# 2AC Round 1 Districts

## Warfighting

### NEPA Readiness DA – 2AC

#### 1. Case solves the impact – econ collapse=heg collapse inev now

#### 2. Readiness Low –

#### A) Sequester

Pellerin 13

[Cheryl, American Forces Press Service, Hale: Sequestration Devastates U.S. Military Readiness, 5/10/13, <http://www.defense.gov/news/newsarticle.aspx?id=119998>]

During a Senate hearing yesterday on President Barack Obama’s $9.5 billion military construction budget request for fiscal year 2014, Defense Department Comptroller Robert F. Hale said the severe and abrupt budget cuts imposed by sequestration are devastating the U.S. armed forces. Hale and John Conger, acting deputy undersecretary of defense for installations and environment, testified on military construction and family housing before the Senate Appropriations subcommittee on military construction, veterans affairs and related agencies. The officials described for the panel the impact of sequestration on military construction, facilities sustainment and restoration, and on the services in the current year. “While sequestration and related problems do not affect most military construction projects, they are devastating military readiness,” Hale told the senators, adding, “I just can't believe what we're doing to the military right now.”

#### Plan returns the US to case law circa 2004 – 5 years of legal application disproves the disad

Schiffer 4 (Lois J., partner at Baach Robinson & Lewis PLLC in Washington, D.C., Assistant Attorney General for the Environment and Natural Resources Division at the U.S. Department of Justice from 1994-2001, adjunct professor of environmental law at Georgetown University Law Center, “The National Environmental Policy Act today, with an emphasis on its application across U.S. Borders,” Duke Environmental Law & Policy Forum, Vol. 14:2, 2004, <http://www.eli.org/pdf/seminars/NEPA/NEPA%20Today.pdf>)

The Bush Administration has made clear its view that NEPA should be limited to impacts within the United States. In Natural Resources Defense Council v. U.S. Department of the Navy, which challenged the Navy’s testing of low-frequency sonar on the basis that the Navy must prepare an EIS to evaluate impacts on marine mammals, the government argued that NEPA did not apply to the sonar program because most of the testing took place outside the territorial waters of the LLS.\*1 The government relied on the presumption against extraterritorial application of federal laws. In a clear and strong decision, the court rejected the claim and held that NEPA applied.45 While the Navy and the NRDC then reached a substantive settlement, congressional legislation that redefined what constitutes "harassment" under the Marine Mammal Protection Act reopened this debate. In Center for Biological Diversity v. National Science Foundation, in which the National Science Foundation's plan to undertake acoustical research in an environmentally sensitive area of the Gulf of California without NEPA compliance was challenged, the United States argued that it need not prepare an environmental review for a project within the Exclusive Economic Zone of Mexico: the court held that the area was the high seas, that NEPA applied, and thus issued a temporary restraining order.1" in Border Power Plant Working Group v. Department of Energy, the federal government argued that the Department of Energy, in permitting transmission lines in the U.S. to connect Mexican power plants to the U.S. grid, need not consider the environmental effects of the power plants.\* The court disagreed and held that NEPA requires assessment of effects in the U.S. resulting from power plants in Mexico. Since that ruling, the Department of Energy has undertaken an environmental analysis of the project and took public comments on the draft EIS through June 2004.'11"

#### 4. Turn – NEPA allows for flexibility and makes our military more effective

Dycus 96

[Stephen, Professor, Vermont Law School, 1996, "National Defense and the Environment"pp 149]

There is serious, continuing debate about whether the domestic environmental laws apply abroad. 89 The Defense Department expressly disavows the applicability of NEPA to military actions outside the nation's borders, especially to armed conflict.90 The Pentagon's "Overseas Environmental Baseline Guidance Document" claims only to have "considered" United States environmental laws and regulations, not to be governed by them, and it does not apply to "deployments for operations," that is, to warfare.91 The environmental laws themselves are silent on the question, and the legislative histories are almost as enigmatic. Aside from the usual presumption that domestic laws are not meant to apply abroad unless Congress expressly states otherwise, there is no compelling evidence that Congress intended to exclude their application to armed conflict. Indeed, these laws should be applied to warfare. As a practical matter, they provide convenient, familiar mechanisms for evaluating and minimizing risks to the environment in time of war just as they do in peacetime. Applied with a practical flexibility, they need not interfere with military operations. No one has suggested that the Defense Department ought to have prepared the kind of formal environmental impact statement required by NEPA before deploying troops and equipment in the Persian Gulf, even though Operations Desert Shield and Desert Storm were undeniably "major federal actions affecting the human environment." The political objectives of freeing Kuwait and protecting Saudi Arabia from further Iraqi advances might well have been frustrated by delays inherent in the usual public notice and interagency review process. Very much to its credit, the Pentagon did not ignore the environmental risks altogether. But it failed to undertake, even internally, the kind of systematic, coordinated environmental evaluation that NEPA requires. We cannot expect the environmental laws to apply the same way on the battlefield that they do in planning a highway or operating a sewage disposal plant. A field commander whose forces come under attack cannot stop to prepare an environmental assessment or apply for a Clean Water Act permit before mounting a counteroffensive. Because of the need for speed and secrecy, members of the public cannot expect to receive advance notice or have an opportunity to comment on proposed tactics. Citizen enforcement will be nearly impossible; we will have to rely on the military branches to police their own operations and personnel, aided by oversight from their inspectors general. It may not even be practical for our field commander to fully document his consideration of environmental effects, making accountability more problematic. Yet even in a combat setting, our commander can apply performance standards and follow procedures set out in the domestic environmental laws as closely as circumstances permit. Much that takes place on the battlefield is planned far in advance. Operation plans, rules of engagement, and standardized tactics should be routinely vetted for compliance with domestic environmental law standards, just as they are now reviewed for conformity with the law of war, even though for security reasons neither the planning process nor the plans themselves can be made public. The designs of weapons and other equipment, and protocols for their use on the battlefield, should also conform to requirements of the environmental laws. Just as the law of war proscribes weapons that cause unnecessary suffering, application of the environmental laws ought to prevent the deployment of weapons that cause unnecessary injury to the environment. Thus, the Navy should only deploy ships that have the capacity to treat or store their solid wastes while at sea, instead of dumping them overboard in violation of the Ocean Dumping Act or the Clean Water Act. 92 The Army has decided that if chemical herbicides are used in combat, they "must be employed in accordance with federal laws and regulations which would govern their use within the United States.... Environmental Protection Agency regulations pertaining to dilution, droplet size, protective clothing, etc. are binding on U.S. forces."93 The EPA regulations are promulgated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).94 The military services are beginning to incorporateenvironmental compliance into combat training, just as they now train every soldier, sailor, and airman to be familiar with the law of war. As one high­ranking Air Force officer put it, "we fight the way we are trained." Long before reaching the battlefield, for example, a tank commander needs to learn not to drive through the middle of a wetland if a path across high ground offers the same tactical advantage. The same commander should be instructed to carry along not only a change of oil for his tank's engine, but also a safe receptacle for the old oil, so it will not have to be drained onto the ground, as was done in the Persian Gulf War. Finally, environmental compliance on the battlefield itself will not necessarily make combat units less effective in carrying out their military missions. A recent Army­ financed study concluded that successful introduction of pollution prevention initiatives into combat doctrine and planning would actually enhance fighting strength by increasing each unit's self­sufficiency, reducing diseaseand nonbattle injury, and reducing the unit's visibility to the enemy. 95

## T

### T- Restrinction=Prohibit -2AC NEPA

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

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

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

#### We meet – NEPA is a restriction

Abby 09

[Robert, Director of the Bureau of Land Management, Requirements for Processing and Approving Temporary Public Land Closure and Restriction Orders , 12/11/09 , <http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2010/IM_2010-028.html>]

National Environmental Policy Act (NEPA) analysis is required prior to the BLM closing the public lands to certain uses or restricting specific uses of the public lands under the authorities of 43 CFR § 8364.1, 8351.2-1, and 6302.19. Most closures and restrictions implemented by the BLM fall into these categories. Adequate NEPA analysis and documentation for temporary closures and restrictions may include: Categorical Exclusions (CX) Environmental Assessments (EA) Environmental Impact Statements (EIS) (i.e., specific closure decisions adopted in a completed Resource Management Plan)

#### 2. Judicial restriction means regulation

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

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

3. **Counter interpretation – restrict means to limit through conditions.**

**Cambridge Dictionary 9** (Cambridge Dictionary of American English, *Restrict – Definition*, http://dictionary.cambridge.org/define.asp?key=restrict\*1+0&dict=A)

Restrict

Verb [T]

To limit (an intended action) esp. by setting the conditions under which it is allowed to happen

The state legislature voted to restrict development in the area.

Efforts are under way to further restrict cigarette advertising.

#### Restriction is limitation not prohibition

CAC 12, COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. ALTERNATIVE MEDICINAL CANNABIS COLLECTIVE et al., Defendants and Appellants, DIVISION ONE, 207 Cal. App. 4th 601; 143 Cal. Rptr. 3d 716; 2012 Cal. App. LEXIS 772

We disagree with County that in using the phrases “further restrict the location or establishment” and “regulate the location or establishment” in [\*615] section 11362.768, subdivisions (f) and (g), the Legislature intended to authorize local governments to ban all medical marijuana dispensaries that are otherwise “authorized by law to possess, cultivate, or distribute medical marijuana” (§ 11362.768, subd. (e) [stating scope of section's application]); the Legislature did not use the words “ban” or “prohibit.” Yet County cites dictionary definitions of “regulate” (to govern or direct according to rule or law); “regulation” (controlling by rule or restriction; a rule or order that has legal force); “restriction” (a limitation or qualification, including on the use of property); “establishment” (the act of establishing or state or condition of being established); “ban” (to prohibit); and “prohibit” (to forbid by law; to prevent or hinder) to attempt to support its interpretation. County then concludes that “the ordinary meaning [\*\*\*23] of the terms, ‘restriction,’ ‘regulate,’ and ‘regulation’ are consistent with a ban or prohibition against the opening or starting up or continued operation of [a medical marijuana dispensary] storefront business.” We disagree.¶CA(9)(9) The ordinary meanings of “restrict” and “regulate” suggest a degree of control or restriction falling short of “banning,” “prohibiting,” “forbidding,” or “preventing.” Had the Legislature intended to include an outright ban or prohibition among the local regulatory powers authorized in section 11362.768, subdivisions (f) and (g), it would have said so. Attributing the usual and ordinary meanings to the words used in section 11362.768, subdivisions (f) and (g), construing the words in context, attempting to harmonize subdivisions (f) and (g) with section 11362.775 and with the purpose of California's medical marijuana [\*\*727] statutory program, and bearing in mind the intent of the electorate and the Legislature in enacting the CUA and the MMP, we conclude that HN21Go to this Headnote in the case. the phrases “further restrict the location or establishment” and “regulate the location or establishment” in section 11362.768, subdivisions (f) and (g) do not authorize a per se ban at the local level. The Legislature [\*\*\*24] decided in section 11362.775 to insulate medical marijuana collectives and cooperatives from nuisance prosecution “solely on the basis” that they engage in a dispensary function. To interpret the phrases “further restrict the location or establishment” and “regulate the location or establishment” to mean that local governments may impose a blanket nuisance prohibition against dispensaries would frustrate both the Legislature's intent to “[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects” and “[p]romote uniform and consistent application of the [CUA] among the counties within the state” and the electorate's intent to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes” and “encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.”

## K

### Security – Framework/Framing

#### 2. K doesn’t come first

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

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

#### 3. Extinction outweighs

Bok 88

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

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

### Security – Perm/Rlsm

#### 6. Perm – do both

#### Perm solves

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

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

### Warming – 2AC

#### No link—we are a challenge message – increases salience and collective action

Brulle 10 (Robert BRULLE Sociology & Envt’l Science @ Drexel ’10 “From Environmental Campaigns to Advancing the Public Dialog: Environmental Communication for Civic Engagement” Environmental Communication 4 (1) p. 92)

From Identity to Challenge Campaigns One of the most common assumptions in designing identity-based environmental communication campaigns is that fear appeals are counterproductive. As Swim et al. (2009, p. 80) note: ‘‘well meaning attempts to create urgency about climate change by appealing to fear of disasters or health risks frequently lead to the exact opposite of the desired response: denial, paralysis, apathy, or actions that can create greater risks than the one being mitigated.’’ While the author goes on to qualify and expand this line of argument, this has been taken as an absolute in the popular press and much of the grey literature produced by nonprofit organizations and foundations. However, the academic literature portrays a much more complex picture: whereas apocalyptic rhetoric has been shown to be able to evoke powerful feelings of issue salience (O’Neill & Nicholson-Cole, 2009, p. 373), reassuring messages, such as those advocated by ecoAmerica, have the least ability to increase issue salience (de Hoog, Stroebe, & de Wit, 2007; Lowe et al., 2006; Meijinders, Cees, Midden, & Wilke, 2001; Witte & Allen, 2000). Additionally, apocalyptic messages do not necessarily result in denial. A number of empirical studies show that individuals respond to threat appeals with an increased focus on collective action (Eagly & Kulesa, 1997; Langford, 2002; Leiserowitz, Kates, & Parris, 2006, p. 437; Maiteny, 2002; Shaiko, 1999; Swim et al., 2009, p. 94). Tomaka, Blascovich, Kelsey, and Leitten (1993, p. 248) distinguish between threat and challenge messaging: threat messages ‘‘are those in which the perception of danger exceeds the perception of abilities or resources to cope with the stressor. Challenge appraisals, in contrast, are those in which the perception of danger does not exceed the perception of resources or abilities to cope.’’ If a meaningful response to a threat can be taken that is within the resources of the individual, this results in a challenge, which ‘‘may galvanize creative ideas and actions in ways that transform and strengthen the resilience and creativity of individuals and communities’’ (Fritze, Blashki, Burke, & Wieseman, 2008, p. 12). While fear appeals can lead to maladaptive behaviors, fear combined with information about effective actions can also be strongly motivating (O’Neill & Nicholson-Cole, 2009, p. 376; Witte & Allen, 2000).

#### Catastrophic warming reps are good—it’s the only way to motivate response—their empirics are attributable to climate denialism

Romm 12(Joe Romm is a Fellow at American Progress and is the editor of Climate Progress, which New York Times columnist Tom Friedman called "the indispensable blog" and Time magazine named one of the 25 “Best Blogs of 2010.″ In 2009, Rolling Stone put Romm #88 on its list of 100 “people who are reinventing America.” Time named him a “Hero of the Environment″ and “The Web’s most influential climate-change blogger.” Romm was acting assistant secretary of energy for energy efficiency and renewable energy in 1997, where he oversaw $1 billion in R&D, demonstration, and deployment of low-carbon technology. He is a Senior Fellow at American Progress and holds a Ph.D. in physics from MIT., 2/26/2012, “Apocalypse Not: The Oscars, The Media And The Myth of ‘Constant Repetition of Doomsday Messages’ on Climate”, http://thinkprogress.org/romm/2012/02/26/432546/apocalypse-not-oscars-media-myth-of-repetition-of-doomsday-messages-on-climate/#more-432546)

The two greatest myths about global warming communications are 1) constant repetition of doomsday messages has been a major, ongoing strategy and 2) that strategy doesn’t work and indeed is actually counterproductive! These myths are so deeply ingrained in the environmental and progressive political community that when we finally had a serious shot at a climate bill, the powers that be decided not to focus on the threat posed by climate change in any serious fashion in their $200 million communications effort (see my 6/10 post “Can you solve global warming without talking about global warming?“). These myths are so deeply ingrained in the mainstream media that such messaging, when it is tried, is routinely attacked and denounced — and the flimsiest studies are interpreted exactly backwards to drive the erroneous message home (see “Dire straits: Media blows the story of UC Berkeley study on climate messaging“) The only time anything approximating this kind of messaging — not “doomsday” but what I’d call blunt, science-based messaging that also makes clear the problem is solvable — was in 2006 and 2007 with the release of An Inconvenient Truth (and the 4 assessment reports of the Intergovernmental Panel on Climate Change and media coverage like the April 2006 cover of Time). The data suggest that strategy measurably moved the public to become more concerned about the threat posed by global warming (see recent study here). You’d think it would be pretty obvious that the public is not going to be concerned about an issue unless one explains why they should be concerned about an issue. And the social science literature, including the vast literature on advertising and marketing, could not be clearer **that only repeated messages have any chance of sinking in and moving the needle**. Because I doubt any serious movement of public opinion or mobilization of political action could possibly occur until these myths are shattered, I’ll do a multipart series on this subject, featuring public opinion analysis, quotes by leading experts, and the latest social science research. Since this is Oscar night, though, it seems appropriate to start by looking at what messages the public are exposed to in popular culture and the media. It ain’t doomsday. Quite the reverse, climate change has been mostly an invisible issue for several years and the message of conspicuous consumption and business-as-usual reigns supreme. The motivation for this post actually came up because I received an e-mail from a journalist commenting that the “constant repetition of doomsday messages” doesn’t work as a messaging strategy. I had to demur, for the reasons noted above. But it did get me thinking about what messages the public are exposed to, especially as I’ve been rushing to see the movies nominated for Best Picture this year. I am a huge movie buff, but as parents of 5-year-olds know, it isn’t easy to stay up with the latest movies. That said, good luck finding a popular movie in recent years that even touches on climate change, let alone one a popular one that would pass for doomsday messaging. Best Picture nominee The Tree of Life has been billed as an environmental movie — and even shown at environmental film festivals — but while it is certainly depressing, climate-related it ain’t. In fact, if that is truly someone’s idea of environmental movie, count me out. The closest to a genuine popular climate movie was the dreadfully unscientific The Day After Tomorrow, which is from 2004 (and arguably set back the messaging effort by putting the absurd “global cooling” notion in people’s heads! Even Avatar, the most successful movie of all time and “the most epic piece of environmental advocacy ever captured on celluloid,” as one producer put it, omits the climate doomsday message. One of my favorite eco-movies, “Wall-E, is an eco-dystopian gem and an anti-consumption movie,” but it isn’t a climate movie. I will be interested to see The Hunger Games, but I’ve read all 3 of the bestselling post-apocalyptic young adult novels — hey, that’s my job! — and they don’t qualify as climate change doomsday messaging (more on that later). So, no, the movies certainly don’t expose the public to constant doomsday messages on climate. Here are the key points about what repeated messages the American public is exposed to: The broad American public is exposed to virtually **no doomsday messages**, let alone constant ones, on climate change in popular culture (TV and the movies and even online). There is not one single TV show on any network devoted to this subject, which is, arguably, more consequential than any other preventable issue we face. The same goes for the news media, whose coverage of climate change has collapsed (see “Network News Coverage of Climate Change Collapsed in 2011“). When the media do cover climate change in recent years, the overwhelming majority of coverage is devoid of any doomsday messages — and many outlets still feature hard-core deniers. Just imagine what the public’s view of climate would be if it got the same coverage as, say, unemployment, the housing crisis or even the deficit? When was the last time you saw an “employment denier” quoted on TV or in a newspaper? The public is exposed to constant messages promoting business as usual and indeed idolizing conspicuous consumption. See, for instance, “Breaking: The earth is breaking … but how about that Royal Wedding? Our political elite and intelligentsia, including MSM pundits and the supposedly “liberal media” like, say, MSNBC, hardly even talk about climate change and when they do, it isn’t doomsday. Indeed, there isn’t even a single national columnist for a major media outlet who writes primarily on climate. Most “liberal” columnists rarely mention it. At least a quarter of the public chooses media that devote a vast amount of time to the notion that global warming is a hoax and that environmentalists are extremists and that clean energy is a joke. In the MSM, conservative pundits routinely trash climate science and mock clean energy. Just listen to, say, Joe Scarborough on MSNBC’s Morning Joe mock clean energy sometime. The major energy companies bombard the airwaves with millions and millions of dollars of repetitious pro-fossil-fuel ads. The environmentalists spend far, far less money. As noted above, the one time they did run a major campaign to push a climate bill, they and their political allies including the president explicitly did NOT talk much about climate change, particularly doomsday messaging Environmentalists when they do appear in popular culture, especially TV, are routinely mocked. There is very little mass communication of doomsday messages online. Check out the most popular websites. General silence on the subject, and again, what coverage there is ain’t doomsday messaging. Go to the front page of the (moderately trafficked) environmental websites. Where is the doomsday? If you want to find anything approximating even modest, blunt, science-based messaging built around the scientific literature, interviews with actual climate scientists and a clear statement that we can solve this problem — well, you’ve all found it, of course, but the only people who see it are those who go looking for it. Of course, this blog is not even aimed at the general public. Probably 99% of Americans haven’t even seen one of my headlines and 99.7% haven’t read one of my climate science posts. And Climate Progress is probably the most widely read, quoted, and reposted climate science blog in the world. Anyone dropping into America from another country or another planet who started following popular culture and the news the way the overwhelming majority of Americans do would get the distinct impression that **nobody who matters is terribly worried about climate change**. And, of course, they’d be right — see “The failed presidency of Barack Obama, Part 2.” It is total BS that somehow the American public **has been scared and overwhelmed by repeated doomsday messaging into some sort of climate fatigue**. If the public’s concern has dropped — and public opinion analysis suggests it has dropped several percent (though is bouncing back a tad) — that is **primarily due to the conservative media’s disinformation** **campaign** impact on Tea Party conservatives and to the treatment of this as a nonissue by most of the rest of the media, intelligentsia and popular culture.

### Security – Enviro Sec Good

#### Failure to securitize the environment causes war

Kumari 12 -- International Relations Masters graduate @ University of Nottingham (Parmila, 1/29/12, "Securitising The Environment: A Barrier To Combating Environment Degradation Or A Solution In Itself?" <http://www.e-ir.info/2012/01/29/securitising-the-environment-a-barrier-to-combating-environment-degradation-or-a-solution-in-itself/>)

In any case, any disadvantages of ‘loosening’ of security may not outweigh the possible benefits. Securitising the environment attracts the attention of high-level decision makers and results in the mobilisation of resources (Detraz and Betsill 2009:303) because “security encapsulates danger much better than concepts like sustainability, vulnerability or adaptation” (Barnett 2003:14). It is also ideal in that it facilitates communication between a diverse range of interests, which is important since environmental degradation impacts more than just one party (Barnett 2001:136). Consider the following scenario. Continued population growth means greater pressure on governments to provide adequate food, housing, jobs and healthcare. The task is all the more difficult for developing countries, where funds previously going to resource conservation are redirected to meet basic needs. Scarcity of resources due to lack of resource conservation is bad news for these countries’ economic performance, as resources are the natural capital contributions to the economy. This could lead to political instability and conflict, pushing people out of their homes to seek refuge across borders. These refugees will create extra demand for food and place new burdens on the land in the place where they settle (Mathews 1989:162-168). This is one of many paths down which population growth can take states, but the point is that resource scarcity in one area can spread its effects across borders. This is especially so now due to economic interdependence. If the effects of environmental degradation do not respect borders/areas, then this presents a case for cooperation with all those people in the world that are affected. If securitisation achieves high awareness and facilitates communication from various interested parties, then it seems worthwhile. In this way securitisation may allow the meaning of environmental security to be stood and pronounced not just from one place, but from many. The amalgamation of these standpoints may just lead to the closest thing possible to a neutral one.

