# 1NC

## 1NC

### Off

#### A. Restrictions are prohibitions on action -- oversight is merely a supervision condition

Schiedler-Brown 12 (Jean, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, <http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf>)

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation. ¶ Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as; ¶ A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb. ¶ In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment. ¶ Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### ‘Indefinite detention’ is detainment without a trial where the individual doesn’t know when or whether they will be released

Robideau 13 -- Center for Victims of Torture, Media Relations Manager (Brad, 7/24/2013, "CVT Submits Testimony to Senate Judiciary Committee on Indefinite Detention at Guantanamo," http://www.cvt.org/news-events/press-releases/cvt-submits-testimony-senate-judiciary-committee-indefinite-detention)

“CVT opposes indefinite detention, which we define as detention without trial for an undefined duration over which the individual has no knowledge of when or whether he will be released. From our 27 years of experience healing torture survivors, we know indefinite detention causes such severe, prolonged and harmful health and mental health problems for those detained that it can constitute cruel, inhuman, and degrading treatment. Among the thousands of survivors CVT cares for are many who have suffered while being imprisoned without charge or trial and without being told when, if ever, they might be released.”

#### B. Aff doesn’t prohibit the president’s exercise of war powers authority and doesn’t prohibit indefinite detention.

C. Vote Neg –

1. Limits – Conditions, regulation and oversight of authority allows a litany of new affs in each area – justifies indirect effects of statutory policies and judicial rulings that don’t alter presidential authority – undermines prep and clash

2. Ground – Restriction ground is the locus of neg prep – their interpretation jacks all core disads – politics, presidential powers, and any area based disad because an aff doesn’t have to prevent the president from doing anything

### Off

#### Text: The President of the United States should issue an executive order, via the appropriate administrative agencies, that prohibits the force feeding of indefinite detainees.

#### Solves –

#### Executive orders concerning war powers are common, have the same effect as the plan, and withstand judicial scrutiny

Duncan 10 (John C. – Associate Professor of Law, College of Law, Florida A & M University; Ph.D., Stanford University; J.D., Yale Law School, “A CRITICAL CONSIDERATION OF EXECUTIVE ORDERS: GLIMMERINGS OF AUTOPOIESIS IN THE EXECUTIVE ROLE”, Vermont Law Review, 35 Vt. L. Rev. 333, lexis)

Executive orders make "legally binding pronouncements" in fields of authority generally conceded to the President. n92 A prominent example of this use is in the area of security classifications. n93 President Franklin Roosevelt issued an executive order to establish the system of security classification in use today. n94 Subsequent administrations followed the President's lead, issuing their own executive orders on the subject. n95 In 1994, Congress specifically required "presidential issuance of an executive order on classification," by way of an "amendment to the National Security Act of 1947 . . . ." n96 The other areas in which Congress concedes broad power to the President "include ongoing governance of civil servants, foreign service and consular activities, operation and discipline in the military, controls on government contracting, and, until recently, the management and control of public lands." n97 Although there are also statutes that address these areas, most basic policy comes from executive orders. n98 Executive orders commonly address matters "concerning military personnel" n99 and foreign policy. n100 "[D]uring periods of heightened national security activity," executive orders regularly authorize the transfer of responsibilities, personnel, or resources from selected parts of the government to the military or vice versa. n101 Many executive orders have also guided the management of public lands, such as orders creating, expanding, or decommissioning military installations, and creating reservations for sovereign Native American communities. n102 [\*347] Executive orders serve to implement both regulations and congressional regulatory programs. n103 Regulatory orders may target specific businesses and people, or may be designed for general applicability. n104 Many executive orders have constituted "delegations of authority originally conferred on the president by statute" and concerning specific agencies or executive-branch officers. n105 Congress may confer to the President, within the statutory language, broad delegatory authority to subordinate officials, while nevertheless expecting the President to "retain[] ultimate responsibility for the manner in which ." n106 "[I]t is common today for [the President] to cite this provision of law . . . as the authority to support an order." n107 Many presidents, especially after World War II, used executive orders-with or without congressional approval-to create new agencies, eliminate existing organizations, and reorganize others. n108 Orders in this category include President Kennedy's creation of the Peace Corps, n109 and President Nixon's establishment of the Cabinet Committee on Environmental Quality, the Council on Environmental Policy, and reorganization of the Office of the President. n110 At the core of this reorganization was the creation of the Office of Management and Budget. n111 President Clinton continued the practice of creating agencies, including the National Economic Council, with the issuance of his second executive order. n112 President Clinton also used an executive order "to cut one hundred thousand positions from the federal service" a decision which would have merited no congressional review, despite its impact. n113 President George W. Bush created the Office of Homeland Security as his key organizational reaction to the terrorist attacks of September 11, 2001, despite the fact that [\*348] Congress at the time appeared willing to enact whatever legislation he sought. n114 President Obama created several positions of Special Advisor to the President on specific issues of concern, for which there is often already a cabinet or agency position. n115 Other executive orders have served "to alter pay grades, address regulation of the behavior of civil servants, outline disciplinary actions for conduct on and off the job, and establish days off, as in the closing of federal offices." n116 Executive orders have often served "to exempt named individuals from mandatory retirement, to create individual exceptions to policies governing pay grades and classifications, and to provide for temporary reassignment of personnel in times of war or national emergency." n117 Orders can authorize "exceptions from normal operations" or announce temporary or permanent appointments. n118 Many orders have also addressed the management of public lands, although the affected lands are frequently parts of military reservations. n119 The fact that an executive order has the effect of a statute makes it a law of the land in the same manner as congressional legislation or a judicial decision. n120 In fact, an executive order that establishes the precise rules and regulations for governing the execution of a federal statute has the same effect as if those details had formed a part of the original act itself. n121 However, if there is no constitutional or congressional authorization, an executive order may have no legal effect. n122 Importantly, executive orders designed to carry a statute into effect are invalid if they are inconsistent [\*349] with the statute itself, for any other construction would permit the executive branch to overturn congressional legislation capriciously. n123 The application of this rule allows the President to create an order under the presumption that it is within the power of the executive branch to do so. Indeed, a contestant carries the burden of proving that an executive action exceeds the President's authority. n124 That is, as a practical matter, the burden of persuasion with respect to an executive order's invalidity is firmly upon anyone who tries to question it. n125 The President thus has great discretion in issuing regulations. n126 An executive order, with proper congressional authorization enjoys a strong presumption of validity, and the judiciary is likely to interpret it broadly. n127 If Congress appropriates funds for a President to carry out a directive, this constitutes congressional ratification thereof. n128 Alternatively, Congress may simply refer to a presidential directive in later legislation and thereby retroactively shield it from any future challenge. n1

#### Judicial review of war powers erodes the State Secrets Privilege

Kadidal 7 (Shayana – Center for Constitutional Rights, New York City; J.D., Yale 1994, “DOES CONGRESS HAVE THE POWER TO LIMIT THE PRESIDENT'S CONDUCT OF DETENTIONS, INTERROGATIONS AND SURVEILLANCE IN THE CONTEXT OF WAR?”, 2007, 11 N.Y. City L. Rev. 23, lexis)

As to the AUMF, this meta-defense runs as follows: In both our case and the ACLU's similar case, the government claims that it could explain how the program fits into what Congress authorized in the AUMF--namely, the "use [of] all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist [\*58] attacks that occurred on September 11, 2001" n127 and those who harbored them--but to do so it would have to explain to the court how the Program works, particularly who it was targeting and what kinds of communications it was intercepting. The sensitivity of that information about how the Program works in practice means that it cannot do that, even ex parte in camera. Thus, the government argues, the State Secrets Privilege forecloses the ability to litigate these questions. n128 As to the FISA-is-unconstitutional defense, the meta-defense argues that for the government to explain to the court how the Program fits into the core of the President's inherent power to defend the nation--that (limited) core aspect of the war power that is so fundamentally executive as to be immune to regulation from Congress--would require disclosing state secrets to the court. Since FISA might be unconstitutional to the extent that it restricts such a hypothetical core, unregulable part of the executive war power, the court cannot rely on FISA in enjoining the President from carrying out such surveillance:

#### State Secrets Privilege protects private and government patent secrets – key to the military superiority

Donohue 10 (Laura – Associate Professor of Law, Georgetown University Law Center, “The Shadow of State Secrets”, 2010, 159 U. Pa. L. Rev. 77, lexis)

In contrast, docket searches demonstrate that, from January 2001 to January 2009, the privilege played a significant role in the executive branch's national security litigation strategy. In one case, the Administration asserted the state secrets privilege some 245 times. n31 More to the point, the government has invoked the state secrets privilege in more than 100 cases, which is more than five times the number of cases previously considered. And it is not just the executive branch that benefitted from the privilege: in scores of additional cases, private industry claimed that the state secrets doctrine applied, with the expectation that the federal government would later intervene to prevent certain documents from being subject to discovery or to stop the suit from moving forward. Beyond these, there are hundreds of cases on which the shadow of the privilege fell. This Article thus focuses on cases working their way through the courts between 2001 and 2009. It begins with disputes related to government contractors, where the threatened and actual invocation of the privilege appears in a broad range of grievances. Breach of contract, patent disputes, trade secrets, fraud, and employment termination cases prove remarkable in their frequency, length, and range of technologies involved. Wrongful death, personal injury, and negligence [\*88] cases extend beyond product liability to include infrastructure and services, as well as an emerging area perhaps best understood as the conduct of war. These corporate cases are distinguished by the tendency of companies to claim that state secrets are at stake early in the dispute and the subsequent role of the United States, if it chooses to become involved and to invoke the privilege, as an intervenor. Close inspection suggests a conservative executive branch that is more likely to step forward when breach of contract, trade secrets, or patent disputes present themselves, and unlikely - once it invokes the privilege - to back down. Where the executive initially decides not to intervene and invoke the privilege, the rapid expansion of the use of contractors appears to be giving birth to a new form of "graymail": should the government initially refuse to support the corporation's state secrets claim, companies deeply embedded in the state may threaten to air legally or politically damaging information. n32 Even when no overt threat is made, the government may worry that certain information will emerge during the course of the trial that would politically compromise the agency or individuals involved. In other cases, the government may be dependent upon a corporation for a key aspect of national defense, thus creating an incentive for the state to protect the company from financial penalties associated with bad behavior. n33

#### Nuclear war

Kagan 7 (Robert, Senior Associate – Carnegie Endowment for International Peace, “End of Dreams, Return of History: International Rivalry and American Leadership”, Policy Review, August/September, http://www.hoover.org/publications/policyreview/8552512.html#n10)

The jostling for status and influence among these ambitious nations and would-be nations is a second defining feature of the new post-Cold War international system. Nationalism in all its forms is back, if it ever went away, and so is international competition for power, influence, honor, and status. American predominance prevents these rivalries from intensifying —  its regional as well as its global predominance. Were the United States to diminish its influence in the regions where it is currently the strongest power, the other nations would settle disputes as great and lesser powers have done in the past: sometimes through diplomacy and accommodation but often through confrontation and wars of varying scope, intensity, and destructiveness. One novel aspect of such a multipolar world is that most of these powers would possess nuclear weapons. That could make wars between them less likely, or it could simply make them more catastrophic. It is easy but also dangerous to underestimate the role the United States plays in providing a measure of stability in the world even as it also disrupts stability. For instance, the United States is the dominant naval power everywhere, such that other nations cannot compete with it even in their home waters. They either happily or grudgingly allow the United States Navy to be the guarantor of international waterways and trade routes, of international access to markets and raw materials such as oil. Even when the United States engages in a war, it is able to play its role as guardian of the waterways. In a more genuinely multipolar world, however, it would not. Nations would compete for naval dominance at least in their own regions and possibly beyond. Conflict between nations would involve struggles on the oceans as well as on land. Armed embargos, of the kind used in World War i and other major conflicts, would disrupt trade flows in a way that is now impossible. Such order as exists in the world rests not only on the goodwill of peoples but also on American power. Such order as exists in the world rests not merely on the goodwill of peoples but on a foundation provided by American power. Even the European Union, that great geopolitical miracle, owes its founding to American power, for without it the European nations after World War II would never have felt secure enough to reintegrate Germany. Most Europeans recoil at the thought, but even today Europe ’s stability depends on the guarantee, however distant and one hopes unnecessary, that the United States could step in to check any dangerous development on the continent. In a genuinely multipolar world, that would not be possible without renewing the danger of world war. People who believe greater equality among nations would be preferable to the present American predominance often succumb to a basic logical fallacy. They believe the order the world enjoys today exists independently of American power. They imagine that in a world where American power was diminished, the aspects of international order that they like would remain in place. But that ’s not the way it works. International order does not rest on ideas and institutions. It is shaped by configurations of power. The international order we know today reflects the distribution of power in the world since World War ii, and especially since the end of the Cold War. A different configuration of power, a multipolar world in which the poles were Russia, China, the United States, India, and Europe, would produce its own kind of order, with different rules and norms reflecting the interests of the powerful states that would have a hand in shaping it. Would that international order be an improvement? Perhaps for Beijing and Moscow it would. But it is doubtful that it would suit the tastes of enlightenment liberals in the United States and Europe. The current order, of course, is not only far from perfect but also offers no guarantee against major conflict among the world ’s great powers. Even under the umbrella of unipolarity, regional conflicts involving the large powers may erupt. War could erupt between China and Taiwan and draw in both the United States and Japan. War could erupt between Russia and Georgia, forcing the United States and its European allies to decide whether to intervene or suffer the consequences of a Russian victory. Conflict between India and Pakistan remains possible, as does conflict between Iran and Israel or other Middle Eastern states. These, too, could draw in other great powers, including the United States. Such conflicts may be unavoidable no matter what policies the United States pursues. But they are more likely to erupt if the United States weakens or withdraws from its positions of regional dominance. This is especially true in East Asia, where most nations agree that a reliable American power has a stabilizing and pacific effect on the region. That is certainly the view of most of China ’s neighbors. But even China, which seeks gradually to supplant the United States as the dominant power in the region, faces the dilemma that an American withdrawal could unleash an ambitious, independent, nationalist Japan. Conflicts are more likely to erupt if the United States withdraws from its positions of regional dominance. In Europe, too, the departure of the United States from the scene — even if it remained the world’s most powerful nation — could be destabilizing. It could tempt Russia to an even more overbearing and potentially forceful approach to unruly nations on its periphery. Although some realist theorists seem to imagine that the disappearance of the Soviet Union put an end to the possibility of confrontation between Russia and the West, and therefore  to the need for a permanent American role in Europe, history suggests that conflicts in Europe involving Russia are possible even without Soviet communism. If the United States withdrew from Europe — if it adopted what some call a strategy of “offshore balancing” — this could in time increase the likelihood of conflict involving Russia and its near neighbors, which could in turn draw the United States back in under unfavorable circumstances.

