weerapana, 2004), which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. "Diversionary theory" suggests that, when facing unpopularity arising from economic decline, sitting governments have increased incentives to fabricate externalmilitary conflicts to create a 'rally around the flag' effect. Wang (1996), DeRouen (1995). and Blomberg, Hess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999), and Kisangani and Pickering (2009) suggest that the tendency towards diversionary tactics are greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked to an increase in theuse of force. In summary, recent economic scholarship positively correlates economic integration with an increase in the frequency of economic crises, whereas political science scholarship links economic decline with external conflictat systemic, dyadic and national levels.5 This implied connection between integration, crises and armed conflict has not featured prominently in the economic-security debate and deserves more attention.

#### 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.

#### Supreme court action is key to end indefinite detention and affirm the court’s duty and independence

Martin 13 (Ronald, Contributor @ Tenth Amendment Center, "Indefinite Detention is Patently Unconstitutional," http://tenthamendmentcenter.com/2013/06/27/indefinite-detention-is-patently-unconstitutional/#.Uhj8TJLqnoI)

In January 2012, New York Times Pulitzer Prize winning reporter Christopher Hedges filed a federal lawsuit against President Obama, challenging detention provisions in the National Defense Authorization Act (NDAA) of Fiscal Year 2012.¶ The Act authorized $662 billion in funding, “for defense of the United States and it’s interests abroad.” Central to Hedges’ suit, a controversial provision set forth in subsection 1021 of Title X, Sub-title (d) entitled “Counter-Terrorism,” authorizing indefinite military detention of individuals the government suspects are involved in terrorism, including U.S. citizens arrested on American soil.¶ Over the last two years, a broad coalition including the Tenth Amendment Center, the American Civil Liberties Union, the Bill of Rights Defense Committee, and many others formed in opposition to indefinite detention provisions, concerned with over-broad language open to wide interpretation and the growing scope of presidential authority. In support of Hedges, many of these individuals and organizations joined together as an Amicus Curiae, otherwise known as a Friend of the Court. The coalition filed an Amicus Brief supporting Hedges’ interpretation of the controversial issues abounding in Hedges v. Obama. The Amicus Curiae states, “Each entity is dedicated, inter alia (among other things), to the correct construction, interpretation, and application of the law.”¶ For those not familiar with an Amicus Brief, it is a document filed with a court by a person or group not directly involved in the case. The brief often contains information useful to a judge when evaluating the merits of a case and it becomes part of the official record. In addition to filing a brief, Amicus Curiae can involve itself in a case in many ways. It can contribute academic evaluations of subject matters, it can testify in a case, and on rare cases it can help contribute to oral arguments. Many times, state and local governments also join a case as a “Friend” if they believe it will impact them. This happened in Hedges v. Obama. A large number of concerned individuals and advocacy organizations enjoined the case as Amicus Curiae.¶ The Amicus Brief of this case commences by focusing on the ambiguity of the language in section 1021 of the 2012 NDAA.¶ “Rarely has a short statute been subject to more radically different interpretations than Section 1021 of the NDAA of 2012.”¶ The “Friends” contend the verbiage offers diametrically opposite meanings.¶ ”The Framers would be greatly shocked to hear the United States assert that an American President has power to place civilians in the U.S. or citizens abroad into military custody absent status as armed combatants. No President has ever held such power.”¶ As the Amicus Curiae implies, the language of this law is dangerously vague. Many believe the provisions of Section 1021 grant dictatorial powers to the federal government to arrest any American citizen without a warrant and indefinitely detain them without charge. Detainees can be shipped to the military’s offshore prisons and kept there until “the end of hostilities.”¶ Section 1021 defines a “covered person” as “one subject to detention” and “a person who was part of or substantially supported al-Qaeda, the Taliban, or associated forces engaged in hostilities against the United States or it’s coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.” However, the law does not define “substantially supported” or “associated forces,” leaving those nebulous terms open to interpretation.¶ The White House and Senate sponsors maintain the Authorization for Use of Military Force (AUMF) previously granted presidential authority for indefinite detention. In their Appellant Brief, the Department of Justice contends that the NDAA does no more than “explicitly reaffirm…the President’s detention authority under AUMF,” a Congressional Joint Resolution passed Sept. 14, 2001.¶ In response to this claim, the plaintiffs’ Coalition rebuts, “If the Government’s theory was true, then the U.S. Senate spent weeks debating and enacting, and the U.S. Department of Justice has worked mightily to uphold a meaningless and unnecessary statute.”¶ The Amicus Curiae addresses a second issue.¶ “The Legislative History of the NDAA Reveals a Gap between the Clear Purpose and the Ambiguous Statutory Language. The NDAA detention provisions, and one amendment which was adopted creating subsection (e), were not drafted in haste. Rather, the legislative history suggests another reason for the stark difference of statutory interpretation.”¶ This section continues, contrasting the original Senate bill (S. 1253) that included limiting language excluding the ability of the government to detain citizens of the United States under the act and the final version of the NDAA. This limiting language was deleted in a substitute bill (S. 1867), by Senator Carl Levin (D-MI). The record shows that this limiting language was removed at the request of the president in order to keep the law consistent with the AUMF of 2001.¶ This fact stands in stark contrast to public statements made by Pres. Obama on the detention issue, including his signing statement.¶ “I want to clarify, that my Administration will not authorize the indefinite detention without trial of American citizens…My Administration will interpret section 1021 in a manner that ensures that any detention it authorizes complies with the Constitution, the laws of war, and all other applicable law.”¶ However in May 2012, Judge Katherine Forrest, (an Obama-appointed judge) ruled part of section 1021 unconstitutional.¶ “The plaintiffs do have standing, and that section 1021 is facially unconstitutional.”¶ In her ruling, Forrest asserted that the provision denies First and Fifth Amendment rights, and she granted a temporary restraining order against Section 1021 of the NDAA. The government responded by requesting that the judge reverse her ruling, claiming the plaintiffs did not have standing to bring the case against the government because they had yet to be indefinitely detained. And the administration argued that even if Mr. Hedges and the other plaintiffs did have standing, they were the only seven American citizens covered by the temporary restraining order.¶ In spite of the administration’s arguments, Judge Forrest returned a clarifying order, making it abundantly clear, without any equivocation, that the temporary restraining order applied to ALL American citizens. According to the judge, the government cannot indefinitely detain any American citizen without access to due process.¶ In September 2012, Judge Forrest issued a permanent injunction against indefinite detention of American citizens, but the Obama administration appealed and was granted a stay pending that appeal.¶ The next consequential argument forwarded in the Amicus Brief is that the 2001 AUMF is not a Constitutional Declaration of War.¶ “The Government misunderstands the Constitution which was written for a time of war, as well as a time of peace. There is only one provision in the Constitution which can be suspended in wartime conditions: the writ of habeus corpus, and that suspension requires an act of Congress. U.S. Constitution, Article I, Section 9. And there is only one wartime exception, that being the right to a Grand Jury indictment as set forth in the Fifth Amendment. The war power does not trump the rights and protections of the people in any other instances.”¶ “The Government’s sole support in attempt to sweep aside the Constitution’s Bill of Rights, is the Congressional declaration of war against the Imperial Department of Japan in World War II (Govt. Br., p.47), which the Government claims to have been: -stated in broadest terms, with no precise descriptions of who may be the subject of force (including detention) or under what circumstances, and without any express carve-outs for arguably protected speech. This pattern holds for every authorization for the use of military force in our nation’s history-including the AUMF.’”¶ Rather than offering support for the Government’s claim, the differences between the 2001 and 1941 declarations undermine it.¶ In contrast the AUMF provides: “that the President is authorized to use all necessary and appropriate force against those nations, organizations or persons he determines planned,authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.” [Pub. L. 107-40, 115 Stat. 224 (Sept. 18, 2001)§ 2(a)¶ The first and most obvious difference between the two resolutions is that the U.S. actually declared war against Japan. Even though the Government argues the Constitution “imposes no constraints on how the declaration should be worded, Congress has never been at a loss for words when declaring war from 1812 to 1941.'”¶ Secondly, the 1941 declaration “authorizes and directs” the President to take action, while the 2001 AUMF merely leaves it to the President’s discretion to “determine” the force necessary.¶ “In 1941, Congress instructed the President to use all of the nation’s military force and government resources to carry on war against a clearly identified enemy, while the 2001 AUMF empowered the President to identify the enemy."¶ Lastly, the 1941 declaration specified a time when the president’s authority ended, when the war was successfully terminated, while the AUMF set no definite time for the president’s power to cease. In the wake of 9/11, Congressman Ron Paul implored Congress to address the war declaration issue, but found little interest in the constitutional process.¶ “As the Apellees have demonstrated, the Constitution does not confer upon the President or upon Congress any power to subject civilians to detention by the military as AUMF and Section 1021 (b)(2) do, even if the nation is at war.”¶ Access to habeus corpus is “not a satisfactory remedy to the burden of military detention” for a citizen who is suspected of “substantially supporting a force associated with any enemy, al-Qaeda, the Taliban, or otherwise.” Not only is habeas relief unsatisfactory, imposing upon an American citizen the burden of seeking habeas relief to escape from military detention is constitutionally impermissible under the Treason Clause of Article III, Section 3. In Federalist No. 43, James Madison asserted that the Treason Clause must be understood as one of the enumerated powers of the federal government, placing severe limits on the legislative power not only to define the elements of treason, but to preclude Congress from evading the constitutional definition of treason by "new-fangled and artificial” definitions.¶ Lastly, the Amicus Brief discusses the judicial branch's duty to address constitutional issues in the case asserted by many states.¶ After the enactment of the NDAA of 2012, many state and local officials expressed opposition to the constitutional violations perceived in Section 1021. State legislators and local officials have taken different approaches in battling this unconstitutional overreach. Some states have passed non-binding resolutions, while others like Virginia and Alaska have enacted laws nullifying Section 1021 by “barring any state agency or political subdivision or employee or National Guard from knowingly aiding an agency of the armed forces of the United States in the unlawful NDAA detention of any citizen…”¶ “These efforts do not break new ground, they build on lessons learned since the beginning of the Republic. When the federal government breeches the bounds of its authority, the nation’s sovereign states can be expected to respond to protect the liberties of the people.” As Chief Justice John Marshall observed, "vesting such power in the courts requires a judge to look into the Constitution, examining it’s text to determine whether actions of the two other branches conform to the written instrument." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 178-79 (1803).¶ “In this case, the executive branch is arguing on behalf of the legislative branch that the judicial branch may not even look into the Constitution to determine if Section 1021 (b) (2) violates First and Fifth Amendments. As Chief Justice John Marshall responded in Marbury, the Government’s claim is too extravagant to be maintained.”¶ The appeals process continues and the case is expected to ultimately be heard by the Supreme Court. If the Plaintiff and it’s coalition are correct, then the district court’s conclusion that, “Section 1021(b)(2), and its companion subsections (d) and (e), differ materially from AUMF, creating a reasonable and objective fear of detention , and should be affirmed” as Unconstitutional.