### Gov’t Key

#### Gov’t is key- individual change fails

Bryant 12—prof of philosophy at Collin College (Levi, Black Ecology: A Pessimistic Moment, larvalsubjects.wordpress.com/2012/03/19/black-ecology-a-pessimistic-moment/)

So why is this an issue? It’s an issue because while environmentalists prescribe all sorts of action we need to take to avert the climate catastrophe, it seems to me that in failing to engage in an ecology of social and political institutions they are whistling past the graveyard by failing to address the question of the conditions under which action is possible. Here’s the part where everyone gets angry with me. Given the way in which government and corporations are today intertwined, I don’t think there’s much we can do to avert the coming catastrophe. As Morton says, referring to logical time, “the catastrophe has already happened”. So what would it mean, I wonder, to take Morton’s thesis seriously? Here I know Tim will disagree with me. When I look at environmental discussions in popular media and from many around me, I see the discussion revolving almost entirely around consumers. We’re told that we have to consume differently to solve this problem. I agree that we need to consume differently, but **I don’t see any feasible way in which** driving fuel efficient cars, **using less** heat and AC, eating less meat, etc **will solve these problems**. This is because the lion’s share of our climate change problems arise from the production and distribution end of the equation, rather than the consumption end. They are problems arising from agricultural practices, factories, and how we ship goods throughout countries and the world. The problem is that given the way in which governments and corporations are intertwined with one another, and given the way in which third world countries are dependent on fossil fuels for their development, and given the fact that only governmental solutions can address problems of production and distribution, **we’re left with no recourse for action**. We can only watch helplessly while our bought and sold politicians continue to fiddle as the world burns.

### Security – No impact

#### No impact to security

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

Against the view that panicked government officials overreact to an emergency, and unnecessarily curtail civil liberties, we suggest a more constructive theory of the role of fear. Before the emergency, government officials are complacent. They do not think clearly or vigorously about the potential threats faced by the nation. After the terrorist attack or military intervention, their complacency is replaced by fear. Fear stimulates them to action. Action may be based on good decisions or bad: fear might cause officials to exaggerate future threats, but it also might arouse them to threats that they would otherwise not perceive. **It is impossible to say in the abstract whether decisions and actions provoked by fear are likely to be better than decisions and actions made in a state of calm**. But our limited point is that there is no reason to think that the fear-inspired decisions are likely to be worse. For that reason, the existence of fear during emergencies does not support the antiaccommodation theory that the Constitution should be enforced as strictly during emergencies as during non-emergencies. C. The Influence of Fear during Emergencies Suppose now that the simple view of fear is correct, and that it is an unambiguously negative influence on government decisionmaking. Critics of accommodation argue that this negative influence of fear justifies skepticism about emergency policies and strict enforcement of the Constitution. However, this argument is implausible. It is doubtful that fear, so understood, has more influence on decisionmaking during emergencies than decisionmaking during non-emergencies. The panic thesis, implicit in much scholarship though rarely discussed in detail, holds that citizens and officials respond to terrorism and war in the same way that an individual in the jungle responds to a tiger or snake. The national response to emergency, because it is a standard fear response, is characterized by the same circumvention of ordinary deliberative processes: thus, (i) the response is instinctive rather than reasoned, and thus subject to error; and (ii) the error will be biased in the direction of overreaction. While the flight reaction was a good evolutionary strategy on the savannah, in a complex modern society the flight response is not suitable and can only interfere with judgment. Its advantage—speed—has minimal value for social decisionmaking. No national emergency requires an immediate reaction—except by trained professionals who execute policies established earlier—but instead over days, months, or years people make complex judgments about the appropriate institutional response. And the asymmetrical nature of fear guarantees that people will, during a national emergency, overweight the threat and underweight other things that people value, such as civil liberties. But if decisionmakers rarely act immediately, then the tiger story cannot bear the metaphoric weight that is placed on it. Indeed, the flight response has nothing to do with the political response to the bombing of Pearl Harbor or the attack on September 11. The people who were there—the citizens and soldiers beneath the bombs, the office workers in the World Trade Center—no doubt felt fear, and most of them probably responded in the classic way. They experienced the standard physiological effects, and (with the exception of trained soldiers and security officials) fled without stopping to think. It is also true that in the days and weeks after the attacks, many people felt fear, although not the sort that produces a irresistible urge to flee. **But this kind of fear is not the kind in which cognition shuts down**. (Some people did have more severe mental reactions and, for example, shut themselves in their houses, but these reactions were rare.) The fear is probably better described as a general anxiety or jumpiness, an anxiety that was probably shared by government officials as well as ordinary citizens.53 While, as we have noted, there is psychological research suggesting that normal cognition partly shuts down in response to an immediate threat, we are aware of no research suggesting that people who feel anxious about a non-immediate threat are incapable of thinking, or thinking properly, or systematically overweight the threat relative to other values. Indeed, it would be surprising to find research that clearly distinguished “anxious thinking” and “calm thinking,” given that anxiety is a pervasive aspect of life. People are anxious about their children; about their health; about their job prospects; about their vacation arrangements; about walking home at night. No one argues that people’s anxiety about their health causes them to take too many precautions—to get too much exercise, to diet too aggressively, to go to the doctor too frequently—and to undervalue other things like leisure. So it is hard to see why anxiety about more remote threats, from terrorists or unfriendly countries with nuclear weapons, should cause the public, or elected officials, to place more emphasis on security than is justified, and to sacrifice civil liberties. Fear generated by immediate threats, then, causes instinctive responses that are not rational in the cognitive sense, not always desirable, and not a good basis for public policy, but it is not this kind of fear that leads to restrictions of civil liberties during wartime. The internment of Japanese Americans during World War II may have been due to racial animus, or to a mistaken assessment of the risks; it was not the direct result of panic; indeed there was a delay of weeks before the policy was seriously considered.54 Post-9/11 curtailments of civil liberties, aside from immediate detentions, came after a significant delay and much deliberation. The civil libertarians’ argument that fear produces bad policy trades on the ambiguity of the word “panic,” which refers both to real fear that undermines rationality, and to collectively harmful outcomes that are driven by rational decisions, such as a bank run, where it is rational for all depositors to withdraw funds if they believe that enough other depositors are withdrawing funds. Once we eliminate the false concern about fear, it becomes clear that the panic thesis is indistinguishable from the argument that during an emergency people are likely to make mistakes. But if the only concern is that during emergencies people make mistakes, there would be no reason for demanding that the constitution be enforced normally during emergencies. Political errors occur during emergencies and nonemergencies, but the stakes are higher during emergencies, and that is the conventional reason why constitutional constraints should be relaxed.

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

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

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

### No Impact to Biopower

#### Democratic structures check the impact

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

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

### Security – Alt Fails

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

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

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

#### The state will co-opt the alternative and make things worse.

McCormack 10 (Tara, Lecturer in International Politics at the University of Leicester and has a PhD in International Relations from the University of Westminster, *Critique, Security and Power: The political limits to emancipatory approaches*, page 137-138)

In chapter 7 I engaged with the human security framework and some of the problematic implications of ‘emancipatory’ security policy frameworks. In this chapter I argued that the shift away from the pluralist security framework and the elevation of cosmopolitan and emancipatory goals has served to **enforce international power inequalities** rather than lessen them. Weak or unstable states are subjected to greater international scrutiny and international institutions and other states have greater freedom to intervene, but the citizens of these states have no way of controlling or influencing these international institutions or powerful states. This shift away from the pluralist security framework has not challenged the status quo, which may help to explain why major international institutions and states can easily adopt a more cosmopolitan rhetoric in their security policies. As we have seen, the shift away from the pluralist security framework has entailed a shift towards a more openly hierarchical international system, in which states are differentiated according to, for example, their ability to provide human security for their citizens or their supposed democratic commitments. In this shift, the old pluralist international norms of (formal) international sovereign equality, non-intervention and ‘blindness’ to the content of a state are overturned. Instead, international institutions and states have more freedom to intervene in weak or unstable states in order to ‘protect’ and emancipate individuals globally. Critical and emancipatory security theorists argue that the goal of the emancipation of the individual means that security must be reconceptualised away from the state. As the domestic sphere is understood to be the sphere of insecurity and disorder, the international sphere represents greater emancipatory possibilities, as Tickner argues, ‘if security is to start with the individual, its ties to state sovereignty must be severed’ (1995: 189). For critical and emancipatory theorists there must be a shift towards a ‘cosmopolitan’ legal framework, for example Mary Kaldor (2001: 10), Martin Shaw (2003: 104) and Andrew Linklater (2005). For critical theorists, one of the fundamental problems with Realism is that it is unrealistic. Because it prioritises order and the existing status quo, Realism attempts to impose a particular security framework onto a complex world, ignoring the myriad threats to people emerging from their own governments and societies. Moreover, traditional international theory serves to obscure power relations and omits a study of why the system is as it is: [O]mitting myriad strands of power amounts to exaggerating the simplicity of the entire political system. Today’s conventional portrait of international politics thus too often ends up looking like a Superman comic strip, whereas it probably should resemble a Jackson Pollock. (Enloe, 2002 [1996]: 189) Yet as I have argued, contemporary critical security theorists seem to show a marked lack of engagement with their problematic (whether the international security context, or the Yugoslav break-up and wars). Without concrete engagement and analysis, however, the critical project is undermined and critical theory becomes nothing more than a **request that people behave in a nicer way** to each other. Furthermore, whilst contemporary critical security theorists argue that they present a more realistic image of the world, through exposing power relations, for example, their lack of concrete analysis of the problematic considered renders them actually **unable to engage** with existing power structures and the way in which power is being exercised in the contemporary international system. For critical and emancipatory theorists the central place of the values of the theorist mean that it cannot fulfil its promise to critically engage with contemporary power relations and emancipatory possibilities. Values must be joined with engagement with the material circumstances of the time.

### Bunker Buster Add-On 2AC

#### Plan stops bunker busters

Burroughs 06

[John, executive director of the Lawyers' Committee on Nuclear Policy and adjunct professor of international law at Rutgers Law School – Newark, “DECLARATION OF JOHN BURROUGHS”, 5/20/06, <http://webcache.googleusercontent.com/search?q=cache:s-li80zh7EIJ:lcnp.org/disarmament/nuketesting/strake_declaration.htm+&cd=7&hl=en&ct=clnk&gl=us>]

3. I am informed and believe that the Divine Strake test will serve in part to simulate nuclear weapons effects and to advance understanding of use of such weapons against underground structures. I base this understanding on government documents examined in Andrew Lichterman, “Did the WashPost Miss Explosive Story?” DisarmamentActivist.org, March 31, 2006, for example Department of Defense Exhibit R-2a, RDT&E Project Justification, February 2006, RDT&E, Defense-Wide/Advanced Technology Development - BA 3, 0603160BR, Project BK - Counterforce: The Tunnel Target Defeat ACTD [Advanced Concept and Technology Demonstration] will develop a planning tool that will improve the warfighter’s confidence in selecting the smallest proper nuclear yield necessary to destroy underground facilities while minimizing collateral damage. The focus of the demonstration is to reduce the uncertainties in target characterization and weapon effect/target response….” I base this understanding also on government statements that have acknowledged that the test will advance nuclear weapons science. For example, the Las Vegas Sun reported the following on April 28, 2006 (Launce Rake, “Test blast linked to nuke weapons”; emphasis supplied): Contrary to the Pentagon's earlier denials, a government official overseeing a test explosion at the Nevada Test Site in June says the blast could help with the development of nuclear weapons. The detonation could simulate “a number of weapon concepts,” said Doug Bruder, director of the counter-weapons of mass destruction program for the Defense Department’s Defense Threat Reduction Agency. “It could be nuclear or advanced conventional,” he said. “A charge of this size would be more related to a nuclear weapon.” The Pentagon has denied that the test is intended to aid research into "bunker buster" nuclear weapons - essentially smaller-scale weapons designed to penetrate and destroy facilities built deep below ground. In keeping with those earlier denials, Bruder said the blast, known as Divine Strake, was not specifically designed to produce a nuclear weapon and "does not replicate any existing or planned nuclear weapon.” \* \* \* After watching a CNN tape of remarks by Bruder, Rep. Jim Matheson, a Democrat who represents southwestern Utah, issued a statement Thursday saying: "Officials who say they are using this Divine Strake test in planning for new nuclear weapons seem to be ignoring congressional intent about no new nuclear weapons, and that concerns me." On the CNN tape, Bruder said: "There are some very hard targets out there and right now it would be extremely difficult if not impossible to defeat with current conventional weapons. Therefore there are some that would probably require nuclear weapons." 4. Set forth below are requirements of international law bearing upon the Divine Strake test. I believe they are relevant in several respects to the issues before this Court. First, they shed light on whether under the National Environmental Policy Act (NEPA), defendants have adequately examined alternatives to the proposed action. Defendants have not evaluated an alternative of not performing the test in the context of reduction and elimination of U.S. nuclear forces as part of a global process accompanied by a diminishing role of nuclear weapons in security policies. However, under the Nuclear Non-Proliferation Treaty, a U.S. treaty, proceeding on that path is a legal obligation of the United States. The no action alternative does not substitute for this alternative, because it assumes a purpose and need contrary to that inherent in the denuclearization path. The no action alternative also takes on a different character when assessed in light of U.S. international obligations. Second, NEPA has always been understood to require assessment of international dimensions of actions and programs. 40 CFR § 1508.18, “Major Federal Action,” provides in relevant part that: (b) Federal actions tend to fall within one of the following categories: (1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.” (Emphasis added.) See also “Major Federal actions requiring the preparation of environmental impact statements,”40 CFR § 1502.4, at (b), referring to § 1508.18. Section 102 of NEPA (42 USC § 4332) provides in relevant part: The Congress authorizes and directs that, to the fullest extent possible … (2) all agencies of the Federal Government shall -- … (F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment; …. Third, U.S. internal, treaty-based obligations vis-à-vis the Western Shoshone people need to be understood in the context of U.S. international, treaty-based obligations. 5. Both treaty-based and custom-based international law are part of the law of the land under Article VI, clause 2 of the Constitution (treaties are included in the "supreme law of the land") and The Paquete Habana, 175 U.S. 677, 700 (1900) (customary international law is "part of our law"). Customary international law may be analogized to common law. It refers to universally binding law based on a general and consistent practice of states accompanied by a sense of legal obligation. 6. The International Court of Justice (ICJ) is the judicial branch of the United Nations, and the highest and most authoritative court in the world on questions of international law. Its July 8, 1996 opinion, Legality of the Threat or Use of Nuclear Weapons, I.C.J. Reports (1996) 226, was issued in response to a request for an advisory opinion by the UN General Assembly. Advisory opinions are intended to provide UN bodies guidance regarding legal issues, and are not directly binding on the UN or its member states. However, the ICJ has authoritatively interpreted law which states, including the United States, acknowledge they must follow, including the Nuclear Non-Proliferation Treaty and international humanitarian law. Accordingly, the opinion stands as an authoritative statement of law with which the United States must comply. 7. The ICJ’s opinion addressed the following question posed by the General Assembly: “Is the threat or use of nuclear weapons permitted in any circumstance under international law?” In paragraph 105(2)F of the “dispositif” setting forth its answers to the General Assembly, the Court unanimously concluded: “There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.” The Court’s statement of the disarmament obligation is now the authoritative interpretation of Article VI of the Nuclear Non-Proliferation Treaty (NPT). Article VI provides: “Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.” 8. Article VI must be understood in the context of the entire treaty. The NPT is the only security treaty that permits two classes of members: states acknowledged to possess nuclear weapons and states barred from acquiring them. One hundred and eighty-eight states are members. Only three countries are outside the regime, all nuclear-armed, India, Pakistan, and Israel. In addition, North Korea's status is in limbo; it has announced its withdrawal, and may have a few nuclear weapons. The NPT strikes a bargain between non-nuclear weapon states, which are prohibited from acquiring nuclear arms and are guaranteed access to peaceful nuclear technology, and nuclear weapons states, which are required to negotiate nuclear disarmament in good faith. In the post-Cold War era, the 1995 and 2000 NPT Review Conferences, and the 1996 International Court of Justice opinion, established that the NPT requires the achievement of symmetry by obligating the nuclear weapons states to implement a program culminating in the elimination of their arsenals. 9. In 1995, the year that the NPT was due to expire, the indefinite extension of the treaty was agreed as part of a larger package that included a set of commitments known as the “Principles and Objectives for Nuclear Non-Proliferation and Disarmament”. The Principles and Objectives set forth measures for implementation of the Article VI disarmament obligation. They include negotiation of a Comprehensive Test Ban Treaty by 1996, commencement of negotiations on a treaty banning production of fissile materials for use in weapons, and the “determined pursuit by the nuclear-weapon States of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons.” 10. The 2000 NPT Review Conference further specified what the Article VI disarmament obligation requires. Its Final Document sets forth “practical steps for the systematic and progressive efforts to achieve nuclear disarmament” (“Practical Steps”). Implementation of this comprehensive agenda would result in the achievement of a nuclear-weapon-free world. Among its crucial elements were: 1) an “unequivocal undertaking by the nuclear-weapon States to accomplish the total elimination of their nuclear arsenals,” confirming the ICJ’s interpretation of Article VI; 2) affirmation of principles of transparency, verification, and irreversibility for the reduction and elimination of nuclear arsenals; 3) bringing the Comprehensive Test Ban Treaty into force and observing the moratorium on nuclear test explosions pending its entry into force; and 4) “a diminishing role for nuclear weapons in security policies to minimize the risk that these weapons ever be used and to facilitate the process of their total elimination.” The last step is especially relevant to the Divine Strake test, as discussed below. 11. This history decisively informs the proper interpretation of Article VI and the obligation “to bring to a conclusion negotiations on nuclear disarmament in all its aspects” as stated by the International Court of Justice. Under well-established rules of treaty interpretation set forth in the Vienna Convention on the Law of Treaties, the 2000 Practical Steps together with the 1995 Principles and Objectives constitute agreement and practice subsequent to the adoption of the NPT authoritatively applying and interpreting Article VI. The Vienna Convention is widely acknowledged, including by the U.S. State Department, as stating customary rules of international law. See Chubb & Son, Inc. v. Asiana Airlines, 214 F.3d 301, 308 (2nd Cir. 2000). Thus while the United States has signed but not ratified the treaty, it states rules binding on the United States. Article 31(3) of the Vienna Convention, entitled “General Rule of Interpretation,” provides that in addition to the text and preamble of a treaty, “there shall be taken into account … (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.” The 2000 NPT Review Conference Final Document states that the “Conference agrees” on the Practical Steps. Further, the agreement was reached in the context of a proceeding authorized by Article VIII of the NPT "to review the operation of this Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realized." This is the most natural setting for states to make authoritative applications and interpretations of the NPT. 12. In addition to constituting agreements, the Principles and Objectives and Practical Steps are part of a practice of the parties to the NPT that has been consistent over the course of the treaty’s life, dating back to its inception. After the treaty was opened for signature on July 1, 1968, the Soviet Union and the United States placed specific measures before the predecessor to today's Conference on Disarmament, the Eighteen Nation Disarmament Committee, where the NPT had been negotiated. Under a heading taken from Article VI, they proposed an agenda including "the cessation of testing, the non-use of nuclear weapons, the cessation of production of fissionable materials for weapons use, the cessation of manufacture of weapons and reduction and subsequent elimination of nuclear stockpiles ….” (ENDC/PV. 390, 15 August 1968, para. 93.) Disarmament measures have been the subject of discussion at every Review Conference since then. In short, the Practical Steps, as an application of Article VI, are an essential guide to its interpretation. They identify criteria and principles that are so tightly connected to the core meaning of Article VI as to constitute requirements for compliance with the NPT and more generally the disarmament obligation stated by the ICJ. 13. The Divine Strake test, as a contribution to the potential use of nuclear weapons against buried targets, would be a step in implementation of an expanding role of nuclear weapons as envisaged by the Department of Defense Nuclear Posture Review of December 2001. It reflects a doctrine of warfighting in which nuclear weapons could be used first, against states not possessing nuclear weapons, in an integrated fashion with non-nuclear forces. A nuclear weapons simulation aimed at improving understanding of nuclear earth penetrators or other nuclear weapons to be used for attacking buried targets is wholly inconsistent with a “diminishing role for nuclear weapons in security policies” agreed by the United States in 2000 and a central element of compliance with the disarmament obligation. 14. The Divine Strake test further is contrary to the Article VI requirement “to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date ….” Sometimes overlooked, cessation of the nuclear arms race is one of three elements of Article VI; the other two are nuclear disarmament and a treaty on general and complete disarmament. Nuclear arms racing is understood to have both qualitative and quantitative components. More than 35 years after the 1970 entry into force of the NPT, development of techniques for nuclear attacks on buried targets, and possible modification or design of nuclear weapons for this purpose, assisted by the Divine Strake test, is incompatible with a good faith effort to end nuclear arms racing. 15. Also relevant to the issues before the Court is the legality of threat or use of nuclear weapons, particularly low-yield nuclear weapons whose effects the Divine Strake test would simulate. Under international law discussed below, such threat or use is illegal. This reinforces the need for the Department of Energy to examine alternatives under NEPA in which the test is not performed. Also relevant to NEPA issues is that international law forbids use of weapons with disproportionate environmental consequences.

#### Nuke war

Friedman 02
[Benjamin, Center for Defense Information Independent Analyst, "Mini–Nukes, Bunker–Busters, and Deterrence: Framing the Debate," April 2002 CIAO]

Arms control advocates attack proponents of new nuclear weapons for threatening international arms control. They argue that the development of new nuclear weapons for the express purpose of destroy non-nuclear targets will lower other nations' thresholds for use and push them to develop similar weapons. Non-nuclear states might develop nuclear weapons to avoid being blackmailed by nuclear states, leading to acceleration in nuclear proliferation and a heightened risk of nuclear war. Proponents of mini-nukes respond that states' decisions to develop nuclear weapons are not driven by the international norms, but by their regional security concerns - the balance of power with their potential adversaries. Other critics of mini-nukes argue that developing mini-nukes might be impossible without nuclear testing, which the United States ended in 1993. Proponents of mini-nukes claim that the weapon could be deployed without testing by relying on simple designs and on computer modeling. Opponents note, however, that the Nuclear Posture Review recommends accelerating testing readiness, possibly presaging a resumption of testing in order to deploy mini-nukes. Abandoning the nuclear testing moratorium might encourage other nuclear states to test their weapons - undermining the Comprehensive Test Ban Treaty which was put in place to stem the spread of nuclear weapons. These arguments make it clear that new nuclear weapons would mean a net loss for American security. The benefits- heightened deterrence and ability to destroy buried targets, depend on faulty science. Even if realized, these uncertain gains will not pay for the damage they cause to U.S. security by undermining our international reputation, international law and nuclear nonproliferation efforts.

## Politics

### The d

#### Global trading system resilient – stakeholders are too entrenched to reject

Drezner 12 (Daniel W., Professor, The Fletcher School of Law and Diplomacy, Tufts University, October 2012, “The Irony of Global Economic Governance: The System Worked,” <http://www.globaleconomicgovernance.org/wp-content/uploads/IR-Colloquium-MT12-Week-5_The-Irony-of-Global-Economic-Governance.pdf>

It is equally possible, however, that a renewed crisis would trigger a renewed surge in policy coordination. As John Ikenberry has observed, “the complex interdependence that is unleashed in an open and loosely rule-based order generates some expanding realms of exchange and investment that result in a growing array of firms, interest groups and other sorts of political stakeholders who seek to preserve the stability and openness of the system.”103 The post-2008 economic order has remained open, entrenching these interests even more across the globe. Despite uncertain times, the open economic system that has been in operation since 1945 does not appear to be closing anytime soon.