### Off

#### Obama's capital will force the GOP to quickly cave and end the shutdown

WSJ 10/2/13 ("A GOP Shutdown Strategy," http://online.wsj.com/article/SB10001424052702303464504579107720562837270.html)

President Obama defaulted to his usual strategy Tuesday of denouncing Republicans for the partial government shutdown that began at midnight even as he refuses to negotiate. He's betting that his bully pulpit, amplified by his media echoes, will cause the GOP to blink first.¶ And the truth is that Mr. Obama and the GOP's own "defund ObamaCare" caucus have put Speaker John Boehner and House Republicans in a difficult spot. If they now surrender empty-handed, their Ted Cruz faction will denounce them as sellouts. But the longer they hold out for compromise from an AWOL President, the more chances increase that the public will turn against GOP governance.¶ We opposed this shutdown strategy precisely because the congressional math made this box canyon so clearly inevitable. But now that it's here, the question is what Republicans can do to navigate an honorable exit that accomplishes some of their goals.¶ The strategy of the defund faction seems to be for the House to hold "firm," as Mr. Cruz puts it, and wait for Democrats to break. The public won't notice much inconvenience from the furloughs of 800,000 or so employees in this view. And to the extent they do notice, the voters will blame the President as much as the GOP. Sooner or later Mr. Obama will sue for peace and agree to delay his signature legislative achievement for a year if not longer.¶ That would be great if it worked, though Mr. Obama hardly looked worried on Tuesday as he assailed the "Republican shutdown." He rolled out his usual parade of horribles, including damage to the economy.¶ He's exaggerating the harm, just as he did on the sequester spending cuts in January. The economy doesn't depend on nonessential government spending for growth. And if the showdown ended with serious reforms that reduced Washington's claim on the private economy, it would be worth the political price and help growth.¶ Yet that still leaves the not-so-small matter of what Republicans do if Mr. Obama won't compromise and if the public continues by 2 to 1 to disapprove of using the shutdown to end ObamaCare. The Presidency is a powerful platform, and the executive branch can make the shutdown more onerous if it wants to. Pressure will build on Republicans to break ranks in the kind of unruly retreat that would demoralize their own voters. A long shutdown followed by surrender would be the worst possible result.

#### Obama fights the plan – strongly supports war powers

Rana 11 (Aziz – Assistant Professor of Law, Cornell Law School, “TEN QUESTIONS: RESPONSES TO THE TEN QUESTIONS”, 2011, 37 Wm. Mitchell L. Rev. 5099, lexis)

Thus, for many legal critics of executive power, the election of Barack Obama as President appeared to herald a new approach to security concerns and even the possibility of a fundamental break from Bush-era policies. These hopes were immediately stoked by Obama's decision before taking office to close the Guantanamo Bay prison. n4 Over two years later, however, not only does Guantanamo remain open, but through a recent executive order Obama has formalized a system of indefinite detention for those held there and also has stated that new military commission trials will begin for Guantanamo detainees. n5 More important, in ways small and large, the new administration remains committed to core elements of the previous constitutional vision of national security. Just as their predecessors, Obama officials continue to defend expansive executive detention and war powers and to promote the centrality of state secrecy to national security.

#### Presidential war power battles expend capital – it’s immediate and forces a trade-off

O’Neil 7 (David – Adjunct Associate Professor of Law, Fordham Law School, “The Political Safeguards of Executive Privilege”, 2007, 60 Vand. L. Rev. 1079, lexis)

a. Conscious Pursuit of Institutional Prerogatives The first such assumption is belied both by first-hand accounts of information battles and by the conclusions of experts who study them. Participants in such battles report that short-term political calculations consistently trump the constitutional interests at stake. One veteran of the first Bush White House, for example, has explained that rational-choice theory predicts what he in fact experienced: The rewards for a consistent and forceful defense of the legal interests of the office of the presidency would be largely abstract, since they would consist primarily of fidelity to a certain theory of the Constitution... . The costs of pursuing a serious defense of the presidency, however, would tend to be immediate and tangible. These costs would include the expenditure of political capital that might have been used for more pressing purposes, [and] the unpleasantness of increased friction with congressional barons and their allies. n182 Louis Fisher, one of the leading defenders of the political branches' competence and authority to interpret the Constitution independently of the courts, n183 acknowledges that politics and "practical considerations" typically override the legal and constitutional principles implicated in information disputes. n184 In his view, although debate about congressional access and executive privilege "usually proceeds in terms of constitutional doctrine, it is the messy political realities of the moment that usually decide the issue." n185 Indeed, Professor Peter Shane, who has extensively studied such conflicts, concludes that their successful resolution in fact depends upon the parties focusing only on short-term political [\*1123] considerations. n186 When the participants "get institutional," Shane observes, non-judicial resolution "becomes vastly more difficult." n187

#### Battles undermine focus and constant pressure on the GOP – that kills budget negotiations

**Milbank 9/27/13 (**Dana**,** Washington Post Opinion Writer, “Obama should pivot to Dubya’s playbook” Washington Post, <http://www.washingtonpost.com/opinions/dana-milbank-obama-should-try-pivoting-to-george-bushs-playbook/2013/09/27/c72469f0-278a-11e3-ad0d-b7c8d2a594b9_story.html>)

If President Obama can stick to his guns, he will win his October standoff with Republicans. That’s an awfully big “if.” This president has been consistently inconsistent, predictably unpredictable and reliably erratic. Consider the events of Thursday morning: Obama gave a rousing speech in suburban Washington, in defense of Obamacare, on the eve of its implementation. “We’re now only five days away from finishing the job,” he told the crowd. But before he had even left the room, his administration let slip that it was delaying by a month the sign-up for the health-care exchanges for small businesses. It wasn’t a huge deal, but it was enough to trample on the message the president had just delivered. Throughout his presidency, Obama has had great difficulty delivering a consistent message. Supporters plead for him to take a position — any position — and stick with it. His shifting policy on confronting Syria was the most prominent of his vacillations, but his allies have seen a similar approach to the Guantanamo Bay prison, counterterrorism and climate change. Even on issues such as gun control and immigration where his views have been consistent, Obama has been inconsistent in promoting his message. Allies are reluctant to take risky stands, because they fear that Obama will change his mind and leave them standing alone. Now come the budget showdowns, which could define the rest of his presidency. Republican leaders are trying to shift the party’s emphasis from the fight over a government shutdown to the fight over the debt-limit increase, where they have more support. A new Bloomberg poll found that Americans, by a 2-to-1 margin, disagree with Obama’s view that Congress should raise the debt limit without any conditions. But Obama has a path to victory. That poll also found that Americans think lawmakers should stop trying to repeal Obamacare. And that was before House Republicans dramatically overplayed their hand by suggesting that they’ll allow the nation to default if Obama doesn’t agree to their laundry list of demands, including suspending Obamacare, repealing banking reforms, building a new oil pipeline, easing environmental regulations, limiting malpractice lawsuits and restricting access to Medicare. To beat the Republicans, Obama might follow the example of a Republican, George W. Bush. Whatever you think of what he did, he knew how to get it done: by simplifying his message and repeating it, ad nauseam, until he got the result he was after. Obama instead tends to give a speech and move along to the next topic. This is why he is forever making “pivots” back to the economy, or to health care. But the way to pressure Congress is to be President One Note. In the debt-limit fight, Obama already has his note: He will not negotiate over the full faith and credit of the United States. That’s as good a theme as any; it matters less what the message is than that he delivers it consistently. The idea, White House officials explained to me, is to avoid getting into a back-and-forth over taxes, spending and entitlement programs. “We’re right on the merits, but I don’t think we want to argue on the merits,” one said. “Our argument is not that our argument is better than theirs; it’s that theirs is stupid.” This is a clean message: Republicans are threatening to tank the economy — through a shutdown or, more likely, through a default on the debt — and Obama isn’t going to negotiate with these hostage-takers. Happily for Obama, Republicans are helping him to make the case by being publicly belligerent. After this week’s 21-hour speech on the Senate floor by Sen. Ted Cruz (R-Tex.), the publicity-seeking Texan and Sen. Mike Lee (R-Utah) objected to a bipartisan request to move a vote from Friday to Thursday to give House Republicans more time to craft legislation avoiding a shutdown. On the Senate floor, Sen. Bob Corker (R-Tenn.) accused them of objecting because they had sent out e-mails encouraging their supporters to tune in to the vote on Friday. The Post’s Ed O’Keefe caught Cruz “appearing to snicker” as his colleague spoke — more smug teenager than legislator. Even if his opponents are making things easier for him, Obama still needs to stick to his message. As in Syria, the president has drawn a “red line” by saying he won’t negotiate with those who would put the United States into default. If he retreats, he will embolden his opponents and demoralize his supporters.

#### Prolonged shutdown decks global economy

Arcega 10/1/13 (Mil, Voice of America News, "Global Markets Calm on First Day of US Government Shutdown," http://www.voanews.com/content/global-markets-calm-on-first-day-of-us-government-shutdown/1761037.html)

On Tuesday, financial markets, by and large, shrugged off the first U.S. government shutdown in 17 years. Analysts believe the shutdown is likely to be short-lived but others worry a prolonged stand-off could wreak havoc on the global economy. ¶ While the back and forth continued in Washington, “The House has made its position known very clearly," said Republican Speaker of the House John Boehner.¶ “Madame President, it is embarrassing," said Democratic Leader of the Senate Harry Reid.¶ Financial markets around the world watched from the sidelines, waiting for cooler heads to prevail.¶ “I think the market is convinced that a deal eventually will be reached but right now they are really in wait and see mode," said market strategist Mike Ingram.¶ If resolved quickly, many investors believe the economic impact of the government shutdown will be minimal. Investment manager Patrick Armstrong says the danger lies in not knowing when.¶ “The longer it does drag on the more impact it will have, because it will have consequences on consumer confidence, the unemployment rate kicks up as you’ve got government workers who aren’t employed," he said. "And it will probably create a bit more uncertainty about the budget crisis that’s looming at the middle of this month as well."¶ He’s referring to the country’s $16.7 trillion debt.¶ Unless Congress reaches a deal on raising the debt limit this month, the U.S. Treasury says the country will run out of money to pay its debts. ¶ Economist Eric Chaney says the longer the political stand-off continues, the greater the risk that people who hold U.S. Treasury bonds will not get paid. ¶ ¶ “If the government shutdown in the U.S. lasts more than a week, people will start to think that “Okay, the deadline for the debt ceiling, which is around the 17th of October is not going to be met,” he said. "In that case, the risk is a risk of default. And I think in that case, we might have a very negative reaction."¶ If that happens, analysts say the dollar’s value will fall, interest rates will rise and the U.S. could see another credit downgrade. ¶ The prospect of a U.S. default is especially troubling in Asia, where stock prices were rising on manufacturing gains. ¶ South Korean TV newscasters voiced the concerns this way:¶ “If the United States federal government’s temporary shutdown is prolonged, not only America but the world’s economy could be affected negatively.”

#### 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

#### Judicial review of war powers erodes the State Secrets Privilege

Kadidal 7 (Shayana – Center for Constitutional Rights, New York City; J.D., Yale 1994, “DOES CONGRESS HAVE THE POWER TO LIMIT THE PRESIDENT'S CONDUCT OF DETENTIONS, INTERROGATIONS AND SURVEILLANCE IN THE CONTEXT OF WAR?”, 2007, 11 N.Y. City L. Rev. 23, lexis)

As to the AUMF, this meta-defense runs as follows: In both our case and the ACLU's similar case, the government claims that it could explain how the program fits into what Congress authorized in the AUMF--namely, the "use [of] all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist [\*58] attacks that occurred on September 11, 2001" n127 and those who harbored them--but to do so it would have to explain to the court how the Program works, particularly who it was targeting and what kinds of communications it was intercepting. The sensitivity of that information about how the Program works in practice means that it cannot do that, even ex parte in camera. Thus, the government argues, the State Secrets Privilege forecloses the ability to litigate these questions. n128 As to the FISA-is-unconstitutional defense, the meta-defense argues that for the government to explain to the court how the Program fits into the core of the President's inherent power to defend the nation--that (limited) core aspect of the war power that is so fundamentally executive as to be immune to regulation from Congress--would require disclosing state secrets to the court. Since FISA might be unconstitutional to the extent that it restricts such a hypothetical core, unregulable part of the executive war power, the court cannot rely on FISA in enjoining the President from carrying out such surveillance:

#### State Secrets Privilege protects private and government patent secrets – key to the military superiority

Donohue 10 (Laura – Associate Professor of Law, Georgetown University Law Center, “The Shadow of State Secrets”, 2010, 159 U. Pa. L. Rev. 77, lexis)

In contrast, docket searches demonstrate that, from January 2001 to January 2009, the privilege played a significant role in the executive branch's national security litigation strategy. In one case, the Administration asserted the state secrets privilege some 245 times. n31 More to the point, the government has invoked the state secrets privilege in more than 100 cases, which is more than five times the number of cases previously considered. And it is not just the executive branch that benefitted from the privilege: in scores of additional cases, private industry claimed that the state secrets doctrine applied, with the expectation that the federal government would later intervene to prevent certain documents from being subject to discovery or to stop the suit from moving forward. Beyond these, there are hundreds of cases on which the shadow of the privilege fell. This Article thus focuses on cases working their way through the courts between 2001 and 2009. It begins with disputes related to government contractors, where the threatened and actual invocation of the privilege appears in a broad range of grievances. Breach of contract, patent disputes, trade secrets, fraud, and employment termination cases prove remarkable in their frequency, length, and range of technologies involved. Wrongful death, personal injury, and negligence [\*88] cases extend beyond product liability to include infrastructure and services, as well as an emerging area perhaps best understood as the conduct of war. These corporate cases are distinguished by the tendency of companies to claim that state secrets are at stake early in the dispute and the subsequent role of the United States, if it chooses to become involved and to invoke the privilege, as an intervenor. Close inspection suggests a conservative executive branch that is more likely to step forward when breach of contract, trade secrets, or patent disputes present themselves, and unlikely - once it invokes the privilege - to back down. Where the executive initially decides not to intervene and invoke the privilege, the rapid expansion of the use of contractors appears to be giving birth to a new form of "graymail": should the government initially refuse to support the corporation's state secrets claim, companies deeply embedded in the state may threaten to air legally or politically damaging information. n32 Even when no overt threat is made, the government may worry that certain information will emerge during the course of the trial that would politically compromise the agency or individuals involved. In other cases, the government may be dependent upon a corporation for a key aspect of national defense, thus creating an incentive for the state to protect the company from financial penalties associated with bad behavior. n33

#### Nuclear war

Kagan 7 (Robert, Senior Associate – Carnegie Endowment for International Peace, “End of Dreams, Return of History: International Rivalry and American Leadership”, Policy Review, August/September, http://www.hoover.org/publications/policyreview/8552512.html#n10)