#### Multiple controversial decisions coming now - docket proves

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.

#### The Forrest decision is key

RT 12 ("Supreme Court asked to strike down NDAA's indefinite detention clause," http://rt.com/usa/supreme-court-ndaa-indefinite-016/)

The US Supreme Court has been asked to step in and make sure the military cannot detain US citizens indefinitely without charge or trial as guaranteed in this year’s National Defense Authorization Act, or NDAA.¶ Attorneys representing the plaintiffs in the case of Hedges, et al. v. Obama filed an emergency motion with the Supreme Court on Wednesday asking the top justices in the United States to stop a White House-ordered stay that ensures US citizens can be locked up without due process [pdf].¶ Under a provision of the 2012 NDAA, the US government can indefinitely imprison any person suspected of terrorist activity without ever requiring them to be brought to trial. In September, US District Judge Katherine Forrest granted a permanent injunction against that part of the annual defense bill, Section 1021, essentially barring the White House from using the law. In response, US President Barack Obama asked the Second Circuit Court to intervene, and they did so by placing a stay on Judge Forrest’s injunction. On Wednesday, the plaintiffs urged the Supreme Court take action and eliminate the appellate decision.¶ “The effect of the Second Circuit stay is to place the plaintiffs in this action and many United States civilians and citizens in actual and imminent danger of losing their core First Amendment rights and fundamental Equal Protection liberties. The stay actually upends the status quo that has been in place for most of our nation’s history: that the military cannot detain civilians,” the plaintiffs argue.¶ Additionally, the plaintiffs argue that the stay ensures that any US citizen is now fair game to be imprisoned indefinitely in military jails “for the first time since the internment of Japanese-Americans during World War II.”¶ Attorneys Carl Mayer and Bruce Afran have filed their request insisting the Supreme Court vacates the Second Circuit’s stay with Associate Justice Ruth Joan Bader Ginsburg, who can at any time now make a ruling that will reinstate the original injunction against Sec. 1021 or disregard the plaintiffs’ plea.¶ Mr. Mayer previously told RT that he is fully prepared to present his arguments before the Supreme Court and suggested the Obama administration is likely to lose that battle.¶ “I think they are ill advised to appeal this at all,” he told RT. “The Obama administration has now lost three times. They lost the temporary injunction, they lost the motion for reconsideration and they lost the hearing for permanent injunction. I say three strikes and you’re out.”¶ Speaking of Pres. Obama, Mayer added, “He knows as a former constitutional law professor that this is wholly unconstitutional.”¶ Mayer and Afran are asking for the Supreme Court to vacate the Second Circuit’s stay because the plaintiffs say the president’s argument that Judge Forrest’s injunction intrudes upon the executive power to detain Americans under the Authorization for the Use of Military Force (AUMF) is incorrect.¶ “No court in the long history of litigation under the AUMF,” write the plaintiffs, has agreed that that legislation allows for the indefinite detention of persons who’ve “substantially supported” terrorists, as outlined in the NDAA. On the president’s part, however, he argues that the injunction impedes that ability; the plaintiffs say he simply doesn’t have that power.¶ But because the language in the 2012 NDAA is so vague, warns Mayer, the White House could make anything possible.¶ “If any journalist or activist is seen as reporting or offering opinions about groups that could somehow be linked not just to al-Qaeda but to any opponent of the United States or even opponents of our allies,” he told RT they could be imprisoned.¶ “The decision to vigorously fight Forrest’s ruling is a further example of the Obama White House’s steady and relentless assault against civil liberties, an assault that is more severe than that carried out by George W. Bush,” plaintiff Chris Hedges wrote earlier this year.

# 2AC

## T

### 2AC Increase

#### We meet – we make judicial restrictions greater

#### No one is FOLLOWING the forrest decision and it WASN’T upheld by the second circuit court of appeals – we’re doing away with contradictory court cases – they say the plan is the squo, but the squo isn’t implementing, the squo is that the forrest decision was overturned

#### “Increase” is to make greater

Webster’s 13 – Webster’s Dictionary. 1913 ("Increase", http://machaut.uchicago.edu/cgi-bin/WEBSTER.sh?WORD=increase)

In\*crease" (?), v. i.

To become greater or more in size, quantity, number, degree, value, intensity, power, authority, reputation, wealth; to grow; to augment; to advance; -- opposed to *decrease*.

#### Reasons to prefer

#### Limits – sets a clear brightline – this interpretation is silly, they haven’t lost any ground and its impossible to differentiate

AND

#### Precision and grammar go aff – the supreme court decision is a fundamental increase above lower courts – this violation is proof that they have NO understanding of the court systems since almost no cases go directly to the supreme court – means its key to aff ground

#### We’re better for neg ground – they can counterplan to have a totally new case

#### Competing interpretations is bad – causes a race to the bottom and trades off with substantive debate about the topic – reasonability is best and good is good enough.

## Terror

### 2AC Circumvention

#### 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.

#### 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

<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.

#### No circumvention – empirically proven for detention

Bradley and Morrison 13 (Curtis, Professor of Law, Duke Law School, and Trevor, Professor of Law, Columbia Law School , “Presidential Power, Historical Practice, And

Legal Constraint” Duke Law Scholarship Repository) http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5451&context=faculty\_scholarship

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.118 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.119 But the reason why Presidents abide by court decisions has a connection to the broader issue 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).120

#### 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]

### 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.

## Egypt

### 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

### Harris and Burrows

#### Global nuclear war

Harris & Burrows 9 (Mathew, PhD European History @ Cambridge, counselor of the U.S. National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” <http://www.ciaonet.org/journals/twq/v32i2/f_0016178_13952.pdf>)

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 Revisiting the Future 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**. 36 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.

## Off

### Article III Courts 2AC

#### 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

#### 1. Perm do both

#### Doesn’t solve court action – this is essentially a congress CP – it’s takes the decision out of the hands of the judiciary by creating a brand new court system that’s seen as less credible than squo courts

#### Perm do the counterplan – it’s an example of the way the plan could be done – all federal courts are article III courts

#### Doesn’t Solve Terror -

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

#### Doesn’t Solve independent Judiciary – it’s

**3. Perm do the CP – it’s an example of legislating the plans restrictions – it’s not saying something about the plan is bad, it’s just a way the plan could be passed**

Counterplans that are plan plus are a reason to reject the team – the counterplan does the entirety of the affirmative which makes it impossible to generate and doesn’t prove the aff is a bad idea – fairness, education