#### Collapse of global trade doesn’t cause war

Jervis 11 (Robert, Professor in the Department of Political Science and School of International and Public Affairs at Columbia University, December 2011, “Force in Our Times,” Survival, Vol. 25, No. 4, p. 403-425)

Even if war is still seen as evil, the security community could be dissolved if severe conflicts of interest were to arise. Could the more peaceful world generate new interests that would bring the members of the community into sharp disputes? 45 A zero-sum sense of status would be one example, perhaps linked to a steep rise in nationalism. More likely would be a worsening of the current economic difficulties, which could itself produce greater nationalism, undermine democracy and bring back old-fashioned beggar-my-neighbor economic policies. While these dangers are real, it is hard to believe that the conflicts could be great enough to lead the members of the community to contemplate fighting each other. It is not so much that economic interdependence has proceeded to the point where it could not be reversed – states that were more internally interdependent than anything seen internationally have fought bloody civil wars. Rather it is that even if the more extreme versions of free trade and economic liberalism become discredited, it is hard to see how without building on a preexisting high level of political conflict leaders and mass opinion would come to believe that their countries could prosper by impoverishing or even attacking others. Is it possible that problems will not only become severe, but that people will entertain the thought that they have to be solved by war? While a pessimist could note that this argument does not appear as outlandish as it did before the financial crisis, an optimist could reply (correctly, in my view) that the very fact that we have seen such a sharp economic down-turn without anyone suggesting that force of arms is the solution shows that even if bad times bring about greater economic conflict, it will not make war thinkable.

### TPA – 2AC

#### TPA won’t pass – Reid blocks and election pressure

Raum 2/19/14 (Tom, Japan Today, "Obama, fellow Democrats at odds on big trade bills," http://www.japantoday.com/category/world/view/obama-fellow-democrats-at-odds-on-big-trade-bills)

A fast-track bill may be “ready to go” in the Republican-controlled House but certainly isn’t in the Democratic-led Senate, where Senate Majority Leader Harry Reid has given it a thumbs-down. “I’m against fast track,” Reid says flatly.¶ White House press secretary Jay Carney says the president’s team has been aware of Reid’s opposition for some time but “will continue to work to enact bipartisan trade-promotion authority.”¶ The top House Democrat, Nancy Pelosi, also opposes fast track¶ President Bill Clinton, a Democrat, used the powers to speed congressional approval of the North American Free Trade Agreement (NAFTA) with the United States, Mexico and Canada in 1993. The landmark pact had been negotiated under his predecessor, President George H.W. Bush.¶ George W. Bush used the same authority to push through Congress the Central American Free Trade Agreement in 2005.¶ Even without fast track, Obama was able to win congressional passage of free-trade agreements with Colombia, Panama and South Korea the old-fashioned way in 2011.¶ But the stakes are higher now. And, little by little, the politics of approaching elections are intruding.¶ “Neither political party at this point has any appetite for taking on an issue that would divide that party’s caucus in Congress,” said William Galston, Clinton’s domestic-policy adviser when NAFTA was passed. “That being said, I suspect that very little is going to happen between now and November” on the trade front.

#### Won't pass due to Dem opposition and Obama not spending capital

Harwood 2/18/14 (John, NYT, "Global trade talks threaten Obama's longtime balancing act," lexis)

But they conflict with another, more immediate political goal: to preserve unity among fellow Democrats. Many of them believe that those deals would undercut efforts to narrow income inequality and therefore complicate the party's campaign for midterm House and Senate elections.¶ Those competing pressures have come into sharper focus lately. Mr. Obama plans to travel to Asia in April, by which time his administration hopes to have Trans-Pacific Partnership talks all but wrapped up.¶ However, Democratic leaders in Congress have openly rejected legislation Mr. Obama wants that would smooth the path for those deals.¶ Not only has the president declined to challenge them, but Vice President Joseph R. Biden Jr. acknowledged last week in a meeting with Democratic lawmakers that ''local political priorities'' prevented action on the legislation now.¶ That balancing act has marked Mr. Obama's approach since 2008. Courting union voters who blame globalization for stagnant wages, Obama the candidate spoke of renegotiating the North American Free Trade Agreement. Then, as president, he dropped the idea.¶ He won approval, on revised terms, of agreements with Colombia, Panama and South Korea that he inherited from the George W. Bush administration. But new trade deals took a back seat to economic recovery, Wall Street regulation and health care during his first term.¶ Global trade talks through the World Trade Organization, which began in 2001 and stalled during the Bush administration, continued to languish. Critics faulted the administration for lukewarm commitment at the expense of growth and expanded exports.¶ ''It's a major problem for global economies that the multilateral trading system is stuck in the mud,'' said Susan Schwab, who served as Mr. Bush's trade representative.¶ ''President Obama is playing catch-up on trade,'' added James Bacchus, a former Democratic congressman and trade official under President Jimmy Carter.¶ Mr. Obama's trade representative, Michael Froman, disputes that Mr. Obama has played down the issue.¶ In December, W.T.O. talks in Bali, Indonesia, produced a modest accord to cut red tape. The next month, the United States and major trading partners decided to seek agreement on the free trade of environmentally friendly ''green goods.''¶ Together with the potential Pacific Rim and European deals, it represents ''among the most ambitious trade agendas in history,'' Mr. Froman said in an interview.¶ Mr. Obama has, however, allowed the window for achieving it to narrow. Though he called on Congress to enact ''Trade Promotion Authority'' in his State of the Union address, he has not pressed for action as vigorously as on other issues like raising the minimum wage.¶ The House Democratic leader, Nancy Pelosi of California, and her Senate counterpart, Harry Reid of Nevada, have both waved off his request for this year. Mr. Obama picked a leading Democratic trade advocate, Max Baucus, the retiring senator of Montana, as his new ambassador to China. The maneuver was designed in part to increase Democrats' chances of holding Mr. Baucus's seat.

### Obama Good – 2AC

#### 3. Congress likes the plan

Janofsky 05

[Michael, NY Times, 5/11/05, Pentagon Is Asking Congress to Loosen Environmental Laws, <http://www.nytimes.com/2005/05/11/politics/11enviro.html?_r=0>]

Dozens of groups have complained to Congress that the military's needs are covered by the laws that they seek to change and that waivers would result in conditions getting worse on and around the nation's military bases, endangering the health of millions of people. As the owner of 425 active bases and more than 10,000 training ranges, the Defense Department is widely regarded as one of the nation's leading polluters, producing vast amounts of chemicals from ordnance that leach into groundwater, as well as air pollution from military vehicles. The Environmental Protection Agency lists more than 130 Superfund sites on military bases. "Congress would never consider letting the nation's biggest corporate polluter off the hook," Heather Taylor, deputy legislative director for the Natural Resources Defense Council, said in a conference call with reporters. "Why, then, would Congress grant immunity to America's, and the world's, largest polluter?" Since 2001, the Pentagon has been asking Congress for greater latitude in complying with environmental laws. When it came to birds and animals, lawmakers were willing to compromise, granting exemptions to federal laws. But they have been more resistant to changes that might affect human health under the Clean Air Act; the Resource Conservation and Recovery Act, dealing with solid waste; and the Comprehensive Environmental Response, Compensation and Liability Act, which deals with toxic wastes and is better known as the Superfund law.

#### 4. Court shields

Stimson 9

[09/25/09, Cully Stimson is a senior legal fellow at the Heritage Foundation and an instructor at the Naval Justice School former American career appointee at the Pentagon. Stimson was the Deputy Assistant Secretary of Defense for Detainee Affairs., “Punting National Security To The Judiciary”, http://blog.heritage.org/2009/09/25/punting-national-security-to-the-judiciary/]

So what is really going on here? To those of us who have either served in senior policy posts and dealt with these issues on a daily basis, or followed them closely from the outside, it is becoming increasingly clear that this administration is trying to create the appearance of a tough national-security policy regarding the detention of terrorists at Guantanamo, yet allow the courts to make the tough calls on releasing the bad guys. Letting the courts do the dirty work would give the administration plausible cover and distance from the decision-making process. The numbers speak for themselves. Of the 38 detainees whose cases have been adjudicated through the habeas process in federal court in Washington, 30 have been ordered released by civilian judges. That is close to an 80 percent loss rate for the government, which argued for continued detention. Yet, how many of these decisions has this administration appealed, knowing full well that many of those 30 detainees should not in good conscience be let go? The answer: one. Letting the courts do it for him gives the president distance from the unsavory release decisions. It also allows him to state with a straight face, as he did at the Archives speech, “We are not going to release anyone if it would endanger our national security, nor will we release detainees within the United States who endanger the American people.” No, the president won’t release detainees; he’ll sit back and let the courts to do it for him. And the president won’t seek congressional authorization for prolonged detention of the enemy, as he promised, because it will anger his political base on the Left. The ultra-liberals aren’t about to relinquish their “try them or set them free” mantra, even though such a policy threatens to put terrorists back on the battlefield. Moreover, the president would have to spend political capital to win congressional authorization for a prolonged detention policy. Obviously, he would rather spend that capital on other policy priorities. Politically speaking, it is easier to maintain the status quo and let the detainees seek release from federal judges. The passive approach also helps the administration close Gitmo without taking the heat for actually releasing detainees themselves.

#### 5. Plan’s announced in June

Ward 10 (Jake, “Bilski Decision Tomorrow (Thursday, June 17th)? Maybe?”, Anticipate This! (Patent and Trademark Law Blog), 6-17, http://anticipatethis.wordpress.com/2010/06/16/bilski-decision-tomorrow-thursday-june-17th-maybe/)

In mid-May until the end of June, the Supreme Court of the United States (SCOTUS) releases orders and opinions.  SCOTUS has yet to issue a number of decisions this term, however, and it is rapidly moving toward summer recess.  Most notable from a patent law perspective is that the decision in [Bilski v. Kappos](http://anticipatethis.wordpress.com/?s=bilski), which was argued in November 2009, has yet to be decided.

#### 7. PC not real

Hirsch 13

[Michael, chief correspondent for the National Journal and former senior editor and columnist at Newsweek, "There's no such thing as political capital.” 2/27/13, <http://news.yahoo.com/no-thing-political-capital-201002390--politics.html>]

On Tuesday, in his State of the Union address, President Obama will do what every president does this time of year. For about 60 minutes, he will lay out a sprawling and ambitious wish list highlighted by gun control and immigration reform, climate change and debt reduction. In response, the pundits will do what they always do this time of year: They will talk about how unrealistic most of the proposals are, discussions often informed by sagacious reckonings of how much “political capital” Obama possesses to push his program through. Most of this talk will have no bearing on what actually happens over the next four years. Consider this: Three months ago, just before the November election, if someone had talked seriously about Obama having enough political capital to oversee passage of both immigration reform and gun-control legislation at the beginning of his second term—even after winning the election by 4 percentage points and 5 million votes (the actual final tally)—this person would have been called crazy and stripped of his pundit’s license. (It doesn’t exist, but it ought to.) In his first term, in a starkly polarized country, the president had been so frustrated by GOP resistance that he finally issued a limited executive order last August permitting immigrants who entered the country illegally as children to work without fear of deportation for at least two years. Obama didn’t dare to even bring up gun control, a Democratic “third rail” that has cost the party elections and that actually might have been even less popular on the right than the president’s health care law. And yet, for reasons that have very little to do with Obama’s personal prestige or popularity—variously put in terms of a “mandate” or “political capital”—chances are fair that both will now happen. What changed? In the case of gun control, of course, it wasn’t the election. It was the horror of the 20 first-graders who were slaughtered in Newtown, Conn., in mid-December. The sickening reality of little girls and boys riddled with bullets from a high-capacity assault weapon seemed to precipitate a sudden tipping point in the national conscience. One thing changed after another. Wayne LaPierre of the National Rifle Association marginalized himself with poorly chosen comments soon after the massacre. The pro-gun lobby, once a phalanx of opposition, began to fissure into reasonables and crazies. Former Rep. Gabrielle Giffords, D-Ariz., who was shot in the head two years ago and is still struggling to speak and walk, started a PAC with her husband to appeal to the moderate middle of gun owners. Then she gave riveting and poignant testimony to the Senate, challenging lawmakers: “Be bold.” As a result, momentum has appeared to build around some kind of a plan to curtail sales of the most dangerous weapons and ammunition and the way people are permitted to buy them. It’s impossible to say now whether such a bill will pass and, if it does, whether it will make anything more than cosmetic changes to gun laws. But one thing is clear: The political tectonics have shifted dramatically in very little time. Whole new possibilities exist now that didn’t a few weeks ago. Meanwhile, the Republican members of the Senate’s so-called Gang of Eight are pushing hard for a new spirit of compromise on immigration reform, a sharp change after an election year in which the GOP standard-bearer declared he would make life so miserable for the 11 million illegal immigrants in the U.S. that they would “self-deport.” But this turnaround has very little to do with Obama’s personal influence—his political mandate, as it were. It has almost entirely to do with just two numbers: 71 and 27. That’s 71 percent for Obama, 27 percent for Mitt Romney, the breakdown of the Hispanic vote in the 2012 presidential election. Obama drove home his advantage by giving a speech on immigration reform on Jan. 29 at a Hispanic-dominated high school in Nevada, a swing state he won by a surprising 8 percentage points in November. But the movement on immigration has mainly come out of the Republican Party’s recent introspection, and the realization by its more thoughtful members, such as Sen. Marco Rubio of Florida and Gov. BobbyJindal of Louisiana, that without such a shift the party may be facing demographic death in a country where the 2010 census showed, for the first time, that white births have fallen into the minority. It’s got nothing to do with Obama’s political capital or, indeed, Obama at all. The point is not that “political capital” is a meaningless term. Often it is a synonym for “mandate” or “momentum” in the aftermath of a decisive election—and just about every politician ever elected has tried to claim more of a mandate than he actually has. Certainly, Obama can say that because he was elected and Romney wasn’t, he has a better claim on the country’s mood and direction. Many pundits still defend political capital as a useful metaphor at least. “It’s an unquantifiable but meaningful concept,” says Norman Ornstein of the American Enterprise Institute. “You can’t really look at a president and say he’s got 37 ounces of political capital. But the fact is, it’s a concept that matters, if you have popularity and some momentum on your side.” The real problem is that the idea of political capital—or mandates, or momentum—is so poorly defined that presidents and pundits often get it wrong. “Presidents usually over-estimate it,” says George Edwards, a presidential scholar at Texas A&M University. “The best kind of political capital—some sense of an electoral mandate to do something—is very rare. It almost never happens. In 1964, maybe. And to some degree in 1980.” For that reason, political capital is a concept that misleads far more than it enlightens. It is distortionary. It conveys the idea that we know more than we really do about the ever-elusive concept of political power, and it discounts the way unforeseen events can suddenly change everything. Instead, it suggests, erroneously, that a political figure has a concrete amount of political capital to invest, just as someone might have real investment capital—that a particular leader can bank his gains, and the size of his account determines what he can do at any given moment in history. Naturally, any president has practical and electoral limits. Does he have a majority in both chambers of Congress and a cohesive coalition behind him? Obama has neither at present. And unless a surge in the economy—at the moment, still stuck—or some other great victory gives him more momentum, it is inevitable that the closer Obama gets to the 2014 election, the less he will be able to get done. Going into the midterms, Republicans will increasingly avoid any concessions that make him (and the Democrats) stronger. But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “Winning wins.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote. Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a bandwagon effect.”

# 2AC Round 4 Districts

## Case

### U.S. wants to cooperate

#### China and the U.S. want to cooperate

Chen 13

[Weihua, China Daily, China, US urged to lead climate change fight, 12/18/13, <http://usa.chinadaily.com.cn/us/2013-12/18/content_17181335.htm>]

Just days after China released its blueprint for adaption to climate change, the world's two largest greenhouse emitters were urged to show more leadership. Andrew Light, a senior advisor to the US Special Envoy on Climate Change at the State Department, said the US and China have very active and vibrant cooperation in climate change and related fields. "Obviously, as the two biggest emitters of carbon dioxide in the world, we couldn't conceivably solve this problem unless we are both willing to make efforts forward," Light said on Tuesday at a panel discussion on climate change at the Wilson Center in Washington. Light, who is also a professor of public policy at George Mason University, said Secretary of State John Kerry is committed to cooperative plans with China and Environmental Protection Agency Administrator Gina McCarthy has visited China to discuss issues not only with respect to climate change but also overlapping issues, such as air quality. During a trip to China last week, McCarthy sought more cooperation in clean air and climate change between the two countries. Nicholas Stern, chair of the Grantham Research Institute on Climate Change and the Environment at the London School of Economics and Political Science, urged China and the US to show more leadership in fighting climate change. "With the European Union currently dithering and unable to provide the leadership that it has previously shown on climate change, the stage has been set for the world's two largest emitters — China and the US — to set an example," Stern wrote on the website of the British newspaper The Guardian last Wednesday. The two largest greenhouse emitters have shown more cooperation in the past year. In April, the two set up the China-US Working Group on Climate Change during Kerry's visit to China. During last June's summit in Sunnylands, California, Chinese President Xi Jinping and US President Barack Obama agreed that their two countries would work together and with other countries to use the expertise and institutions of the Montreal Protocol to reduce consumption and production of hydrofluorocarbons (HFCs), a potent greenhouse gas. The move was widely applauded by environmental groups. During the 5th Strategic and Economic Dialogue in July in Washington, **the two countries agreed to five new action initiatives aimed at reducing greenhouse gas emissions** and air pollution: reducing emissions from heavy-duty vehicles; increasing carbon capture, utilization and storage; increasing energy efficiency in buildings, industry and transport; improving greenhouse gas data collection and management; and promoting smart grids.

### AT Warming Inev

#### Not inevitable – it’s immediately reversible and there is no time lag

Desjardins 13 – member of Concordia university Media Relations Department, academic writer, citing Damon Matthews; associate professor of the Department of Geography, Planning and Environment at Concordia University, PhD, Member of the Global Environmental and Climate Change Center

(Cléa, “Global Warming: Irreversible but Not Inevitable,” http://www.concordia.ca/now/what-we-do/research/20130402/global-warming-irreversible-but-not-inevitable.php)

Carbon dioxide emission cuts will immediately affect the rate of future global warming Concordia and MIT researchers show Montreal, April 2, 2013 – There is a persistent misconception among both scientists and the public that there is a delay between emissions of carbon dioxide (CO2) and the climate’s response to those emissions. This misconception has led policy makers to argue that CO2 emission cuts implemented now will not affect the climate system for many decades. This erroneous line of argument makes the climate problem seem more intractable than it actually is, say Concordia University’s Damon Matthews and MIT’s Susan Solomon in a recent Science article. The researchers show that immediate decreases in CO2 emissions would in fact result in an immediate decrease in the rate of climate warming. Explains Matthews, professor in the Department of Geography, Planning and Environment, “If we can successfully decrease CO2 emissions in the near future, this change will be felt by the climate system when the emissions reductions are implemented – not in several decades." “The potential for a quick climate response to prompt cuts in CO2 emissions opens up the possibility that the climate benefits of emissions reductions would occur on the same timescale as the political decisions themselves.” In their paper, Matthews and Solomon, Ellen Swallow Richards professor of Atmospheric Chemistry and Climate Science, show that the onus for slowing the rate of global warming falls squarely on current efforts at reducing CO2 emissions, and the resulting future emissions that we produce. This means that there are critical implications for the equity of carbon emission choices currently being discussed internationally. Total emissions from developing countries may soon exceed those from developed nations. But developed countries are expected to maintain a far higher per-capita contribution to present and possible future warming. “This disparity clarifies the urgency for low-carbon technology investment and diffusion to enable developing countries to continue to develop,” says Matthews. “Emission cuts made now will have an immediate effect on the rate of global warming,” he asserts. “I see more hope for averting difficult-to-avoid negative impacts by accelerating advances in technology development and diffusion, than for averting climate system changes that are already inevitable. Given the enormous scope and complexity of the climate mitigation challenge, clarifying these points of hope is critical to motivate change.”

## T

### T- Restrinction=Prohibit -2AC NEPA

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

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

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

#### We meet – NEPA is a restriction

Abby 09

[Robert, Director of the Bureau of Land Management, Requirements for Processing and Approving Temporary Public Land Closure and Restriction Orders , 12/11/09 , <http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2010/IM_2010-028.html>]

National Environmental Policy Act (NEPA) analysis is required prior to the BLM closing the public lands to certain uses or restricting specific uses of the public lands under the authorities of 43 CFR § 8364.1, 8351.2-1, and 6302.19. Most closures and restrictions implemented by the BLM fall into these categories. Adequate NEPA analysis and documentation for temporary closures and restrictions may include: Categorical Exclusions (CX) Environmental Assessments (EA) Environmental Impact Statements (EIS) (i.e., specific closure decisions adopted in a completed Resource Management Plan)

#### 2. Judicial restriction means regulation

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

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

3. **Counter interpretation – restrict means to limit through conditions.**

**Cambridge Dictionary 9** (Cambridge Dictionary of American English, *Restrict – Definition*, http://dictionary.cambridge.org/define.asp?key=restrict\*1+0&dict=A)

Restrict

Verb [T]

To limit (an intended action) esp. by setting the conditions under which it is allowed to happen

The state legislature voted to restrict development in the area.

Efforts are under way to further restrict cigarette advertising.

#### Restriction is limitation not prohibition

CAC 12, COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. ALTERNATIVE MEDICINAL CANNABIS COLLECTIVE et al., Defendants and Appellants, DIVISION ONE, 207 Cal. App. 4th 601; 143 Cal. Rptr. 3d 716; 2012 Cal. App. LEXIS 772

We disagree with County that in using the phrases “further restrict the location or establishment” and “regulate the location or establishment” in [\*615] section 11362.768, subdivisions (f) and (g), the Legislature intended to authorize local governments to ban all medical marijuana dispensaries that are otherwise “authorized by law to possess, cultivate, or distribute medical marijuana” (§ 11362.768, subd. (e) [stating scope of section's application]); the Legislature did not use the words “ban” or “prohibit.” Yet County cites dictionary definitions of “regulate” (to govern or direct according to rule or law); “regulation” (controlling by rule or restriction; a rule or order that has legal force); “restriction” (a limitation or qualification, including on the use of property); “establishment” (the act of establishing or state or condition of being established); “ban” (to prohibit); and “prohibit” (to forbid by law; to prevent or hinder) to attempt to support its interpretation. County then concludes that “the ordinary meaning [\*\*\*23] of the terms, ‘restriction,’ ‘regulate,’ and ‘regulation’ are consistent with a ban or prohibition against the opening or starting up or continued operation of [a medical marijuana dispensary] storefront business.” We disagree.¶CA(9)(9) The ordinary meanings of “restrict” and “regulate” suggest a degree of control or restriction falling short of “banning,” “prohibiting,” “forbidding,” or “preventing.” Had the Legislature intended to include an outright ban or prohibition among the local regulatory powers authorized in section 11362.768, subdivisions (f) and (g), it would have said so. Attributing the usual and ordinary meanings to the words used in section 11362.768, subdivisions (f) and (g), construing the words in context, attempting to harmonize subdivisions (f) and (g) with section 11362.775 and with the purpose of California's medical marijuana [\*\*727] statutory program, and bearing in mind the intent of the electorate and the Legislature in enacting the CUA and the MMP, we conclude that HN21Go to this Headnote in the case. the phrases “further restrict the location or establishment” and “regulate the location or establishment” in section 11362.768, subdivisions (f) and (g) do not authorize a per se ban at the local level. The Legislature [\*\*\*24] decided in section 11362.775 to insulate medical marijuana collectives and cooperatives from nuisance prosecution “solely on the basis” that they engage in a dispensary function. To interpret the phrases “further restrict the location or establishment” and “regulate the location or establishment” to mean that local governments may impose a blanket nuisance prohibition against dispensaries would frustrate both the Legislature's intent to “[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects” and “[p]romote uniform and consistent application of the [CUA] among the counties within the state” and the electorate's intent to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes” and “encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.”