The jostling for status and influence among these ambitious nations and would-be nations is a second defining feature of the new post-Cold War international system. Nationalism in all its forms is back, if it ever went away, and so is international competition for power, influence, honor, and status. American predominance prevents these rivalries from intensifying —  its regional as well as its global predominance. Were the United States to diminish its influence in the regions where it is currently the strongest power, the other nations would settle disputes as great and lesser powers have done in the past: sometimes through diplomacy and accommodation but often through confrontation and wars of varying scope, intensity, and destructiveness. One novel aspect of such a multipolar world is that most of these powers would possess nuclear weapons. That could make wars between them less likely, or it could simply make them more catastrophic. It is easy but also dangerous to underestimate the role the United States plays in providing a measure of stability in the world even as it also disrupts stability. For instance, the United States is the dominant naval power everywhere, such that other nations cannot compete with it even in their home waters. They either happily or grudgingly allow the United States Navy to be the guarantor of international waterways and trade routes, of international access to markets and raw materials such as oil. Even when the United States engages in a war, it is able to play its role as guardian of the waterways. In a more genuinely multipolar world, however, it would not. Nations would compete for naval dominance at least in their own regions and possibly beyond. Conflict between nations would involve struggles on the oceans as well as on land. Armed embargos, of the kind used in World War i and other major conflicts, would disrupt trade flows in a way that is now impossible. Such order as exists in the world rests not only on the goodwill of peoples but also on American power. Such order as exists in the world rests not merely on the goodwill of peoples but on a foundation provided by American power. Even the European Union, that great geopolitical miracle, owes its founding to American power, for without it the European nations after World War II would never have felt secure enough to reintegrate Germany. Most Europeans recoil at the thought, but even today Europe ’s stability depends on the guarantee, however distant and one hopes unnecessary, that the United States could step in to check any dangerous development on the continent. In a genuinely multipolar world, that would not be possible without renewing the danger of world war. People who believe greater equality among nations would be preferable to the present American predominance often succumb to a basic logical fallacy. They believe the order the world enjoys today exists independently of American power. They imagine that in a world where American power was diminished, the aspects of international order that they like would remain in place. But that ’s not the way it works. International order does not rest on ideas and institutions. It is shaped by configurations of power. The international order we know today reflects the distribution of power in the world since World War ii, and especially since the end of the Cold War. A different configuration of power, a multipolar world in which the poles were Russia, China, the United States, India, and Europe, would produce its own kind of order, with different rules and norms reflecting the interests of the powerful states that would have a hand in shaping it. Would that international order be an improvement? Perhaps for Beijing and Moscow it would. But it is doubtful that it would suit the tastes of enlightenment liberals in the United States and Europe. The current order, of course, is not only far from perfect but also offers no guarantee against major conflict among the world ’s great powers. Even under the umbrella of unipolarity, regional conflicts involving the large powers may erupt. War could erupt between China and Taiwan and draw in both the United States and Japan. War could erupt between Russia and Georgia, forcing the United States and its European allies to decide whether to intervene or suffer the consequences of a Russian victory. Conflict between India and Pakistan remains possible, as does conflict between Iran and Israel or other Middle Eastern states. These, too, could draw in other great powers, including the United States. Such conflicts may be unavoidable no matter what policies the United States pursues. But they are more likely to erupt if the United States weakens or withdraws from its positions of regional dominance. This is especially true in East Asia, where most nations agree that a reliable American power has a stabilizing and pacific effect on the region. That is certainly the view of most of China ’s neighbors. But even China, which seeks gradually to supplant the United States as the dominant power in the region, faces the dilemma that an American withdrawal could unleash an ambitious, independent, nationalist Japan. Conflicts are more likely to erupt if the United States withdraws from its positions of regional dominance. In Europe, too, the departure of the United States from the scene — even if it remained the world’s most powerful nation — could be destabilizing. It could tempt Russia to an even more overbearing and potentially forceful approach to unruly nations on its periphery. Although some realist theorists seem to imagine that the disappearance of the Soviet Union put an end to the possibility of confrontation between Russia and the West, and therefore  to the need for a permanent American role in Europe, history suggests that conflicts in Europe involving Russia are possible even without Soviet communism. If the United States withdrew from Europe — if it adopted what some call a strategy of “offshore balancing” — this could in time increase the likelihood of conflict involving Russia and its near neighbors, which could in turn draw the United States back in under unfavorable circumstances.

### Medical Ethics

#### No widespread prolif

Hymans 12—Jacques E. C. Hymans is Associate Professor of IR at USC [April 16, 2012, “North Korea's Lessons for (Not) Building an Atomic Bomb,” *Foreign Affairs*, http://www.foreignaffairs.com/articles/137408/jacques-e-c-hymans/north-koreas-lessons-for-not-building-an-atomic-bomb?page=show]

Washington's miscalculation is not just a product of the difficulties of seeing inside the Hermit Kingdom. It is also a result of the broader tendency to overestimate the pace of global proliferation. For decades, Very Serious People have predicted that strategic weapons are about to spread to every corner of the earth. Such warnings have routinely proved wrong -- for instance, the intelligence assessments that led to the 2003 invasion of Iraq -- but they continue to be issued. In reality, despite the diffusion of the relevant technology and the knowledge for building nuclear weapons, the world has been experiencing a great proliferation slowdown. Nuclear weapons programs around the world are taking much longer to get off the ground -- and their failure rate is much higher -- than they did during the first 25 years of the nuclear age.

As I explain in my article "Botching the Bomb" in the upcoming issue of Foreign Affairs, the key reason for the great proliferation slowdown is the absence of strong cultures of scientific professionalism in most of the recent crop of would-be nuclear states, which in turn is a consequence of their poorly built political institutions. In such dysfunctional states, the quality of technical workmanship is low, there is little coordination across different technical teams, and technical mistakes lead not to productive learning but instead to finger-pointing and recrimination. These problems are debilitating, and they cannot be fixed simply by bringing in more imported parts through illicit supply networks. In short, as a struggling proliferator, North Korea has a lot of company.

#### Prolif is super slow—empirics disprove their fear mongering.

Hymans 12—Jacques E. C. Hymans is Associate Professor of IR at USC [May/June 2012, “Botching the Bomb,” *Foreign Affairs*, http://www.foreignaffairs.com/articles/137403/jacques-e-c-hymans/botching-the-bomb?page=show]

The chronic problem of nuclear proliferation is once again dominating the news. A fierce debate has developed over how to respond to the threat posed by Iran's nuclear activities, which most experts believe are aimed at producing a nuclear weapon or at least the capacity to assemble one. In this debate, one side is pushing for a near-term military attack to damage or destroy Iran's nuclear program, and the other side is hoping that strict sanctions against the Islamic Republic will soften it up for a diplomatic solution. Both sides, however, share the underlying assumption that unless outside powers intervene in a dramatic fashion, it is inevitable that Iran will achieve its supposed nuclear goals very soon.

Yet there is another possibility. The Iranians had to work for 25 years just to start accumulating uranium enriched to 20 percent, which is not even weapons grade. The slow pace of Iranian nuclear progress to date strongly suggests that Iran could still need a very long time to actually build a bomb -- or could even ultimately fail to do so. Indeed, global trends in proliferation suggest that either of those outcomes might be more likely than Iranian success in the near future. Despite regular warnings that proliferation is spinning out of control, the fact is that since the 1970s, there has been a persistent slowdown in the pace of technical progress on nuclear weapons projects and an equally dramatic decline in their ultimate success rate.

The great proliferation slowdown can be attributed in part to U.S. and international nonproliferation efforts. But it is mostly the result of the dysfunctional management tendencies of the states that have sought the bomb in recent decades. Weak institutions in those states have permitted political leaders to unintentionally undermine the performance of their nuclear scientists, engineers, and technicians. The harder politicians have pushed to achieve their nuclear ambitions, the less productive their nuclear programs have become. Meanwhile, military attacks by foreign powers have tended to unite politicians and scientists in a common cause to build the bomb. Therefore, taking radical steps to rein in Iran would be not only risky but also potentially counterproductive, and much less likely to succeed than the simplest policy of all: getting out of the way and allowing the Iranian nuclear program's worst enemies -- Iran's political leaders -- to hinder the country's nuclear progress all by themselves.

NUCLEAR DOGS THAT HAVE NOT BARKED

"Today, almost any industrialized country can produce a nuclear weapon in four to five years," a former chief of Israeli military intelligence recently wrote in The New York Times, echoing a widely held belief. Indeed, the more nuclear technology and know-how have diffused around the world, the more the timeline for building a bomb should have shrunk. But in fact, rather than speeding up over the past four decades, proliferation has gone into slow motion.

Seven countries launched dedicated nuclear weapons projects before 1970, and all seven succeeded in relatively short order. By contrast, of the ten countries that have launched dedicated nuclear weapons projects since 1970, only three have achieved a bomb. And only one of the six states that failed -- Iraq -- had made much progress toward its ultimate goal by the time it gave up trying. (The jury is still out on Iran's program.) What is more, even the successful projects of recent decades have needed a long time to achieve their ends. The average timeline to the bomb for successful projects launched before 1970 was about seven years; the average timeline to the bomb for successful projects launched after 1970 has been about 17 years.

#### Global violence is decreasing – their impact is empirically denied

Pinker 7 (Steven, Johnstone Family Professor in the Department of Psychology – Harvard University, “A History of Violence”, Edge: The Third Culture, 3-28, http://www.edge.org/3rd\_culture/pinker07/pinker07\_index.html)

In sixteenth-century Paris, a popular form of entertainment was cat-burning, in which a cat was hoisted in a sling on a stage and slowly lowered into a fire. According to historian Norman Davies, "[T]he spectators, including kings and queens, shrieked with laughter as the animals, howling with pain, were singed, roasted, and finally carbonized." Today, such sadism would be unthinkable in most of the world. This change in sensibilities is just one example of perhaps the **most important and** most **underappreciated** **trend** in the human saga: **Violence has been in decline over long stretches of history, and today we are** probably **living in the most peaceful moment of our species' time on earth**. In the decade of Darfur and Iraq, and shortly after the century of Stalin, Hitler, and Mao, the claim that violence has been diminishing may seem somewhere between hallucinatory and obscene. Yet recent studies that seek to quantify the historical ebb and flow of violence point to exactly that conclusion. Some of the evidence has been under our nose all along. Conventional history has long shown that, in many ways, we have been getting kinder and gentler. Cruelty as entertainment, human sacrifice to indulge superstition, slavery as a labor-saving device, conquest as the mission statement of government, genocide as a means of acquiring real estate, torture and mutilation as routine punishment, the death penalty for misdemeanors and differences of opinion, assassination as the mechanism of political succession, rape as the spoils of war, pogroms as outlets for frustration, homicide as the major form of conflict resolution—all were unexceptionable features of life for most of human history. But, today, they are **rare to nonexistent** in the West, far less common elsewhere than they used to be, concealed when they do occur, and widely condemned when they are brought to light. At one time, these facts were widely appreciated. They were the source of notions like progress, civilization, and man's rise from savagery and barbarism. Recently, however, those ideas have come to sound corny, even dangerous. They seem to demonize people in other times and places, license colonial conquest and other foreign adventures, and conceal the crimes of our own societies. The doctrine of the noble savage—the idea that humans are peaceable by nature and corrupted by modern institutions—pops up frequently in the writing of public intellectuals like José Ortega y Gasset ("War is not an instinct but an invention"), Stephen Jay Gould ("Homo sapiens is not an evil or destructive species"), and Ashley Montagu ("Biological studies lend support to the ethic of universal brotherhood"). But, now that social scientists have started to count bodies in different historical periods, they have discovered that the romantic theory gets it backward: Far from causing us to become more violent, something in modernity and its cultural institutions has made us nobler. To be sure, any attempt to document changes in violence must be soaked in uncertainty. In much of the world, the distant past was a tree falling in the forest with no one to hear it, and, even for events in the historical record, statistics are spotty until recent periods. Long-term trends can be discerned only by smoothing out zigzags and spikes of horrific bloodletting. And the choice to focus on relative rather than absolute numbers brings up the moral imponderable of whether it is worse for 50 percent of a population of 100 to be killed or 1 percent in a population of one billion. Yet, despite these caveats, a picture is taking shape. The decline of violence is a fractal phenomenon, visible at the scale of millennia, centuries, decades, and years. It **applies over several orders** of magnitude of violence, from genocide to war to rioting to homicide to the treatment of children and animals. And it appears to be a **worldwide trend**, though not a homogeneous one. The leading edge has been in Western societies, especially England and Holland, and there seems to have been a **tipping point** at the onset of the Age of Reason in the early seventeenth century. At the widest-angle view, one can see a whopping difference across the millennia that separate us from our pre-state ancestors. Contra leftist anthropologists who celebrate the noble savage, quantitative body-counts—such as the proportion of prehistoric skeletons with axemarks and embedded arrowheads or the proportion of men in a contemporary foraging tribe who die at the hands of other men—suggest that pre-state societies were far more violent than our own. It is true that raids and battles killed a tiny percentage of the numbers that die in modern warfare. But, in tribal violence, the clashes are more frequent, the percentage of men in the population who fight is greater, and the rates of death per battle are higher. According to anthropologists like Lawrence Keeley, Stephen LeBlanc, Phillip Walker, and Bruce Knauft, these factors combine to yield population-wide rates of death in tribal warfare that dwarf those of modern times. If the wars of the twentieth century had killed the same proportion of the population that die in the wars of a typical tribal society, there would have been two billion deaths, not 100 million. Political correctness from the other end of the ideological spectrum has also distorted many people's conception of violence in early civilizations—namely, those featured in the Bible. This supposed source of moral values contains many celebrations of genocide, in which the Hebrews, egged on by God, slaughter every last resident of an invaded city. The Bible also prescribes death by stoning as the penalty for a long list of nonviolent infractions, including idolatry, blasphemy, homosexuality, adultery, disrespecting one's parents, and picking up sticks on the Sabbath. The Hebrews, of course, were no more murderous than other tribes; one also finds frequent boasts of torture and genocide in the early histories of the Hindus, Christians, Muslims, and Chinese. At the century scale, it is hard to find quantitative studies of deaths in warfare spanning medieval and modern times. Several historians have suggested that there has been an increase in the number of recorded wars across the centuries to the present, but, as political scientist James Payne has noted, this may show only that "the Associated Press is a more comprehensive source of information about battles around the world than were sixteenth-century monks." Social histories of the West provide evidence of numerous barbaric practices that became obsolete in the last five centuries, such as slavery, amputation, blinding, branding, flaying, disembowelment, burning at the stake, breaking on the wheel, and so on. Meanwhile, for another kind of violence—homicide—the data are abundant and striking. The criminologist Manuel Eisner has assembled hundreds of homicide estimates from Western European localities that kept records at some point between 1200 and the mid-1990s. In every country he analyzed, murder rates declined steeply—for example, from 24 homicides per 100,000 Englishmen in the fourteenth century to 0.6 per 100,000 by the early 1960s. On the scale of decades, comprehensive data again paint a **shockingly happy picture**: Global violence has **fallen steadily** since the middle of the twentieth century. According to the Human Security Brief 2006, the number of battle deaths in interstate wars has declined from more than 65,000 per year in the 1950s to less than 2,000 per year in this decade. In Western Europe and the Americas, the second half of the century saw a steep decline in the number of wars, military coups, and deadly ethnic riots. Zooming in by a further power of ten exposes yet another reduction. After the cold war, every part of the world saw a steep drop-off in state-based conflicts, and those that do occur are more likely to end in negotiated settlements rather than being fought to the bitter end. Meanwhile, according to political scientist Barbara Harff, between 1989 and 2005 the number of campaigns of mass killing of civilians decreased by 90 percent. The decline of killing and cruelty poses several challenges to our ability to make sense of the world. To begin with, how could so many people be so wrong about something so important? Partly, it's because of a **cognitive** **illusion**: We estimate the probability of an event from how easy it is to recall examples. Scenes of carnage are more likely to be relayed to our living rooms and burned into our memories than footage of people dying of old age. Partly, it's an intellectual culture that is loath to admit that there could be anything good about the institutions of civilization and Western society. Partly, it's the incentive structure of the activism and opinion markets: No one ever attracted followers and donations by announcing that things keep getting better. And part of the explanation lies in the phenomenon itself. The decline of violent behavior has been paralleled by a decline in attitudes that tolerate or glorify violence, and often the attitudes are in the lead. As deplorable as they are, the abuses at Abu Ghraib and the lethal injections of a few murderers in Texas are mild by the standards of atrocities in human history. But, from a contemporary vantage point, we see them as signs of how low our behavior can sink, not of how high our standards have risen. The other major challenge posed by the decline of violence is how to explain it. A force that pushes in the same direction across many epochs, continents, and scales of social organization mocks our standard tools of causal explanation. The usual suspects—guns, drugs, the press, American culture—aren't nearly up to the job. Nor could it possibly be explained by evolution in the biologist's sense: Even if the meek could inherit the earth, natural selection could not favor the genes for meekness quickly enough. In any case, human nature has not changed so much as to have lost its taste for violence. Social psychologists find that at least 80 percent of people have fantasized about killing someone they don't like. And modern humans still take pleasure in viewing violence, if we are to judge by the popularity of murder mysteries, Shakespearean dramas, Mel Gibson movies, video games, and hockey. What has changed, of course, is people's willingness to act on these fantasies. The sociologist Norbert Elias suggested that European modernity accelerated a "civilizing process" marked by increases in self-control, long-term planning, and sensitivity to the thoughts and feelings of others. These are precisely the functions that today's cognitive neuroscientists attribute to the prefrontal cortex. But this only raises the question of why humans have increasingly exercised that part of their brains. No one knows why our behavior has come under the control of the better angels of our nature, but there are four plausible suggestions.