Pics are a reason to reject the team – skew 2ac strategy, no offense

#### Consequences are more importan

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

What is striking about much of the political discussion on the left today is its failure to engage this earlier tradition of argument. The left, particularly the campus left—by which I mean “progressive” faculty and student groups, often centered around labor solidarity organizations and campus Green affiliates—has become moralistic rather than politically serious. Some of its moralizing—about Chiapas, Palestine, and Iraq—continues the third worldism that plagued the New Left in its waning years. Some of it—about globalization and sweatshops— is new and in some ways promising (see my “Thinking About the Antisweatshop Movement,” *Dissent*, Fall 2001). But what characterizes much campus left discourse is a substitution of moral rhetoric about evil policies or institutions for a sober consideration of what might improve or replace them, how the improvement might be achieved, **and what the likely costs**, as well as the benefits, **are of any reasonable strategy**. One consequence of this tendency is a failure to worry about methods of securing political support through democratic means or to recognize the distinctive value of democracy itself. It is not that conspiratorial or antidemocratic means are promoted. On the contrary, the means employed tend to be preeminently democratic—petitions, demonstrations, marches, boycotts, corporate campaigns, vigorous public criticism. And it is not that political democracy is derided. Projects such as the Green Party engage with electoral politics, locally and nationally, in order to win public office and achieve political objectives. But what is absent is a sober reckoning with the preoccupations and opinions of **the vast majority of Americans**, who are not drawn to vocal denunciations of the International Monetary Fund and World Trade Organization and **who do not believe that the discourse of “anti-imperialism” speaks to their lives**. Equally absent is critical thinking about why citizens of liberal democratic states—including most workers and the poor—value liberal democracy and subscribe to what Jürgen Habermas has called “constitutional patriotism”: a patriotic identification with the democratic state because of the civil, political, and social rights it defends. Vicarious identifications with Subcommandante Marcos or starving Iraqi children allow left activists to express a genuine solidarity with the oppressed elsewhere that is surely legitimate in a globalizing age. But these symbolic avowals are not an effective way of contending for political influence or power in the society in which these activists live. The ease with which the campus left responded to September 11 by rehearsing an all too-familiar narrative of American militarism and imperialism is not simply disturbing. **It is a sign of this left’s alienation from the society in which it operates** (the worst examples of this are statements of the Student Peace Action Coalition Network, which declare that “the United States Government is the world’s greatest terror organization,” and suggest that “homicidal psychopaths of the United States Government” engineered the World Trade Center attacks as a pretext for imperialist aggression. See http://www.gospan.org). Many left activists seem more able to identify with (idealized versions of) Iraqi or Afghan civilians than with American citizens, whether these are the people who perished in the Twin Towers or the rest of us who legitimately fear that we might be next. This is not because of any “disloyalty.” Charges like that lack intellectual or political merit. It is because of a debilitating *moralism*; because it is easier to denounce wrong than to take real responsibility for correcting it, easier to locate and to oppose a remote evil than to address a proximate difficulty. The campus left says what it thinks. But it exhibits little interest in how and why so many Americans think differently. The “peace” demonstrations organized across the country within a few days of the September 11 attacks—in which local Green Party activists often played a crucial role—were, whatever else they were, a sign of their organizers’ lack of judgment and common sense. Although they often expressed genuine horror about the terrorism, they focused their energy not on the legitimate fear and outrage of American citizens but rather on the evils of the American government and its widely supported response to the terror. Hardly anyone was paying attention, but they alienated anyone who was. This was utterly predictable. And that is my point. The predictable consequences did not matter. What mattered was simply the expression of righteous indignation about what is wrong with the United States, as if September 11 hadn’t really happened. Whatever one thinks about America’s deficiencies, it must be acknowledged that a political praxis preoccupation with this is foolish and self-defeating. The other, more serious consequence of this moralizing tendency is the failure to think seriously about global *politics*. The campus left is rightly interested in the ills of global capitalism. But politically it seems limited to two options: expressions of “solidarity” with certain oppressed groups—Palestinians but not Syrians, Afghan civilians (though not those who welcome liberation from the Taliban), but not Bosnians or Kosovars or Rwandans—and automatic opposition to American foreign policy in the name of anti-imperialism. The economic discourse of the campus left is a universalist discourse of human needs and workers rights; but it is accompanied by a refusal to think in *political* terms about the realities of states, international institutions, violence, and power. This refusal is linked to a peculiar strain of pacifism, according to which any use of military force by the United States is viewed as aggression or militarism. case in point is a petition circulated on the campus of Indiana University within days of September 11. Drafted by the Bloomington Peace Coalition, it opposed what was then an imminent war in Afghanistan against al-Qaeda, and called for peace. It declared: “Retaliation will not lead to healing; rather it will harm innocent people and further the cycle of violence. Rather than engage in military aggression, those in authority should apprehend and charge those individuals believed to be directly responsible for the attacks and try them in a court of law in accordance with due process of international law.” This declaration was hardly unique. Similar statements were issued on college campuses across the country, by local student or faculty coalitions, the national

Campus Greens, 9- 11peace.org, and the National Youth and Student Peace Coalition. As Global Exchange declared in its antiwar statement of September 11: “vengeance offers no relief. . . retaliation can never guarantee healing. . . and to meet violence with violence breeds more rage and more senseless deaths. Only love leads to peace with justice, while hate takes us toward war and injustice.” On this view military action of any kind is figured as “aggression” or “vengeance”; harm to innocents, whether substantial or marginal, intended or unintended, is absolutely proscribed; legality is treated as having its own force, independent of any means of enforcement; and, most revealingly, “healing” is treated as the principal goal of any legitimate response. None of these points withstands serious scrutiny. A military response to terrorist aggression is not in any obvious sense an act of aggression, unless any military response—or at least any U.S. military response—is simply *defined* as aggression. While any justifiable military response should certainly be governed by just-war principles, the criterion of absolute harm avoidance would rule out the possibility of *any* military response. It is virtually impossible either to “apprehend” and prosecute terrorists or to put an end to terrorist networks without the use of military force, for the “criminals” in question are not law-abiding citizens but mass murderers, and there are no police to “arrest” them. And, finally, while “healing” is surely a legitimate moral goal, it is not clear that it is a *political* goal. Justice, however, most assuredly is a political goal. The most notable thing about the Bloomington statement is its avoidance of political justice. Like many antiwar texts, it calls for “social justice abroad.” It supports redistributing wealth. But criminal and retributive justice, protection against terrorist violence, or the political enforcement of the minimal conditions of global civility—these are unmentioned. They are unmentioned because to broach them is to enter a terrain that the campus left is unwilling to enter—the terrain of violence, a realm of complex choices and dirty hands. This aversion to violence is understandable and in some ways laudable. America’s use of violence has caused much harm in the world, from Southeast Asia to Central and Latin America to Africa. The so-called “Vietnam Syndrome” was the product of a real learning experience that should not be forgotten. In addition, the destructive capacities of modern warfare— which jeopardize the civilian/combatant distinction, and introduce the possibility of enormous ecological devastation—make war under any circumstances something to be feared. No civilized person should approach the topic of war with anything other than great trepidation. And yet the left’s reflexive hostility toward violence in the international domain is strange. It is inconsistent with avowals of “materialism” and evocations of “struggle,” especially on the part of those many who are *not* pacifists; it is in tension with a commitment to human emancipation (is there no cause for which it is justifiable to fight?); and it is oblivious to the tradition of left thinking about ends and means. To compare the debates within the left about the two world wars or the Spanish Civil War with the predictable “anti-militarism” of today’s campus left is to compare a discourse that was serious about political power with a discourse that is not. This unpragmatic approach has become a hallmark of post–cold war left commentary, from the Gulf War protests of 1991, to the denunciation of the 1999 U.S.-led NATO intervention in Kosovo, to the current post–September 11 antiwar movement. In each case protesters have raised serious questions about U.S. policy and its likely consequences, but in a strikingly ineffective way. They sound a few key themes: the broader context of grievances that supposedly explains why Saddam Hussein, or Slobodan Milosevic, or Osama bin Laden have done what they have done; the hypocrisy of official U.S. rhetoric, which denounces terrorism even though the U.S. government has often supported terrorism; the harm that will come to ordinary Iraqi or Serbian or Afghan citizens as a result of intervention; and the cycle of violence that is likely to ensue. These are important issues. But they typically are raised by left critics not to promote real debate about practical alternatives, but to avoid such a debate or to trump it. As a result, the most important political questions are simply not asked. It is assumed that U.S. military intervention is an act of “aggression,” but no consideration is given to the aggression to which intervention is a response. The status quo ante in Afghanistan is not, as peace activists would have it, peace, but rather terrorist violence abetted by a regime—the Taliban—that rose to power through brutality and repression. This requires us to ask a question that most “peace” activists would prefer not to ask: *What should be done to respond to the violence of a Saddam Hussein, or a Milosevic, or a Taliban regime?* What means are likely to stop violence and bring criminals to justice? Calls for diplomacy and international law are well intended and important; they implicate a decent and civilized ethic of global order. But they are also vague and empty, because they are not accompanied by any account of how diplomacy or international law can work effectively to address the problem at hand. The campus left offers no such account. To do so would require it to contemplate tragic choices in which moral goodness is of limited utility. Here what matters is not purity of intention but the intelligent exercise of power. Power is not a dirty word or an unfortunate feature of the world. It is the core of politics. Power is the ability to effect outcomes in the world. Politics, in large part, involves contests over the distribution and use of power. To accomplish anything in the political world, one must attend to the means that are necessary to bring it about. And to develop such means is to develop, and to exercise, power. To say this is not to say that power is beyond morality. It is to say that power is not reducible to morality. As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one’s intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics—as opposed to religion—pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about unintended consequences as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with “good” may engender impotence, it is often the pursuit of “good” that generates evil. This is the lesson of communism in the twentieth century: **it is not enough that one’s goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals** and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

### Fem 2AC

#### Framework – evaluate the aff vs. status quo or a competitive policy option. That’s best for fairness and predictability – there are too many frameworks to predict and they moot all of the 1ac – makes it impossible to be aff. Only our framework solves activism.