## PIC

### Intro PIC – 2AC

####  ( ) Any exemption is used as a trump card – takes out solvency

Stellakis 10

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

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

#### 4. Plan solves enviro collapse – extinction

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

Since time immemorial, war has visited its excesses on nature, excesses that many fear the Earth can no longer tolerate. From ancient times to modern, the environment has been used as a weapon and as a target of war. For instance, the Spartans salted Athenian fields during the Peloponnesian War. The Dutch opened dikes to create a water barrier (the "Dutch Water Line" of 1672) to halt the French in the Third Anglo-Dutch War. Both sides burned huge expanses of the veldt during the Boer War. Verdun was emaciated by artillery and poisoned with gas during World War I. A horrific loss of life and widespread devastation occurred when the Chinese dynamited the Huayuankow dike on the Yellow River during the Second Sino-Japanese War (1938). The United States extensively seeded clouds over the Ho Chi Minh Trail and defoliated large jungle tracts during the Vietnam War. n2 Another chilling example is the contamination of [\*442] Scotland's Gruinard Island during Britain's Anthrax testing in 1942; the island remains uninhabitable today. n3 If environmental damage during armed conflict is not restrained, the armed forces that are intended to protect us from harm may become the agents of our ultimate destruction. n4 In a world troubled by stratospheric ozone depletion, global warming, rain forest destruction, and other local, regional, and transboundary environmental dangers, n5 the potentially catastrophic environmental impact of armed conflict is further cause for great concern. n6 Extensive environmental damage from chemical weapons use, widespread habitat and species destruction, and unprecedented oil pollution has already occurred. n7 The full long-term health and environmental effects of war are unknown. It is uncertain how long it will take to acquire a complete understanding of how to remedy past, and prevent future, occurrences. n8 The need to protect the environment against unjustified damage during armed conflict is an unmet challenge of the 20th century. The weapons of war grow ever [\*443] more virulent, greatly increasing the risk of harm from incidental as well as intentional damage to the environment. n9 The environment itself may be the most potent weapon of all, a weapon that can be manipulated by both simple and technologically sophisticated means. n10

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

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

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

#### Extinction

Helfand and Pastore 9 (Ira Helfand, M.D., and John O. Pastore, M.D., are past presidents of Physicians for Social Responsibility, 3/31, “U.S.-Russia nuclear war still a threat”, http://www.projo.com/opinion/contributors/content/CT\_pastoreline\_03-31-09\_EODSCAO\_v15.bbdf23.html)

President Obama and Russian President Dimitri Medvedev are scheduled to Wednesday in London during the G-20 summit. They must not let the current economic crisis keep them from focusing on one of the greatest threats confronting humanity: the danger of nuclear war. Since the end of the Cold War, many have acted as though the danger of nuclear war has ended. It has not. There remain in the world more than 20,000 nuclear weapons. Alarmingly, more than 2,000 of these weapons in the U.S. and Russian arsenals remain on ready-alert status, commonly known as hair-trigger alert. They can be fired within five minutes and reach targets in the other country 30 minutes later. Just one of these weapons can destroy a city. A war involving a substantial number would cause devastation on a scale unprecedented in human history. A study conducted by Physicians for Social Responsibility in 2002 showed that if only 500 of the Russian weapons on high alert exploded over our cities, 100 million Americans would die in the first 30 minutes. An attack of this magnitude also would destroy the entire economic, communications and transportation infrastructure on which we all depend. Those who survived the initial attack would inhabit a nightmare landscape with huge swaths of the country blanketed with radioactive fallout and epidemic diseases rampant. They would have no food, no fuel, no electricity, no medicine, and certainly no organized health care. In the following months it is likely the vast majority of the U.S. population would die. Recent studies by the eminent climatologists Toon and Robock have shown that such a war would have a huge and immediate impact on climate world wide. If all of the warheads in the U.S. and Russian strategic arsenals were drawn into the conflict, the firestorms they caused would loft 180 million tons of soot and debris into the upper atmosphere — blotting out the sun. Temperatures across the globe would fall an average of 18 degrees Fahrenheit to levels not seen on earth since the depth of the last ice age, 18,000 years ago. Agriculture would stop, eco-systems would collapse, and many species, including perhaps our own, would become extinct. It is common to discuss nuclear war as a low-probabillity event. But is this true? We know of five occcasions during the last 30 years when either the U.S. or Russia believed it was under attack and prepared a counter-attack. The most recent of these near misses occurred after the end of the Cold War on Jan. 25, 1995, when the Russians mistook a U.S. weather rocket launched from Norway for a possible attack. Jan. 25, 1995, was an ordinary day with no major crisis involving the U.S. and Russia. But, unknown to almost every inhabitant on the planet, a misunderstanding led to the potential for a nuclear war. The ready alert status of nuclear weapons that existed in 1995 remains in place today.

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#### (if time )Undoing the entirety of the national security exemption is key to global warming action

**Gormley 10** (Neil Gormley, J.D., 2009, Harvard Law School, “Standing in the Way of Cooperation: Citizen Standing and Compliance with Environmental Agreements,” Summer 2010, West Northwest Journal of Environmental Law & Policy, 16 Hastings W.-N.W. J. Env. L. & Pol'y 397)

The Supreme Court's approach to standing, therefore, raises serious questions about the viability of a bedrock of U.S. environmental law - the citizen suit. Cass Sunstein concluded in the wake of Lujan that "it is now [\*405] apparently the law that Article III forbids Congress from granting standing to "citizens' to bring suit." n48 At the very least, as we have seen, these developments in standing doctrine will make the burdens on citizens and environmental groups more onerous. I will argue in Part II that standing doctrine may someday present insuperable obstacles to citizen suit enforcement with respect to international environmental problems that are yet to be comprehensively addressed under U.S. law. The growing doctrinal obstacles to the enforcement of federal environmental law via citizen suit are not, of course, strictly confined to Article III standing. A wide range of justiciability doctrines deter and weaken environmental citizen suits, including the Administrative Procedure Act's bar on "programmatic" challenges to agency action, announced in Lujan v. National Wildlife Federation, n49 and the arcane distinctions in Norton v. SUWA between agency "action" and agency "inaction" for purposes of determining whether the APA permits suit. n50 Perhaps the most prominent of these developments is the Court's 2008 decision in Winter v. NRDC, which raised the bar for even successful environmental plaintiffs to obtain injunctive relief. n51 In Winter, the Court decided that the balance of the equities and the public interest weighed against granting a preliminary injunction to environmental groups seeking to force the Navy to comply with the National Environmental Policy Act. n52 Particularly in the way it characterized the harms to be balanced in that inquiry - considering the risk of a national security incident but holding the environmental plaintiffs to a standard of actual, documented, past harm to wildlife - the Court took an approach to balancing that seemed systematically to disadvantage environmental plaintiffs. Interestingly, there were echoes of the Court's environmental standing jurisprudence in its balancing-of-the-harms analysis in Winter. Though NEPA is a procedural statute, the court did not consider or weigh any procedural harms on the side of the environmental plaintiffs, focusing instead on the types of harms that environmental plaintiffs traditionally have had to rely on to establish standing - individualized scientific, recreational and aesthetic harms. n53 At oral argument, Justice Scalia went so far as to evoke explicitly the requirements of Article III standing in the [\*406] discussion of what harms count for purposes of equitable injunctions. n54 Thus Winter may yet provide a new opening for reinserting common law conceptions of injury into these complex regulatory disputes. n55 Perhaps most significantly, Winter also announced that a district court would abuse its discretion in granting an injunction to the environmental groups even if they ultimately prevailed on the merits. n56 Winter thus appears to represent another significant obstacle in the path of environmental groups trying to force executive compliance with the law. Importantly, however, the decisions in National Wildlife Federation, Norton v. SUWA and Winters are not constitutional. Given sufficient political will, Congress can smooth those obstacles to environmental citizen suits by amending the Administrative Procedure Act and Federal Rule of Civil Procedure 65(a), governing preliminary injunctions. Because the core of Article III standing doctrine is, by contrast, beyond the capacity of Congress to alter by statute, standing decisions are likely to impose the steepest costs in enforcement of environmental law in the future. This cost to effective enforcement should be borne in mind as courts decide whether to embark down any of the several avenues that exist for reconciling Article III standing and environmental citizen suits. First, courts can opt to extend the Massachusetts approach to causation and redressability to all plaintiffs, rather than confining it to states. They also might accommodate citizen suits by indulging in some slight of hand concerning the nature of the injury that is required. Courts have shown themselves willing, in the past, to sidestep standing difficulties by simply redefining the injury. n57 Thus, in Laidlaw, a "reasonable fear" of illness stemming from toxic emissions was enough to confer standing. n58 A generous application of the "reasonable fear" approach could go a long way towards getting [\*407] environmental groups into court. Finally, the most accommodating way forward, by far, would be to recognize the power of Congress to define injuries and articulate chains of causation free from the constraints of the common law. III. The Problem of Compliance The ability of citizens to access courts in order to compel executive compliance with environmental laws may have important repercussions on the international plane, because domestic enforcement bears on one of the most fundamental questions in the design of international environmental agreements § Marked 12:02 § - why do states comply with their commitments? International environmental problems require deep cooperation among states. Given the prevalence of physical, economic, and psychological externalities associated with environmentally harmful practices, cooperation is necessary to the realization of the mutual benefits of common solutions. n59 Negotiated agreements, of course, only facilitate cooperation if states comply with them. Furthermore, expectations about compliance will often constrain the depth of the commitments that states are willing to make - that is, the extent to which they are willing to depart from the course that they would have taken in the absence of cooperation. Just as in private contract situations, states need to be able to rely on credible commitments by other states, especially when the contemplated activities are highly reciprocal. A state party may not be willing to embark on a path of costly pollution control, for example, without highly credible commitments from peer states that they will make the same sacrifices. David Victor blames the shallowness of international environmental law generally on the failure of efforts to develop effective compliance mechanisms. n60 The risk of defection in the environmental context is generally quite high. Because of scientific and economic uncertainty, the costs and benefits of cooperation are difficult to predict and assess ex ante. Moreover, this uncertainty is magnified by the long duration of cooperation that is often necessary to deal effectively with serious environmental problems. Similarly, political economy models predict that compliance with environmental commitments will be inconsistent. n61 The costs of [\*408] environmental regulation are typically highly concentrated, so that regulated sectors - industry groups in particular - have strong incentives to oppose compliance over time. The benefits of regulation, by contrast, are typically diffuse. Beneficiaries face higher transaction costs in organizing in favor of compliance, and high levels of political mobilization may be unsustainable over the long term. As Sunstein argues, the fact that environmental commitments are concluded at all often has to do with the "availability heuristic." n62 By this reasoning, environmental regulation has more widespread appeal when environmental harms are more "cognitively available" - when vivid and salient examples are present in the popular consciousness. As the cognitive availability of environmental harms fades, popular support for costly regulatory measures - and thus for compliance with environmental agreements that compel such measures - tends to fade as well. Given these challenges, how can the advocates of international environmental cooperation ensure compliance with negotiated agreements? A wide variety of explanations have been advanced to explain observed compliance. They need not be viewed as mutually exclusive; more likely, each of these mechanisms contributes in some respect to state compliance. The leading explanations include the reputational costs of defection, n63 the perceived fairness and legitimacy of negotiated agreements, n64 social learning, n65 and administrative capacity-building, both bilateral and multilateral. n66 Transnational legal process theorists, such as Harold Koh and Anne Marie Slaughter, predict greater compliance stemming from interactions - direct and indirect - between the legal institutions, broadly understood, of different countries. n67 Other theorists are far less sanguine about the prospects for compliance with international agreements in the face of changing conditions. Goldsmith and Posner have famously argued that the discipline [\*409] of international law mistakes correlation for causation. n68 They argue that the behaviors that international lawyers take to be manifestations of opinio juris are actually no more than states acting in their own interests. Pursuit of the national interest, they suggest, happens to produce consistent behaviors, at most times and in most places, which are mistaken for legal norms. Relatedly, David Victor and Kal Raustiala have questioned whether international law - as opposed to international political processes, culminating in so-called "soft law" - contributes meaningfully to compliance. n69 They point to several instances of highly effective environmental cooperation among states on the basis of non-legally binding agreements, and reason that nations may be more likely to agree to robust monitoring regimes when the commitments at stake are not legally binding. The accounts of compliance with international law that accord the most weight to direct enforceability of commitments in domestic legal systems are liberal theories, which focus on the distinctive domestic institutions of so-called "liberal states." Thus, according to David Victor, there are certain states - liberal democracies - "in which internal public pressure [and] robust legal systems make it possible to enforce international commitments from the inside (ground-up) rather than the outside (top-down)." n70 None of these, however, pays much heed to the potential for domestic courts to play a role in escaping the compliance dilemma. Even liberal theories tend to focus instead on interest groups and on the operations of the political branches. n71 Victor identified the existence of independent judiciaries as one of three factors explaining heightened compliance with international obligations by liberal states, but left the idea unexplored. He emphasized that "more work is needed to unravel [the] conditions under which they are most effective." n72 [\*410] Oona Hathaway offers empirical support for the hypothesis that domestic legal enforcement contributes meaningfully to compliance with international obligations. n73 After reviewing a range of studies, both qualitative and quantitative, that assess compliance with human rights law, she reaches two conclusions that are relevant here. First, states that boast independent judiciaries, media, and political parties are more likely to join treaties when their human rights practices are good, and are more likely to improve their practices upon joining. n74 In other words, they take their international legal obligations seriously. Second, just as domestic enforcement contributes to international compliance, the existence of "robust domestic rule-of-law institutions" tends to strengthen domestic enforcement. n75 Hathaway concludes, therefore, that work to strengthen local rule of law serves the ultimate goal of compliance with international human rights agreements. n76 In the environmental context, the compliance-reinforcing potential of domestic enforcement mechanisms is particularly pronounced. In the United States, citizen suits have been tremendously effective at forcing executive compliance, at both the federal and state levels, with the major federal environmental statutes. James May offers this assessment: Citizen suits work; they have transformed the environmental movement, and with it, society. Citizen suits have secured compliance by myriad agencies and thousands of polluting facilities, diminished pounds of pollution produced by the billions, and protected hundreds of rare species and thousands of acres of ecologically important land. The foregone monetary value of citizen enforcement has conserved innumerable agency resources and saved taxpayers billions. n77 Citizen suits are a staple of federal environmental law: nearly every major environmental statute imparts a private right of action to citizens. n78 And nearly 75 percent of all actions to enforce domestic environmental laws take the form of citizen suits. n79 Steps to make the environmental treaty obligations of the executive branch enforceable by citizen suit, therefore, may be expected to improve compliance. [\*411] Two overarching approaches to enforcement of international commitments by citizen suit are possible. First, environmental agreements could be made to include more specific, self-executing obligations, from the outset. n80 Alternatively, international agreements could continue to adhere to the model common to the Montreal and Kyoto protocols, whereby states commit to broad quantitative reductions, only now with an additional treaty obligation to provide for private enforcement of subsequent implementing legislation in the domestic legal system. Although this latter option would leave some margin for noncompliance, that margin would be highly circumscribed. Most noncompliance with environmental obligations is not through overt repudiation at the level of the executive or national legislature, but through non-enforcement. n81 Thus, whether international environmental agreements themselves create privately enforceable rights or those provisions are instead inserted later at the time of passage of implementing legislation by the legislature, the availability of citizen suits will greatly diminish the opportunity for states subsequently to renege through inaction on their commitments. n82 The key is to harness the enforcement potential of citizen suits in service of international compliance. This strategy is further recommended by the fact that domestic courts may be particularly well-suited, in institutional terms, to the task of long-term enforcement in the environmental context. Independent judiciaries are, in part by definition, more insulated from politics than the executive and the legislature, which means that they are also insulated from some of the most dangerous biases of political actors: short-termism, tendency to undervalue low-risk events, and unwillingness to face up to catastrophic risk. n83 Yet, generally speaking, domestic courts are not so insulated from the political tenor of a country so as to fail to perceive the costs of compliance. n84 Hence, they offer a solution to the vexing trade-off between credibility and [\*412] flexibility faced by the framers of international agreements in which environmental commitments - with their uncertain long-term costs - are at issue. What a country wants is to be bound when the question is close - so as to be able to make a credible commitment - but not when, from their perspective, circumstances have changed so much as to excuse noncompliance. n85 States are understandably wary of trusting foreign or international authorities to recognize and accommodate such instances of changed circumstances. A domestic institution is more likely to do so, even in cases of true judicial independence, simply by virtue of shared background assumptions that inhere in national identity and culture. Maximizing the extent to which international environmental commitments can make use of domestic legal institutions, therefore, may allow for optimal pre-commitment strategies. In addition to being highly effective, domestic enforcement of international environmental commitments is likely to be more politically palatable, at the stage of institutional design and ratification, than the alternatives. n86 Existing international agreements in this area are notable for their lack of monitoring, sanctions, and other international oversight mechanisms. n87 In the United States, at least, concerns about loss of national sovereignty to international institutions are highly politically salient, and often carried to irrational, even paranoid, extremes. n88 Thus, political resistance to foreign and international monitoring and sanctions regimes often goes far beyond what one would expect given the simple risk that those institutions will be insufficiently attentive to national interests in hard cases. This resistance means that any achievements in international oversight often come at the expense of the depth of the commitments made. n89 In the environmental context, therefore, provision for domestic judicial enforcement of international commitments may be a Goldilocks solution: just enough precommitment, without the steep political price upfront. Such a strategy, however, is closely bound up with the difficult questions about standing doctrine that were discussed in Part I. A [\*413] hospitable doctrine of standing is among the conditions necessary for making domestic courts an effective tool in ensuring compliance with international environmental agreements. If, instead, standing doctrine continues to constrict the environmental citizen suits that make it into court, these compliance benefits will be commensurately foregone. Ironically, standing doctrine will sweep most broadly in excluding citizen enforcement in a substantive area such as environmental law where the achievement of international cooperation was already highly challenging. In a further irony, the imminence and causation requirements of restrictive standing doctrine will make domestic enforcement most difficult to attain precisely when international institutions are most in need of support from domestic sources of compliance pressure: at the early stages of cooperation to address an incipient environmental problem. Climate change is the prime example of these risks, but the mismatch between standing doctrine and the substance of international environmental cooperation is institutional; it has the potential to extend far beyond the particular problem of climate change. Other environmental regimes promise even less concrete, more diffuse, and longer-term benefits from regulation. For example, failure of states to heed commitments directed towards preserving biodiversity will often fail to implicate any plaintiffs in particular. n90 What American has an "injury-in-fact," as interpreted by Justice Scalia, when an agency fails to take action to preserve the genetic diversity of obscure insects, plant species, or microorganisms, the use value of which to humans is almost nonexistent in the short or medium term? n91 Another highly problematic example is explored by Paul Hawken, Amory Lovins and L. Hunter Lovins in Natural Capitalism. n92 Several European countries have made great strides in reducing demand for natural resources and supply of solid waste by imposing responsibility for disposal and other "full life-cycle costs" on the manufacturers of consumer durables and industrial products. But when the environmental goods and services conserved by European states are freely traded, other economies can free-ride off of their efforts. If the United States agreed by treaty to impose similar requirements on manufacturers, what citizens would have standing to challenge executive noncompliance with resulting legislation? The doctrine of Article III standing has profound and far-reaching consequences for United States participation in international regimes to address the pressing environmental problems of today and tomorrow. If standing doctrine remains restrictive, unpredictable, and immune to [\*414] alteration by Congress, the international environment will pay part of the price. IV. Credibility as Negotiating Advantage The course of United States standing doctrine, of course, will not directly influence the enforceability of internationally agreed-upon environmental rules within other countries. Therefore, one might legitimately question the extent to which a change in the domestic law of one state - even that of a hegemonic power - will meaningfully affect the prospects for effective international coordination. n93 One response to such criticism is that removing one obstacle to greater reliance on domestic enforceability in international environmental regimes is a step in the right direction. As Justice Stevens reasoned in Massachusetts v. EPA, that a step is incremental does not defeat its utility. n94 But there also is a separate, stronger response: More robust domestic enforcement will strengthen the hand of the United States in international negotiations, whether or not other countries move in the same direction. The academic literature surrounding negotiation has a tendency to analyze the concept of credibility in the context of threats. That is, in bargaining over the spoils within a zone of possible agreement, the party that is able to tie its own hands or burn its bridges (or create the credible impression of having done so), alters (or obscures) its true bottom line. By threatening to walk away from the table, that party captures a greater share of the mutual benefits from agreement. n95 But as I explain, the capacity to make credible promises is also an asset in negotiation. The weakening of domestic enforcement of environmental law renders less valuable the promises made by U.S. negotiators, n96 by the following chain of causation: More restrictive environmental standing hinders domestic judicial enforcement, which in turn makes defection by the executive more likely, which drives negotiating partners to discount the value of promised actions by the (increased) likelihood of defection, thereby [\*415] rendering U.S. promises less valuable. As a result, the U.S. is able to get less in exchange for its promises in international environmental negotiations. Many scholars, however, emphasize the value of flexibility in international agreements, particularly in situations of uncertainty. n97 An advocate of restrictive standing might, in reliance on these analyses, argue that the gain in flexibility to the United States is worth the cost in terms of lost credibility. But the hypothesized Lujan apologist would be wrong. Weakened enforcement by the domestic courts serves only to narrow the range of options available to the political branches in the international arena. Whereas a state that is able to make credible promises can calibrate the value of a promise by varying its substantive content as it wishes, a state lacking credibility is limited in what it can (effectively, credibly) promise. In other words, a state in possession of credibility can still enjoy the benefits of flexibility, but the reverse is not true. Strategies of pre-commitment like domestic enforceability may be particularly useful to hegemonic powers like the United States. Hegemons of course, have a strong interest in preservation of the status quo. While ascendant political forces in the United States have, up to the present, identified the interests of the status quo as in conflict with concerted global action to deal with environmental problems, that position may no longer be tenable. Climate change and other looming ecological crises - not the efforts to deal with them - in fact pose the greater existential threat to the current global order, and American political elites are beginning to understand the need to address them. Thus, the nominees of both major American political parties expressed strong rhetorical support for efforts to deal with climate change in 2008, and a comprehensive cap-and-trade bill passed the House, but not the Senate, in 2009. n98 For a hegemonic power to convince other states to cooperate on its terms, however, it must be able to make credible commitments. Otherwise, the world will remain all too aware of the power of the hegemon to renege after the fact. n99 The U.S.'s need for credibility on the world stage derives not only from [\*416] structural factors. Though America's image in the world has rebounded substantially since the election of President Obama, n100 it was held in much lower esteem just one year ago. n101 And its perceived flouting of international norms was an important contributor to that decline. n102 The Bush administration's salient decisions to opt out of multilateral efforts, including "unsigning" the Rome Statute of the International Criminal Court, withdrawal from the Anti-Ballistic Missile Treaty, and non-participation in the Kyoto process are unlikely to be completely overlooked by global leaders considering long-term reciprocal cooperation with the United States, Obama's recent charm offensives notwithstanding. The international community is painfully aware of the periodic willingness of the political branches - particularly the executive - in the United States to spurn international obligations when interests so dictate. Many point out, however, that these manifestations of United States "exceptionalism" consisted not in noncompliance - violation of a binding legal norm - but rather in perfectly legal decisions to opt out of international processes. n103 The point is true for what it is worth, but prominent instances of U.S. noncompliance with binding legal norms are, nonetheless, fairly easy to identify. One of these instances of noncompliance is the requirement of consular notification in the Vienna Convention on Consular Relations. n104 In Medellin v. Texas, n105 the Supreme Court held that the state of Texas was not bound to refrain from executing Ernesto Medellin, even though the United States was indisputably in breach of its obligations under that treaty. n106 Domestic considerations of federalism and procedural default, therefore, trumped international compliance, much to the dismay of Mexico and many others in the international community. n107 Domestic procedural law also, [\*417] arguably, trumped international obligations for some time in the case of the prisoners of the war on terror held at Guantanamo. With respect to those individuals, the protections of the Geneva Conventions were undone - or at least very significantly delayed - by the jurisdictional requirements of U.S. law. n108 Comprehensive treatment of these controversies is beyond the scope of this paper, but the basic point is clear: the U.S.'s prospective negotiating partners are likely to be attentive to the risk that procedural hurdles - like strict standing - will undermine U.S. compliance in the environmental arena as well. V. Conclusion Several unresolved questions about Article III standing have important implications for the viability and effectiveness of citizen suits in environmental cases. If courts continue the recent trend of allowing procedural doctrines to restrict these suits, the shift may have important international repercussions which have not yet been fully reckoned with. Most important among these is that the unavailability of domestic enforcement of environmental laws through citizen suits will tend to undermine compliance with international environmental obligations. Both the negotiating position of the United States and the prospects for effective cooperation on the most pressing environmental issues facing humanity will suffer accordingly.