#### Democratic structures check the impact

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

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

#### Court rulings restricting presidential war powers spur massive court stripping – empirics

Reinhardt 6 (Stephen – Judge, U.S. Court of Appeals for the Ninth Circuit, “THE ROLE OF THE JUDGE IN THE TWENTY-FIRST CENTURY: THE JUDICIAL ROLE IN NATIONAL SECURITY”, 2006, 86 B.U.L. Rev. 1309, lexis)

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." n2 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. n3 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. n4 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. n5 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, n6 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. n7 The administration's position in the initial round of Guantanamo cases was that no court anywhere had any jurisdiction to consider [\*1311] 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. n8 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.

#### Stripping sends a signal that undermines global democracy

Gerhardt 5 (Michael J. Gerhardt, William & Mary School of Law Professor, Lewis & Clark Review, "THE CONSTITUTIONAL LIMITS TO COURT-STRIPPING," 9 Lewis & Clark L. Rev. 347, lexis)

Beyond the constitutional defects with the Act, n40 it may not be good policy. It may send the wrong signals to the American people and to people around the world. It expresses hostility to our Article III courts, in spite of their special function in upholding constitutional rights and enforcing and interpreting federal law. If a branch of our government demonstrates a lack of respect for federal courts, our citizens and citizens in other countries may have a hard time figuring out why they should do otherwise. Rejecting proposals to exclude all federal jurisdiction or inferior court jurisdiction for some constitutional claims extends an admirable tradition within Congress and reminds the world of our hard-won, justifiable confidence in the special role performed by Article III courts throughout our history in vindicating the rule of law.

**Democracy’s on the brink --- consolidation solves global WMD conflict**

**Halperin 11** (Morton H., Senior Advisor – Open Society Institute and Senior Vice President of the Center for American Progress, “Unconventional Wisdom – Democracy is Still Worth Fighting For”, Foreign Policy, January / February, http://www.foreignpolicy.com/articles/2011/01/02/unconventional\_wisdom?page=0,11)

As the United States struggles to wind down two wars and recover from a humbling financial crisis, realism is enjoying a renaissance. Afghanistan and Iraq bear scant resemblance to the democracies we were promised. The Treasury is broke. And America has a president, Barack Obama, who once compared his foreign-policy philosophy to the realism of theologian Reinhold Niebuhr: "There's serious evil in the world, and hardship and pain," Obama said during his 2008 campaign. "And we should be humble and modest in our belief we can eliminate those things." But one can take such words of wisdom to the extreme-as realists like former Secretary of State Henry Kissinger and writer Robert Kaplan sometimes do, arguing that the United States can't afford the risks inherent in supporting democracy and human rights around the world. Others, such as cultural historian Jacques Barzun, go even further, saying that America can't export democracy at all, "because it is not an ideology but a wayward historical development." Taken too far, such realist absolutism can be just as dangerous, and wrong, as neoconservative hubris. For there is one thing the neocons get right: As I argue in *The Democracy Advantage*, democratic governments are more likely than autocratic regimes to engage in conduct that advances U.S. interests and avoids situations that pose a threat to peace and security. Democratic states are more likely to develop and to avoid famines and economic collapse. They are also less likely to become failed states or suffer a civil war. Democratic states are also more likely to cooperate in dealing with security issues, such as terrorism and proliferation of weapons of mass destruction. As the bloody aftermath of the Iraq invasion painfully shows, democracy cannot be imposed from the outside by force or coercion. It must come from the people of a nation working to get on the path of democracy and then adopting the policies necessary to remain on that path. But we should be careful about overlearning the lessons of Iraq. In fact, the outside world can make an enormous difference in whether such efforts succeed. There are numerous examples-starting with Spain and Portugal and spreading to Eastern Europe, Latin America, and Asia-in which the struggle to establish democracy and advance human rights received critical support from multilateral bodies, including the United Nations, as well as from regional organizations, democratic governments, and private groups. It is very much in America's interest to provide such assistance now to new democracies, such as Indonesia, Liberia, and Nepal, and to stand with those advocating democracy in countries such as Belarus, Burma, and China. It will still be true that the United States will sometimes need to work with a nondemocratic regime to secure an immediate objective, such as use of a military base to support the U.S. mission in Afghanistan, or in the case of Russia, to sign an arms-control treaty. None of that, however, should come at the expense of speaking out in support of those struggling for their rights. Nor should we doubt that America would be more secure if they succeed.

### Torture

#### The aff can’t solve – the executive circumvents – in future crises the President justifies skirting the law no matter what it says

Fatovic, 9 – Director of Graduate Studies for Political Science at Florida International University (Clement, *Outside the Law: Emergency and Executive Power.* pp 1-5.)

But the problem for any legal order is that law aims at fixity in a world beset by flux. The greatest challenge to legally established order comes not from the resistance of particular groups or individuals who object to any of its substantive aims but from the unruliness of the world itself. The stability, predictability, and regularity sought by law eventually runs up against the unavoidable instability, unpredictability, and irregularity of the world. Events constantly threaten to disrupt and destabilize the artificial order established by law. Emergencies-sudden and extreme occurrences such as the devastating terrorist attacks of September 11, an overwhelming natural disaster like Hurricane Katrina, a pandemic outbreak of avian flu, a catastrophic economic collapse, or a severe food shortage, to name just a few-dramatize the limitations of the law in dealing with unexpected and incalculable contingencies. Designed for the ordinary and the normal, law cannot always provide for such extraordinary occurrences in spite of its aspiration to comprehensiveness. When such events arise, the responsibility for formulating a response usually falls to the executive. The executive has a unique relationship to the law and the order that it seeks, especially in a liberal constitutional system committed to the rule of law. Not only is the executive the authority most directly responsible for enforcing the law and maintaining order in ordinary circumstances, it is also the authority most immediately responsible for restoring order in extraordinary circumstances. But while the executive is expected to uphold and follow the law in normal times, emergencies sometimes compel the executive to exceed the strict letter of the law. Given the unique and irrepressible nature of emergencies, the law often provides little effective guidance, leaving executives to their own devices. Executives possess special resources and characteristics that enable them to formulate responses more rapidly, flexibly, and decisively than can legislatures, courts, and bureaucracies. Even where the law seeks to anticipate and provide for emergencies by specifying the kinds of actions that public officials are permitted or required to take, emergencies create unique opportunities for the executive to exercise an extraordinary degree of discretion. And when the law seems to be inadequate to the situation at hand, executives often claim that it [is] necessary to go beyond its dictates by consolidating those powers ordinarily exercised by other branches of government or even by expanding the range of powers ordinarily permitted. But in seeking to bring order to the chaos that emergencies instigate, executives who take such action also bring attention to the deficiencies of the law in maintaining order, often with serious consequences for the rule of law. The kind of extralegal action that executives are frequently called upon to take in response to emergencies is deeply problematic for liberal constitutionalism, which gives pride of place to the rule of law, both in its self-definition and in its standard mode of operation. If emergencies test the limits of those general and prospective rules that are designed to make governmental action limited and predictable, that is because emergencies are largely unpredictable and potentially limitless.1 Yet the rule of law, which has enjoyed a distinguished position in constitutional thought going back to Aristotle, has always sought to place limits on what government may do by substituting the arbitrariness and unpredictability of extemporary decrees with the impartiality and regularity of impersonal rules promulgated in advance. The protection of individual freedom within liberal constitutionalism has come to be unimaginable where government does not operate according to general and determinate rules.2 The rule of law has achieved primacy within liberal constitutionalism because it is considered vital to the protection of individual freedom. As Max Weber famously explained of the modern bureaucratic state, legitimacy in the liberal state is not based on habitual obedience to traditions or customs sanctified by time or on personal devotion to a charismatic individual endowed with superhuman gifts but on belief in the legality of a state that is functionally competent in administering highly impersonal but "rational rules." 3 In fact, its entire history and aim can be summed up as an attempt to curtail the kind of discretionary action associated with the arbitrary "rule of men"-by making government itself subject to the law. The apparent primacy of law in liberal constitutionalism has led some critics to question its capacity to deal with emergencies. Foremost among these critics is German political and constitutional theorist Carl Schmitt, who concluded that liberalism is incapable of dealing with the "exception" or "a case of extreme peril" that poses "a danger to the existence of the state" without resorting to measures that contradict and undermine its commitments to the rule of law, the separation of powers, the preservation of civil liberties, and other core values.4 In Schmitt's view, liberalism is wedded to a "normativistic" approach that seeks to regulate life according to strictly codified legal and moral rules that not only obscure the "decisionistic" basis of all law but also deny the role of personal decision-making in the interpretation, enforcement, and application of law. 5 Because legitimacy in a liberal constitutional order is based largely on adherence to formal legal procedures that restrict the kinds of actions governments are permitted to take, actions that have not been specified or authorized in advance are simply ruled out. According to Schmitt, the liberal demand that governmental action always be controllable is based on the naive belief that the world is thoroughly calculable. 6 If it expects regularity and predictability in government, it is because it understands the world in those terms, making it oblivious to the problems of contingency. Not only does this belief that the world is subject to a rational and predictable order make it difficult for liberalism to justify actions that stand outside that order, it also makes it difficult for liberalism even to acknowledge emergencies when they do arise. But Schmitt's critique goes even further than this. When liberal constitutionalism does acknowledge the exception, its commitment to the rule of law forces it to choose between potential suicide if it adheres strictly to its legalistic ideals and undeniable hypocrisy if ignores those ideals? Either way, the argument goes, emergencies expose the inherent shortcomings and weaknesses of liberalism. It is undeniable that the rule of law occupies a privileged position within liberal constitutionalism, but it is a mistake to identify liberal constitutionalism with an excessively legalistic orientation that renders it incapable of dealing effectively with emergencies. Schmitt is correct in pointing out that liberal normativism seeks to render government action as impersonal and predictable as possible in normal circumstances, but the history of liberal 'I· constitutional thought leading up to the American Founding reveals that its main proponents recognized the need to supplement the rule of law with a personal element in cases of emergency. The political writings of John Locke, David Hume, William Blackstone, and those Founders who advocated a strong presidency indicate that many early liberal constitutionalists were highly attuned to the limitations of law in dealing with events that disrupt the regular order. They were well aware that rigid adherence to the formalities of law, both in responding to emergencies and in constraining the official who formulates the response, could undermine important substantive aims and values, thereby sacrificing the ends for the means. Their reflections on the chronic instability and irregularity of politics reveal an appreciation for the inescapable-albeit temporary-need for the sort of discretionary action that the law ordinarily seeks to circumscribe. As Locke explained in his classic formulation, that "it is impossible to foresee, and so by laws to provide for, all Accidents and Necessities, that may concern the publick means that the formal powers of the executive specified in law must be supplemented with "prerogative," the "Power to act according to discretion, for the publick good, without the prescription of the Law, and sometimes even against it." 8 Unlike the powers of the Hobbesian sovereign, which are effectively absolute and unlimited, the exercise of prerogative is, in principle, limited in scope and duration to cases of emergency. The power to act outside and even against the law does not mean that the executive is "above the law”—morally or politically unaccountable—but it does mean that executive power is ultimately irreducible to law.

#### No solvency – indefinite detention itself is torture, as are other practices within it

**The Hill 13** (July 27, Curt Goering “End Indefinite Detention Now” <http://thehill.com/blogs/congress-blog/homeland-security/313761-end-indefinite-detention-now>)

In written testimony, the Center for Victims of Torture (CVT) addressed the human rights implications of indefinite detention of prisoners held at Guantanamo. The continued indefinite detention of individuals at Guantanamo – some of whom have been held over 11 years without being charged or tried – is inconsistent with U.S. treaty obligations and constitutional principles. Indefinite detention is an unlawful practice that rises to the level of cruel, inhuman and degrading treatment in direct violation of U.S. laws and our obligations under international laws, including the UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, signed by the United States 25 years ago during President Reagan’s final year in office. Placing prisoners in custody indefinitely without charge or trial has absolutely no place in our laws. As Sen. Patrick Leahy (D-Vt.) said during the hearing, “Countries that champion the rule of law and human rights do not lock away prisoners indefinitely without charge or trial.” We oppose indefinite detention on behalf of torture survivors, because among those we care for are survivors who have suffered while being imprisoned without charge or trial and without being told when, if ever, they might be released. From our experience healing survivors of torture and war related atrocities, we know indefinite detention causes severe, prolonged and harmful health and mental health problems for those imprisoned. Our intensive work with individual torture survivors, combined with medical literature that documents the damaging physical and psychological effects of indefinite detention, causes us to oppose this practice. For example, research by Physicians for Human Rights has found that the effects of indefinite detention include depression and suicide; Post Traumatic Stress Disorder; and damage to the body’s immune, cardiovascular and central nervous systems.