#### -- Alt fails – reverses the error and can’t build transformational theory

Caprioli 4 (Mary, Professor of Political Science – University of Tennessee, “Feminist IR Theory and Quantitative Methodology: A Critical Analysis”, International Studies Review, 42(1), March, http://www.blackwell-synergy.com/links/doi/10.1111/0020-8833.00076)

If researchers cannot add gender to an analysis, then they must necessarily use a purely female-centered analysis, even though the utility of using a purely female centered analysis seems equally biased. Such research would merely be gendercentric based on women rather than men, and it would thereby provide an equally biased account of international relations as those that are male-centric. Although one might speculate that having research done from the two opposing worldviews might more fully explain international relations, surely an integrated approach would offer a more comprehensive analysis of world affairs. Beyond a female-centric analysis, some scholars (for example, Carver 2002) argue that feminist research must offer a critique of gender as a set of power relations. Gender categories, however, do exist and have very real implications for individuals, social relations, and international affairs. Critiquing the social construction of gender is important, but it fails to provide new theories of international relations or to address the implications of gender for what happens in the world.

#### -- Perm do both and perm do the plan and all parts of the alt that don’t consist of reject the aff

#### Solves best – alt alone fails – combining it with practical problem-solving is best --- overcomes the failings of both

**Keohane 98** (Robert, Professor – Duke University, “Beyond Dichotomy: Conversations Between International Relations and Feminist Theory”, International Studies Quarterly 42, http://www.blackwell-synergy.com/action/showPdf?submitPDF=Full+Text+PDF+%2889+KB%29&doi=10.1111%2F0020-8833.00076)

The problem with Tickner’s dichotomies, however, goes much deeper. The dichotomies should be replaced by continua, with the dichotomous characterizations at the poles. Each analyst of world politics has to locate herself or himself somewhere along the dimensions between critical and problem-solving theory, nomothetic and narrative epistemology, and a social or structural conception of international relations. In my view, none of the ends of these continua are the optimal places to rest one’s perspective. Criticism of the world, by itself, becomes a jeremiad, often resting implicitly on a utopian view of human potential. Without analysis, furthermore, it constitutes merely the opinion of one or a number of people. On the other hand, implicit or complacent acceptance of the world as it is would rob the study of international relations of much of its meaning. How could one identify “problems” withough criticism at some level? The issue is not problem-solving vs. critical theory- a convenient device for discarding work that one does not wish to accept- but how deeply the criticism should go. For example, most students of war study it because they hope to expose its evils or to control it in some way: few do so to glorify war as such. But the depth of their critique varies. Does the author reject certain acts of warfare, all warfare, all coercion, or the system of states itself? The deeper the criticism, the more wide-ranging the questions. Narrowly problem-solving work, as in much policy analysis, often ignores the most important causal factors in a situation because they are not manipulable in the short run. However, the more critical and wide-ranging an author’s perspective, the more difficult it is to do comparative empirical analysis. An opponent of some types of war can compare the causes of different wars, as a way to help to eliminate those that are regarded as pernicious; but the opponent of the system of states has to imagine the counterfactual situation of a system without states.

[\*\* Note – “jeremiad” = a prolonged lamentation or mournful complaint.]

#### Only the perm solves – criticism without an affirmative political component will be coopted

Best and Kellner 1 (Steven, Associate Professor of Philosophy and Humanities – University of Texas and Douglas, Philosophy of Education Chair – UCLA, “Postmodern Politics and the Battle for the Future,” Illuminations, http://www.uta.edu/huma/illuminations/kell28.htm)

The emphasis on local struggles and micropower, cultural politics which redefine the political, and attempts to develop political forms relevant to the problems and developments of the contemporary age is extremely valuable, but there are also certain limitations to the dominant forms of postmodern politics. While an emphasis on micropolitics and local struggles can be a healthy substitute for excessively utopian and ambitious political projects, one should not lose sight that key sources of political power and oppression are precisely the big targets aimed at by modern theory, including capital, the state, imperialism, and patriarchy. Taking on such major targets involves coalitions and multi-front struggle, often requiring a **politics of alliance** and solidarity that cuts across group identifications to mobilize sufficient power to struggle against, say, the evils of capitalism or the state. Thus, while today we need the expansion of localized cultural practices, they attain their real significance only within the struggle for the transformation of society as a whole. Without this systemic emphasis, cultural and identity politics remain **confined to the margins** of society and are in danger of **degenerating into narcissism, hedonism, aestheticism**, or personal therapy, where they **pose no danger** and are **immediately coopted** by the § Marked 08:43 § culture industries. In such cases, the political is merely the personal, and the original intentions of the 1960s goal to broaden the political field are inverted and perverted. Just as economic and political demands have their referent in subjectivity in everyday life, so these cultural and existential issues find their ultimate meaning in the demand for a new society and mode of production. Yet we would insist that it is not a question of micro vs macropolitics, as if it were an either/or proposition, but rather both dimensions are important for the struggles of the present and future.[15] Likewise, we would argue that we need to combine the most affirmative and negative perspectives, embodying Marcuse's declaration that critical social theory should be both more negative and utopian in reference to the status quo.[16] There are certainly many things to be depressed about is in the negative and cynical postmodernism of a Baudrillard, yet **without a positive political vision** merely citing the negative might lead to **apathy and depression** that only benefits the existing order. For a dialectical politics, however, positive vision of what could be is articulated in conjunction with critical analysis of what is in a multioptic perspective that focuses on the forces of domination as well as possibilities of emancipation.

#### Viewing all problems through the lens of gender is counter-productive --- blocks crucial progressive action

Jarvis 2k (Daryl, Lecturer in Government and International Relations – University of Sydney, International Relations and the Challenge of Postmodernism: Defending the Discipline)

Celebrating and reifying difference as a political end in itself thus run the risk of creating increasingly divisive and incommensurate discourses where each group claims a knowledge or experienced based legitimacy but, in doing so, precluding the possibility of common understanding or intergroup political discourse. Instead, difference produces antithetical dis­cord and political-tribalism: only working class Hispanics living in South Central Los Angeles, for instance, can speak of, for, and about their com­munity, its concerns, interests and needs; only female African Americans living in the projects of Chicago can speak "legitimately" of the housing and social problems endemic to inner city living. Discourse becomes con­fined not to conversations between identity groups since this is impossible, but story telling of personal/group experiences where the "other" listens intently until their turn comes to tell their own stories and experiences. Appropriating the voice or pain of others by speaking, writing, or theoriz­ing on issues, perspectives, or events not indicative of one's group-identity becomes not only illegitimate but a medium of oppression and a means to silence others. The very activity of theory and political discourse as it has been understood traditionally in International Relations, and the social sciences more generally, is thus rendered inappropriate in the new milieu of identity politics. Politically, progressives obviously see a danger in this type of discourse and, from a social scientific perspective, understand it to be less than rig­orous. Generalizing, as with theorizing, for example, has fallen victim to postmodern feminist reactions against **methodological essentialism** and the adoption of what Jane Martin calls the instillation of **false difference** into identity discourse. By reacting against the assumption that "all indi­viduals in the world called `women' were exactly like us" (i.e. white, mid­dle class, educated, etc.), feminists now tend "a priori to give privileged status to a predetermined set of analytic categories and to affirm the exis**­**tence of nothing but difference." In avoiding the "pitfall of false unity," feminists have thus "walked straight into the trap of false difference. Club words now dominate the discourse. Essentialism, ahistoricism, uni­versalism, and androcentrism, for example, have become the "prime idiom[s] of intellectual terrorism and the privileged instrument[s] of polit­ical orthodoxy." While sympathetic to the cause, even feminists like Jane Martin are critical of the methods that have arisen to circumvent the evils of essentialism, characterizing contemporary feminist scholarship as imposing its own "chilly climate" on those who question the method­ological proclivity for difference and historicism. Postmodern feminists, she argues, have fallen victim to compulsory historicism, and by "rejecting one kind of essence talk but adopting another," have followed a course "whose logical conclusion all but precludes the use of language." For Martin, this approaches a "**dogmatism** on the methodological level that we do not countenance in other contexts.... It **rules out theories, categories, and research projects** in advance; prejudges the extent of difference and the nonexistence of similarity." In all, it speaks to a methodological **trap** th**at produces many of the same problems as before**, but this time in a language otherwise viewed as progressive, sensitive to the particularities of identity and gender, and destructive of conventional boundaries in disci­plinary knowledge and theoretical endeavor.

#### Rejecting traditional security analysis guarantees the sector will be dominated by the most conservative policymakers

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

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

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#### -- Alt fails – no mechanism to translate theory into practice

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

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

#### -- Case outweighs.

#### Indefinite detention risks large-scale short-term death. Policy change is necessary to alleviate real and on-going suffering. Abstract claims of “epistemology” and non-impacts like “technological rationality” are ivory-tower constructions that condemn millions to death.