## ADV CP

### 2AC A2: Biochar CP

#### Biochar fails – variable soil conditions

Ernsting, 13 – European Focal Point of the Global Forest Coalition and Co-director of Biofuelwatch (Almuth, “Biochar: A cause for concern?” http://www.theecologist.org/blogs\_and\_comments/commentators/other\_comments/2016620/biochar\_a\_cause\_for\_concern.html)

In 3 cases, biochar increased soil carbon compared to adding nothing to soils – but not when compared to other common soil amendments, such as saw dust, manure and geen manure. In just 3 out of 11 cases did biochar result in additional carbon sequestration, at least short-term but its long-term stability is still in question. This rather contradicts claims such as those by the UK Biochar Foundation that “biochar has properties which make it suitable for the safe and long-term storage of carbon in the environment”. Most biochar research now focuses on identifying and producing different ‘designer’ biochars with different properties including with particularly ‘stable’ carbon. Yet soil science reviews show that such findings tell us very little. As two suchreviews show, the fate of any type of soil carbon cannot be predicted from looking at molecular structures or at what happens under laboratory conditions. Carbon in organic residues may not last long under laboratory conditions but may remain in living soils for millennia. And black carbon, the form of carbon in biochar, which appears extremely stable under sterile laboratory conditions, may disappear rapidly from soils. It appears that the stability of carbon depends primarily on highly variable soil and climatic conditions. Those insights fundamentally undermine the case for biochar as a reliable way of sequestering carbon, although this has not stopped the International Biochar Initiative and their members and supporters from continuing to claim that “The carbon in biochar resists degradation and can hold carbon in soils for hundreds to thousands of years.”

#### Doesn’t solve warming

Hertsgaard, 14 – has reported on climate change for The New Yorker, Vanity Fair, Time, the BBC, and The Nation, where he is the environment correspondent (Mark, 1/21. “As Uses of Biochar Expand, Climate Benefits Still Uncertain.” http://e360.yale.edu/feature/as\_uses\_of\_biochar\_expand\_climate\_benefits\_still\_uncertain/2730/)

The largest outstanding question about biochar is how much of a difference it can make in slowing global warming and how soon. Johannes Lehmann, a professor of agricultural science at Cornell University and one of the world’s top experts on biochar, has calculated that if biochar were added to 10 percent of global cropland, the effect would be to sequester 29 billion tons of CO2 equivalent — roughly equal to humanity’s annual greenhouse gas emissions. What researchers still don’t know is how long that buried carbon would remain sequestered from the atmosphere. Also unclear is just how much biomass would have to be turned into biochar to make a meaningful dent in global warming, and what environmental and social impacts this might have — for example, by encouraging the clear-cutting of forests and their replacement by plantations of trees destined for biochar production. Lehmann and former NASA climate scientist James Hansen have emphasized that they oppose such plantations and other unsustainable practices as a means to produce biochar. Rather, Lehmann says, biochar should be sourced from the massive amount of waste materials that normal agricultural and forestry production methods leave behind: corn stalks, rice husks, tree trimmings, and the like. And as the chicken manure example described above illustrates, biochar could also help dispose of the large amounts of manure currently generated by poultry and livestock operations.

#### Links to politics

Hertsgaard, 14 – has reported on climate change for The New Yorker, Vanity Fair, Time, the BBC, and The Nation, where he is the environment correspondent (Mark, 1/21. “As Uses of Biochar Expand, Climate Benefits Still Uncertain.” http://e360.yale.edu/feature/as\_uses\_of\_biochar\_expand\_climate\_benefits\_still\_uncertain/2730/)

The U.S. government, by contrast, is winding down its biochar research. Congress has cut the Agricultural Research Service’s budget by 12 percent since 2010, said ARS’s Fireovid. "We’ve closed at least ten laboratories in the last three years," he added. "The long-term studies we think we need to do on biochar, we just can’t do. We lack the funds."

#### Increased use of biochar causes extinction

Ho, 10 – director of the Institute of Science in Society, Reader in Biology at the Open University, Ph.D. in biochemistry (Dr Mae-Wan, 11/18. “Beware the Biochar Initiative.” http://permaculturenews.org/2010/11/18/beware-the-biochar-initiative/)

It is clear that biochar has not lived up to its promises as a stable C repository or enhancer of crop yields. On the other hand, the risk of oxygen depletion is real [1-3]. Biochar itself is an oxygen sink in the course of degrading in the soil [24. 32]; adding to the depletion of oxygen that cannot be regenerated because trees have been turned into biochar for burial. And worse, as in the biofuels boom that has already apparently speeded up deforestation and oxygen depletion since 2003 [2], if biochar is promoted under the Clean Development Mechanism, it will almost certainly further accelerate deforestation and destruction of other natural ecosystems (identified as ‘spare land’) for planting biochar feedstock, and swing the oxygen downtrend that much closer towards mass extinction.

## Toto DA (Africa lol jokes)

### Congo DA – 2AC

#### Training solves the link

Dycus 96

[Stephen, Professor, Vermont Law School, 1996, "National Defense and the Environment"pp 137]

It might seem terribly naive to suggest that in the midst of battle military leaders should have to worry about protecting the natural environment, or be distracted in any way from the immediate task of winning. But because, as we have noted, the environment itself is worth fighting to protect, environmental consequences must be considered in making tactical decisions. Fortunately, much that happens during a war is determined far in advance, from planning and training for combat, to the design of weapons. There is ordinarily plenty of time for reflection and debate about the wartime environmental implications of these preparations. One former infantry officer summed up the responsibility of military leaders this way: [C]ommanders must take strong positive steps to limit environmental damage. They must plan campaigns with the avoidance of damage in mind. For example, they should avoid, if at all possible, especially fragile areas. They should prohibit mass destruction of the land (such as the use of Agent Orange in Vietnam) as a method of warfare. They must make their subordinates aware of the environment, and they must issue orders prohibiting damage. They must continually assess the effects of their campaigns on the environment. Finally, they must insure that positive steps are taken to heal environmental damage in areas that they conquer and occupy. 13

#### 3. Intervention makes the situation worse

Rogers 12

[Paul, Global Security Consultant to Oxford Research Group (ORG) and Professor of Peace Studies at the University of Bradford, Mali: The Risk of Intervention, 6/29/12, [www.oxfordresearchgroup.org.uk/publications/middle\_east/mali\_risk\_intervention+&cd=11&hl=en&ct=clnk&gl=us](http://www.oxfordresearchgroup.org.uk/publications/middle_east/mali_risk_intervention%2B%26cd%3D11%26hl%3Den%26ct%3Dclnk%26gl%3Dus)]

Military intervention may indeed be complicated and unpredictable, not least because of the heterogeneous nature of the rebellion, but even more important is the need to see this in a wider context. From the point of view of the leadership of AQIM in North Africa, and Boko Haram in Nigeria, military intervention would actually be welcome as further evidence of external interference, in particular if there was French and US involvement. From that perspective, any escalation would be expected to increase support for their own movements, especially if an early phase of military support included a reliance on armed drones and Special Forces. It is also necessary to factor in the rapidity with which the effects of such intervention, including the inevitable civilian casualties, would be communicated around the world. One of the main lessons of the experience in Afghanistan and Iraq over the past eleven years has been the manner in which events in one region have far greater and more rapid impacts in other areas than even a few decades ago. This is a reflection of changes in commercial, public and social media, but it means that any attempt to impose a military solution in northern Mali should be expected to have a wide impact, not just across northern Africa, but even in the Middle East and beyond. There needs to be a far greater focus on negotiations. This is a matter of some urgency, given that Malian government defence forces (reportedly with assistance from Ukrainian contract pilots flying attack helicopters) are already responding with force to recent developments. Negotiations, though, must be undertaken while recognising that the relative underdevelopment of northern Mali and the marginalisation of the Tuareg people and other groups must be addressed. In effect, negotiations may be able to buy time and help avoid military action, with its potentially dangerous consequences, but will not in themselves provide a long term solution.

#### 4. Intervention causes U.S./China war

Bodansky 14 (Yossef, Senior Editor, Global Information System / Defense & Foreign Affairs, "U.S. interventionism in Africa makes colonialism look progressive, empowers China,"

<http://webcache.googleusercontent.com/search?q=cache:S3BWkY44V_MJ:www.worldtribune.com/2014/01/20/u-s-interventionism-in-africa-makes-colonialism-look-progressive-empowers-china/+&cd=21&hl=en&ct=clnk&gl=us>)

Given the changing realities, the U.S. and France are playing with fire in sub-Saharan Africa.¶ The region is undergoing a tense and explosive transformation. The populace is facing a lot of frightening uncertainties on account of hasty urbanization, popular mobility, and an information-communication revolution. There is a grassroots dread of the evolution of the role and power of clans, tribes, and states (regarding authority, legitimacy, corruption, abuse of power, etc.). There is confusion regarding the potential impact on society of the development of riches. Finally, there exist the seduction and lure of violent criminality, as well as religious and ethno-centrist militancy and radicalism. Taken together, these grassroots apprehensions create a very explosive yet confused and confusing environment. It doesn’t take great effort to exacerbate such a volatile situation and spark a major eruption.¶ Moreover, there exists the evolution in the People’s Republic of China’s (PRC’s) attitude toward, and commitment to, Africa.¶ The role of sub-Saharan Africa is evolving from just an economic resource for China into a Chinese strategic lever against the U.S.-led West. The Chinese have long been investing heavily in Africa as the key long-term source for energy, ores, rare earths, and other raw materials for their industrial growth.¶ Recently, the PRC has been expanding its operations into sponsoring the creation of a secondary industrial base in Africa itself in order to better support their economic undertakings. Beijing is now also looking to Africa as a prime instrument for preventing, or at the least controlling, the flow of resources to the West. The PRC is worried because the PRC leadership perceives that the U.S. is desperate to revive its sagging economy and disappearing industrial base while discussing an explicitly anti-Chinese pivot to East Asia.¶ The Chinese are also apprehensive that Europe is embarking on re industrialization and thus might lessen its dependence on Chinese imports and the trans-Asian venues of transportation — the new Silk Road — and their strategic value. It is in such a grand strategic context that Beijing is studying U.S.-led Western activities in Africa and, not without reason, is becoming increasingly apprehensive about them. Hence, Beijing is now determined to capitalize on the PRC’s preeminence in Africa in order to pressure, if not extort, the West. The margin for error under these conditions is extremely narrow.¶ America’s “humanitarian interventionism” in sub-Saharan Africa is markedly increasing tensions and exacerbating conflicts all around. The specter of current and future U.S.- and French-led military interventions and the ensuing toppling of leaders and governments is sending both African leaders and aspirant strongmen to posture for better positions in case the U.S. and France intervened in their states and regions. Desperate to increase their military capabilities, they make Faustian deals with any anti-Western power they can reach out to, be it China or Iran. Hence, there exists a growing possibility that U.S.-Chinese tension will also spark a clash in explosive Africa.¶ Where the next eruption in Africa will lead is anybody’s guess. In a recent Brookings Essay entitled “The Rhyme of History: Lessons of the Great War”, Professor Margaret MacMillan warned of the growing and disquieting similarities between the world of Summer 1914 and the world of early 2014.¶ “It is tempting — and sobering — to compare today’s relationship between China and the U.S. with that between Germany and England a century ago,” Professor MacMillan writes.¶ She also points to the prevailing belief — then as now — that a full-scale war between the major powers is unthinkable after such a prolonged period of peace. “Now, as then, the march of globalization has lulled us into a false sense of safety,” Professor MacMillan writes. “The 100th anniversary of 1914 should make us reflect anew on our vulnerability to human error, sudden catastrophes, and sheer accident.”

#### 5. Extinction

Lieven 12 (Anatol, Professor in the War Studies Department – King’s College (London), Senior Fellow – New America Foundation (Washington), “Avoiding US-China War,” New York Times, 6-12, http://www.nytimes.com/2012/06/13/opinion/avoiding-a-us-china-war.html)

Relations between the United States and China are on a course that may one day lead to war. This month, Defense Secretary Leon Panetta announced that by 2020, 60 percent of the U.S. Navy will be deployed in the Pacific. Last November, in Australia, President Obama announced the establishment of a U.S. military base in that country, and threw down an ideological gauntlet to China with his statement that the United States will “continue to speak candidly to Beijing about the importance of upholding international norms and respecting the universal human rights of the Chinese people.” The dangers inherent in present developments in American, Chinese and regional policies are set out in “The China Choice: Why America Should Share Power,” an important forthcoming book by the Australian international affairs expert Hugh White. As he writes, “Washington and Beijing are already sliding toward rivalry by default.” To escape this, White makes a strong argument for a “concert of powers” in Asia, as the best — and perhaps only — way that this looming confrontation can be avoided. The economic basis of such a U.S.-China agreement is indeed already in place. The danger of conflict does not stem from a Chinese desire for global leadership. Outside East Asia, Beijing is sticking to a very cautious policy, centered on commercial advantage without military components, in part because Chinese leaders realize that it would take decades and colossal naval expenditure to allow them to mount a global challenge to the United States, and that even then they would almost certainly fail. In East Asia, things are very different. For most of its history, China has dominated the region. When it becomes the largest economy on earth, it will certainly seek to do so. While China cannot build up naval forces to challenge the United States in distant oceans, it would be very surprising if in future it will not be able to generate missile and air forces sufficient to deny the U.S. Navy access to the seas around China. Moreover, China is engaged in territorial disputes with other states in the region over island groups — disputes in which Chinese popular nationalist sentiments have become heavily engaged. With communism dead, the Chinese administration has relied very heavily — and successfully — on nationalism as an ideological support for its rule. The problem is that if clashes erupt over these islands, Beijing may find itself in a position where it cannot compromise without severe damage to its domestic legitimacy — very much the position of the European great powers in 1914. In these disputes, Chinese nationalism collides with other nationalisms — particularly that of Vietnam, which embodies strong historical resentments. The hostility to China of Vietnam and most of the other regional states is at once America’s greatest asset and greatest danger. It means that most of China’s neighbors want the United States to remain militarily present in the region. As White argues, even if the United States were to withdraw, it is highly unlikely that these countries would submit meekly to Chinese hegemony. But if the United States were to commit itself to a military alliance with these countries against China, Washington would risk embroiling America in their territorial disputes. In the event of a military clash between Vietnam and China, Washington would be faced with the choice of either holding aloof and seeing its credibility as an ally destroyed, or fighting China. Neither the United States nor China would “win” the resulting war outright, but they would certainly inflict catastrophic damage on each other and on the world economy. If the conflict escalated into a nuclear exchange, modern civilization would be wrecked. Even a prolonged period of military and strategic rivalry with an economically mighty China will gravely weaken America’s global position. Indeed, U.S. overstretch is already apparent — for example in Washington’s neglect of the crumbling states of Central America.

#### 6. Intervention kills congo biodiversity

Kearns 12 (Brendan – J.D. and B.A., summa cum laude, from the University of California, “When Bonobos Meet Guerillas: Preserving Biodiversity on the Battlefield”, 2012, 24 Geo. Int'l Envtl. L. Rev. 123, lexis)

Over thirty years after the adoption of Additional Protocol I, ecological concerns remain a secondary consideration in the corpus of international humanitarian law: not quite an afterthought, but far from the priority. The inferior status of environmental protections, compared to foundational concepts such as the avoidance of unnecessary suffering and the distinction between civilians and combatants, n87 resulted in an underdeveloped legal regime that occasionally alludes to the natural environment, but historically does little to secure it against warfare's devastating impact. The failure of the laws of war to adequately address wartime threats to Pan paniscus illustrates the grave consequences stemming from this tenuous, imprecise application of environmental protections during armed hostilities. Residing exclusively within one of the most unstable, war-afflicted states in modern history, n88 the survival of the species depends in large part upon armed forces restraining their military operations to the extent such activities seriously threaten the Congo's biodiversity. International humanitarian law currently includes provisions relevant to the preservation of endangered animals, but the existing legal regime has failed to effectively address these environmental consequences of war.

#### Extinction

**Dusky 8** (Lorraine, Contributing Editor – YI and Award-Winning Environmental Writer, “Champion of a Forest Sanctuary: Sally Jewell Coxe”, Yoga International, May / June, http://www.himalayaninstitute.org/yi/Article.aspx?i d=2834)

Coxe is founder and president of the Bonobo Conservation Initiative (BCI), dedicated to saving the “hippie” primate in its native habitat in the Congo Basin of the DRC, the only place in the world bonobos are found. This is no mean feat, as the rain forest—sometimes called our second lung by ecologists—is threatened by commercial logging and poachers with guns who freely roam the area. Though bonobos may be the species most closely related to humans, they are slain for bush-meat, or killed and dismembered for local rituals. Together, the logging and poaching has taken its deadly toll. While civil strife in the area has made an accurate count impossible, it is generally accepted that the number of bonobos has declined from a robust 150,000 to 10,000 over the last three decades, according to the World Wildlife Fund. Coxe and her nonprofit organization, working hand in glove with the DRC government, are their last best hope against extinction. Most news from the DRC is not good; the current fighting there makes ugly headlines of rape and murder, but it is in the eastern part of the country bordering Rwanda and Uganda, some distance away from the Congo Basin and bonobo territory. Yoga in the Bush Home base for Coxe and the BCI is Washington D.C., but she spends a good deal of time on-site in Africa. Coxe has been to the Congo Basin more times than she can readily count. It was there she saw that the women who regularly carry heavy bundles had numerous back problems. Aware that certain asanas would be beneficial, she began teaching them yoga. “I take out my mat and just do it,” she says. “They think it is very bizarre, but I tell them it will help their backs.” It helps that she speaks the native tongue, Lingala. Yoga and meditation have been integral to Coxe’s spiritual path for decades. “Yoga is a part of who I am; I rely on yoga for my spiritual and physical health,” she explains. “I can’t imagine who I would be if I had never discovered it.” Coxe practices both hatha and kundalini yoga, as well as daily meditation—up to two hours when possible—and although she has studied with several teachers and yogis, these days she rarely finds the time for a class. She confesses that sometimes she says her mantra “even when walking down the street.” Because of her innate spirituality, the philosophy that we are all one world infuses the BCI, which has been instrumental—in fact, crucial—to the establishment of bonobo reserves in the Congo Basin. Her close friendship with Gene Nash, who at the time was running the Keshavashram International Center, a meditation center near Washington, D.C. (it’s now a peace center), was the key to saving a good-sized chunk of the forest. A few years ago, Nash remembers, Coxe was despondent that land would be lost to logging because she couldn’t raise the money to stop development there. Coxe expressed her dismay to Nash in a late-night phone call. “I asked her how much money she needed, thinking it would be a few thousand, and she said, ‘Three hundred and fifty thousand,’” says Nash, who is known as Gita. “I knew in an instant how I would raise the money.” Nash had a 16-acre piece of property nearby in Warrenton, Virginia, and was pretty sure she had a willing buyer, a man who bred thoroughbreds on property that abutted hers. It was already early December; Coxe needed the cash in hand by the end of the year, not a day later. “I called him the next morning and told him the property was for sale but everything had to be settled by December 31st,” Nash says. “Nothing was smooth, various offices were closing for the Christmas holiday, there were many complications, but everybody collaborated and hours before the deadline, we had $350,000 shipped to the Congo to give to the man who owned the development rights. Loggers were already there and ready to go in. It was the most amazing synchronicity I have ever seen.” Today bonobo reserves (which are also home to other rare species) in the rain forest cover more than 95,000 square miles, approximately 10 percent of the country and one of the largest contiguous land reserves left on earth. The eventual goal is to add another 5 percent to that, bringing the total to more than 15 percent of the DRC landmass. One reserve alone, the Sankuru, was established only late last year; encompassing more than 11,800 square miles, it is slightly larger in size than the state of Massachusetts. “We are not just saving bonobos, we are protecting the entire rain forest and ecosystem,” notes Michael Hurley, BCI executive director and Coxe’s partner. “The forest we are talking about is the second largest in the world, and as such, crucial to the survival of the planet—it sequesters huge amounts of carbon and releases oxygen.” The amount indeed is enormous: It is estimated that the Sankuru Reserve alone stores up to 660 million tons of carbon, which if released by deforestation would emit up to 2 billion tons of carbon dioxide, comparable to emissions from 38,000,000 cars per year for 10 years. The urgency to save the forest then is not just for our close relatives, the bonobos, and other species who live there, but for all of us. The very air the world breathes depends on it.

## Ptix

### Iran – 2AC (Districts)

#### Obama already won – Iran sanctions aren’t a thing, AIPAC and bill supporters threw in the towel

Parsi 2/19/14 (Trita, founder and president of the National Iranian American Council and an expert on US-Iranian relations, Iranian politics, and the balance of power in the Middle East., "The Illusion of AIPAC’s Invincibility," http://www.fairobserver.com/article/illusion-aipac-invincibility-52678)

The defeat of the American Israel Public Affairs Committee's (AIPAC) ill-advised push for new sanctions on Iran in the midst of successful negotiations is nothing short of historic. The powerful and hawkish pro-Israeli lobby's defeats are rare and seldom public. But in the last year, it has suffered three major public setbacks, of which the sanctions defeat is the most important one.¶ Defeats?¶ AIPAC's first defeat was over the nomination of Senator Chuck Hagel for secretary of defense. In spite of a major campaign defaming Hagel, even accusing him of anti-Semitism, his nomination won approval in the Senate.¶ The second was over President Barack Obama's push for military action against Syria. AIPAC announced that it would send hundreds of citizen lobbyists to the Hill to help secure approval for authorization of the use of force. But AIPAC and Obama were met with stiff resistance.¶ The American people quickly mobilized and ferociously opposed the idea of yet another war in the Middle East. By some accounts, AIPAC failed to secure the support of a single member of Congress.¶ The third defeat was over new Iran sanctions. Now, AIPAC and the president were on opposite sides. The interim nuclear agreements from last November explicitly stated that no new sanctions could be imposed.¶ Yet backed by Senators Mark Kirk and Robert Menendez, AIPAC pushed for new sanctions, arguing that it would enhance America's negotiating position. The White House strongly disagreed, fearing that new sanctions would cause the collapse of diplomacy and make America look like the intransigent party.¶ The international coalition the president had carefully put together against Iran would fall apart, and the US and Iran would once again find themselves on a path towards military confrontation.¶ But AIPAC insisted. Its immense lobbying activities secured 59 cosponsors for the bill, including 16 Democrats. Its aim was first to reach over 60 cosponsors to force the bill to the floor, and then more than 67 cosponsors to make it veto proof.¶ But 59 cosponsors turned out to be a magical ceiling AIPAC could not break through. Supporters of diplomacy put up an impressive defense of the negotiations policy, building both from years of careful development of a pro-diplomacy constituency and coalition machinery as well as the grassroots muscle of more recent additions to the pro-diplomacy camp. (To get a hint of who these forces are, see the coalition letter against new sanctions signed by more than 70 organizations and organized by Win Without War, FCNL and the author's own organization, the National Iranian American Council.)¶ The watershed moment came when the White House raised the temperature and called out the sanctions supporters for increasing the likelihood of war.¶ "If certain members of Congress want the United States to take military action, they should be up front with the American public and say so," Bernadette Meehan, National Security Council spokeswoman, said in a statement. "Otherwise, it's not clear why any member of Congress would support a bill that possibly closes the door on diplomacy and makes it more likely that the United States will have to choose between military options or allowing Iran's nuclear program to proceed."¶ The prospect of coming across as "warmongers" incensed AIPAC and its supporters. But the White House knew exactly what it was doing. It was tapping into the only force that could stop AIPAC – the war-wariness of the American public.¶ The very same energy among the public that put a stop to the White House's war plans for Syria, would now be used to put a stop to AIPAC's efforts to sabotage the last best chance to avoid war with Iran.¶ AIPAC on the Defensive¶ The angry reaction of the sanctions supporters only confirmed the effectiveness of the White House's strategy. AIPAC was put on the defensive and it could never explain how imposing diplomacy-killing sanctions were good for the negotiations. Chemi Shalev of the Israeli daily Haaretz put it best:¶ "Some of [AIPAC's] supporters claimed that it was meant to strengthen Obama's hand in the nuclear negotiations with Iran, when it was clear that they meant just the opposite: to weaken the president and to sabotage the talks. They couldn't speak this truth outright, so they surrounded it, as Churchill once said, with a bodyguard of lies."¶ AIPAC finally threw in the towel on new sanctions on February 6. The defeat was an undeniable fact.