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

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.

#### Decision-making based on consequences is best mode for action.

Weiss, Prof Poli Sci – CUNY Grad Center, ‘99

(Thomas G, “Principles, Politics, and Humanitarian Action,” *Ethics and International Affairs* 13.1)

Scholars and practitioners frequently employ the term “dilemma” to describe painful decision making but “quandary” would be more apt.27A dilemma involves two or more alternative courses of action with unintended but unavoidable and equally undesirable consequences. If consequences are equally unpalatable, then remaining inactive on the sidelines is an option rather than entering the serum on the field. A quandary, on the other hand, entails tough choices among unattractive options with better or worse possible outcomes. While humanitarians are perplexed, they are not and should not be immobilized. The solution is not indifference or withdrawal but rather appropriate engagement. The key lies in making a good faith effort to analyze the advantages and disadvantages of different alloys of politics and humanitarianism, and then to choose what often amounts to the lesser of evils.

Thoughtful humanitarianism is more appropriate than rigid ideological responses, for four reasons: goals of humanitarian action often conflict, good intentions can have catastrophic consequences; there are alternative ways to achieve ends; and even if none of the choices is ideal, victims still require decisions about outside help. What Myron Wiener has called “instrumental humanitarianism” would resemble just war doctrine because contextual analyses and not formulas are required. Rather than resorting to knee-jerk reactions to help, it is necessary to weigh options and make decisions about choices that are far from optimal.

Many humanitarian decisions in northern Iraq, Somalia, Bosnia, and Rwanda—and especially those involving economic or military sanctions— required selecting least-bad options. Thomas Nagle advises that “given the limitations on human action, it is naive to suppose that there is a solution to every moral problem. “29 Action-oriented institutions and staff are required in order to contextualized their work rather than apply preconceived notions of what is right or wrong. Nonetheless, classicists continue to insist on Pictet’s “indivisible whole” because humanitarian principles “are interlocking, overlapping and mutually supportive. . . . It is hard to accept the logic of one without also accepting the others. “30

The process of making decisions in war zones could be compared to that pursued by “clinical ethical review teams” whose members are on call to make painful decisions about life-and-death matters in hospitals.sl The sanctity of life is complicated by new technologies, but urgent decisions cannot be finessed. It is impermissible to long for another era or to pretend that the bases for decisions are unchanged. However emotionally wrenching, finding solutions is an operational imperative that is challenging but intellectually doable. Humanitarians who cannot stand the heat generated by situational ethics should stay out of the post-Cold War humanitarian kitchen.

Principles in an Unprincipled World

Why are humanitarians in such a state of moral and operational disrepair? In many ways Western liberal values over the last few centuries have been moving toward interpreting moral obligations as going beyond a family and intimate networks, beyond a tribe, and beyond a nation. The impalpable moral ideal is concern about the fate of other people, no matter how far away.szThe evaporation of distance with advances in technology and media coverage, along with a willingness to intervene in a variety of post–Cold War crises, however, has produced situations in which humanitarians are damned if they do and if they don’t. Engagement by outsiders does not necessarily make things better, and it may even create a “moral hazard by altering the payoffs to combatants in such a way as to encourage more intensive fighting.“33

This new terrain requires analysts and practitioners to admit ignorance and question orthodoxies. There is no comfortable theoretical framework or world vision to function as a compass to steer between integration and fragmentation, globalization and insularity. Michael Ignatieff observes, “The world is not becoming more chaotic or violent, although our failure to understand and act makes it seem so. “34Gwyn Prins has pointed to the “scary humility of admitting one’s ignorance” because “the new vogue for ‘complex emergencies’ is too often a means of concealing from oneself that one does not know what is going on. “3sTo make matters more frustrating, never before has there been such a bombardment of data and instant analysis; the challenge of distilling such jumbled and seemingly contradictory information adds to the frustration of trying to do something appropriate fast.

International discourse is not condemned to follow North American fashions and adapt sound bites and slogans. It is essential to struggle with and even embrace the ambiguities that permeate international responses to wars, but without the illusion of a one-size-fits-all solution. The trick is to grapple with complexities, to tease out the general without ignoring the particular, and still to be inspired enough to engage actively in trying to make a difference.

Because more and more staff of aid agencies, their governing boards, and their financial backers have come to value reflection, an earlier policy prescription by Larry Minear and me no longer appears bizarre: “Don’t just do something, stand there! “3sThis advice represented our conviction about the payoffs from thoughtful analyses and our growing distaste for the stereotypical, yet often accurate, image of a bevy of humanitarian actors flitting from one emergency to the next.

#### And the ethics disad –

#### Ethics are inherently situational. We are forced to make hard choices because we have finite resources and political capabilities. Ethics makes us push the blame onto others to maintain the purity of our intentions instead of taking responsibility

Chandler, 1 – Policy Research Institute @ Leeds Metropolitan University

(David, Human Rights Quarterly 23, “The Road to Military Humanitarianism”)

When intervening for ethical ends there is little pressure to account for final policy outcomes. Whatever happens in the targeted states, under international sanctions or military action, it can be alleged to be better than non-intervention. As both Tony Blair and The Guardian argued in response to the ‘collateral’ deaths of ethnic Albanian refugees from the high altitude Nato bombing campaign in Kosovo: ‘Milosevic is determined to wipe a people from the face of this country. Nato is determined to stop him’(The Guardian, 15 May 1999). The House of Commons Foreign Affairs Committee, although dismissing the idea that there was a Serb policy of genocide, still concluded that ‘The issue in Kosovo was ... whether in the absence of Nato intervention, the Serb campaign would have continued over many years, eventually resulting in more deaths and instability in the region than if Nato had not intervened. We believe that it would’ (UKFAC 2000, para.123). The belief that it would have been even worse without international action provides a hypothetical post facto justification that is difficult to disprove. The discourse of ethical foreign policy establishes a framework of western intervention which inevitably encourages a positive view of intervention in the face of exaggerated fears of non-intervention.

#### The impact is genocide

Mohawk, Associate Professor of History @ SUNY Buffalo, ‘2K

(John C, Utopian Legacies, p. 4-5)

People who believe that they are acting on a plan to solve all of the humankind’s problems think they are on a kind of sacred mission, even when the origin of their inspiration is secular in nature and makes no claim to intervention by a higher power. Although adherents may have only a vague idea about how the utopia will come about or what it will be like when it arrives, utopian movements often stimulate high levels of enthusiasm and a widely shared sense of being a “chosen people” with a special destiny. People caught up in such movements tend to be intolerant of others who are not part of this projected destiny, who do not believe in the same things, and are not expected to share in the future benefits. One reason for the popularity of these movements is that they exalt the importance of the group, praise their imagined superior qualities and future prospects, and urge that, relative to other peoples, they are special and more deserving. This pattern of self-aggrandizement has often proven popular and energizing. It contains a message that others who are not special or chosen are without significant value and may be treated accordingly. This kind of intolerance can result in the denial of rights, including the right to live, to hold property, to vote, or to hold professional licenses, if the inspired group has the power to do these things. A scornful indifference to these unbelieving and unentitled others can manifest as racism and/or ethnocentrism. Such intolerance has been known to lead to crimes against humanity, including systematic acts of genocide.

Performance is the test. Asked directly by a Western interviewer, “In principle, do you believe in one standard of human rights and free expression?”, Lee immediately answers, “Look, it is not a matter of principle but of practice.” This might appear to represent a simple and rather crude pragmatism. But in its context it might also be interpreted as an appreciation of the fundamental point made by Max Weber that, in politics, it is “the ethic of responsibility” rather than “the ethic of absolute ends” that is appropriate. While an individual is free to treat human rights as absolute, to be observed whatever the cost, governments must always weigh consequences and the competing claims of other ends. So once they enter the realm of politics, human rights have to take their place in a hierarchy of interests, including such basic things as national security and the promotion of prosperity. Their place in that hierarchy will vary with circumstances, but no responsible government will ever be able to put them always at the top and treat them as inviolable and over-riding. The cost of implementing and promoting them will always have to be considered.

#### All lives are infinitely valuable, the only ethical option is to maximize the number saved

**Cummisky, 96** (David, professor of philosophy at Bates, Kantian Consequentialism, p. 131)

Finally, even if one grants that saving two persons with dignity cannot outweigh and compensate for killing one—because dignity cannot be added and summed in this way—this point still does not justify deontologieal constraints. On the extreme interpretation, why would not killing one person be a stronger obligation than saving two persons? If I am concerned with the priceless dignity of each, it would seem that 1 may still saw two; it is just that my reason cannot be that the two compensate for the loss of the one. Consider Hills example of a priceless object: If I can save two of three priceless statutes only by destroying one. Then 1 cannot claim that saving two makes up for the loss of the one. But Similarly, the loss of the two is not outweighed by the one that was not destroyed. Indeed, even if dignity cannot be simply summed up. How is the extreme interpretation inconsistent with the idea that I should save as many priceless objects as possible? Even if two do not simply outweigh and thus compensate for the lass of the one, each is priceless: thus, I have good reason to save as many as I can. In short, it is not clear how the extreme interpretation justifies the ordinary killing'letting-die distinction or even how it conflicts with the conclusion that the more persons with dignity who are saved, the better.\*

# 2NC Round 6 KY

## T

### T – Must Be Prohibit – A2: Counter-interpretation

#### Judicial restrictions narrow the scope of authority

Dufresne 71 (Armand, Chief Justice of Maine Supreme Court, 273 A.2d 732; 1971 Me. LEXIS 293, Emile BLIER v. INHABITANTS OF TOWN OF FORT KENT; Emile BLIER v. Clarence BLIER, lexis)

The doctrine of the sovereign immunity of the State is an outgrowth of the medieval concept that "the King can do no wrong." It was extended to all political and governmental agencies of the State on the ground that since the State was not subject to suit nor liable for the torts or negligence of its agents, likewise subdivisions of the State, as governmental agencies of the State, were exempted to respond in damages for the negligent acts of their servants to the same extent as the [\*\*10] State itself was. HN6Go to this Headnote in the case.The basic concept underlying the whole law of torts, however, is that liability follows negligence, and that individuals and corporations are responsible for the negligence of their agents and employees acting in the course of their employment. The doctrine of governmental immunity, running directly counter to that basic concept, has been subjected to judicial restrictions which have narrowed the range of the doctrine. The courts generally, including the Maine Court, have classified the activities of municipal corporations or state agencies as "governmental" and "proprietary", with full liability in tort imposed if the activity was classified as "proprietary" and non-liability [\*736] if it was viewed as "governmental". This distinction between governmental and proprietary functions of units of local governments or state agencies was designed undoubtedly to alleviate the injustice of the results that would flow from an all-inclusive doctrine of sovereign immunity. See, Anderson v. City of Portland, supra; Wilde v. Inhabitants of the Town of Madison, 1950, 145 Me. 83, 87, 72 A.2d 635, 638. Furthermore, our Court relaxed the rule of non-liability where the [\*\*11] tortious act was done by a municipal agent or employee acting not as a public officer, but rather as a special agent following specific authority or order of the governmental unit. Under such circumstances, our Court has said that the doctrine of respondeat superior would apply. Woodcock v. City of Calais, 1877, 66 Me. 234; Michaud v. City of Bangor, 1963, 159 Me. 491, 196 A.2d 106.

### AJ

#### Clash is key to depth which is comparatively better – studies overwhelmingly vote NEG

TPC (Texas Panhandle P-16 Council, Texas-based group of teachers and educators from across the state) 2010 “Breadth vs. Depth of High School Curriculum Content” http://www.panhandlep-16.net/users/0001/docs/Position%20Paper2.pdf

Less breadth and more depth in curriculum better prepares students for future careers and education. This is the position of over one hundred faculty assembled in the Texas Panhandle, and it is also the conclusion of many scholarly studies reviewed for this paper. In fact, there are far too many studies to cite in this paper, so only a few representative studies are used. In a 2008 study entitled “Depth Versus Breadth: How Content Coverage in High School Science Courses Relates to Later Success in College Science Coursework”1 the researchers noted: “In a comparison of 46 countries, Schmidt et al. (2005) noted that in top-achieving countries, the science frameworks cover far fewer topics than in the United States, and that students from these countries perform significantly better than students in the United States. They conclude that U.S. standards are not likely to create a framework that develops a deeper understanding of the structure of the discipline. By international standards, the U.S. science framework is „unfocused, repetitive, and undemanding‟”. The study went on to say that “the baseline model reveals a direct and compelling outcome: teaching for depth is associated with improvements in later performance”.

#### It’s a quantifiable impact – it literally doubles

Arrington 2009 (Rebecca, UVA Today, “Study Finds That Students Benefit From Depth, Rather Than Breadth, in High School Science Courses” March 4)

A recent study reports that high school students who study fewer science topics, but study them in greater depth, have an advantage in college science classes over their peers who study more topics and spend less time on each. Robert Tai, associate professor at the University of Virginia's Curry School of Education, worked with Marc S. Schwartz of the University of Texas at Arlington and Philip M. Sadler and Gerhard Sonnert of the Harvard-Smithsonian Center for Astrophysics to conduct the study and produce the report. "Depth Versus Breadth: How Content Coverage in High School Courses Relates to Later Success in College Science Coursework" relates the amount of content covered on a particular topic in high school classes with students' performance in college-level science classes. The study will appear in the July 2009 print edition of Science Education and is currently available as an online pre-print from the journal. "As a former high school teacher, I always worried about whether it was better to teach less in greater depth or more with no real depth. This study offers evidence that teaching fewer topics in greater depth is a better way to prepare students for success in college science," Tai said. "These results are based on the performance of thousands of college science students from across the United States." The 8,310 students in the study were enrolled in introductory biology, chemistry or physics in randomly selected four-year colleges and universities. Those who spent one month or more studying one major topic in-depth in high school earned higher grades in college science than their peers who studied more topics in the same period of time. The study revealed that students in courses that focused on mastering a particular topic were impacted twice as much as those in courses that touched on every major topic

## DA

### Link – Detention

#### Detention information is classified as a state secret – the plan must circumvent the doctrine

Bazzle 12 (Tom – J.D., Georgetown University Law Center, 2011, “Shutting the Courthouse Doors: Invoking the State Secrets Privilege to Thwart Judicial Review in the Age of Terror”, 2012, 23 Geo. Mason U. Civ. Rts. L.J. 29, lexis)

The war on terror has led to an increased use of the state secrets privilege by the Executive Branch - to dismiss legal challenges to widely publicized and controversial government actions - ostensibly aimed at protecting national security from terrorist threats. n1 Faced with complaints that allege indiscriminate and warrantless surveillance, n2 tortious detention, and torture that flouts domestic and international law, n3 courts have had to reconcile impassioned appeals for private justice with the government's unyielding insistence on protecting national security. Courts, almost unanimously, have cast their lot with national security, granting considerable deference to government assertions of the state secrets principle. This deference to state secrets shows no signs of abating; indeed, the growing trend is for courts to dismiss these legal challenges pre-discovery, n4 even before the private litigants have had the chance to present actual, non-secret evidence to meet their burden of proof. Although many looked optimistically at President Obama's inauguration as a chance to break decisively from the Bush Administration's aggressive application of the state secrets [\*30] privilege, n5 the Obama Administration has largely disappointed on the state-secrets front, asserting the privilege with just as much fervor - if not as much regularity n6 - as its predecessor. n7

## Torture

### 2NC Must Read

#### Trial systems don’t solve – courts will grant enormous leeway to the executive

Scheppele, 12—Professor of Sociology and Public Affairs @ Princeton University (Kim Lane, January. “The New Judicial Deference,” Boston University Law Review, 92 B.U.L. Rev. 89. Lexis.)