Jarvis 00 (Darryl, Senior Lecturer in International Relations – University of Sydney, International Relations and the Challenge of Postmodernism, p. 128-129)

Perhaps more alarming though is the outright violence Ashley recommends in response to what at best seem trite, if not imagined, injustices. Inculpating modernity, positivism, technical rationality, or realism with violence, racism, war, and countless other crimes not only smacks of anthropomorphism but, as demonstrated by Ashley’s torturous prose and reasoning, requires a dubious logic to make such connections in the first place. Are we really to believe that ethereal entities like positivism, modernism, or realism emanate a “violence” that marginalizes dissidents? Indeed, where is this violence, repression, and marginalization? As self-professed dissidents supposedly exiled from the discipline, Ashley and Walker appear remarkably well integrated into the academy—vocal, published, and at the center of the Third Debate and the forefront of theoretical research. Likewise, is Ashley seriously suggesting that, on the basis of this largely imaged violence, global transformation (perhaps even revolutionary violence) is a necessary, let alone desirable, response? Has the rationale for emancipation or the fight for justice been reduced to such vacuous revolutionary slogans as “Down with positivism and rationality”? The point is surely trite. Apart from members of the academy, who has heard of positivism and who for a moment imagines that they need to be emancipated from it, or from modernity, rationality, or realism for that matter? In an era of unprecedented change and turmoil, of new political and military configurations, of war in the Balkans and ethnic cleansing, is Ashley really suggesting that some of the greatest threats facing humankind or some of the great moments of history rest on such **innocuous** and largely unknown **nonrealities** like positivism and realism? These are **imagined and fictitious enemies**, **theoretical fabrications** that represent arcane, self-serving debates superfluous to the lives of most people and, arguably, to most issues of importance in international relations. More is the pity that such irrational and obviously abstruse debate should so occupy us at a time of great global turmoil. That it does and continues to do so reflect our lack of judicious criteria for evaluating theory and, more importantly, the lack of attachment theorists have to the real world. Certainly it is right and proper that we ponder the depths of our theoretical imaginations, engage in epistemological and ontological debate, and analyze the sociology of our knowledge. But to support that this is the only task of international theory, let alone the most important one, **smacks of intellectual elitism** and **displays** a certain **contempt** for those who search for guidance in their daily struggle as actors in international politics. What does Ashley’s project, his deconstructive efforts, or valiant fight against positivism say to the truly marginalized, oppressed, and destitute? How does it help solve the plight of the poor, the displaced refugees, the casualties of war, or the émigrés of death squads? Does it in any way speak to those whose actions and thoughts comprise the policy and practice of international relations? On all these questions one must answer **no**. This is not to say, of course, that all theory should be judged by its technical rationality and problem-solving capacity as Ashley forcefully argues. But to support that problem-solving technical theory is not necessary—or in some way bad—is a **contemptuous position** that abrogates any hope of solving some of the **nightmarish realities that millions confront daily**. As Holsti argues, we need ask of these theorists and their theories the ultimate question, **“So what?”** To what purpose do they deconstruct, problematize, destabilize, undermine, ridicule, and belittle modernist and rationalist approaches? Does this get us any further, make the world any better, or enhance the human condition? In what sense can this “debate toward [a] bottomless pit of epistemology and metaphysics” be judged pertinent, relevant, helpful, or cogent to anyone other than those foolish enough to be scholastically excited by abstract and recondite debate. Contrary to Ashley’s assertions, then, a poststructural approach fails to empower the marginalized and, in fact, abandons them. Rather than analyze the political economy of power, wealth, oppression, production, or international relations and render and intelligible understanding of these processes, Ashley succeeds in ostracizing those he portends to represent by delivering an obscure and highly convoluted discourse. If Ashley wishes to chastise structural realism for its abstractness and detachment, he must be prepared also to face similar criticism, especially when he so adamantly intends his work to address the real life plight of those who struggle at marginal places.

#### -- This shatters the alt – violent conflict blocks transition to alternative IR

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

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

#### -- No impact – global violence is generally decreasing

#### -- Extinction not inevitable

Peiser 7 (Benny, Faculty of Science, Specializes in the Effects of Environmental Change And Catastrophic Events, Liverpool John Moores University (UK), “Existential Risk and Democratic Peace,” 11-15, <http://news.bbc.co.uk/1/hi/sci/tech/7081804.stm>)

Doomsday argument In recent years, leading scientists in the UK, such as Brandon Carter, Stephen Hawking and Sir Martin Rees, have advanced the so-called Doomsday Argument, a cosmological theory in which global catastrophes due to low-probability mega-disasters play a considerable role. This speculative theory maintains that scientific risk assessments have systematically underestimated existential hazards. Hence the probability is growing that humankind will be wiped out in the near future. Nevertheless, **there are many** **good and** **compelling reasons why human extinction is not** predetermined or **unavoidable**. According to a more optimistic view of the future, all existential risks can be tackled, eliminated or significantly reduced through the application of human ingenuity, hyper-technologies and global democratisation. From this confident perspective of emergent risk reduction, the resilience of civilisation is no longer restricted by the constraints of human biology. Instead, it is progressively shielded against natural and man-made disasters by hyper-complex devices and information-crunching technologies that potentially comprise boundless technological solutions to existential risks. Current advances in developing an effective planetary defence system, for example, will eventually lead to a protective shield that can safeguard life on the Earth from disastrous NEO impacts. The societal response to the cosmic impact hazard is a prime example of how technology can ultimately eliminate an existential risk from the list of contemporary concerns. A technology-based response to climate change impacts is equally feasible, and equally capable of solving the problem. Global democracy as a solution But while most natural extinction risks can be entirely eliminated by technological fixes, no such clean-cut solutions are available for the inherent potential threats posed by super-technologies. After all, the principal threat to our long-term survival is the destabilising and destructive violence committed by extremist groups and authoritarian regimes. Here, the solution can only be political and cultural. Fortunately, there is compelling evidence that the global ascent of democratic liberalism is directly correlated with a **steep reduction** of armed conflicts. A recent UN report found that the total number of wars and civil conflicts has declined by 40% since the end of the Cold War, while the average number of deaths per conflict has dropped dramatically, from 37,000 in 1950 to 600 in 2002. According to the field of democratic peace research, the growing number of democracies is the foremost reason for the pacification of many international conflicts. Democracies have never gone to war against each other, as democratic states adopt compromise solutions to both internal and external problems. As Rudolph J Rummel, one of the world's most eminent peace researchers, has stated: "In democracy we have a cure for war and a way of minimising political violence, genocide, and mass murder." **On balance**, therefore, I believe that **the prophets of doom**, including those predicting climate doom, **are wrong**. Admittedly, there is no guarantee that we can avoid major mayhem and disruption during our risky transition to become a hyper-technological, type 1 civilisation. Even so, societal evolution has now reached a level of complexity that renders the probability of human survival much higher than at any hitherto stage of history.

#### War is bad. Period. Rejecting our Aff for the sake of gendered concerns is a form of political hair-splitting that makes social transformation impossible.

Jarvis 2k (Daryl, Lecturer in Government and International Relations – University of Sydney, International Relations and the Challenge of Postmodernism: Defending the Discipline)

Lurking Behind such positions, of course, is the highly problematic assumption that a fundamental shift in the political, social, and economic worlds has occurred; that "people, machinery and money, images and ideas now follow increasingly nonisomorphic paths, and that because of this there is a "deterritorializing mobility of peoples, ideas, and images," one overcoming the "laborious moves of statism to project an image of the world divided along territorially discontinuous (separated) sovereign spaces, each supposedly with homogeneous cultures and impervious essences." In this new world where global space-as-territory has been obliterated, where discrete national cultures no longer exist but are dissolved by cosmopolitanism and ubiquitous images peddled by hypermodern communications, all that remains as tangible referents for knowledge and understanding, we are told, are our own fractured identities."' While, for feminists, this is profoundly liberating, allowing them to recognize a "multiplicity of identities," each engaged in a "differing politics," it also betrays how narrow is the intent of feminist postmodernism, which stands for no other end except the eradication of essentialism. Much as Ashley saw in positivism tyrannical structures of oppression, so in essentialism postmodern feminists see the subjugation of diversity amid universal narratives. Yet the reification of difference as the penultimate ontological beginning and end point seems disingenuous in the extreme. The question is not whether there are differences-of course there are-but whether these are significant for International Relations, and if so in what capacity? Historically, the brief of International Relations has been to go out in search of those things that unite us, not divide us. Division, disunity, and difference have been the unmistakable problems endemic to global politics, and overcoming them the objective that has provided scholars with both their motivating purpose and moral compass. In venerating difference, identity politics unwittingly reproduces this problematique: exacerbating differences beyond their significance, fabricating disunity, and **contributing to social and political cleavage**. Yes, we are not all the same. But the things that unite us are surely more important, more numerous, and more fundamental to the human condition than those that divide us. **We all share a conviction that war is bad, for example**, that violence is objectionable, global poverty unconscionable, and that peaceful interstate relations are desirable. Likewise, we all inhabit one earth and have similar environmental concerns, have the same basic needs in terms of developmental requirements, nutrition, personal security, education, and shelter. To suppose that these modernist concerns are divisible on the basis of gender, color, sexuality, or religious inclination seems specious, promoting contrariety where none really exists from the perspective of International Relations. How, for example, amid the reification of ever-divisible difference, do we foster political community and solidarity, hope to foster greater global collectivity, or unite antithetically inclined religious, segregationist, or racial groups on the basis of their professed difference? How this is meant to secure new visions of international politics, solve the divisions of previous disputations, or avert violent factionalisms in the future remains **curiously absent** from the discourse of identity politics.