#### Iran talks will inevitably fail – even former Obama officials concede

Mideast Mirror 2/19/14 ("Clouds over Vienna," lexis)

TRUTH BE TOLD: Writing in Israel Hayom, Boaz Bismuth says that the chances of the talks between the six world powers and Iran ending in success are very slim indeed, given that both sides are benefiting from this diplomatic ceasefire.¶ "In December, U.S. President Barack Obama said there was a 50-50 chance that Iran and the world powers would reach a deal on the Islamic Republic's nuclear program - despite the euphoria that engulfed the entire world (including Obama's own administration) after the interim agreement was inked in Geneva.¶ The negotiations between Iran and the rest of the world resumed yesterday in Vienna and this time the sides are talking about a permanent deal. It seems that Obama was being extremely optimistic when he gave the talks a 50 percent chance of success. That is certainly the case if we are to believe Gary Samore, who served as the White House Coordinator for Arms Control and Weapons of Mass Destruction (WMD) and was commonly referred to as the 'WMD czar.' Samore, who played a key role in the earlier talks with Tehran, said in an interview with Jeffrey Goldberg in Bloomberg View, that the Iran nuclear talks have an almost zero chance of success. Of course, this is something that Jerusalem has been saying for months, if not years, but when such a pessimistic outlook comes from Israeli officials the international community has a tendency to write it off. Perhaps now the world will understand why Prime Minister Binyamin Netanyahu refused to join in the celebrations at the United Nations when Iranian President Hassan Rowhani launched his charm offensive.¶ Samore's interview just proves that the international community knows exactly what Iran wants - a nuclear bomb - but how everyone involved (Iran, the international community and even the Obama Administration) are playing for time. According to Samore, it's a 'classic truce' situation, with 'both sides benefiting from this period of diplomacy.' The goal is not to solve the problem, he says, but to postpone it until a later date. Iran and the world powers both pushed the 'Pause' button together. It's convenient for the international community and it's excellent for Iran.¶ At this rate, the Iranians could still reap the fruits - such as discussions with the United States about future cooperation, reviving their economy and a way out of their international isolation - without having to give up even a single centrifuge.¶ What Samore told Goldberg in the interview did not come as news to Israel, but the fact that he said them makes them even more important and even more worrying. The problem is that Samore is no longer on the White House payroll, having moved on to a position at Harvard.¶ And this is exactly the reason why Iran's Supreme Leader, Ayatollah Ali Khamenei, continued, on the eve of the resumption of the talks, to play down their importance and to claim that they would lead nowhere. And it is why Ali Larijani, the chairman of the Iranian parliament, called on the world powers not to make any fresh demands of Iran and not to ask for inspection of its ballistic missile project.¶ Given the predictions of Obama and Samore, I am surprised that bookmakers in London have not yet started offering odds on the nuclear talks' chances of success. Under these circumstances, they might be better off opening a line on the date that the Iranians will carry out their first test of a nuclear bomb."

### 1NC Iran Strikes (Israel)

#### No risk of Israeli strike on Iran

**Rubin, 1/26**/12 – professor at the Interdisciplinary Center in Herzliya, Israel, the Director of the Global Research and International Affairs (GLORIA) Center, and a Senior Fellow at the International Policy Institute for Counterterrorism (Barry, “Israel Isn’t Going to Attack Iran and Neither Will the United States.” http://pjmedia.com/barryrubin/2012/01/26/israel-is-not-about-to-attack-iran-and-neither-is-the-united-states-get-used-to-it/)

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

Even if it happened – wouldn’t cause extinction

Riedel 12 – Senior Fellow in the Saban Center for Middle East Policy at the Brookings Institution and a professor at Georgetown University (Bruce, 01/20, “Iran is not an existential threat,” http://thedailynewsegypt.com/global-views/iran-is-not-an-existential-threat.html)

The danger of war is growing again over Iran's nuclear ambitions. Iran is rattling its sabers, the Republican presidential candidates and others are rattling theirs. But even if Iran gets the bomb, Israel will have **overwhelming** military superiority over Iran, a fact that should not be lost in all the heated rhetoric. Former head of the Mossad, Meir Dagan, says Iran won't get the bomb until at least 2015. In contrast, Israel has had nuclear weapons since the late 1960s and has jealously guarded its monopoly on them in the region. Israel has used force in the past against developing nuclear threats. Iraq in 1981 and Syria in 2007 were the targets of highly effective Israeli air strikes against developing nuclear weapons programs. Israel has **seriously considered** conducting such a strike against Iran and may well do so especially now that it has special bunker-busting bombs from the US. Estimates of the size of the Israeli arsenal by international think tanks generally concur that Israel has about 100 nuclear weapons, possibly 200. Even under a crash program, Iran won't achieve an arsenal that size for many years — perhaps **decades**. Israel also has multiple delivery systems. It has intermediate range ballistic missiles, the Jericho, that are capable of reaching **any target** in Iran. Its fleet of F15 long-range strike aircraft can also deliver nuclear payloads. Some analysts have suggested that it can also deliver nuclear weapons from its German-made Dolphin submarines using cruise missiles. Israel will also continue to have conventional military superiority over Iran and the rest of the region. The Israel Defense Forces has a demonstrated qualitative edge over all of its potential adversaries in the region, including Iran. The Israeli air force has the capability to penetrate air defense systems with virtual impunity as it demonstrated in 2007 when it destroyed Syria's nascent nuclear capability. The IDF's intelligence and electronic warfare capabilities are vastly superior to its potential rivals. The 2006 Lebanon war and the 2009 Gaza war demonstrated that there are limits to Israel's conventional capabilities but those limits should not obscure the underlying reality of Israel's conventional military superiority over its enemies. Iran, on the other hand, has never fully rebuilt its conventional military from the damage suffered in the Iran-Iraq war. It still relies heavily for air and sea power on equipment purchased by the Shah 40 years ago, much of which is antique today. Moreover, the June 2010 United Nations sanctions, UN Security Council resolution 1929, impose a very stringent arms ban on Iran. Virtually **all** significant weapons systems — tanks, aircraft, naval vessels, missiles, etc — are banned from sale or transfer to Iran. Training and technical assistance for such systems is also banned. In other words, even if Iran wants to try to improve its conventional military capability in the next few years and has the money to do so, the UN arms ban will make that close to impossible. Iran does not have the capability to produce state-of-the-art weapons on its own, despite its occasional claims of self-sufficiency. It certainly cannot build a modern air force to compete with the IDF on its own. Finally, Israel will continue to enjoy the support of the world's only superpower for the foreseeable future. Assistance from the United States includes roughly $3 billion in aid every year. That is the longest running financial assistance program in American history, dating back to the 1973 war. It is never challenged or cut by Congress and permits Israeli planners to do multi-year planning for defense acquisitions with great certitude about what they can afford to acquire. When Texas Governor Rick Perry suggested cutting aid to Israel to zero in one Republican debate, his poll numbers plummeted. He backtracked fast. US assistance is also far more than just financial aid. The Pentagon and Israel engage in constant exchanges of technical cooperation in virtually all elements of the modern battle field. Missile defense has been at the center of this exchange for over 20 years now. The United States and Israel also have a robust and dynamic intelligence relationship, which helps ensure Israel's **qualitative** edge. Every American president from Richard Nixon to Barack Obama has been a supporter of maintaining Israel's qualitative edge over its potential foes, including US allies like Egypt and Saudi Arabia. Iran, in contrast, has no major power providing it with financial help. Its arms relationships with Russia and China have been severed by Security Council Resolution 1929. Its only military ally is Syria, not exactly a powerhouse. And Syria is now in the midst of a civil war; its army is dissolving. If President Bashar Al-Assad falls, Iran is the biggest loser in the "Arab spring". Hezbollah will be the second largest loser. The deputy secretary general of Hezbollah and one of its founders, Sheikh Naim Qassem, wrote in 2007 that Syria is "the cornerstone" of Hezbollah’s survival in the region. While Syria and Hezbollah have their differences, the relationship is a "necessity" for Hezbollah. So don't let the hot air from Tehran or the Republican debates confuse the reality on the ground. Iran is a dangerous country but it is **not an existential threat** to either Israel or America.

### Obama Good – 2AC

#### 3. Congress likes the plan

Janofsky 05

[Michael, NY Times, 5/11/05, Pentagon Is Asking Congress to Loosen Environmental Laws, <http://www.nytimes.com/2005/05/11/politics/11enviro.html?_r=0>]

Dozens of groups have complained to Congress that the military's needs are covered by the laws that they seek to change and that waivers would result in conditions getting worse on and around the nation's military bases, endangering the health of millions of people. As the owner of 425 active bases and more than 10,000 training ranges, the Defense Department is widely regarded as one of the nation's leading polluters, producing vast amounts of chemicals from ordnance that leach into groundwater, as well as air pollution from military vehicles. The Environmental Protection Agency lists more than 130 Superfund sites on military bases. "Congress would never consider letting the nation's biggest corporate polluter off the hook," Heather Taylor, deputy legislative director for the Natural Resources Defense Council, said in a conference call with reporters. "Why, then, would Congress grant immunity to America's, and the world's, largest polluter?" Since 2001, the Pentagon has been asking Congress for greater latitude in complying with environmental laws. When it came to birds and animals, lawmakers were willing to compromise, granting exemptions to federal laws. But they have been more resistant to changes that might affect human health under the Clean Air Act; the Resource Conservation and Recovery Act, dealing with solid waste; and the Comprehensive Environmental Response, Compensation and Liability Act, which deals with toxic wastes and is better known as the Superfund law.

#### 4. Court shields

Stimson 9

[09/25/09, Cully Stimson is a senior legal fellow at the Heritage Foundation and an instructor at the Naval Justice School former American career appointee at the Pentagon. Stimson was the Deputy Assistant Secretary of Defense for Detainee Affairs., “Punting National Security To The Judiciary”, http://blog.heritage.org/2009/09/25/punting-national-security-to-the-judiciary/]

So what is really going on here? To those of us who have either served in senior policy posts and dealt with these issues on a daily basis, or followed them closely from the outside, it is becoming increasingly clear that this administration is trying to create the appearance of a tough national-security policy regarding the detention of terrorists at Guantanamo, yet allow the courts to make the tough calls on releasing the bad guys. Letting the courts do the dirty work would give the administration plausible cover and distance from the decision-making process. The numbers speak for themselves. Of the 38 detainees whose cases have been adjudicated through the habeas process in federal court in Washington, 30 have been ordered released by civilian judges. That is close to an 80 percent loss rate for the government, which argued for continued detention. Yet, how many of these decisions has this administration appealed, knowing full well that many of those 30 detainees should not in good conscience be let go? The answer: one. Letting the courts do it for him gives the president distance from the unsavory release decisions. It also allows him to state with a straight face, as he did at the Archives speech, “We are not going to release anyone if it would endanger our national security, nor will we release detainees within the United States who endanger the American people.” No, the president won’t release detainees; he’ll sit back and let the courts to do it for him. And the president won’t seek congressional authorization for prolonged detention of the enemy, as he promised, because it will anger his political base on the Left. The ultra-liberals aren’t about to relinquish their “try them or set them free” mantra, even though such a policy threatens to put terrorists back on the battlefield. Moreover, the president would have to spend political capital to win congressional authorization for a prolonged detention policy. Obviously, he would rather spend that capital on other policy priorities. Politically speaking, it is easier to maintain the status quo and let the detainees seek release from federal judges. The passive approach also helps the administration close Gitmo without taking the heat for actually releasing detainees themselves.

#### 5. Plan’s announced in June

Ward 10 (Jake, “Bilski Decision Tomorrow (Thursday, June 17th)? Maybe?”, Anticipate This! (Patent and Trademark Law Blog), 6-17, http://anticipatethis.wordpress.com/2010/06/16/bilski-decision-tomorrow-thursday-june-17th-maybe/)

In mid-May until the end of June, the Supreme Court of the United States (SCOTUS) releases orders and opinions.  SCOTUS has yet to issue a number of decisions this term, however, and it is rapidly moving toward summer recess.  Most notable from a patent law perspective is that the decision in [Bilski v. Kappos](http://anticipatethis.wordpress.com/?s=bilski), which was argued in November 2009, has yet to be decided.

#### 6. Disad not intrinsic- a rational policymaker can do the plan and pass \_\_\_ - key to effective decisionmaking

#### TPA thumps the disad – Obama is pushing

Lowrey 1/30 (Annie, “Obama and G.O.P. Facing Opposition to Trade Pacts”, 2014, http://www.nytimes.com/2014/01/31/business/reid-pushes-back-on-fast-track-trade-authority.html)

At issue is the so-called fast-track trade approval, a green light from Congress for the Obama administration to complete two sweeping trade deals, one with Pacific Rim countries and the other with Europe. President Obama, supported by many Republicans and business groups, has asked for fast-track approval to ease the eventual passage of his trade deals, which he argues would provide a shot in the arm for the economy. But he has run into staunch opposition from members of his own party, as well as labor and environmental groups. They fear a further loss of jobs to the forces of globalization and technological change and inadequate protections against environmental damage. In the past, trade deals often faced congressional opposition and long parliamentary delays, but eventually they almost inevitably won approval. This time, Mr. Obama appears to be losing the argument. And without fast track, which ensures that lawmakers cannot make changes to either deal, foreign trading partners might hesitate to agree to American demands. This week, Senator Harry Reid of Nevada, the majority leader, came out against fast track, also known as trade-promotion authority, just a day after Mr. Obama had pushed for the two trade deals in his State of the Union address. “I’m against fast track,” Mr. Reid told reporters on Wednesday. “Everyone would be well advised just to not push this right now.” Mr. Reid’s comments suggested that the Senate might not even take up fast-track legislation in the near term — let alone pass it — complicating the administration’s continuing negotiations with foreign leaders. In July, the United States and the European Union opened trade talks, which are still considered to be in the preliminary stages. In December, Washington and 11 other Pacific Rim nations ended a round of talks on a sweeping trade deal aimed not only at reducing tariffs and trade barriers but also providing other benefits sought by some businesses. Officials involved in the talks said they would resume this year. The White House said that the administration was aware of Mr. Reid’s position and that it would continue to campaign for fast-track authority and the two trade deals more generally. “Leader Reid has always been clear on his position on this particular issue,” said Jay Carney, Mr. Obama’s press secretary. The president, he said, “will continue to work to enact bipartisan trade-promotion authority.” The United States trade representative, Michael Froman, said the administration remained confident it could negotiate a comprehensive deal that would bolster the American economy — and win over skeptics. “We have made clear that we’re committed to negotiating a high-standard, ambitious comprehensive deal,” Mr. Froman said in an interview. “If we can achieve that with our trading partners, we’ll be able to sell it to the American public and to Congress.” But Mr. Reid’s comments cast serious doubt on the administration’s push. It also led to a sharp backlash from Republicans, who generally support such trade deals and see an opportunity to capitalize on the election-year rift among Democrats. House Republican leaders kicked off their annual retreat, at a Chesapeake Bay resort, by highlighting the divide between the president and the Senate majority leader. “Is the president going to stand up and lead on this issue?” asked House Speaker John A. Boehner of Ohio. Representative Kevin McCarthy of California, the No. 3 House Republican leader, added: “The president said he has a phone in his hand. The first call he should make is to Harry Reid to talk about trade.” At the heart of the disagreement among Democrats is the effect of trade liberalization on jobs. Mr. Obama and many moderate Democrats, supported by business leaders and many economists, argue that the deals would lift exports and help create more valuable jobs in manufacturing and services, even if some other jobs were lost to cheaper foreign producers. The authority “is critical to completing new trade agreements that have the potential to unleash U.S. economic growth and investment,” Randall L. Stephenson, the chairman of AT&T and leader of the Business Roundtable, a major lobbying group, said in a statement. But many Democrats, joined by some economists, fear that any new trade deals, whatever their overall benefit to the economy, are likely to exacerbate the income inequality that Mr. Obama has made the banner economic issue of his remaining years in office.

#### 7. PC not real

Hirsch 13

[Michael, chief correspondent for the National Journal and former senior editor and columnist at Newsweek, "There's no such thing as political capital.” 2/27/13, <http://news.yahoo.com/no-thing-political-capital-201002390--politics.html>]

On Tuesday, in his State of the Union address, President Obama will do what every president does this time of year. For about 60 minutes, he will lay out a sprawling and ambitious wish list highlighted by gun control and immigration reform, climate change and debt reduction. In response, the pundits will do what they always do this time of year: They will talk about how unrealistic most of the proposals are, discussions often informed by sagacious reckonings of how much “political capital” Obama possesses to push his program through. Most of this talk will have no bearing on what actually happens over the next four years. Consider this: Three months ago, just before the November election, if someone had talked seriously about Obama having enough political capital to oversee passage of both immigration reform and gun-control legislation at the beginning of his second term—even after winning the election by 4 percentage points and 5 million votes (the actual final tally)—this person would have been called crazy and stripped of his pundit’s license. (It doesn’t exist, but it ought to.) In his first term, in a starkly polarized country, the president had been so frustrated by GOP resistance that he finally issued a limited executive order last August permitting immigrants who entered the country illegally as children to work without fear of deportation for at least two years. Obama didn’t dare to even bring up gun control, a Democratic “third rail” that has cost the party elections and that actually might have been even less popular on the right than the president’s health care law. And yet, for reasons that have very little to do with Obama’s personal prestige or popularity—variously put in terms of a “mandate” or “political capital”—chances are fair that both will now happen. What changed? In the case of gun control, of course, it wasn’t the election. It was the horror of the 20 first-graders who were slaughtered in Newtown, Conn., in mid-December. The sickening reality of little girls and boys riddled with bullets from a high-capacity assault weapon seemed to precipitate a sudden tipping point in the national conscience. One thing changed after another. Wayne LaPierre of the National Rifle Association marginalized himself with poorly chosen comments soon after the massacre. The pro-gun lobby, once a phalanx of opposition, began to fissure into reasonables and crazies. Former Rep. Gabrielle Giffords, D-Ariz., who was shot in the head two years ago and is still struggling to speak and walk, started a PAC with her husband to appeal to the moderate middle of gun owners. Then she gave riveting and poignant testimony to the Senate, challenging lawmakers: “Be bold.” As a result, momentum has appeared to build around some kind of a plan to curtail sales of the most dangerous weapons and ammunition and the way people are permitted to buy them. It’s impossible to say now whether such a bill will pass and, if it does, whether it will make anything more than cosmetic changes to gun laws. But one thing is clear: The political tectonics have shifted dramatically in very little time. Whole new possibilities exist now that didn’t a few weeks ago. Meanwhile, the Republican members of the Senate’s so-called Gang of Eight are pushing hard for a new spirit of compromise on immigration reform, a sharp change after an election year in which the GOP standard-bearer declared he would make life so miserable for the 11 million illegal immigrants in the U.S. that they would “self-deport.” But this turnaround has very little to do with Obama’s personal influence—his political mandate, as it were. It has almost entirely to do with just two numbers: 71 and 27. That’s 71 percent for Obama, 27 percent for Mitt Romney, the breakdown of the Hispanic vote in the 2012 presidential election. Obama drove home his advantage by giving a speech on immigration reform on Jan. 29 at a Hispanic-dominated high school in Nevada, a swing state he won by a surprising 8 percentage points in November. But the movement on immigration has mainly come out of the Republican Party’s recent introspection, and the realization by its more thoughtful members, such as Sen. Marco Rubio of Florida and Gov. BobbyJindal of Louisiana, that without such a shift the party may be facing demographic death in a country where the 2010 census showed, for the first time, that white births have fallen into the minority. It’s got nothing to do with Obama’s political capital or, indeed, Obama at all. The point is not that “political capital” is a meaningless term. Often it is a synonym for “mandate” or “momentum” in the aftermath of a decisive election—and just about every politician ever elected has tried to claim more of a mandate than he actually has. Certainly, Obama can say that because he was elected and Romney wasn’t, he has a better claim on the country’s mood and direction. Many pundits still defend political capital as a useful metaphor at least. “It’s an unquantifiable but meaningful concept,” says Norman Ornstein of the American Enterprise Institute. “You can’t really look at a president and say he’s got 37 ounces of political capital. But the fact is, it’s a concept that matters, if you have popularity and some momentum on your side.” The real problem is that the idea of political capital—or mandates, or momentum—is so poorly defined that presidents and pundits often get it wrong. “Presidents usually over-estimate it,” says George Edwards, a presidential scholar at Texas A&M University. “The best kind of political capital—some sense of an electoral mandate to do something—is very rare. It almost never happens. In 1964, maybe. And to some degree in 1980.” For that reason, political capital is a concept that misleads far more than it enlightens. It is distortionary. It conveys the idea that we know more than we really do about the ever-elusive concept of political power, and it discounts the way unforeseen events can suddenly change everything. Instead, it suggests, erroneously, that a political figure has a concrete amount of political capital to invest, just as someone might have real investment capital—that a particular leader can bank his gains, and the size of his account determines what he can do at any given moment in history. Naturally, any president has practical and electoral limits. Does he have a majority in both chambers of Congress and a cohesive coalition behind him? Obama has neither at present. And unless a surge in the economy—at the moment, still stuck—or some other great victory gives him more momentum, it is inevitable that the closer Obama gets to the 2014 election, the less he will be able to get done. Going into the midterms, Republicans will increasingly avoid any concessions that make him (and the Democrats) stronger. But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “Winning wins.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote. Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a bandwagon effect.”

#### 8. Public likes the plan

ENS 01

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

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

#### Key to PC

Sinclair UCLA Prof of Poli Sci 09 - Professor Emerita of Political Science at UCLA.

[Barbara, "Barack Obama and the 111th Congress: Politics as Usual?" http://www.ou.edu/carlalbertcenter/extensions/spring2009/Sinclair.pdf]

Whether the stimulus bill was even in danger of losing significant public support is unclear; but Obama's efforts meant he got the credit when the bill passed to strong public acclaim. A February 10 Gallup poll found that 59 percent of the public favored the stimulus bill while 33 percent opposed it; furthermore, support had increased after Obama went on the road to sell the program. Obama himself maintained his high approval ratings with the American people and the proportion approving of Congress increased significantly.7 Voters approved of the job congressional Democrats are doing by 46 percent to 45 percent and disapproved of the GOP’s performance by 56 percent to 34 percent, according to a February 17-18 poll conducted by Fox News/Opinion Dynamics.8 By using the bully pulpit effectively, Obama makes it easier for congressional Democrats to support his initiatives and for the congressional leaders to deliver for him legislatively.9 When the president attempts to build public support for his agenda by “going to the people,” it is sometimes interpreted as “going over the heads” of members of Congress to pressure them via their constituents and is thought to breed resentment. However, when the president's efforts allow members to do what they would like to do anyway, their response is likely to be quite different. And if a few Republicans do, in fact, feel constituency pressure, any resentment is likely to be considered a reasonable price to pay for their occasional votes.

