# 1NC

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A. Interpretation – debate is a game that requires the aff to defend USFG action on war powers policy –

#### --‘resolved’ means to enact a policy by law.

Words and Phrases 64 (Permanent Edition)

Definition of the word “resolve,” given by Webster is “to express an opinion or determination by resolution or vote; as ‘it was resolved by the legislature;” It is of similar force to the word “enact,” which is defined by Bouvier as meaning “to establish by law”.

#### --“United States Federal Government should” means the debate is solely about the outcome of a policy established by governmental means

Ericson 3 (Jon M., Dean Emeritus of the College of Liberal Arts – California Polytechnic U., et al., The Debater’s Guide, Third Edition, p. 4)

The Proposition of Policy: Urging Future Action In policy propositions, each topic contains certain key elements, although they have slightly different functions from comparable elements of value-oriented propositions. 1. An agent doing the acting ---“The United States” in “The United States should adopt a policy of free trade.” Like the object of evaluation in a proposition of value, the agent is the subject of the sentence. 2. The verb should—the first part of a verb phrase that urges action. 3. An action verb to follow *should* in the *should*-verb combination. For example, should adopt here means to put a program or policy into action though governmental means. 4. A specification of directions or a limitation of the action desired. The phrase *free trade*, for example, gives direction and limits to the topic, which would, for example, eliminate consideration of increasing tariffs, discussing diplomatic recognition, or discussing interstate commerce. Propositions of policy deal with future action. Nothing has yet occurred. The entire debate is about whether something ought to occur. What you agree to do, then, when you accept the *affirmative side* in such a debate is to offer sufficient and compelling reasons for an audience to perform the future action that you propose.

B. Violation – they claim to win for reasons other than the desirability of that action

C. Reasons to prefer:

**1. Predictability – they allow for infinite frameworks which destroys in-depth preparation and clash – the resolution is the sole source of pre-round prep**

#### 2. Dialogue – debate games open up dialogue which fosters information processing and decision-making – they open up infinite frameworks making the game impossible

Haghoj 8 – PhD, affiliated with Danish Research Centre on Education and Advanced Media Materials, asst prof @ the Institute of Education at the University of Bristol (Thorkild, 2008, "PLAYFUL KNOWLEDGE: An Explorative Study of Educational Gaming," PhD dissertation @ Institute of Literature, Media and Cultural Studies, University of Southern Denmark, http://static.sdu.dk/mediafiles/Files/Information\_til/Studerende\_ved\_SDU/Din\_uddannelse/phd\_hum/afhandlinger/2009/ThorkilHanghoej.pdf)

Debate games are often based on pre-designed scenarios that include descriptions of issues to be debated, educational goals, game goals, roles, rules, time frames etc. In this way, debate games differ from textbooks and everyday classroom instruction as debate scenarios allow teachers and students to actively imagine, interact and communicate within a domain-specific game space. However, instead of mystifying debate games as a “magic circle” (Huizinga, 1950), I will try to overcome the epistemological dichotomy between “gaming” and “teaching” that tends to dominate discussions of educational games. In short, educational gaming is a form of teaching. As mentioned, education and games represent two different semiotic domains that both embody the three faces of knowledge: assertions, modes of representation and social forms of organisation (Gee, 2003; Barth, 2002; cf. chapter 2). In order to understand the interplay between these different domains and their interrelated knowledge forms, I will draw attention to a central assumption in Bakhtin’s dialogical philosophy. According to Bakhtin, all forms of communication and culture are subject to centripetal and centrifugal forces (Bakhtin, 1981). A centripetal force is the drive to impose one version of the truth, while a centrifugal force involves a range of possible truths and interpretations. This means that any form of expression involves a duality of centripetal and centrifugal forces: “Every concrete utterance of a speaking subject serves as a point where centrifugal as well as centripetal forces are brought to bear” (Bakhtin, 1981: 272). If we take teaching as an example, it is always affected by centripetal and centrifugal forces in the on-going negotiation of “truths” between teachers and students. In the words of Bakhtin: “Truth is not born nor is it to be found inside the head of an individual person, it is born between people collectively searching for truth, in the process of their dialogic interaction” (Bakhtin, 1984a: 110). Similarly, the dialogical space of debate games also embodies centrifugal and centripetal forces. Thus, the election scenario of The Power Game involves centripetal elements that are mainly determined by the rules and outcomes of the game, i.e. the election is based on a limited time frame and a fixed voting procedure. Similarly, the open-ended goals, roles and resources represent centrifugal elements and create virtually endless possibilities for researching, preparing, 51 presenting, debating and evaluating a variety of key political issues. Consequently, the actual process of enacting a game scenario involves a complex negotiation between these centrifugal/centripetal forces that are inextricably linked with the teachers and students’ game activities. In this way, the enactment of The Power Game is a form of teaching that combines different pedagogical practices (i.e. group work, web quests, student presentations) and learning resources (i.e. websites, handouts, spoken language) within the interpretive frame of the election scenario. Obviously, tensions may arise if there is too much divergence between educational goals and game goals. This means that game facilitation requires a balance between focusing too narrowly on the rules or “facts” of a game (centripetal orientation) and a focusing too broadly on the contingent possibilities and interpretations of the game scenario (centrifugal orientation). For Bakhtin, the duality of centripetal/centrifugal forces often manifests itself as a dynamic between “monological” and “dialogical” forms of discourse. Bakhtin illustrates this point with the monological discourse of the Socrates/Plato dialogues in which the teacher never learns anything new from the students, despite Socrates’ ideological claims to the contrary (Bakhtin, 1984a). Thus, discourse becomes monologised when “someone who knows and possesses the truth instructs someone who is ignorant of it and in error”, where “a thought is either affirmed or repudiated” by the authority of the teacher (Bakhtin, 1984a: 81). In contrast to this, dialogical pedagogy fosters inclusive learning environments that are able to expand upon students’ existing knowledge and collaborative construction of “truths” (Dysthe, 1996). At this point, I should clarify that Bakhtin’s term “dialogic” is both a descriptive term (all utterances are per definition dialogic as they address other utterances as parts of a chain of communication) and a normative term as dialogue is an ideal to be worked for against the forces of “monologism” (Lillis, 2003: 197-8). In this project, I am mainly interested in describing the dialogical space of debate games. At the same time, I agree with Wegerif that “one of the goals of education, perhaps the most important goal, should be dialogue as an end in itself” (Wegerif, 2006: 61).