In this Article, I will show that American courts have often approached the extreme policies of the anti-terrorism campaign by splitting the difference between the two sides—the government and suspected terrorists. One side typically got the ringing rhetoric (the suspected terrorists), and the other side got the facts on the ground (the government). In major decisions both designed to attract public attention and filled with inspiring language about the reach of the Constitution even in times of peril, the Supreme Court, along with some lower courts, has stood up to the government and laid down limits on anti-terror policy in a sequence of decisions about the detention and trial of suspected terrorists. But, at the same time, these decisions have provided few immediate remedies for those who have sought the courts' protection. As a result, suspected terrorists have repeatedly prevailed in their legal arguments, and yet even with these court victories, little changed in the situation that they went to court to challenge. The government continued to treat suspected terrorists almost as badly as it did before the suspected terrorists "won" their cases. And any change in terrorism suspects' conditions that did result from these victorious decisions was slow and often not directly attributable to the judicial victories they won. Does this gap between suspected terrorists' legal gains and their unchanged fates exist because administration officials were flouting the decisions of the courts? The Bush Administration often responded with sound and fury and attempted to override the Supreme Court's decisions or to comply minimally with them when they had to. n6 But, as this Article will show, these decisions did not actually require the government to change its practices very quickly. The decisions usually required the government to change only its general practices in the medium term. Judges had a different framework for analyzing the petitioners' situation than the petitioners themselves did; judges generally couched their decisions in favor of the suspected terrorists as critiques of systems instead of as solutions for individuals. In doing so, however, courts allowed a disjuncture between rights and remedies for those who stood before them seeking a vindication of their claims. Suspected terrorists may have won [\*92] in these cases—and they prevailed overwhelmingly in their claims, especially at the Supreme Court—but courts looked metaphorically over the suspects' heads to address the policies that got these suspects into the situation where the Court found them. Whether those who brought the cases actually got to benefit from the judgments, either immediately or eventually, was anoth

er question. Bad though the legal plight of suspected terrorists has been, one might well have expected it to be worse. Before 9/11, the dominant response of courts around the world during wars and other public emergencies was to engage in judicial deference. n7 Deference counseled courts to stay out of matters when governments argued that national security concerns were central. As a result, judges would generally indicate that they had no role to play once the bullets started flying or an emergency was declared. If individuals became collateral damage in wartime, there was generally no judicial recourse to address their harms while the war was going on. As the saying goes, inter arma silent leges: in war, the law is mute. After 9/11, however, and while the conflict occasioned by those attacks was still "hot," courts jumped right in, dealing governments one loss after another. n8 After 9/11, it appears that deference is dead. [\*93] But, I will argue, deference is still alive and well. We are simply seeing a new sort of deference born out of the ashes of the familiar variety. While governments used to win national security cases by convincing the courts to decline any serious review of official conduct in wartime, now governments win first by losing these cases on principle and then by getting implicit permission to carry on the losing policy in concrete cases for a while longer, giving governments a victory in practice. n9 Suspected terrorists have received [\*94] from courts a vindication of the abstract principle that they have rights without also getting an order that the abusive practices that have directly affected them must be stopped immediately. Instead, governments are given time to change their policies while still holding suspected terrorists in legal limbo. As a result, despite winning their legal arguments, suspected terrorists lose the practical battle to change their daily lives. Courts may appear to be bold in these cases because they tell governments to craft new policies to deal with terrorism. But because the new policies then have to be tested to see whether they meet the new criteria courts have laid down, the final approval may take years, during which time suspected terrorists may still be generally subjected to the treatment that courts have said was impermissible. Because judicial review of anti-terrorism policies itself drags out the time during which suspected terrorists may be detained, suspected terrorists win legal victories that take a very long time to result in change that they can discern. As a result, governments win the policy on the ground until court challenges have run their course and the courts make decisions that contribute to the time that the litigation takes. This is the new face of judicial deference. This Article will explore why and how American courts have produced so many decisions in which suspected terrorists appear to win victories in national security cases. As we will see, many judges have handled the challenges that terrorism poses for law after 9/11 by giving firm support, at least in theory, to both separation of powers and constitutional rights. Judges have been very active in limiting what the government can do, requiring substantial adjustments of anti-terrorism policy and vindicating the claims of those who have been the targets. But the solutions that judges have crafted—often bold, ambitious, and brave solutions—nonetheless fail to address the plights of the specific individuals who brought the cases. This new form of judicial deference has created a slow-motion brake on the race into a constitutional abyss. But these decisions give the government leeway to tackle urgent threats without having to change course right away with respect to the treatment of particular individuals. New deference, then, is a mixed bag. It creates the appearance of doing something—an appearance not entirely false in the long run—while doing far less in the present to bring counter-terrorism policy back under the constraint of constitutionalism.

### Util

#### Util is best – politics is organized according to interests.

Harries, 94 – Editor @ The National Interest

(Owen, Power and Civilization, The National Interest, Spring, lexis)

Performance is the test. Asked directly by a Western interviewer, “In principle, do you believe in one standard of human rights and free expression?”, Lee immediately answers, “Look, it is not a matter of principle but of practice.” This might appear to represent a simple and rather crude pragmatism. But in its context it might also be interpreted as an appreciation of the fundamental point made by Max Weber that, in politics, it is “the ethic of responsibility” rather than “the ethic of absolute ends” that is appropriate. While an individual is free to treat human rights as absolute, to be observed whatever the cost, governments must always weigh consequences and the competing claims of other ends. So once they enter the realm of politics, human rights have to take their place in a hierarchy of interests, including such basic things as national security and the promotion of prosperity. Their place in that hierarchy will vary with circumstances, but no responsible government will ever be able to put them always at the top and treat them as inviolable and over-riding. The cost of implementing and promoting them will always have to be considered.

## Medical Ethics

### Impact – 2NC

**Transitions are coming now – err negative because democratic structures are more likely to prevent escalation of their impact – countries are less likely to go to war**

Diamond 95 (Larry, Senior Fellow – Hoover Institution, Promoting Democracy in the 1990s, December, http://wwics.si.edu/subsites/ccpdc/pubs/di/1.htm)

OTHER THREATS This hardly exhausts the lists of threats to our security and well-being in the coming years and decades. In the former Yugoslavia nationalist aggression tears at the stability of Europe and could easily spread. The flow of illegal drugs intensifies through increasingly powerful international crime syndicates that have made common cause with authoritarian regimes and have utterly corrupted the institutions of tenuous, democratic ones. Nuclear, chemical, and biological weapons continue to proliferate. The very source of life on Earth, the global ecosystem, appears increasingly endangered. Most of these new and unconventional threats to security are associated with or aggravated by the weakness or absence of democracy, with its provisions for legality, accountability, popular sovereignty, and openness. LESSONS OF THE TWENTIETH CENTURY The experience of this century offers important lessons. Countries that govern themselves in a truly democratic fashion do not go to war with one another. They do not aggress against their neighbors to aggrandize themselves or glorify their leaders. Democratic governments do not ethnically "cleanse" their own populations, and they are much less likely to face ethnic insurgency. Democracies do not sponsor terrorism against one another. They do not build weapons of mass destruction to use on or to threaten one another. Democratic countries form more reliable, open, and enduring trading partnerships. In the long run they offer better and more stable climates for investment. They are more environmentally responsible because they must answer to their own citizens, who organize to protest the destruction of their environments. They are better bets to honor international treaties since they value legal obligations and because their openness makes it much more difficult to breach agreements in secret. Precisely because, within their own borders, they respect competition, civil liberties, property rights, and the rule of law, democracies are the only reliable foundation on which a new world order of international security and prosperity can be built.

#### Obviously, Turns the case – lack of jurisdiction prevents courts from exercising judicial review post-plan, prevents enforcement of precedent and tanks solvency

## XO

### Solvency – 2NC – Congress

#### Only the CP solves – the President will refuse the plan’s limitation

Prakash 8 (Saikrishna – Herzog Research Professor of Law, University of San Diego School of Law, “The Executive's Duty To Disregard Unconstitutional Laws”, 2008, Georgetown Law Journal, 96 Geo. L.J. 1613, lexis)

Perhaps most ominously, Presidents might decline to abide by statutes that are meant to constrain presidential authority. Citing a duty to disregard unconstitutional statutes, a President might elude all manner of constraints that Congress imposed upon presidential power. n28 Indeed, such complaints have been made against President George W. Bush. n29 When Congress has tried to tie his hands, the President has declared an unwillingness to abide by such statutory limitations on the grounds that they are unconstitutional.

### CP Solves – Signal

#### The CP aligns policy with the Geneva Conventions – solves signal

Nachbar, 11 – professor of Law at the University of Virginia and Senior Fellow at the Center for National Security Law (Thomas, 12/29. “Nachbar on a New Shift in U.S. Detention Policy.” UVA Law School Faculty Q and A.” <http://www.law.virginia.edu/html/news/2011_fall/nachbar_qa.htm>)

At the beginning of detention policy, back in 2001-02, the Bush administration basically determined that the detention regime really didn't fit any of the established international legal regimes for detention. Eventually, the Supreme Court pulled U.S. detention policy more towards international law, of one kind or another — whether the law of armed conflict or international human rights law, but mostly the law of armed conflict. And the Obama administration appears to be much more interested in engaging those law-of-armed-conflict treaties that the Bush administration rebuffed. The fact sheet, along with some unattributed but I think credible interview sources, signals that the Obama administration plans to comply with Article 75 of Additional Protocol I [to the Geneva Conventions, which addresses the treatment of prisoners of war and related human rights issues]. That would mostly affect military commissions, as opposed to detention determinations. But the fact sheet also announced that the Obama administration seeks to have Congress ratify Additional Protocol II. Both signs are an embrace of international legal sources, while the Bush administration wasn't as interested in embracing international law.

### A2: Perm – Do Both

#### Statutory restrictions require congressional statutes

Barron and Lederman 8 (David J. – Professor of Law, Harvard Law School, and Martin S. – Visiting Professor of Law, Georgetown University Law Center, “THE COMMANDER IN CHIEF AT THE LOWEST EBB - FRAMING THE PROBLEM, DOCTRINE, AND ORIGINAL UNDERSTANDING”, January, 121 Harv. L. Rev. 689, lexis)

2. Congress (Almost) Always Wins Under the Separation of Powers Principle. - We must also consider a related argument for congressional supremacy. This claim is based on the doctrinal test that generally governs separation of powers issues arising from clashes between the President and the Congress in the domestic setting. n149 Under this test, the "real question" the Court asks is whether the statute "impedes the President's ability to perform" his constitutionally assigned functions. n150 And even if such a potential for disruption of executive authority is present, the Court employs a balancing test to "determine whether that impact is justified by an overriding need to promote objectives within the constitutional authority of Congress." n151 Thus, under the general separation of powers principle, even a "serious impact ... on the ability of the Executive Branch to accomplish its assigned mission" might not be enough to render a statute invalid. n152 This approach appears to have a pro-congressional tilt; yet it actually does little more than relocate the dilemma it is impressed to avoid. Even under this deferential test, it is well understood that certain statutes can infringe the President's constitutionally assigned authority to exercise discretion; a statutory restriction on the pardoning of a given category of persons is an obvious example. Nothing in the application of the separation of powers test, then, explains why certain core executive powers (including merely discretionary authorities, rather than obligatory duties) cannot be infringed, even though it is generally understood that such inviolable cores might exist. For this reason, the general separation of powers principle does not actually resolve the question that arises in a Youngstown Category Three case. In all [\*739] events, the question remains whether the President possesses an illimitable reserve of wartime authority. Insofar as the separation of powers principle is thought to provide affirmative support for congressional control, it seems objectionable because it, too, fails to require the analyst to explain why the particular wartime power the President is asserting is not one that Congress can countermand. It simply asserts that it is not.

### Theory – Agent CP – 2NC

#### Counterplan is legitimate –

#### 1. Tests “statutory” and “judicial” – executive action is a different mechanism. Its non-topical, core ground, and something they should be prepared for – that’s Duncan

#### 2. Inter-branch politics are crucial in the context of war powers – it's the reason restrictions exist – makes the counterplan educational and necessary ground

Jenkins 10 (David – Assistant Professor of Law, University of Copenhagen, “Judicial Review Under a British War Powers Act”, Vanderbilt Journal of Transnational Law, May, 43 Vand. J. Transnat'l L. 611, lexis)

In this pragmatic way, the Constitution attempts to balance the efficiency of centralized, executive military command with heightened democratic accountability through legislative debate, scrutiny, and approval. n28 Therefore, despite the Constitution's formal division of war powers between the executive and the legislature, disputes over these powers in the U.S. are usually resolved politically rather than judicially. n29 This constitutional arrangement implicitly acknowledges that both political branches possess certain institutional qualities suited to war-making. n30 These include the dispatch, decisiveness, and discretion of the executive with the open deliberation of the legislature and localized political accountability of its members, which are virtues that the slow, case specific, and electorally isolated courts do not possess. n31 The open, politically contestable allocation of [\*618] war powers under the Constitution not only permits differing and perhaps conflicting interpretations of the legal demarcations of branch authority but also accommodates differing normative preferences for determining which values and which branches are best-suited for war-making. n32 Furthermore, this system adapts over time in response to inter-branch dynamics and shifting value judgments that are themselves politically contingent. Thus, the American war powers model is an intrinsically political - not legal - process for adjusting and managing the different institutional capabilities of the legislative and executive branches to substantiate and reconcile accountability and efficiency concerns. A deeper understanding of why this might be so, despite the judiciary's power to invalidate even primary legislation, can inform further discussions in the United Kingdom about the desirability and advisability of putting the Crown's ancient war prerogative on a statutory footing.