#### [Impact Defense]

# 2AC Round 6 Districts

## Case

### Court Clog – 2AC

#### 1. Court clog inevitable and impact is empirically denied

Ware 13

[Stephen, Professor of Law, University of Kansas. J.D. University of Chicago, 1990; B.A. University of Pennsylvania, 1987., 2013 Yeshiva University

Cardozo Journal of Conflict Resolution, IS ADJUDICATION A PUBLIC GOOD? "OVERCROWDED COURTS" AND THE PRIVATE SECTOR ALTERNATIVE OF ARBITRATION, L/N]

Courts are underfunded, dockets are crowded, and litigation is slow. These observations lead many lawyers and judges to call for increased court funding. While I would like to see a significantly higher percentage of government spending go to courts, I do not believe that is likely to happen. So I suggest we think about "underfunded" courts differently. Courts provide a service - binding adjudication - to disputing parties. This service is heavily subsidized by tax dollars, as only a portion of courts' costs are covered by fees paid by litigants. This public subsidy, basic economics suggests, causes demand for this service to exceed supply so disputing parties queue up to receive the subsidy. A court's time and other resources are allocated among parties according to their willingness to wait. In contrast, other goods and services are, in a market economy, allocated according to willingness to pay. If parties had to pay more to use the court system, fewer would use it, and thus those who did would not have to wait so long. In short, the related phenomena of "**underfunded" courts, crowded dockets and justice delayed** are caused by the public subsidy for litigants. Focus on this subsidy for parties in litigation enables a contrast with the absence of a subsidy for parties in the private sector alternative to litigation, arbitration, which (like litigation) also provides disputing parties with binding adjudication. While the public-sector court system provides binding adjudication virtually free of charge to the disputing parties, the private sector arbitration system generally charges them something like market rates for it. [\*900] Which disputing parties deserve subsidized adjudication and which should have to pay market rate for it? Our society's failure to confront this important question allows all disputing parties to pursue the subsidy for themselves. The result is that parties who do not deserve the subsidy - parties who should be paying market rates for adjudication - are consuming public resources that would be better spent on parties who do deserve the subsidy. One way to end the public subsidy for cases that do not deserve it is for courts to charge the parties to such a case a fee high enough to reimburse the court for its costs of adjudicating the case. Several thoughtful commentators have proposed such "user fees." This Article assesses those proposals and suggests that user fees would make litigation look more like arbitration. It concludes by considering the possibility that the public-sector court system and private arbitration organizations could compete in the market for unsubsidized adjudication and in the market for subsidized adjudication. In short, this Article places discussions of overcrowded courts and court user fees in the context of a society - our society - with a strong private sector alternative to our courts. II. "Overcrowded Courts" and the Private Sector Alternative of Arbitration A. "Overcrowded Courts" The economic downturn of the last few years required many families and businesses to reduce their spending. The same is true of state court systems. n1 State court funding cuts in recent years have prompted protests decrying the harms caused by underfunded courts. n2 In the words of American Bar Association ("ABA") President [\*901] Bill Robinson, "state court underfunding is a threat to our system of justice and all we believe in as Americans and as an association. It is harming clients, slowing our nation's economic recovery and undermining our liberty." n3 If the reality is anywhere near this dire - "a threat to our system of justice and all we believe in as Americans" - then we truly have a crisis on our hands. Still worse, it appears to be a long-running crisis. Cries of alarm about underfunded courts, crowded dockets and justice delayed, which we all know is justice denied, n4 have been sounded by lawyers and courts for over a half a century. In 2012, the ABA President warned that "court underfunding is a threat to our system of justice." n5 Similarly, the previous decade was also a "time of scarce judicial resources and crowded dockets" n6 so the ABA in 2004 "formed a Commission on State Court Funding ... to point out that underfunded courts lack adequate resources to meet caseload demands." n7 Similarly, hanging over the 1990's was a "looming crisis in the nation" due in part to "dangerously crowded dockets" and "overburdened judges." n8 In 1993, an [\*902] ABA committee issued a report providing an "Overview of the Crisis in America's System of Justice." n9 Going back further in time reveals more of the same. In the 1980's, one ABA president wrote a column entitled "the underfunded commitment to justice," n10 and a few years later a different ABA president said "we must attack the underfunding of the justice system." n11 In the 1970's, an ABA report said problems like "overcrowded dockets" and "generally inadequate resources" had "reached crisis proportions." n12 While this "crisis" in the 1970's was "alarming," n13 in the 1960's it was "staggering." n14 A 1969 commentator said "the increased workload which has engulfed the courts had already stretched our judicial system to its limits by the mid-twentieth century." n15 This assessment of the mid-twentieth [\*903] century is confirmed by a 1952 report stating that "the problem of the crowded docket is one which in recent years has grown more and more disturbing." n16 Some suggest this problem goes back, not just these sixty years, but for hundreds, or even thousands, of years. n17 In short, the "crisis" of "underfunded" courts, crowded dockets and justice delayed may always be with us. n18

#### 2. No spillover --- strategic docket control prevents runaway caseloads

George 98 (Tracey E., Associate Professor – University of Missouri School of Law, “Developing a Positive Theory of Decisionmaking on U.S. Courts of Appeals”, Ohio State Law Journal, 58 Ohio St. L.J. 1635, Lexis)

Based on the theories and empirical evidence presented here, we can explain and predict micro-level judicial behavior on the en banc courts of [\*1695] appeals in light of the party of the President who appointed the judges. Most courts of appeals judges vote their attitudes. But the influence of individual attitudes on judicial decisionmaking appears to be vitiated for a minority of judges by the presence of other judges and the Supreme Court. These judges vote strategically. These two findings taken together mean that courts-the macro-level unit of analysis- are balanced. Thus, the institutional structure of the federal courts (collegiality and hierarchy) is successful at achieving the goal of limiting or moderating the behavior of judges at the intermediate appellate level. The use of multi-judge decisionmaking bodies combined with the presence of actors who can limit or reverse their decisions has the net effect of curbing preference maximization. That these internal and external constraints prevent unfettered discretion is probably by design, though the means by which the goal is achieved may be other than expected. The result is equilibrium on a given court between those judges acting to pursue policy and those seeking to achieve strategic ends. Most judges believe they are classicists and go to great lengths to explain their decisions by reference to existing law. Rare is the judge who will go on record saying she is a raw instrumentalist. And despite legal realism, critical legal theory, and their permutations, most scholars and practitioners also perceive themselves largely as classicists. Consequently, many judges, scholars, and practitioners espousing normative theory may challenge the relevance of my positive theory to their work. But, for normative theory to be coherent, it must respond to what is actually going on, not merely what judges perceive themselves to be doing, or the prescription can only be persuasive to those judges already receptive to the idea. Normative theory uninformed by positive theory is built upon a foundation that is inherently flawed because it relies on the premise that judges are following classical legal theory. Taken as a whole, then, what are the implications of my findings for the development of normative theories? On some level, the answer is obvious: the most fully articulated and grounded normative theories should incorporate, consider, and respond to the realities of how judges make decisions. The question of the implications of my findings for specific prescriptive theories is best left for those scholars developing such theories. I would suggest, however, that scholars concerned about the growing caseload and size of the federal circuit courts because they fear that the larger circuit courts will be too divided and that the Supreme Court will lose its ability to retain control over the development of national law should reconsider the degree of their fear. My findings for the Fourth Circuit indicate that an internal equilibrium is achieved within an appellate court and remains even as the court grows-a balance achieved by strategic judges restraining the power of ideology-driven judges. Similarly, the Supreme Court maintained some [\*1696] authority over the decisions of the Fourth Circuit, acting as a check on its decisionmaking, despite the geometric increases in caseload.

### Navy DA – 2AC

#### 1. Navy decline inevitable- Rising powers and budget cuts

Gibbons-Neff 13

[Thomas, Free Beacon, Expert: U.S. Naval Supremacy Is in Trouble, 8/1/13, <http://freebeacon.com/expert-u-s-naval-supremacy-is-in-trouble/>]

Former U.S. Deputy Undersecretary of the Navy Seth Cropsey told an audience at the Heritage Foundation Thursday afternoon that American sea power and global projection is “in trouble.” Cropsey appeared at Heritage to highlight the release of his new book Mayday: The Decline of American Naval Supremacy. Michaela Dodge, policy analyst of defense and strategic policy at the Heritage Foundation, highlighted the current plight of U.S. naval forces before Cropsey’s speech. Under current sequestration cuts, the Navy will be reduced from approximately 285 ships to 195 in the next thirty years, Dodge said. While Cropsey was quick to criticize sequestration’s effects on U.S. Naval power, his main focus was the looming threat posed by China. Cropsey highlighted the fact that the last Maritime strategic review was conducted over six years ago and did not mention China at all. “The 2007 strategy did not mention China, not once.” Cropsey said. “The Chinese have made it clear that its policy is to **deny the United States access to the Western Pacific**.” “China’s military budget continues to grow … in double percentage points each year,” Cropsey added. With countries in various stages of unrest, Cropsey pointed to the fact that countries **like Iran, China, and Russia have already begun projecting naval power** in various parts of the globe. Cropsey pointed to the fact that Russia is in the process of having a permanent twelve-ship presence in the Mediterranean Sea. With rival countries encroaching on American sea power Cropsey lamented the state of the U.S. 6th fleet—the group of ships responsible for Mediterranean operations. “The Eastern Med has reverted back to instability… and the U.S. 6th Fleet … that once composed of two carrier battle groups, today consists of a command ship based in Italy and three [surface ships],” Cropsey said. Cropsey also stressed the threat of the recently tested DF-21D a Chinese anti-ship ballistic missile designed to destroy large surface ships from over 1,200 miles away.

#### 3. Environmental restrictions don’t hurt the Navy – their impacts are overblown

London 9 -- J.D. Candidate, 2011 @ Denver Univ Law School (Ian K, 2009, "Comment: Winter v. National Resources Defense Council: Enabling the Military's Ongoing Rollback of Environmental Legislation," 87 Denv. U.L. Rev. 197, L/N)

First, the Court deferred to the Navy's claim that no evidence connected the forty years of SOCAL exercises with a single sonar-related injury to a marine mammal. n94 Yet, the Navy itself admitted that the exercises would affect approximately **80,000 marine mammals**, some of which would be severely injured or killed. n95 In fact, in 2000, the Navy and NOAA Fisheries conducted an investigation into a mass marine mammal stranding event in the Bahamas. n96 The report concluded that the seventeen marine mammals were driven onto shore by injuries from underwater acoustic sources. n97 The report connected those injuries to a series of contemporaneous Navy MFA sonar exercises, and the Navy pledged to be more careful in the future. n98 The evidence that the use of MFA sonar causes mass marine mammal strandings and deaths is "overwhelming," and the Navy was well aware of it. n99 It is surprising, then, that the Court deferred to the Navy's assertion that there would be no irremediable damage to the environment. It is difficult to think of an injury less remediable than the death of any number of marine mammals. By contrast, the Navy's probable injuries in the case of a mid-training sonar shutdown are quite remediable. A mid-exercise MFA sonar shutdown would **delay the** completion of the **exercise**, and would undoubtedly raise costs, but **it would not make completion of the exercise impossible**. n100 The Navy mischaracterized this inconvenience as an irremediable injury, and the effect on marine mammals as negligible. The majority accepted this mischaracterization at face value. Second, the Court observed that the injunction's shutdown provision would amount to a hundredfold increase in the surface area of the shutdown zone. n101 However, at the Navy's urging, the Court disregarded the observation that this MFA sonar shutdown zone is roughly the same size as the Navy's existing long-frequency active ("LFA") sonar shutdown zone. n102 The Court, perhaps humbled by the Navy's chastisement [\*207] of the Ninth Circuit, declined to explore the effect on the training exercises of congruent MFA/LFA shutdown zones. n103 By deferring to the Navy's unsubstantiated claim that MFA sonar and LFA sonar are irreconcilably dissimilar in terms of the effect of the technology on marine mammals, n104 the Court failed to consider a range of factors that could have shown the burden to be **smaller than the Navy asserted** it to be. Third, the Court deferred to the Navy regarding the power-down provision. The Court correctly recognized the Navy's important interest in training under surface ducting conditions when they exist. n105 Presumably, however, the conditions that conceal enemy submarines also conceal marine mammals. In other words, when surface ducting conditions exist, the Navy must be just as vigilant in avoiding marine mammals as it is in looking for enemy submarines. As Justice Breyer argued, the Court could have imposed the Ninth Circuit's provisional injunction, requiring the Navy to power down the sonar in proportion to the proximity of marine mammals to the vessel. n106 Justice Breyer's compromise would allow the Navy to continue training, while mitigating the injury to nearby marine mammals. Fourth, the Court deferred to the Navy regarding the connection between the SOCAL training exercises and national security. **The Navy asserted that the injunctions would jeopardize national security**. n107 This conclusion was an exaggeration. **The injunctions issued** by the district court **would not make training exercises impossible**; **they would merely cause delay** and disruption. n108 Also, the injunctions applied to training exercises in SOCAL waters, and not to Navy actions generally. n109 The Navy also argued the injunction would create "an unacceptable risk to the Navy's ability to train for essential overseas operations at a time when the United States is engaged in war in two countries." n110 This assertion was also an exaggeration. While the United States was indeed at war in Iraq and in Afghanistan, none of the United States' adversaries in those countries fielded a naval force--let alone the advanced "silent submarines" that MFA sonar was designed to detect. The Navy failed to explain the connection between adequate sonar training and combat readiness against these land-based, non-state forces. The Navy failed to explain how a delay in sonar training presented an "unacceptable risk" to [\*208] ground forces in Iraq and Afghanistan. n111 The Navy also failed to explain how the injunction affected the combat readiness of already-deployed forces, other than underlining the importance of fleet-wide integration. n112 Professor Burke refers to such **unsubstantiated claims** as "thought-terminating cliches." n113

### Air Force

#### Air force complies now

Searles 12 (Nadine, Nicholas School of the Environment at Duke University, “NEPA Compliance with Classified Actions,” October 2012)

NEPA and the United States Air Force The CEQ allows each agency to develop specific procedures for implementing the law and regulations and customizing these procedures to fit its own mission and needs. For example, based on 32 CFR part 989, the U.S. Air Force (USAF) developed Policy directive 32-70 and uses Air Force Instruction 32-7061 to comply with the Environmental Impact Analysis Process (EIAP), fulfilling the procedural requirements of NEPA outlined under the CEQ regulations. Like all federal agencies, the US Air Force’s goal is ensuring commitment to the EIAP by producing a defendable document that meets the spirit, intent, and objective of NEPA and the environmental impact analysis process. To initiate the EIAP, the USAF uses Air Force Form 813, Request for Environmental Impact Analysis. Air Force Form 813 To efficiently initiate the NEPA process in the Air Force, the proponent must complete and submit to the USAF Environmental Management department an AF Form 813. The proposed action is evaluated by subject matter experts with respect to their field of expertise (e.g., natural/cultural resources, water quality, air quality, etc.) to analyze and disclose potential environmental effects in the proposed project. The environmental impact analysis can be positive or negative; have long or short term impacts; direct, indirect or cumulative effects. The analysis gathered determines the level of effort required to complete the NEPA process. This level of effort can range from a simple categorical exclusion; meaning the level of effort has been determined to have no substantive environmental impact, or to a higher level of effort such as an environmental assessment (EA) or environmental impact statement (EIS); which requires a more complex and extensive study. If the EA document provides sufficient evidence and analysis indicating the environmental impacts are insignificant, then a finding of no significant impact or FONSI is the defining document. However, if the document provides sufficient evidence and analysis indicating the proposed project is to be a major federal action significantly affecting the quality of the human environment or if the action is controversial, more analysis is required and an EIS must be prepared.

#### Air power fails

Guardiano 9 (John, Marine – Iraq and Worker – Army’s Future Combat Systems, “Air Power Alone Cannot Win Wars”, New Majority, 8-12, http://www.newmajority.com/air-power-alone-cannot-win-wars)

One of the great lessons of recent military history is that wars cannot be won through air power alone; you need boots on the ground. Recall, for instance, the exaggerated claims of “shock and awe” prior to the 2003 liberation of Iraq. Exponents of air power had assured us that the decisive exercise of military power, principally through aerial bombardment, could paralyze the enemy, destroy his will to fight, and render him impotent. In fact, it was only after U.S. soldiers and Marines engaged the enemy in close combat that Iraqi government and Fedayeen forces surrendered and Iraq was liberated. Even then it took additional close combat over several years ─ in Fallujah, Mosul, Najaf, Baghdad, and elsewhere ─ before the military component of the Iraq War was truly won. And Iraq is hardly the only example that proves the crucial necessity of ground forces in modern-day conflicts. In Afghanistan, for instance, U.S. Marines are today engaging the enemy in close-quarters combat to protect the Afghan citizenry. Jets and air ordinance can’t do this; only soldiers and Marines can. The Israelis, too, have learned the hard way that ground forces are integral to victory. Indeed, their 2006 battle against Hezbollah made heavy use of air, naval, and rocket attacks, but to little avail. Israeli tanks, moreover, were destroyed by Hezbollah guerillas, who made effective use of advanced technology to fight the powerful Israeli military to a standstill.The lesson then and now is clear: In significant respects, air power is irrelevant to modern-day conflicts. Military success today requires small-scale infantry units who can fight lethally and with precision in populated areas filled with civilian non-combatants. And our infantry units had better be equipped with the latest and greatest technology: because our enemies certainly are, thanks to the internet, eBay, and other virtual bazaars. Yet, old habits die hard; the siren song of air power ─ the false allure of “shock and awe” ─ lives on. Its latest manifestation occurred last week in the Wall Street Journal, where retired Air Force General Chuck Wald argues that an American military “bombing campaign would set back Iranian nuclear development…”

## T

### T- Restrinction=Prohibit -2AC NEPA

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

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

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

#### We meet – NEPA is a restriction

Abby 09

[Robert, Director of the Bureau of Land Management, Requirements for Processing and Approving Temporary Public Land Closure and Restriction Orders , 12/11/09 , <http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2010/IM_2010-028.html>]

National Environmental Policy Act (NEPA) analysis is required prior to the BLM closing the public lands to certain uses or restricting specific uses of the public lands under the authorities of 43 CFR § 8364.1, 8351.2-1, and 6302.19. Most closures and restrictions implemented by the BLM fall into these categories. Adequate NEPA analysis and documentation for temporary closures and restrictions may include: Categorical Exclusions (CX) Environmental Assessments (EA) Environmental Impact Statements (EIS) (i.e., specific closure decisions adopted in a completed Resource Management Plan)

#### 2. Judicial restriction means regulation

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

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

3. **Counter interpretation – restrict means to limit through conditions.**

**Cambridge Dictionary 9** (Cambridge Dictionary of American English, *Restrict – Definition*, http://dictionary.cambridge.org/define.asp?key=restrict\*1+0&dict=A)

Restrict

Verb [T]

To limit (an intended action) esp. by setting the conditions under which it is allowed to happen

The state legislature voted to restrict development in the area.

Efforts are under way to further restrict cigarette advertising.

#### Restriction is limitation not prohibition

CAC 12, COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. ALTERNATIVE MEDICINAL CANNABIS COLLECTIVE et al., Defendants and Appellants, DIVISION ONE, 207 Cal. App. 4th 601; 143 Cal. Rptr. 3d 716; 2012 Cal. App. LEXIS 772

We disagree with County that in using the phrases “further restrict the location or establishment” and “regulate the location or establishment” in [\*615] section 11362.768, subdivisions (f) and (g), the Legislature intended to authorize local governments to ban all medical marijuana dispensaries that are otherwise “authorized by law to possess, cultivate, or distribute medical marijuana” (§ 11362.768, subd. (e) [stating scope of section's application]); the Legislature did not use the words “ban” or “prohibit.” Yet County cites dictionary definitions of “regulate” (to govern or direct according to rule or law); “regulation” (controlling by rule or restriction; a rule or order that has legal force); “restriction” (a limitation or qualification, including on the use of property); “establishment” (the act of establishing or state or condition of being established); “ban” (to prohibit); and “prohibit” (to forbid by law; to prevent or hinder) to attempt to support its interpretation. County then concludes that “the ordinary meaning [\*\*\*23] of the terms, ‘restriction,’ ‘regulate,’ and ‘regulation’ are consistent with a ban or prohibition against the opening or starting up or continued operation of [a medical marijuana dispensary] storefront business.” We disagree.¶CA(9)(9) The ordinary meanings of “restrict” and “regulate” suggest a degree of control or restriction falling short of “banning,” “prohibiting,” “forbidding,” or “preventing.” Had the Legislature intended to include an outright ban or prohibition among the local regulatory powers authorized in section 11362.768, subdivisions (f) and (g), it would have said so. Attributing the usual and ordinary meanings to the words used in section 11362.768, subdivisions (f) and (g), construing the words in context, attempting to harmonize subdivisions (f) and (g) with section 11362.775 and with the purpose of California's medical marijuana [\*\*727] statutory program, and bearing in mind the intent of the electorate and the Legislature in enacting the CUA and the MMP, we conclude that HN21Go to this Headnote in the case. the phrases “further restrict the location or establishment” and “regulate the location or establishment” in section 11362.768, subdivisions (f) and (g) do not authorize a per se ban at the local level. The Legislature [\*\*\*24] decided in section 11362.775 to insulate medical marijuana collectives and cooperatives from nuisance prosecution “solely on the basis” that they engage in a dispensary function. To interpret the phrases “further restrict the location or establishment” and “regulate the location or establishment” to mean that local governments may impose a blanket nuisance prohibition against dispensaries would frustrate both the Legislature's intent to “[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects” and “[p]romote uniform and consistent application of the [CUA] among the counties within the state” and the electorate's intent to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes” and “encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.”

### T – Hostilities – 2AC

#### 2. Hostilities a state of confrontation

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

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

## CP

### CP – 2AC w/NEPA

#### Any exemption is used as a trump card – takes out solvency

Stellakis 10

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

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

#### D) Judicial interprtations key – solves extinction

Villmer ’10 (Matthew,- attorney with the law firm of Emmanuel, Sheppard & Condon 11 Fl. Coastal L. Rev. 321)

The National Environmental Policy Act (NEPA or the Act) 1 greatly improved United States environmental policy, promising judicial oversight to federal actions. However, due to years of judicial interpretation that significantly reduced NEPA's requirements, the Act lost its substantive impact. This erosion of NEPA protections risked local and regional **disaster in the nuclear era**--but now, government contravention of NEPA provisions risks even more: **complete global destruction**. This Article follows the creation, development, and eventual demise of NEPA's environmental protections. The Article tracks NEPA's application throughout the last thirty years using three case studies and particularly analyzes the United States government's intentional evasion of the Act's safeguards. This Article then culminates with a detailed proposition for rehabilitating NEPA to its former status as an environmental safeguard for not only the United States, but the earth as a whole. By amending NEPA to adequately protect the environment, humanity will ensure its future on this planet.