#### No prior questions

**Owen 02** David Owen, 2 Reader of Political Theory at the Univ. of Southampton, Millennium Vol 31 No 3 2002 p. 655-7

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.**

### 2AC EU Soft Power

#### They didn’t read a link – no evidence that US detention cred is key to the DA

#### Alt caus – low relations with Russia

APW 07(Associated Press Worldstream, 11/27. “EU needs closer ties with Russia to increase global influence, Gorbachev says.” Lexis.)

The European Union will not have true global influence until it finds a way to achieve closer ties with Russia, former Soviet leader Mikhail Gorbachev said Tuesday. Gorbachev said that while it was impossible for Russia to become an EU member in the foreseeable future, the two sides needed to draw up a document setting the rules for "advanced cooperation" If the EU and Russia do not improve relations, "we will fail to make Europe a center of power in the world," Gorbachev said at start of a session of the World Political Forum, which he founded in 2003. "For Europe to become a power center ... is important for the world balance and if this doesn't happen, global processes will be even more unpredictable," Gorbachev said. "The EU needs to get a clear and independent voice in global affairs, which has not happened since the end of the Cold War," said the 1990 Nobel Peace Prize winner, whose policies of glasnost and perestroika openness and restructuring helped end communism in the Soviet Union and its satellites. "This is one of the reasons why we have seen major problems and mistakes in international politics the involvement of Europe should be clear and visible," Gorbachev said, mentioning the wars in the Balkans and Iraq as scenarios where Europe "did not quite measure up to its potential" and allowed the United States to achieve a "monopoly leadership." He also expressed concern that more and more Russians wanted to "choose a non-European path," desiring instead to redirect Russia's economic and political links toward Asia, while Europe doubted Russia's ability to build a true democracy. "Alienation between Russia and the EU is a very dangerous tendency and we must not allow it to happen," Gorbachev said, adding that the EU remained Russia's most important partner in economic issues, as well as in modernizing the country. "Russia will continue to move along its democratic path, but we are at best only halfway in this process. We still have a long way to go," Gorbachev concluded.

#### Partnership with the U.S. solves

DPA 08 (Deutsche Presse-Agentur, 9/5. “ROUNDUP: EU looks to close ranks with US to keep global influence.” Lexis.)

The European Union must close ranks with the United States if the two powers are to keep their global influence during the rise of states like China, India and Russia, EU foreign-policy chiefs said at an informal meeting on Friday. "The new American administration will, as we all of course also,have to cope with the new emerging countries: apart from Russia,which is an old power with a new assertiveness, India, Brazil andChina," EU foreign-policy commissioner Benita Ferrero-Waldner said. "We want to be more equal partners with the US, but how can we do that? We have to raise our own game, we have to be more clear andunited in the positions we are taking, we have to be more effectiveand forthcoming in using our policy and our instruments," she said. At an informal meeting in the French city of Avignon, the foreign ministers of the EU's 27 member states discussed how to cooperate with the next US president on questions of global security such asclimate change and energy security, French Foreign Minister BernardKouchner, who chaired the meeting, said. "The world is dangerous, the return of nationalism andmicro-nationalism impose on (the EU and US) a common vision andcommon steps," he warned. "We want to set up a sort of better process, not to be surprised,not to be completely bare-handed, and not always to be obliged tothreaten someone else," he said. Ahead of the US election, scheduled for November 4, the EU is therefore set to draw up a list of the areas in which it would like to work more closely with the US, to be sent to President George WBush and the two candidates in the election. "It's not to take advantage (of the change of administration), but knowing that our American friends ... also wish that the EU should be politically present in the world's problems, and take its political place, not just as a fund-raiser but a player in its matters of peace, and sometimes of war," Kouchner said. But at the same time, he also criticized the policies of current US Vice-President Dick Cheney, who on Friday visited Ukraine on a whirlwind tour of the former Soviet Union aimed at boosting ties in the wake of August's Georgian-Russian war. Cheney "has a certain sense of protecting people, but I'm not so sure he got a lot of success with this particular sense," he said. Also at the meeting, ministers discussed with the EU's top foreign-policy figure, Javier Solana, how the bloc should update itscommon security strategy - a document written in December 2003. "There are questions like climate change and energy security whichneed an answer," Solana said, adding that he hoped to present a"short and useful" new document to EU leaders by the end of the year. Tellingly, however, the original strategy of 2003 stresses the need for the EU to project its values round the world by working withinternational organizations such as the UN and WTO. "The best protection for our security is a world of well-governeddemocratic states," it says, listing political and social reform andthe defence of human rights as "the best means of strengthening theinternational order." And the rise of Russia, China and India has alarmed EU diplomats,with the Russian-Georgian war and the collapse of WTO talks in a rowbetween China, India and the US both seen as signs that Westerndomination of the international agenda can no longer be assured. "Over the last few years, you've seen a determined effort on the part of Europe and the Americans to forge common positions on issues as diverse as Iran, Russia, and international development," British Foreign Minister David Miliband pointed out. "There's still an opportunity to work together, not at the expense of the rising powers in China and India, but as a way of binding them into the global system and making sure that responsibility is shared by all the powers in the modern world," he said.

#### Long timeframe and adaptation solves

Robert O. Mendelsohn 9, the Edwin Weyerhaeuser Davis Professor, Yale School of Forestry and Environmental Studies, Yale University, June 2009, “Climate Change and Economic Growth,” online: http://www.growthcommission.org/storage/cgdev/documents/gcwp060web.pdf

The heart of the debate about climate change comes from a number of warnings from scientists and others that give the impression that human-induced climate change is an immediate threat to society (IPCC 2007a,b; Stern 2006). Millions of people might be vulnerable to health effects (IPCC 2007b), crop production might fall in the low latitudes (IPCC 2007b), water supplies might dwindle (IPCC 2007b), precipitation might fall in arid regions (IPCC 2007b), extreme events will grow exponentially (Stern 2006), and between 20–30 percent of species will risk extinction (IPCC 2007b). Even worse, there may be catastrophic events such as the melting of Greenland or Antarctic ice sheets causing severe sea level rise, which would inundate hundreds of millions of people (Dasgupta et al. 2009). Proponents argue there is no time to waste. Unless greenhouse gases are cut dramatically today, economic growth and well‐being may be at risk (Stern 2006).

These statements are largely alarmist and misleading. Although climate change is a serious problem that deserves attention, society’s immediate behavior has an extremely low probability of leading to catastrophic consequences. The science and economics of climate change is quite clear that emissions over the next few decades will lead to only mild consequences. The severe impacts predicted by alarmists require a century (or two in the case of Stern 2006) of no mitigation. Many of the predicted impacts assume there will be no or little adaptation. The net economic impacts from climate change over the next 50 years will be small regardless. Most of the more severe impacts will take more than a century or even a millennium to unfold and many of these “potential” impacts will never occur because people will adapt. It is not at all apparent that immediate and dramatic policies need to be developed to thwart long‐range climate risks. What is needed are long‐run balanced responses.

### 2AC Drone Shift

#### non-unique, - decreasing detainees now

Brookings 8 (Benjamin Wittes and Zaahira Wyne with Erin Miller, Julia Pilcer, and Georgina Druce, December 16, 2008, “The Current Detainee Population of Guantánamo: An Empirical Study” http://www.brookings.edu/~/media/research/files/reports/2008/12/16%20detainees%20wittes/1216\_detainees\_wittes)

As of December 16, 2008, the detention facility at Guantánamo Bay, Cuba held 248 detainees. This figure represents only a fraction of the 779 who have passed through the facility since it opened in 2002. Of the 558 detainees who remained at the base long enough to go through the CSRT process, 330 have been transferred or released. Over that same time period, 20 additional detainees have arrived at Guantánamo. Fourteen of these came in September 2006, when the CIA transferred the so-called high-value detainees, whom it had previously held for interrogation in its secret detention program overseas; six additional detainees arrived between March 2007 and March 2008.21 Our calculations concerning the current population have a small but real margin of error, described below in our discussion of sources and methods.

#### Previous rulings non-unique

Vladeck 12 (10/01/12, Professor Stephen I. Vladeck of the Washington College of Law at American University, “Detention Policies: What Role for Judicial Review?”, <http://www.abajournal.com/magazine/article/detention_policies_what_role_for_judicial_review/>)

The short chapter that follows aims to take Judge Brown’s suggestion seriously. As I explain, although Judge Brown is clearly correct that judicial review has affected the size of the detainee populations within the territorial United States and at Guantanamo, it does not even remotely follow that the jurisprudence of the past decade has precipitated a shift away from detention and toward targeted killings. To the contrary, the jurisprudence of Judge Brown’s own court has simultaneously (1) left the government with far greater detention authority than might otherwise be apparent where noncitizens outside the United States are concerned; and (2) for better or worse, added a semblance of legitimacy to a regime that had previously and repeatedly been decried as lawless. And in cases where judicial review prompted the government to release those against whom it had insufficient evidence, the effects of such review can only be seen as salutary. Thus, at the end of a decade where not a single U.S. military detainee was freed by order of a federal judge, it is more than a little ironic for Judge Brown to identify “take no prisoners” as Boumediene’s true legacy.