### A2: 1AC Ev

He vaguely cites a few authors – I’m going to answer them specifically

Wakeman says that dismissing the injunction was bad, not that only courts are key

Tomkiel – maybe is solvency for pres powers but is NOT a reason why the CP doesn’t solve the aff

Lightcap is solvency for the CP – I’m going to quote it:

, the constitution can change both formally through amendment and court decisions (“legal” change) and informally through new institutions established by decisions based on executive discretion (“

Even if they win some risk of the these deficits, we solve:

#### Executive internal restraint encourages judicial fill-in – solves all court advantages

Metzger 9 (Gillian – Professor of Law, Columbia Law School, “ ARTICLE & ESSAY: THE INTERDEPENDENT RELATIONSHIP BETWEEN INTERNAL AND EXTERNAL SEPARATION OF POWERS”, Emory Law Journal, 2009, 59 Emory L.J. 423, lexis)

I therefore see benefits from paying greater attention to internal administrative design and in particular to analyzing what types of administrative structures are likely to prove effective and appropriate in different contexts. n9 But I believe that attending to internal constraints alone is too narrow a focus because it excludes the crucial relationship between internal and external checks on the Executive Branch. Internal checks can be, and often are, reinforced by a variety of external forces - including not just Congress and the courts, but also state and foreign governments, international bodies, the media, and civil society organizations. Moreover, the reinforcement can also work in reverse, with internal constraints serving to enhance the ability of external forces, in particular Congress and the courts, to [\*426] exert meaningful checks on the Executive Branch. Greater acknowledgment of this reciprocal relationship holds import both for fully understanding the separation of powers role played by internal constraints and for identifying effective reform strategies. One aspect of this dynamic meriting additional attention is the link between internal Executive Branch constraints and external legal doctrine. Contemporary separation of powers doctrine makes little effort to reinforce internal constraints on the Executive Branch; instead it largely focuses on whether internal constraints intrude too far on presidential power, to the extent it considers such constraints at all. This stands in contrast to administrative law doctrine, which focuses primarily on behavior internal to the Executive Branch and often seeks to encourage Executive Branch adherence to constraints on agency action. This division of labor is not coincidental; the availability of administrative law restrictions on agencies is one reason why the courts have not sought to link internal and external constraints as a matter of separation of powers analysis. Judicial concerns about unduly intruding into congressional and presidential choices in structuring administration, and about the courts' limited competency on questions of institutional design, are likely in play as well. Yet greater exploration of how separation of powers doctrine could be used to reinforce internal Executive Branch constraints appears justified, especially given the important separation of powers function that internal constraints can serve.

### A2: Rollback – Judiciary – 2NC

#### Courts defer to the executive – err neg on the question of rollback

Duncan 10 (John C. – Associate Professor of Law, College of Law, Florida A & M University; Ph.D., Stanford University; J.D., Yale Law School, “A CRITICAL CONSIDERATION OF EXECUTIVE ORDERS: GLIMMERINGS OF AUTOPOIESIS IN THE EXECUTIVE ROLE”, Vermont Law Review, 35 Vt. L. Rev. 333, lexis)

In Jenkins v. Collard, the Supreme Court ruled that executive orders are indeed valid when based on a constitutional or statutory grant of power to the President, and that such executive orders are equivalent to laws. [n248](http://www.lexisnexis.com.proxy-remote.galib.uga.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1368490653913&returnToKey=20_T17387983447&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.397939.9757858271" \l "n248) In Youngstown, the Supreme Court held that executive orders that lack constitutional or statutory power are invalid. [n249](http://www.lexisnexis.com.proxy-remote.galib.uga.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1368490653913&returnToKey=20_T17387983447&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.397939.9757858271" \l "n249) The Court also noted that  [\*365]  longstanding judicial doctrine holds that when an executive order conflicts with a statute, the statute preempts the order. [n250](http://www.lexisnexis.com.proxy-remote.galib.uga.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1368490653913&returnToKey=20_T17387983447&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.397939.9757858271" \l "n250) Nevertheless, unless the conflict is stark, the courts will attempt to interpret an executive order under the presumption that there is no such conflict. [n251](http://www.lexisnexis.com.proxy-remote.galib.uga.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1368490653913&returnToKey=20_T17387983447&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.397939.9757858271" \l "n251)

#### Especially true with the Roberts court

Cisneros 9 (Laura A. – Assistant Professor of Law, Thurgood Marshall School of Law, “STANDING DOCTRINE, JUDICIAL TECHNIQUE, AND THE GRADUAL SHIFT FROM RIGHTS-BASED CONSTITUTIONALISM TO EXECUTIVE-CENTERED CONSTITUTIONALISM”, 2009, 59 Case W. Res. 1089, lexis)

This expansion, however, has been uneven and largely limited to the domestic realm. Where the Bush administration has pushed the bounds of traditional constitutionalism on the foreign policy front--namely, in prosecuting the War on Terror--the Court has been less accommodating, perhaps in part because the President's actions in this arena have at times been extremely aggressive and have overtly [\*1155] challenged the Court's authority to say what the Constitution requires, allows, and forbids when the nation is engaged in unconventional military conflicts. However, at home the unitary executive has enjoyed increased freedom of movement. The process of replacing the Warren Court's rights-based constitutionalism with a more executive-centered version--a process that began in the middle years of Chief Justice Burger's tenure and was pursued with quiet persistence by the Rehnquist Court--has been effectively continued by the conservative Justices who make up the majority of the current Roberts Court.

### Prez Powers

1 – their link ev BLOWS that was cx

#### Presidential powers are high – foreign policy

Rucker and Wallsten 13

[Philip and Peter, Washington Post, President Obama exercises a fluid grip on the levers of power, 5/18/13, <http://articles.washingtonpost.com/2013-05-18/politics/39353014_1_president-obama-laurence-tribe-executive-power>]

President Obama’s professed ignorance of the targeting of conservatives by one government agency and his support of tracking journalists’ sources by another highlight one of the great paradoxes of his presidency: Sometimes he uses his office as aggressively as anyone who’s held it; other times he seems unacquainted with the work of his own administration. The controversies over the Internal Revenue Service’s scrutiny of tea party and other conservative groups and the Justice Department’s surveillance of Associated Press journalists are only the latest examples of Obama’s a la carte governing style. Obama has been willing to push the bounds of executive power when it comes to making life-and-death decisions about drone strikes on suspected terrorists or instituting new greenhouse gas emission standards for cars.But at other times he has been skittish. When immigration activists first urged him to halt deportations of many illegal immigrants, for instance, Obama said he didn’t have the authority to do so. He eventually gave in after months of public protest and private pressure from immigrant and Hispanic advocates, granting relief to certain people who had been brought to the United States as children. And at key moments, Obama has opted against power plays. In the 2011 debt-ceiling fight, Obama ruled out unilaterally raising the country’s borrowing limit even though some constitutional scholars, as well as many of his political allies, believed doing so was well within his authority. The president’s inconsistency is so befuddling that not even his critics can get it straight. They simultaneously charge that he is “leading from behind” and that he is displaying, in the words of House Speaker John A. Boehner (R-Ohio), “the arrogance of power.” Some of his friends are a bit confused, as well. “He’s a smart guy, a scholarly guy, but I can’t figure him out,” said Rep. Steve Cohen (D-Tenn.), who has been unsuccessfully pushing for Obama to use his pardoning powers more aggressively to release nonviolent drug offenders from prison. Obama’s current and former advisers said the president’s approach is deliberate and coherent: On national security, he exercises power to keep the country safe, whereas on domestic issues, he acts strategically on a case-by-case basis. Still, the advisers acknowledge, Obama’s sometimes-yes, sometimes-no approach can give the appearance that he’s all over the map. Four-and-a-half years in, they said, he still is figuring out how to strike the right balance.“He is deeply concerned both that his office . . . never violate its primary duty to abide by the Constitution’s checks and balances and that he nonetheless exercise those powers to the limit as needed to protect the nation and its people,” said Laurence Tribe, a Harvard Law professor who has been a mentor of Obama’s for two decades and served briefly in Obama’s Justice Department. Still, Tribe expressed concern that Obama, himself a former law instructor, “is being a bit too much the constitutional lawyer in some of these matters and not enough the ordinary citizen, sharing the anger that ordinary citizens understandably feel but flexing the muscles that no citizen other than Barack Obama possesses.”

### 2NC Threat Cred – Courts

#### Deference k2 the Executive's ability to make threats

Waxman 8/25 – Professor of Law @ Columbia and Adjunct Senior Fellow for Law and Foreign Policy @ CFR (Matthew, “The Constitutional Power to Threaten War,” Forthcoming in Yale Law Journal, vol. 123, August 25, 2013, SSRN)

In recent decades a few prominent legal scholars have addressed the President’s **power to threaten force**, though in only brief terms. Taylor Reveley noted in his volume on war powers the importance of allocating constitutional responsibility not only for the actual use of force but also “[v]erbal or written threats or assurances about the circumstances in which the United States will take military action …, whether delivered by declarations of American policy, through formal agreements with foreign entities, by the demeanor or words of American officials, or by some other sign of national intent.”68 Beyond recognizing the critical importance of threats and other non-military actions in affecting war and peace, however, Reveley made little effort to address the issue in any detail. Among the few legal scholars attempting to define the limiting doctrinal contours of presidentially threatened force, Louis Henkin wrote in his monumental Foreign Affairs and the Constitution that: Unfortunately, the line between war and lesser uses of force is often elusive, sometimes illusory, and the use of force for foreign policy purposes can almost imperceptibly become a national commitment to war. Even when he does not use military force, the President can incite other nations or otherwise plunge or stumble this country into war, or force the hand of Congress to declare or to acquiesce and cooperate in war. As a matter of constitutional doctrine, however, one can declare with confidence that a President begins to exceed his authority if he willfully or recklessly moves the nation towards war…69 The implication seems to be that the President may not unilaterally threaten force in ways that are dramatically escalatory and could likely lead to war, or perhaps that the President may not unilaterally threaten the use of force that he does not have the authority to initiate unilaterally.70

#### Threat credibility solves everything – [terrorism, East Asia arms race, Iran, China, North Korea, Asian alliances]

Waxman 8/25 – Professor of Law @ Columbia and Adjunct Senior Fellow for Law and Foreign Policy @ CFR (Matthew, “The Constitutional Power to Threaten War,” Forthcoming in Yale Law Journal, vol. 123, August 25, 2013, SSRN)

After the Cold War, the United States continued to rely on coercive force – threatened force to deter or compel behavior by other actors – as a central pillar of its grand strategy. During the 1990s, the United States wielded coercive power with varied results against rogue actors in many cases that, without the overlay of superpower enmities, were considered secondary or peripheral, not vital, interests: Iraq, Somalia, Haiti, Bosnia, and elsewhere. For analysts of U.S. national security policy, a major puzzle was reconciling the fact that the United States possessed overwhelming military superiority in raw terms over any rivals with its difficult time during this era in compelling changes in their behavior.104 As Daniel Byman and I wrote about that decade in our study of threats of force and American foreign policy: U.S. conventional and nuclear forces dwarf those of any adversaries, and the U.S. economy remains the largest and most robust in the world. Because of these overwhelming advantages, the United States can threaten **any conceivable adversary** with little danger of a major defeat or even significant retaliation. Yet coercion remains difficult. Despite the United States’ lopsided edge in raw strength, regional foes persist in defying the threats and ultimatums brought by the United States and its allies. In confrontations with Somali militants, Serb nationalists, and an Iraqi dictator, the U.S. and allied record or coercion has been mixed over recent years…. Despite its mixed record of success, however, coercion will remain a critical element of U.S. foreign policy.105 One important factor that seemed to undermine the effectiveness of U.S. coercive threats during this period was that many adversaries perceived the United States as still afflicted with “Vietnam Syndrome,” unwilling to make good on its military threats and see military operations through.106 Since the turn of the 21st Century, major U.S. security challenges have included non-state **terrorist threats**, the proliferation of nuclear and other weapons of mass destruction (WMD), and rapidly changing power balances in **East Asia**, and the United States has accordingly been reorienting but retaining its strategic reliance on threatened force. The Bush Administration’s “preemption doctrine” was premised on the idea that some dangerous actors – including terrorist organizations and some states seeking WMD arsenals – are undeterrable, so the United States might have to strike them first rather than waiting to be struck.107 On one hand, this was a move away from reliance on threatened force: “[t]he inability to deter a potential attacker, the immediacy of today’s threats, and the magnitude of potential harm that could be caused by our adversaries’ choice of weapons, do not permit” a reactive posture.108 Yet the very enunciation of such a policy – that “[t]o forestall or prevent such hostile acts by our *adversaries*, the United States will, if necessary, act preemptively”109 – was intended to persuade those adversaries to alter their policies that the United States regarded as destabilizing and threatening. Although the Obama administration pulled back from this rhetoric and placed greater emphasis on international institutions, it has continued to rely on threatened force as a key pillar of its strategy with regard to deterring threats (such as **aggressive Iranian § Marked 12:52 § moves**), intervening in humanitarian crises (as in Libya), and **reassuring allies**.110 With regard to East Asia, for example, the credible threat of U.S. military force is a significant element of U.S. strategy for **deterring Chinese and North Korean aggression** as well as reassuring other Asian powers of U.S. protection, to **avert a destabilizing arms race**.111

### Threat Cred LL Impacts

**We’ll impact each one –**

#### Asian arms races

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

Failure to contain proliferation in Pyongyang could spread nuclear fever throughout Asia. Japan and South Korea might seek nuclear weapons and missile defenses. A pentagonal configuration of nuclear powers in the Pacific basis (Russia, China, Japan, and the two Koreas – not including the United States, with its own Pacific interests) could put deterrence at risk and create **enormous temptation toward nuclear preemption**. Apart from actual use or threat of use, North Korea could exploit the mere existence of an assumed nuclear capability in order to support its coercive diplomacy. As George H. Quester has noted: If the Pyongyang regime plays its cards sensibly and well, therefore, the world will not see its nuclear weapons being used against Japan or South Korea or anyone else, but will rather see this new nuclear arsenal held in reserve (just as the putative Israeli nuclear arsenal has been held in reserve), as a deterrent against the outside world’s applying maximal pressure on Pyongyang and as a bargaining chip to extract the economic and political concessions that the DPRK needs if it wishes to avoid giving up its peculiar approach to social engineering. A **five-sided nuclear competition** in the Pacific would be linked, in geopolitical deterrence and proliferation space, to the existing nuclear deterrents in India and Pakistan, and to the emerging nuclear weapons status of Iran. An **arc of nuclear instability** from Tehran to Tokyo could place U.S. proliferation strategies into the ash heap of history and call for more drastic military options, not excluding preemptive war, defenses, and counter-deterrent special operations. In addition, an eight-sided nuclear arms race in Asia would increase the likelihood of accidental or inadvertent nuclear war. § Marked 12:52 § It would do so because: (1) some of these states already have histories of protracted conflict; (2) states may have politically unreliable or immature command and control systems, especially during a crisis involving a decision for nuclear first strike or retaliation; unreliable or immature systems might permit a technical malfunction that caused an unintended launch, or a deliberate but unauthorized launch by rogue commanders; (3) faulty intelligence and warning systems might cause one side to misinterpret the other’s defensive moves to forestall attack as offensive preparations for attack, thus triggering a mistaken preemption.