### Amendment CP – 2AC New

#### 1. Perm do both - solves the link

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

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

#### 2. China will model the plan – solves pollution

Goldman 5 (Patti, Managing Attorney for Earthjustice's Seattle office, “Environmental Law in China,” 10-22-5, <http://earthjustice.org/features/dispatches-from-china>)

Sun Youhai, the Director of the Environmental and Resource Committee of the People's Congress provided an overview of the development of China's environmental law, moving from an early period of little regulation to framework laws and then progressive amendments and enactment of new laws to cover various modes of pollution and natural resource issues. He candidly identified the key weaknesses in the current scheme as: (1) lack of enforcement because local governments are so closely tied to and economically dependent (through their tax revenues) on the polluting industries; and (2) the lack of specific standards and implementing systems in the current laws. However, he expressed optimism that China could attain a stronger legal environmental protection regime due to greater public attention to the environment, a growing focus on public participation in environmental decisionmaking, and current government policies that favor building a harmonious society that integrates economic development, sustainability, human health and environmental protection. What was striking to this American observer was the strength of the pro-environment rhetoric coming from a Chinese official. Sun Youhai admitted that economic development is a strong force that often trumps environmental protection, but he then identified the need to have mechanisms in place to curb that impulse. He also gave credence to embodying into Chinese law such concepts as the precautionary principle, corporate social responsibility, and the polluter pays principle. And he touted the benefits of public participation as anti-environmental forces in the United States are poised to weaken the U.S. National Environmental Policy Act. The afternoon turned to China's 2003 Environmental Impact Assessment law with Wang Canfa, Professor at China University of Politics and Law and founder and director of the Center for Legal Assistance to Pollution Victims. He walked through the law's § Marked 19:50 § provisions with criticisms that echo those experienced under the U.S. National Environmental Policy Act. For example, a power plant divided its project into two components, neither of which warranted a full environmental impact assessment alone when such an assessment would be required by the project as a whole. He also lamented the fact that an environmental impact assessment does not compel the government to make the most environmentally sound decision and recounted an example where the government's analysis of an appeal supported canceling construction of a high-voltage electric line but it allowed the project to proceed in the end. While many of the issues resemble those still experienced in the U.S., China's law suffers from its early stage where implementation mechanisms are still not fully developed. When the law was adopted, a provision that would have allowed citizens to enforce the law's mandates was rejected. As a result, advocates like Professor Wang are struggling to create effective mechanisms for administrative and judicial review. The law's principal enforcement mechanism is currently in the hands of the government, which recently responded to criticism of its lack of enforcement by ordering approximately 30 projects to stop because they had proceeded without an environmental impact assessment. While the stop work orders may seem bold on the surface, they merely delayed most of the projects by a few weeks while additional paperwork was filed. The decision to proceed with the projects received little or no scrutiny in light of the tardy assessments.

**Extinction**

**Yee and Storey 02**

[Herbert Yee, Professor of Politics and IR, Hong Kong Baptist University --AND-- Ian Storey, Lecturer in Defence Studies at Deakin, 02

“The China Threat: Perceptions, Myths and Reality,” p5]

The fourth factor contributing to the perception of a China threat is the fear of political and economic collapse in the PRC, resulting in territorial fragmentation, civil war and waves of refugees pouring into neighbouring countries. Naturally, any or all of these scenarios would have a profoundly negative impact on regional stability. Today the Chinese leadership faces a raft of internal problems, including the increasing political demands of its citizens, a growing population, a shortage of natural resources and a deterioration in the natural environment caused by rapid industrialisation and pollution. These problems are putting a strain on the central government's ability to govern effectively. Political disintegration or a Chinese civil war might result in millions of Chinese refugees seeking asylum in neighbouring countries. Such an unprecedented exodus of refugees from a collapsed PRC would no doubt put a severe strain on the limited resources of China's neighbours. A fragmented China could also result in another nightmare scenario - nuclear weapons falling into the hands of irresponsible local provincial leaders or warlords.2 From this perspective, a disintegrating China would also pose a threat to its neighbours and the world.

#### C) Doesn’t overturn deference

Griffin 11

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

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

#### 4. No solvency --- delay

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

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

## K

### Greenwashing – 2AC

#### The aff’s key – builds coalitions between the military and environment – not greenwashing

**Hopwood et al, 5 –**

[Citation: Hopwood, Bill, Mellor, Mary and O'Brien, Geoff (2005) Sustainable Development: mapping different approaches. Sustainable Development, 13. pp. 38-52. ISSN 0968-0802]

One option is that advocated by Hardin (1974) that the rich and powerful of the world have a lifeboat ethic of extreme gated communities to ensure their own privileged survival. The outcome would be a increased inequality, environmental degradation and probably wars. This trend is reflected in some to the thinking of the US government which has turned concerns about security in dealing environmental risks, mostly due to human actions (Beck, 1992), to a programme of security based on military action to protect unsustainable policies such as the USA‟s oil consumption (White House, 2000; Dalby, 2003). The alternative suggested by the Deep Greens would share out the reduction in living standards more fairly in a world that drastically reduces consumption and, they usually suggest, population. However who will decide which of the world‟s billion shall die? A return to low technology and living on the land would risk a return to the poverty and high infant mortality of the past for the west and the nightmarish present for many of the poor of the world. This too might well be a recipe for social conflict and wars. It certainly would not be a future based on the ideas of sustainable development. Reformers would reject the grim views of Hardin or deep greens while acknowledging that 15 years after Brundtland many trends are still getting worse. The challenge for them is how and why will governments and big business self reform to challenge the powerful vested interests that act in ways contrary to sustainable development. The future envisaged by transformationists takes a different view, starting from the view that environmental degradation, poverty and a lack of justice are not a historical coincidence. The linkage is not simply moral; it is rooted in a society of domination and exploitation of the environment and most people. In what O‟Connor (1989) describes as combined and uneven development, some communities and people are rich because others are poor and vice versa. O‟Riordan states that “wealth creation based on renewability and replenishment rather than exploitation ... is a contradiction in terms for modern capitalism”, so that real sustainable development requires a “massive redistribution of wealth and power‟ (1989, p93). Transformationists emphasise justice and equity believing that if these are not central to any analysis the ecological problems will be blamed upon a common „us‟, who are held equally to blame. This trend is evident in some deep ecologists thinking that holds all humanity responsible for the ecological crisis, thus masking divisions of race, class and gender. In an unequal society it is those who are least powerful who suffer poverty and lack of access to resources. The poor also have to bear the heaviest burden of ill-health, war and ecological problems (Sachs, 1999; UNDP, 2002; Agyeman et al, 2003). Transformationists‟ view of the connection between environmental degradation and human exploitation encourages the building of alliances between environmental and social justice movements. The challenge they face is how to mobilise a coalition that is powerful and cohesive enough to realise the needed changes. The core values of sustainable development as outlined by Haughton are environment protection and justice. The issues that transformations are facing, of how to combine these two, will increasingly become main stage as society faces the challenges of the future. Although open to many interpretations, sustainable development has gained wide currency. It crucially embraces the key issues for humanity of how to ensure lives worth living and our relation with the planet and our relations with each other. Rather than discarding the concept of sustainable development, it provides a useful framework in which to debate the choices for humanity. We have argued that sustainable development needs to be based on appreciation of the close links between the environment and society with feedback loops both ways and that social and environmental equity are fundamental ideas. Given the need for fundamental change, a deep connection between human life and the environment and a common linkage of power structures that exploit both people and planet we would argue that transformation is essential. However§ Marked 19:52 § , we do not see it as necessary or sensible to make an exclusive commitment to transformation. Reform now is better than nothing and transformation may not be immediately feasible. However, whilst engaging with government and business for reforms, the main focus should be to raise the issues, successful mobilisation of the media and to build coalitions linking researchers, popular protest, and direct action.

### Security – Framework/Framing

#### 3. Extinction outweighs

Bok 88

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

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

### Security – No impact

#### No impact– prefer topic specific ev

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

Against the view that panicked government officials overreact to an emergency, and unnecessarily curtail civil liberties, we suggest a more constructive theory of the role of fear. Before the emergency, government officials are complacent. They do not think clearly or vigorously about the potential threats faced by the nation. After the terrorist attack or military intervention, their complacency is replaced by fear. Fear stimulates them to action. Action may be based on good decisions or bad: fear might cause officials to exaggerate future threats, but it also might arouse them to threats that they would otherwise not perceive. **It is impossible to say in the abstract whether decisions and actions provoked by fear are likely to be better than decisions and actions made in a state of calm**. But our limited point is that there is no reason to think that the fear-inspired decisions are likely to be worse. For that reason, the existence of fear during emergencies does not support the antiaccommodation theory that the Constitution should be enforced as strictly during emergencies as during non-emergencies. C. The Influence of Fear during Emergencies Suppose now that the simple view of fear is correct, and that it is an unambiguously negative influence on government decisionmaking. Critics of accommodation argue that this negative influence of fear justifies skepticism about emergency policies and strict enforcement of the Constitution. However, this argument is implausible. It is doubtful that fear, so understood, has more influence on decisionmaking during emergencies than decisionmaking during non-emergencies. The panic thesis, implicit in much scholarship though rarely discussed in detail, holds that citizens and officials respond to terrorism and war in the same way that an individual in the jungle responds to a tiger or snake. The national response to emergency, because it is a standard fear response, is characterized by the same circumvention of ordinary deliberative processes: thus, (i) the response is instinctive rather than reasoned, and thus subject to error; and (ii) the error will be biased in the direction of overreaction. While the flight reaction was a good evolutionary strategy on the savannah, in a complex modern society the flight response is not suitable and can only interfere with judgment. Its advantage—speed—has minimal value for social decisionmaking. No national emergency requires an immediate reaction—except by trained professionals who execute policies established earlier—but instead over days, months, or years people make complex judgments about the appropriate institutional response. And the asymmetrical nature of fear guarantees that people will, during a national emergency, overweight the threat and underweight other things that people value, such as civil liberties. But if decisionmakers rarely act immediately, then the tiger story cannot bear the metaphoric weight that is placed on it. Indeed, the flight response has nothing to do with the political response to the bombing of Pearl Harbor or the attack on September 11. The people who were there—the citizens and soldiers beneath the bombs, the office workers in the World Trade Center—no doubt felt fear, and most of them probably responded in the classic way. They experienced the standard physiological effects, and (with the exception of trained soldiers and security officials) fled without stopping to think. It is also true that in the days and weeks after the attacks, many people felt fear, although not the sort that produces a irresistible urge to flee. **But this kind of fear is not the kind in which cognition shuts down**. (Some people did have more severe mental reactions and, for example, shut themselves in their houses, but these reactions were rare.) The fear is probably better described as a general anxiety or jumpiness, an anxiety that was probably shared by government officials as well as ordinary citizens.53 While, as we have noted, there is psychological research suggesting that normal cognition partly shuts down in response to an immediate threat, we are aware of no research suggesting that people who feel anxious about a non-immediate threat are incapable of thinking, or thinking properly, or systematically overweight the threat relative to other values. Indeed, it would be surprising to find research that clearly distinguished “anxious thinking” and “calm thinking,” given that anxiety is a pervasive aspect of life. People are anxious about their children; about their health; about their job prospects; about their vacation arrangements; about walking home at night. No one argues that people’s anxiety about their health causes them to take too many precautions—to get too much exercise, to diet too aggressively, to go to the doctor too frequently—and to undervalue other things like leisure. So it is hard to see why anxiety about more remote threats, from terrorists or unfriendly countries with nuclear weapons, should cause the public, or elected officials, to place more emphasis on security than is justified, and to sacrifice civil liberties. Fear generated by immediate threats, then, causes instinctive responses that are not rational in the cognitive sense, not always desirable, and not a good basis for public policy, but it is not this kind of fear that leads to restrictions of civil liberties during wartime. The internment of Japanese Americans during World War II may have been due to racial animus, or to a mistaken assessment of the risks; it was not the direct result of panic; indeed there was a delay of weeks before the policy was seriously considered.54 Post-9/11 curtailments of civil liberties, aside from immediate detentions, came after a significant delay and much deliberation. The civil libertarians’ argument that fear produces bad policy trades on the ambiguity of the word “panic,” which refers both to real fear that undermines rationality, and to collectively harmful outcomes that are driven by rational decisions, such as a bank run, where it is rational for all depositors to withdraw funds if they believe that enough other depositors are withdrawing funds. Once we eliminate the false concern about fear, it becomes clear that the panic thesis is indistinguishable from the argument that during an emergency people are likely to make mistakes. But if the only concern is that during emergencies people make mistakes, there would be no reason for demanding that the constitution be enforced normally during emergencies. Political errors occur during emergencies and nonemergencies, but the stakes are higher during emergencies, and that is the conventional reason why constitutional constraints should be relaxed.

### Security – Perm/Rlsm

#### 6. Perm – do both

#### Security is not inherently negative.

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

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

### Security – Alt Fails

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

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

As I have shown above, while political forces played a significant role in checking President Bush, what was significant was the particular substantive content of that politics; it was not just any political pressure, but pressure to maintain fidelity to the rule of law. Politics standing alone is as likely to fuel as to deter executive abuse; consider the lynch mob, the Nazi Party in Germany, or xenophobia more generally. What we need if we are to check abuses of executive power is a politics that champions the rule of law. Unlike the politics Posner and Vermeule imagine, this type of politics cannot be segregated neatly from the law. On the contrary, it will often coalesce around a distinctly legal challenge, objecting to departures from distinctly legal norms, heard in a court case, as we saw with Guantanamo. Congress’s actions make clear that had Guantanamo been left to the political process, there would have been few if any advances. The litigation generated and concentrated political pressure on claims for a restoration of the values of legality, and, as discussed above, that pressure then played a critical role in the litigation’s outcome, which in turn affected the political pressure for reform. There is, to be sure, something paradoxical about this assessment. The rule of law, the separation of powers, and human rights are designed to discipline and constrain politics, out of a concern that pure majoritarian politics, focused on the short term, is likely to discount the long-term values of these principles. Yet without a critical mass of political support for these legal principles, they are unlikely to be effective checks on abuse, for many of the reasons Posner andVermeule identify. The answer, however, is not to abandon the rule of law for politics, but to develop and nurture a political culture that values the rule of law itself. § Marked 19:52 § Civil society organizations devoted to such values, such as Human Rights Watch, the Center for Constitutional Rights, and the American Civil Liberties Union, play a central role in facilitating, informing, and generating that politics. Indeed, they have no alternative. Unlike governmental institutions, civil society groups have no formal authority to impose the limits of law themselves. Their recourse to the law’s limits is necessarily indirect: they can file lawsuits seeking judicial enforcement, lobby Congress for statutory reform or other legislative responses, or seek to influence the executive branch. But they necessarily and simultaneously pursue these goals through political avenues – by appealing to the public for support, educating the public, exposing abuses, and engaging in public advocacy around rule-of-law values. Unlike ordinary politics, which tends to focus on the preferences of the moment, the politics of the rule of law is committed to a set of long-term principles. Civil society organizations are uniquely situated to bring these long-term interests to bear on the public debate. Much like a constitution itself, civil society groups are institutionally designed to emphasize and reinforce our long-term interests. When the ordinary political process is consumed by the heat of a crisis, organizations like the ACLU, Human Rights First, and the Center for Constitutional Rights, designed to protect the rule of law, are therefore especially important. While Congress and the courts were at best compromised and at worst complicit in the abuses of the post-9/11 period, civil society performed admirably. The Center for Constitutional Rights brought the first lawsuit seeking habeas review at Guantanamo, and went on to coordinate a nationwide network of volunteer attorneys who represented Guantanamo habeas petitioners. The ACLU filed important lawsuits challenging secrecy and government excesses, and succeeded in disclosing many details about the government’s illegal interrogation program. Both the ACLU and CCR filed lawsuits and engaged in public advocacy on behalf of torture and rendition victims, and challenging warrantless wiretapping. Human Rights Watch and Human Rights First wrote important reports on detention, torture, and Guantanamo, and Human Rights First organized former military generals and admirals to speak out in defense of humanitarian law and human rights. These efforts are but a small subset of the broader activities of civil society, at home and abroad, that helped to bring to public attention the Bush administration’s most questionable initiatives, and to portray the initiatives as contrary to the rule of law. At their best, civil society organizations help forge a politics of the rule of law, in which there is a symbiotic relationship between politics and law: the appeal to law informs a particular politics, and that politics reinforces the law’s appeal, in a mutually reinforcing relation. Posner and Vermeule understand the importance of politics as a checking force in the modern world, but fail to see the critical qualification that the politics must be organized around a commitment to fundamental principles of liberty, equality, due process, and the separation of powers – in short, the rule of law. Margulies and Metcalf recognize that politics as much as law determines the reality of rights protections, but fail to identify the unique role that civil society organizations play in that process. It is not that the “rule of politics” has replaced the “rule of law,” but that, properly understood, a politics of law is a critical supplement to the rule of law. We cannot survive as a constitutional democracy true to our principles without both. And our survival turns, not only on a vibrant constitution, but on a vibrant civil society dedicated to reinforcing and defending constitutional values.

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

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

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

## DA

### A2: Bond Treaty Power

#### Treaty power inevitable

Hathaway et al, 13 – Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School (Oona A., with Spencer Amdur, Celia Choy, Samir Deger-Sen, John Paredes, Sally Pei and Haley Nix Proctor, January. “ARTICLE: THE TREATY POWER: ITS HISTORY, SCOPE, AND LIMITS.” Cornell Law Review, 98 Cornell L. Rev. 239. Lexis.)

[\*325] Yet this cacophony of fears gives little credit to those who designed the Constitution. The Framers placed the treaty power outside of Article I precisely because the limits that applied to those enumerated powers were not meant to apply to the treaty power. In doing so, they were not turning a blind eye to the dangers of power run amok. Indeed, they were deeply suspicious of any unchecked power and sought to jealously guard the power of the states to act independent of the federal government. It was precisely these concerns that led them to design the Treaty Clause they did - one that vested the power to make treaties in the President, but only with the consent of two-thirds of the Senate. This supermajority bar is among the highest in the Constitution, exceeded only by the requirement that three-quarters of the states agree before the Constitution itself could be amended. This provision - one inherent in the design of the Treaty Clause itself - was designed precisely to gives states the very voice and control over the treaty-making process that critics fear the Treaty Clause threatens to deny them. This structural protection is reinforced, moreover, by political checks - the necessity that those with a role in making treaties must win reelection and thus be able to justify any decisions to the voters. It is also backed up by diplomatic checks - a treaty is not a treaty unless another sovereign state consents to it, and other states are unlikely to wish to wade into internal political struggles by entering a treaty understood to violate the fundamental constitutional allocation of power. The Treaty Clause has served its purpose - perhaps too well. n495 It has prevented the passage of all but a handful of Article II treaties each year since the Founding. The political, structural, and diplomatic checks that the Framers put in place have served to create a system of federal accommodation that does not require intervention by the courts. Top-down federalism accommodates federalism concerns through self-restraint by the federal government institutions. The President and the Senate actively work to accommodate federalism concerns by rejecting treaties that would impinge on state prerogatives, modifying treaties to address federalism concerns, providing for state implementation of treaties, and by declining to compel state agencies to carry out treaty obligations. This operates alongside bottom-up federalism - accommodation of federalism concerns by states that play a direct and active role in shaping the international lawmaking process. In a variety of areas, states have been on the front lines of implementing treaties and thus played an active role in their interpretation and in determining when and how the treaty will affect the states. [\*326] It is highly unlikely that a treaty that survives this process will fail any of the tests to which the courts might reasonably put it. The affirmative limits on the federal government's power protect against treaties that violate constitutional rights and structure, Eleventh Amendment immunity, and anticommandeering. Yet, it is hard to imagine that any treaty that fails these tests would survive the rough-and-tumble political process put in place by Article II. The same is true of the legal limits on implementing legislation - which must be necessary and proper to carrying out the treaty obligations. And any treaty that would fail the pretext test - even the more fully specified version outlined in this Article - would be unlikely to win the support of the President and Senate. In sum, the chance that a treaty will slip through the treaty-making process that violates these court-enforced limits remains small. For those concerned about federalism, the conclusion that there is little role for the courts in the debate should be a cause not for despair but for celebration. The flexible system of accommodation that has grown up around the treaty power has proven extraordinarily effective at protecting against abuse of the federal treaty power. The treaty power binds itself more effectively than the courts ever could.

### Bond N/U - Districts

#### Missouri v. Holland is screwed now – oral arguments clearly showed the government will lose big time

Ku, 11/5/13 – A graduate of Yale University and Yale Law School, Julian Ku is a professor at Hofstra University School of Law. He served as a law clerk to on the U.S. Court of Appeals for the Fifth Circuit, and as an Olin Fellow and Lecturer in Law at the University of Virginia Law School (Julian, “A Quick Reaction to Oral Argument in Bond v. U.S.: Missouri v. Holland is in Real Trouble.” http://opiniojuris.org/2013/11/05/quick-reaction-oral-argument-bond-v-u-s-missouri-v-holland-real-trouble/)

A Quick Reaction to Oral Argument in Bond v. U.S.: Missouri v. Holland is in Real Trouble by Julian Ku Lyle Denniston is first out of the gate with his take on the oral argument in the much-anticipated U.S. Supreme Court decision in U.S. v. Bond. His general take: The argument in Bond v. U.S. (docket 12-158) reached the grand constitutional scale that has been its potential all along. At the end of an hour-long hearing, it appeared that the government might just have to hope that it loses the case on narrow grounds, because it might lose it in a sweeping way. Some of the Justices openly canvassed ways to cut back, perhaps sharply, on the national government’s power to negotiate or to implement global treaties — the very thing that U.S. Solicitor General Donald B. Verrilli, Jr., was trying so hard to head off. For my own part, I was also struck by how none of the justices seemed impressed with the U.S. Solicitor General’s pleas for deference to the Executive Branch in the interpretation and administration of the Chemical Weapons Convention. Several justices seemed to almost scoff at this argument at times, noting that it was not emphasized in the briefs. The one exception, a reference to the brief filed by John Bellinger and former U.S. State Department Legal Advisors, was brushed aside fairly easily at argument. So I think the case will turn out to be a straight-up domestic American federalism debate, with few foreign affairs concerns implicated in either the majority or the dissent. If I’m right about this, then there seems little reason to doubt that we are headed toward a 5-4 decision in favor of the petitioner. The frequent use of the phrase “police power” is a bad sign for the government, since that is the one thing the Court doesn’t want to acknowledge giving to the federal government. Moreover, the facts of this case, involving the federal prosecution of what is very close to a plain vanilla domestic dispute, should be enough to tie together a pro-federalism majority on § Marked 19:53 § the court. Indeed, I think the unusual Nick Rosencranz inspired argument which separates the constitutionality of the treaty-implementation power from the treaty power actually makes the federalism argument easier to swallow. The pro-federalism justices can simply hold that constitutional limits the domestic implementation power does not necessarily limit the treaty power itself. The President should not feel constrained to enter into treaties since this ruling does not reach the treaty power. Justice Scalia repeatedly embraced this argument, and even conceded that there are no similar limitations on a self-executing treaty. It is a bit of an odd argument, since it does imply that a self-executing treaty could accomplish here what the statute could not, but that case would at least be left for another day. I am also struck that there was not much fealty to Justice Holmes’ opinion in Missouri v. Holland. The US government did not rely on the authority of that decision very much, and Bond’s counsel came up with a way to distinguish it that no justice bothered to challenge. So fealty to precedent does not appear to be much on their minds either. Without national security or precedent, the Government’s argument is much weaker, and I agree with Denniston that its best outcome is a very narrow construction of the statute (which Justice Breyer seemed to be leaning toward with his emphasis on the statute’s exception for a “peaceful purpose” and which he repeatedly urged the US government to do as well). I think one could get 8 votes for a narrow construction of the relevant statute. But I think there is appetite on the Court to go farther. Will they?

### \*\*\*Court Politics DA – 2AC

#### 5. Capital is compartmentalized

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

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

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

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

Other scholars bolster Redish's position by pointing out that judicial review of both federalism and separation of powers questions presents something of a self-fulfilling prophesy. Through review of these sensitive issues of power, the judiciary bolsters its own position or amasses "political capital" § Marked 19:54 § and, thereby, legitimates its own power to engage in such review . 237 The judiciary has therefore established  [\*98]  itself as an effective watchdog to ensure that governmental structures are functioning appropriately. n237. Perry, supra note 11, at 57 (Supreme Court has "amassed a great deal of the political capital it now enjoys ... precisely by resolving problems arising under the doctrines of federalism and of the separation-of-powers "); see also Archibald Cox, The Role of the Supreme Court in American Government 30 (1972) (explaining that "history legitimated the power [of judicial review], and then habit took over to guide men's actions so long as the system worked well enough").