#### Not an alt cause – our evidence indicates that overturning indefinite detention is SUFFICIENT to solve the aff – its seen as changing the deference trend – that’s Martin and Reinhardt and it’s the key internal to hearts and minds - spaulding

#### Strikes now

McClatchy 13 (May 23, Lesley Clark and Jonathan S. Landay | McClatchy Washington Bureau

“Obama speech suggests possible expansion of drone killings”

www.mcclatchydc.com/2013/05/23/192081/obama-promises-anew-to-transfer.html#storylink=cpy)

But Obama’s speech appeared to expand those who are targeted in drone strikes and other undisclosed “lethal actions” in apparent anticipation of an overhaul of the 2001 congressional resolution authorizing the use of force against al Qaida and allied groups that supported the 9/11 attacks on the United States. In every previous speech, interview and congressional testimony, Obama and his top aides have said that drone strikes are restricted to killing confirmed “senior operational leaders of al Qaida and associated forces” plotting imminent violent attacks against the United States. But Obama dropped that wording Thursday, making no reference at all to senior operational leaders. While saying that the United States is at war with al Qaida and its associated forces, he used a variety of descriptions of potential targets, from “those who want to kill us” and “terrorists who pose a continuing and imminent threat” to “all potential terrorist targets.” The previous wording also was absent from a fact sheet distributed by the White House. Targeted killings outside of “areas of active hostilities,” it said, could be used against “a senior operational leader of a terrorist organization or the forces that organization is using or intends to use to conduct terrorist attacks.” The preconditions for targeted killings set out by Obama and the fact sheet appear to correspond to the findings of a McClatchy review published in April of U.S. intelligence reports that showed the CIA killed hundreds of lower-level suspected Afghan, Pakistani and unidentified “other” militants in scores of drone attacks in Pakistan’s tribal are during the height of the operations in 2010-11. Nearly 4,000 people are estimated to have died in U.S. drone strikes since 2004, the vast majority if them conducted by the CIA in Pakistan’s tribal area bordering Afghanistan. The fact sheet also said that those who can be killed must pose a “continuing and imminent threat” to “U.S. persons,” setting no geographic limits. Previous administration statements have referred to imminent threats to the United States – the homeland or its interests. “They appear to be broadening the potential target set,” said Christopher Swift, an international legal expert who teaches national security studies at Georgetown University and closely follows the targeted killing issue.

#### Drone arms race inevitable

USA Today 13

(1/9, http://www.usatoday.com/story/news/world/2013/01/08/experts-drones-basis-for-new-global-arms-race/1819091/, “Experts: Drones basis for new global arms race”, AB)

The success of U.S. drones in Iraq and Afghanistan has triggered a global arms race, raising concerns the remotely piloted aircraft could fall into unfriendly hands, military experts say. The number of countries that have acquired or developed drones expanded to more than 75, up from about 40 in 2005, according to the Government Accountability Office, the investigative arm of Congress. Iran and China are among the countries that have fielded their own systems. "People have seen the successes we've had," said Lt. Gen. Larry James, the Air Force's deputy chief of staff for intelligence, surveillance and reconnaissance. The U.S. military has used drones extensively in Afghanistan, primarily to watch over enemy targets. Armed drones have been used to target terrorist leaders with missiles that are fired from miles away.

#### No drone shift link---numbers don’t line up

Robert Chesney 11, Charles I. Francis Professor in Law at the UT School of Law as well as a non-resident Senior Fellow at Brookings, "Examining the Evidence of a Detention-Drone Strike Tradeoff", October 17, www.lawfareblog.com/2011/10/examining-the-evidence-of-a-detention-drone-strike-tradeoff/

Yesterday Jack linked to this piece by Noah Feldman, which among other things advances the argument that the Obama administration has resorted to drone strikes at least in part in order to avoid having to grapple with the legal and political problems associated with military detention:¶ Guantanamo is still open, in part because Congress put obstacles in the way. Instead of detaining new terror suspects there, however, Obama vastly expanded the tactic of targeting them, with eight times more drone strikes in his first year than in all of Bush’s time in office.¶ Is there truly a detention-drone strike tradeoff, such that the Obama administration favors killing rather than capturing? As an initial matter, the numbers quoted above aren’t correct according to the New America Foundation database of drone strikes in Pakistan, 2008 saw a total of 33 strikes, while in 2009 there were 53 (51 subsequent to President Obama’s inauguration). Of course, you can recapture something close to the same point conveyed in the quote by looking instead to the full number of strikes conducted under Bush and Obama, respectively. There were relatively few drone strikes prior to 2008, after all, while the numbers jump to 118 for 2010 and at least 60 this year (plus an emerging Yemen drone strike campaign). But what does all this really prove?¶ Not much, I think. Most if not all of the difference in drone strike rates can be accounted for by specific policy decisions relating to the quantity of drones available for these missions, the locations in Pakistan where drones have been permitted to operate, and most notably whether drone strikes were conditioned on obtaining Pakistani permission. Here is how I summarize the matter in my forthcoming article on the legal consequences of the convergence of military and intelligence activities:¶ According to an analysis published by the New America Foundation, two more drone strikes in Pakistan’s FATA region followed in 2005, with at least two more in 2006, four more in 2007, and four more in the first half of 2008.[1] The pattern was halting at best. Yet that soon changed. U.S. policy up to that point had been to obtain Pakistan’s consent for strikes,[2] and toward that end to provide the Pakistani government with advance notification of them.[3] But intelligence suggested that on some occasions “the Pakistanis would delay planned strikes in order to warn al Qaeda and the Afghan Taliban, whose fighters would then disperse.”[4] A former official explained that in this environment, it was rare to get permission and not have the target slip away: “If you had to ask for permission, you got one of three answers: either ‘No,’ or ‘We’re thinking about it,’ or ‘Oops, where did the target go?”[5]¶ Declaring that he’d “had enough,” Bush in the summer of 2008 “ordered stepped-up Predator drone strikes on al Qaeda leaders and specific camps,” and specified that Pakistani officials going forward should receive only “‘concurrent notification’…meaning they learned of a strike as it was underway or, just to be sure, a few minutes after.”[6] Pakistani permission no longer was required.[7] ¶ The results were dramatic. The CIA conducted dozens of strikes in Pakistan over the remainder of 2008, vastly exceeding the number of strikes over the prior four years combined.[8] That pace continued in 2009, which eventually saw a total of 53 strikes.[9] And then, in 2010, the rate more than doubled, with 188 attacks (followed by 56 more as of late August 2011).[10] The further acceleration in 2010 appears to stem at least in part from a meeting in October 2009 during which President Obama granted a CIA request both for more drones and for permission to extend drone operations into areas of Pakistan’s FATA that previously had been off limits or at least discouraged.[11] ¶ There is an additional reason to doubt that the number of drone strikes tells us much about a potential detention/targeting tradeoff: most of these strikes involved circumstances in which there was no feasible option for capturing the target. These strikes are concentrated in the FATA region, after all. ¶ Having said all that: it does not follow that there is no detention-targeting tradeoff at work. I’m just saying that drone strikes in the FATA typically should not be understood in that way (though there might be limited exceptions where a capture raid could have been feasible). Where else to look, then, for evidence of a detention/targeting tradeoff?¶ Bear in mind that it is not as if we can simply assume that the same number of targets emerge in the same locations and circumstances each year, enabling an apples-to-apples comparison. But set that aside.¶ First, consider locations that (i) are outside Afghanistan (since we obviously still do conduct detention ops for new captures there) and (ii) entail host-state government control over the relevant territory plus a willingness either to enable us to conduct our own ops on their territory or to simply effectuate captures themselves and then turn the person(s) over to us. This is how most GTMO detainees captured outside Afghanistan ended up at GTMO. Think Bosnia with respect to the Boumediene petitioners, Pakistan’s non-FATA regions, and a variety of African and Asian states where such conditions obtained in years past. In such locations, we seem to be using neither drones nor detention. Rather, we either are relying on host-state intervention or we are limiting ourselves to surveillance. Very hard to know how much of each might be going on, of course. If it is occurring often, moreover, it might reflect a decline in host-state willingness to cooperate with us (in light of increased domestic and diplomatic pressure from being seen to be responsible for funneling someone into our hands, and the backdrop understanding that, in the age of wikileaks, we simply can’t promise credibly that such cooperation will be kept secret). In any event, this tradeoff is not about detention versus targeting, but something much more complex and difficult to measure.