#### Terror

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

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between § Marked 12:53 § two or more of the states that possess them. In this context, today's and tomorrow's terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,[40](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928" \l "EN0040) and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”[41](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0041) Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington's relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington's early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country's armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abetters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents' … long-standing interest in all things nuclear.”[42](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0042) American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide. There is also the question of how other nuclear-armed states respond to the act of nuclear terrorism on another member of that special club. It could reasonably be expected that following a nuclear terrorist attack on the United States, both Russia and China would extend immediate sympathy and support to Washington and would work alongside the United States in the Security Council. But there is just a chance, albeit a slim one, where the support of Russia and/or China is less automatic in some cases than in others. For example, what would happen if the United States wished to discuss its right to retaliate against groups based in their territory? If, for some reason, Washington found the responses of Russia and China deeply underwhelming, (neither “for us or against us”) might it also suspect that they secretly were in cahoots with the group, increasing (again perhaps ever so slightly) the chances of a major exchange. If the terrorist group had some connections to groups in Russia and China, or existed in areas of the world over which Russia and China held sway, and if Washington felt that Moscow or Beijing were placing a curiously modest level of pressure on them, what conclusions might it then draw about their culpability? If Washington decided to use, or decided to threaten the use of, nuclear weapons, the responses of Russia and China would be crucial to the chances of avoiding a more serious nuclear exchange. They might surmise, for example, that while the act of nuclear terrorism was especially heinous and demanded a strong response, the response simply had to remain below the nuclear threshold. It would be one thing for a non-state actor to have broken the nuclear use taboo, but an entirely different thing for a state actor, and indeed the leading state in the international system, to do so. If Russia and China felt sufficiently strongly about that prospect, there is then the question of what options would lie open to them to dissuade the United States from such action: and as has been seen over the last several decades, the central dissuader of the use of nuclear weapons by states has been the threat of nuclear retaliation. If some readers find this simply too fanciful, and perhaps even offensive to contemplate, it may be informative to reverse the tables. Russia, which possesses an arsenal of thousands of nuclear warheads and that has been one of the two most important trustees of the non-use taboo, is subjected to an attack of nuclear terrorism. In response, Moscow places its nuclear forces very visibly on a higher state of alert and declares that it is considering the use of nuclear retaliation against the group and any of its state supporters. How would Washington view such a possibility? Would it really be keen to support Russia's use of nuclear weapons, including outside Russia's traditional sphere of influence? And if not, which seems quite plausible, what options would Washington have to communicate that displeasure? If China had been the victim of the nuclear terrorism and seemed likely to retaliate in kind, would the United States and Russia be happy to sit back and let this occur? In the charged atmosphere immediately after a nuclear terrorist attack, how would the attacked country respond to pressure from other major nuclear powers not to respond in kind? The phrase “how dare they tell us what to do” immediately springs to mind. Some might even go so far as to interpret this concern as a tacit form of sympathy or support for the terrorists. This might not help the chances of nuclear restraint.

#### Iranian adventurism

**Ben-Meir 7** (Alon – professor of international relations at the Center for Global Affairs, Ending iranian defiance, United Press International, 2-6, p. lexis)

That Iran stands today able to challenge or even defy the United States in every sphere of American influence in the Middle East attests to the dismal failure of the Bush administration's policy toward it during the last six years. **Feeling emboldened and unrestrained**, Tehran may, however, miscalculate the consequences of its own actions, which could **precipitate a catastrophic regional war**. The Bush administration has less than a year to rein in Iran's reckless behavior if it hopes to prevent such an ominous outcome and achieve, at least, a modicum of regional stability. By all assessments, Iran has reaped the greatest benefits from the Iraq war. The war's consequences and the American preoccupation with it have provided Iran with an historic opportunity to establish Shiite dominance in the region while aggressively pursuing a nuclear weapon program to deter any challenge to its strategy. Tehran is fully cognizant that the successful pursuit of its regional hegemony has now become intertwined with the clout that a nuclear program bestows. Therefore, it is most unlikely that Iran will give up its nuclear ambitions at this juncture, unless it concludes that the price will be too high to bear. That is, whereas before the Iraq war Washington could deal with Iran's nuclear program by itself, now the Bush administration must also disabuse Iran of the belief that it can achieve its regional objectives with impunity. Thus, while the administration attempts to stem the Sunni-Shiite violence in Iraq to prevent it from engulfing other states in the region, Washington must also take a clear stand in Lebanon. Under no circumstances should Iranian-backed Hezbollah be allowed to topple the secular Lebanese government. If this were to occur, it would trigger not only a devastating civil war in Lebanon but a wider Sunni-Shiite bloody conflict. The Arab Sunni states, especially, Saudi Arabia, Egypt and Jordan, are terrified of this possible outcome. For them Lebanon may well provide the litmus test of the administration's resolve to inhibit Tehran's adventurism but they must be prepared to directly support U.S. efforts. In this regard, the Bush administration must wean Syria from Iran. This move is of paramount importance because not only could Syria end its political and logistical support for Hezbollah, but it could return Syria, which is predominantly Sunni, to the Arab-Sunni fold. President Bush must realize that Damascus' strategic interests are not compatible with Tehran's and the Assad regime knows only too well its future political stability and economic prosperity depends on peace with Israel and normal relations with the United States. President Bashar Assad may talk tough and embrace militancy as a policy tool; he is, however, the same president who called, more than once, for unconditional resumption of peace negotiation with Israel and was rebuffed. The stakes for the United States and its allies in the region are too high to preclude testing Syria's real intentions which can be ascertained only through direct talks. It is high time for the administration to reassess its policy toward Syria and begin by abandoning its schemes of regime change in Damascus. Syria simply matters; the administration must end its efforts to marginalize a country that can play such a pivotal role in changing the political dynamic for the better throughout the region. Although ideally direct negotiations between the United States and Iran should be the first resort to resolve the nuclear issue, as long as Tehran does not feel seriously threatened, it seems unlikely that the clergy will at this stage end the nuclear program. In possession of nuclear weapons Iran will intimidate the larger Sunni Arab states in the region, bully smaller states into submission, threaten Israel's very existence, use oil as a political weapon to blackmail the West and instigate regional proliferation of nuclear weapons' programs. In short, if unchecked, Iran could **plunge the Middle East into** a deliberate or inadvertent **nuclear conflagration**. If we take the administration at its word that it would not tolerate a nuclear Iran and considering these regional implications, Washington is left with no choice but to warn Iran of the severe consequences of not halting its nuclear program.

#### Allies

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

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

### 2NC Resolve

#### A weakened Obama presidency undermines international credibility and resolve

**Bolton 9** (John R., Senior Fellow – American Enterprise Institute and Former U.S. Ambassador – United Nations, “The Danger of Obama’s Dithering”, Los Angeles Times, 10-18,

<http://articles.latimes.com/2009/oct/18/opinion/oe-bolton18>)

Weakness in American [foreign policy](http://articles.latimes.com/keyword/foreign-policy) in one region often invites challenges elsewhere, because our adversaries carefully follow diminished American resolve. Similarly, presidential indecisiveness, whether because of uncertainty or internal political struggles, signals that the United States may not respond to international challenges in clear and coherent ways. Taken together, weakness and indecisiveness have proved historically to be a toxic combination for America's global interests. That is exactly the combination we now see under President Obama. If anything, his receiving the Nobel Peace Prize only underlines the problem. All of Obama's campaign and inaugural talk about "extending an open hand" and "engagement," especially the multilateral variety, isn't exactly unfolding according to plan. Entirely predictably, we see more clearly every day that diplomacy is not a policy but only a technique. Absent presidential leadership, which at a minimum means clear policy direction and persistence in the face of criticism and adversity, engagement simply embodies weakness and indecision.

#### Obama’s weakness causes global instability – Iran, North Korea, Pakistan and India, Russia, China all lash out

**Hanson 9** (Victor Davis, Senior Fellow in Classics and Military History – Hoover Institution, “Change, Weakness, Disaster, Obama: Answers from Victor Davis Hanson,” Pajamas Media, 12-7, http://pajamasmedia.com/blog/change-weakness-disaster-obama-answers-from-victor-davis-hanson/)

BC: Are we currently sending a message of weakness to our foes and allies? Can anything good result from President Obama’s marked submissiveness before the world? Dr. Hanson: Obama is one bow and one apology away from a circus. The world can understand a kowtow gaffe to some Saudi royals, but not as part of a deliberate pattern. Ditto the mea culpas. Much of diplomacy rests on public perceptions, however trivial. We are now in a great waiting game, as regional hegemons, wishing to redraw the existing landscape — whether China, Venezuela, Iran, North Korea, Pakistan, Syria, etc. — are just waiting to see who’s going to be the first to try Obama — and whether Obama really will be as tenuous as they expect. If he slips once, it will be 1979 redux, when we saw the rise of radical Islam, the Iranian hostage mess, the communist inroads in Central America, the Soviet invasion of Afghanistan, etc. BC: With what country then — Venezuela, Russia, Iran, etc. — do you believe his global repositioning will cause the most damage? Dr. Hanson: I think all three. I would expect, in the next three years, Iran to get the bomb and begin to threaten ever so insidiously its Gulf neighborhood; Venezuela will probably cook up some scheme to do a punitive border raid into Colombia to apprise South America that U.S. friendship and values are liabilities; and Russia will continue its energy bullying of Eastern Europe, while insidiously pressuring autonomous former republics to get back in line with some sort of new Russian autocratic commonwealth. There’s an outside shot that North Korea might do something really stupid near the 38th parallel and China will ratchet up the pressure on Taiwan. India’s borders with both Pakistan and China will heat up. I think we got off the back of the tiger and now no one quite knows whom it will bite or when.

### Resolve LL Impacts

#### Korean war causes extinction

**Hayes and Green 10** (Peter, Professor of International Relations – Royal Melbourne Institute of Technology and Director – Nautilus Institute, and Michael Hamel, Victoria University, “The Path Not Taken, the Way Still Open: Denuclearizing the Korean Peninsula and Northeast Asia”, Nautilus Institute Special Report, 1-5, http://www.nautilus.org/fora/security/10001HayesHamalGreen.pdf)

The international community is increasingly aware that cooperative diplomacy is the most productive way to tackle the multiple, interconnected global challenges facing humanity, not least of which is the increasing proliferation of nuclear and other weapons of mass destruction. Korea and Northeast Asia are instances where risks of nuclear proliferation and actual nuclear use arguably have increased in recent years. This negative trend is a product of continued US nuclear threat projection against the DPRK as part of a general program of coercive diplomacy in this region, North Korea’s nuclear weapons programme, the breakdown in the Chinese-hosted Six Party Talks towards the end of the Bush Administration, regional concerns over China’s increasing military power, and concerns within some quarters in regional states (Japan, South Korea, Taiwan) about whether US extended deterrence (“nuclear umbrella”) afforded under bilateral security treaties can be relied upon for protection. The consequences of failing to address the proliferation threat posed by the North Korea developments, and related political and economic issues, are serious, not only for the Northeast Asian region but for the whole international community. At worst, there is the possibility of nuclear attack1, whether by intention, miscalculation, or merely accident, leading to the resumption of Korean War hostilities. On the Korean Peninsula itself, key population centres are well within short or medium range missiles. The whole of Japan is likely to come within North Korean missile range. Pyongyang has a population of over 2 million, Seoul (close to the North Korean border) 11 million, and Tokyo over 20 million. Even a limited nuclear exchange would result in a holocaust of unprecedented proportions. But the catastrophe within the region would not be the only outcome. New research indicates that even a limited nuclear war in the region would rearrange our global climate far more quickly than global warming. Westberg draws attention to new studies modelling the effects of even a limited nuclear exchange involving approximately 100 Hiroshima-sized 15 kt bombs2 (by comparison it should be noted that the United States currently deploys warheads in the range 100 to 477 kt, that is, individual warheads equivalent in yield to a range of 6 to 32 Hiroshimas).The studies indicate that the soot from the fires produced would lead to a decrease in global temperature by 1.25 degrees Celsius for a period of 6-8 years.3 In Westberg’s view: That is not global winter, but the nuclear darkness will cause a deeper drop in temperature than at any time during the last 1000 years. The temperature over the continents would decrease substantially more than the global average. A decrease in rainfall over the continents would also follow…The period of nuclear darkness will cause much greater decrease in grain production than 5% and it will continue for many years...hundreds of millions of people will die from hunger…To make matters even worse, such amounts of smoke injected into the stratosphere would cause a huge reduction in the Earth’s protective ozone.4 These, of course, are not the only consequences. Reactors might also be targeted, causing further mayhem and downwind radiation effects, superimposed on a smoking, radiating ruin left by nuclear next-use. Millions of refugees would flee the affected regions. The direct impacts, and the follow-on impacts on the global economy via ecological and food insecurity, could make the present global financial crisis pale by comparison. How the great powers, especially the nuclear weapons states respond to such a crisis, and in particular, whether nuclear weapons are used in response to nuclear first-use, could make or break the global non proliferation and disarmament regimes. There could be many unanticipated impacts on regional and global security relationships5, with subsequent nuclear breakout and geopolitical turbulence, including possible loss-of-control over fissile material or warheads in the chaos of nuclear war, and aftermath chain-reaction affects involving other potential proliferant states. The Korean nuclear proliferation issue is not just a regional threat but a global one that warrants priority consideration from the international community.

#### Iranian prolif escalates to nuclear war

**Sokolsky 3** (Henry, Exec Dir – Nonproliferation Policy Education Center, Policy Review, 10-1, Lexis)

If nothing is done to shore up U.S. and allied security relations with the Gulf Coordination Council states and with Iraq, Turkey, and Egypt, Iran's acquisition of even a nuclear weapons breakout capability could prompt one or more of these states to try to acquire a nuclear weapons option of their own. Similarly, if the U.S. fails to hold Pyongyang accountable for its violation of the NPT or lets Pyongyang hold on to one or more nuclear weapons while appearing to reward its violation with a new deal--one that heeds North Korea's demand for a nonaggression pact and continued construction of the two light water reactors--South Korea and Japan (and later, perhaps, Taiwan) will have powerful cause to question Washington's security commitment to them and their own pledges to stay non-nuclear. In such a world, Washington's worries would not be limited to gauging the military capabilities of a growing number of hostile, nuclear, or near-nuclear-armed nations. In addition, it would have to gauge the reliability of a growing number of nuclear or near-nuclear friends. Washington might still be able to assemble coalitions, but with more nations like France, with nuclear options of their own, it would be much, much more iffy. The amount of international intrigue such a world would generate would also easily exceed what our diplomats and leaders could manage or track. Rather than worry about using force for fear of producing another Vietnam, Washington and its very closest allies are more likely to grow weary of working closely with others and view military options through the rosy lens of their relatively quick victories in Desert Storm, Kosovo, Operation Iraqi Freedom, and Just Cause. This would be a world disturbingly similar to that of 1914 but with one big difference: It would be **spring-loaded to go nuclear**.