# 1AR

#### Deference causes military medical and bioweapons research – that’s **Parasidis**

#### Unregulated biotech causes grey goo

Wejnert 4 – Jason Candidate for the degree of Juris Doctor at the Arizona State University College of Law and Center Scholar with the Arizona State University College of Law Center for Law, Science, and Technology, Spring, Jurimetrics - 44, "regulating mechanisms for molecular nanotechnology" www.law.asu.edu/files/Programs/Sci-Tech/Commentaries/Wejnert-%20Regulatory%20Mechanisms%20for%20Molecular%20Nanotechnology-%20Final.pdf

To manipulate matter at atomic scale precision, atomic scale techniques are needed. Physicists developed some early promising tools with the scanning tunneling microscope and the atomic force microscope (AFM).18 The AFM allows atomic-level precision positioning of a cantilever tip that is controlled by feedback electronics and modulated by covalent forces between the tip and the atoms in the surface. Finally, there was a tool that could move and place atoms. Though the possible application s for AFM -positioned structures are lim ited at this time because of the physical difficulties of crafting tips, chemists have proposed alternative pathways to MNT using the AFM.19 By using protein engineering and biotechno logy, scientists may be able to devise AFM tip structures that can bind desired compo nents and allo w stable plac ement and construction of molecular scale structures.20 In fact, it is this cross-pollination of ideas between biosciences and physics that is considere d to be the m ost likely pathway to MNT.21 Considered by many to be the epitome of nanotechnology, living cells accomplish many of the tasks that futurists propose for mature nanotechnology—self-replication, self-assembly, self-powered systems that function at the molecular level.22 Scientists hope to model flagella on bacteria for motion, ribosomes in the cell for energy production, and DNA-RNA cycles for information and replication.23 For this reason, many consider MNT to be a future offshoot of biotechnology o r protein engineering more than mechanical engineering o r applied physics.24 In addition to the technological pathways, Drexler tackled some of the societal and political questions that nanotechnology would necessarily engender. As a result of Dre xler’s push to get nanotechnology on everybody’s mind, others joined Drexler to create the Foresight Institute as a think tank devoted to promoting MNT, confronting the technological, societal, political, and ethical challenges of the growing technolog y.25 Prominent on the F oresight Institute’s website is a list of “guidelines” for respon sible develo pment of M NT, inc orporating some safeguards to prevent serious incidents that nanosystems might cause.26 Drexler and the proponents of MNT were not without serious skeptics and challengers from the beginning. From the technological perspe ctive, physicists pointed out that the thermal motion of molecules and atoms at that scale— Brownian motion— would be a serious if not fatal obstacle to coordinating atoms in machine-like structures and makin g them last.27 Indeed, the much-hyped writing of “IBM” on a metal substrate with an atomic force microscope in 1987 was a flash in the pan—most who viewed this image did not know that the logo evaporated almost immediately after it was created.28 Also, other skeptics point out our primitive understanding of how genetics dictate why life even exists poses enormo us obstacles to creating a se lf-replicating system at a molecu lar level.29 Critics and skeptics ponder about the co ntrol of M NT b ecause it represents a challenge unlike that presented by most other technologies. At a minimum, MNT will allow humans to a lter matter at a molecular level in a new way, creating new econom ics. In the past, scientists hav e modified matter chem ically or with nuclear reactions, but only in a crude fashion. MN T will allow the precise modification and placement of atoms and atomic structures to create machines and devices. Perhaps the elimination of poverty and hunger will finally be within the grasp of humanity for the first time in history. On the other hand, critics have suggested that MNT co uld be wielded in such a way that an even greater technological and economic divide than that imagined by biotechnology critics would resu lt.30 From a societal and legal p erspective, sk eptics poin t out the catastro phic potential that MNT has for altering the environment and human society.31 The scale and autonomy of the proposed applications of MNT are such that critics fear the release of nanodevices into the wild where they would propagate uncontrollably like a virus.32 If nanodevices were given the ability of self-replication using ambient fuel, critics fear that the devices would reproduce and consume all available resources, turning what they encounter into “grey goo,” a substance that has been metabolized by the nanodevice swarm and rendered useless, or “infested” to the point of contagion by the nanodev ices.33 Also, a rogu e state might gain the tec hnology an d hold the world hostage

to the state’s demands on the threat of release of a genetically targeted “virus.” Such fears were present in early debates about biotechnology and, though not realized or even realizable, have colored the debate on the introduction of biotechnology products and research around the world.34 These control fears will need to be dealt with for successful implementation and management of MNT in the future. A societal concern that is often not addressed in the technological management discussions is how the technology will affect society at its ultimate level—the purpose and direction of society.35 Bill Joy, CEO o f Sun Microsystems, wrote a controversial article for Wired in 2000 about the role of robotics and MNT in future human society.36 In it, he speculated that intelligent robotic   systems, coupled with omnipotent nanotechnology, would make humanity “obsolete” in the sense that we would have little purpose.37 Without the day-today requirements of working for a living or striving to satisfy our needs, Joy fears we will realize a warped utopia, where our every need is satisfied except for the one of purpose.38 Others have voiced these fears, Drexler included,39 but the futurists believe that when liberated from working for a living, mankind will be free to pursue arts and leisure that will actualize our potential rather than pervert it. Clearly, this scenario has never been tested, and o ne can only sp eculate as to the outcom e. With any discussion of MNT applications and the proper a pproac h to controlling or encouraging their development, there must be a segregation of applications into those that present a credib le hazard a nd those tha t are by their nature controlled and thus not appropriate for extensive control and regulation. The former cate gory includes the devices and applications that futurists most often promo te as the promise of MNT, while at the same time are demonized by detractors. Such applications include self-replicating, free-roaming nanodevices that can replicate in the wild, enviro nmental nan orobo ts that can ope rate autonom ously with distributed intelligence, and medical nanomachines that can operate at a cellular level on the human body, repairing and augmenting it. The latter, less-dangerous, applications include solar electricity-generating materials built into roads and buildings, “smart walls” that can change their appearance, and controlled laboratory or factory replicators that rely on a finite fuel supply and have limited autono my. The fo cus of this paper will be on the regulation of MNT applications that present a threat of “release” into the wild where they can do significant harm . Even though M NT is probably decades away from even th e most realiza ble applications that Drexler and the Fo resight Institute have pro posed, p ropone nts and critics alike agree that rational planning is called for to mitigate the fears and prepare for the radica l changes that M NT will bring.40 Reactions to managing MNT range from outright pro hibition (“relinq uishment” as Bill Joy calls for41) to cooperative promo tion of the techn ology while implementing safeguards, as the Foresight Institute advo cates. One of the majo r problem s that future nation s will have to face is adapting current solutions and m echanisms to deal w ith novel problems that MNT will pose. As will be shown in this paper, perhaps some radical solutions will need to be tried.   At the end of the 20th Cen tury and the b eginning of the 21st, all parties to decision making are aware of the dangers of unmitiga ted techno logy develo pment. From nuclear phys ics to CFCs to VX gas, well-intentioned discoveries turn into unimaginable nightmares even if well regulated. Critics of biotechnology early on pointed out the potential risks of GM organisms escaping into the wild uncontrolled, of gene transfer to wild plants creating “superweeds,” and garage-built “superviruse s.”42 Though none of these fears have come to pa ss yet, opponents of the technology stress that active measures must be taken to prevent their realization in the future.43 Most of the literature analyzing MNT regulation focuses on creating technological safeguards that will prevent runaway releases of the technology into the environment44 or applying the precautionary principle in conjunction with restricted development of MNT.45 Others examine the regulation of nanodevices from the perspe ctive of how th ey fit into existing regulatory standards.46 What is not well-considered is how to adapt other existing regulatory and prohibitory conventions to control MN T risks. What is less consid ered is how to actively promo te the development of MNT while still retaining control of the applications. The former invo lves conside ring how conventions like the Nuclear Non- Proliferation Treaty, the Chemical Weapons Convention, and Biological Weapons Convention can be used as models for a nanotechnology regulatory convention and how FDA and export-control regimes can be applied to MNT. The latter involves examining government incentive programs like patent systems and incentive programs for application to MNT. Lastly, other regimes are considered, such as outright nationalization of MNT or imposition of technology controls as a condition for conducting research.

#### Kills the universe

Rheingold 92 – research fellow at the Institute for the Future, visiting lecturer in Stanford University's Department of Communication, lecturer in U.C. Berkeley's School of Information (Howard, Fall, Whole Earth Review, www.findarticles.com/p/articles/mi\_m1510/is\_n76/ai\_12635777)

It looks as if something even more powerful than thermonuclear weaponry is emanating from that same, strangely fated corner of New Mexico where nuclear physicists first knew sin. Those who follow the progress of artificial-life research know that the effects of messing with the engines of evolution might lead to forces even more regrettable than the demons unleashed at Alamogordo. At least nuclear weaponry and biocidal technologies only threaten life on Earth, and don't threaten to contaminate the rest of the universe. That's the larger ethical problem of a-life. The technology of self-replicating machines that could emerge in future decades from today's a-life research might escape from human or even terrestrial control, infest the solar system, and, given time, break out into the galaxy. If there are other intelligent species out there, they might not react benevolently to evidence that humans have dispersed interstellar strip-mining robots that breed, multiply, and evolve. If there are no other intelligent species in existence, maybe we will end up creating God, or the Devil, depending on how our minds' children evolve a billion years from now. The entire story of life on earth thus far might be just the wetware prologue to a longer, larger, drier tale, etched in silicon rather than carbon, and blasted to the stars -- purposive spores programmed to seek, grow, evolve, expand. That's what a few people think they are on the verge of inventing. Scenarios like that make the potential for global thermonuclear war or destruction of the biosphere look like a relatively local problem. Biocide of a few hundred thousand species (including ourselves) is one kind of ethical problem; turning something like the Alien loose on the cosmos is a whole new level of ethical lapse.