#### 3. Politics – debate as a competitive political game is the best framework to solve dogmatism and human brutality

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Vico asked his audience at the University of Naples in 1708 to debate two competing ways of knowing: Cartesian rationality versus the poetic world of the ancients. Vico, the “pre-law advisor” of his day, saw law as a rhetorical game. That is, he understood the civic (ethical) value of competi-tion itself.12 He understood that Cartesian rationality, like religious and ideological fundamentalism, generates a kind of certainty that shuts down robust debate. Vico’s comprehensive vision suggests, in effect, that people should practice law and politics not as the search for the most rational or logically correct outcomes but rather as passionate and embodied yet peaceful competitive play. Vico inspires this vision of law and politics as play because he sees that all things in the human mind, including law and politics, are at one with the human body. As Vico put it as he concluded his 1708 address, “[T]he soul should be drawn to love by means of bodily images; for once it loves it is easily taught to believe; and when it believes and loves it should be inflamed so that it wills things by means of its normal intemperance.”13 Vico had no hope that such abstract moral principles as liberty, equality, justice, and tolerance could effectively offset the “crude and rough” nature of men.14 The Holy Bible and the Qur’an contain normative principles of love, tolerance, equal respect, and peace, but these commands have not forestalled ancient and modern religious warfare. This essay proposes that humans learn how to keep the peace not by obeying the norms, rules, and principles of civil conduct but by learning how to play, and thereby reintegrating the mind and the body. People do law, politics, and economic life well when they do them in the same ways and by the same standards that structure and govern good competitive sports and games. The word “sport” derives from “port” and “portal” and relates to the words “disport” and “transport.” The word at least hints that the primitive and universal joy of play carries those who join the game across space to a better, and ideally safer, place—a harbor that Vico him-self imagined. This essay’s bold proposition honors Vico in many ways. Its “grand theory” matches the scope of Vico’s comprehensive and integrated vision of the human condition. It plausibly confirms Vico’s hope for a “concep-tion of a natural law for all of humanity” that is rooted in human historical practice.15 Seeing these core social processes as play helps us to escape from arid academic habits and to “learn to think like children,” just as Vico urged.16 Imagining law and politics as play honors Vico above all because, if we attain Ruskin’s epigraphic ideal,17 we will see that the peace-tending qualities of sports and games already operate under our noses. Seeing law and politics as play enables us “to reach out past our inclination to make experience familiar through the power of the concept and to engage the power of the image. We must reconstruct the human world not through concepts and criteria but as something we can practically see.”18 If at its end readers realize that they could have seen, under their noses, the world as this essay sees it without ever having read it, this essay will successfully honor Vico. As Vico would have predicted, formal academic theory has played at best a marginal role in the construction of competitive games. Ordinary people have created cricket and football, and common law and electoral politics and fair market games, more from the experience of doing them than from formal theories of competitive games. When they play interna-tional football today, ordinary people in virtually every culture in the world recreate the experience of competitive games. Playing competitive games unites people across cultures in a common normative world.19 Within Vico’s social anthropological and proto-scientific framework, the claim that competitive play can generate peaceful civic life is purely empirical: law and politics in progressively peaceful political systems already are nothing more or less than competitive games. All empirical description operates within some, though too often ob-scured, normative frame. This essay’s normative frame is clear. It holds, with Shaw’s epigraph, above: Human brutalities waged against other hu-mans—suicide bombings, genocides, tribal and religious wars that provoke the indiscriminate rape, murder, torture, and enslavement of men, women, and children, often because they are labeled “evil”—are the worst things that we humans do. We should learn not to do them. In Vico’s anti-Cartesian, non-foundational world, no method exists to demonstrate that this essay’s normative core is “correct,” or even “better than,” say, the core norm holding that the worst thing humans do is dishonor God. Readers who reject Shaw’s and this essay’s normative frame may have every reason to reject the essay’s entire argument. However, this essay does describe empirically how those whose core norm requires honoring any absolute, including God, above all else regu-larly brutalize other human beings, and why those who live by the norms of good competitive play do not. People brutalize people, as Shaw’s Caesar observed, in the name of right and honor and peace. Evaluated by the norm that human brutality is the worst thing humans do, the essay shows why and how the human invention of competitive play short circuits the psy-chology of a righteousness-humiliation-brutality cycle. We cannot help but see and experience on fields of contested play testosterone-charged males striving mightily to defeat one another. Yet at the end of play, losers and winners routinely shake hands and often hug; adult competitors may dine and raise a glass together.20 Whether collectively invented as a species-wide survival adaptation or not, institutionalized competitive play under-cuts the brutality cycle by displacing religious and other forms of funda-mentalist righteousness with something contingent, amoral, and thus less lethal. Play thereby helps humans become Shaw’s “race that can under-stand.”

This also means no funny business with counterplans or DA’s – if they don’t link to those, they link to framework

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#### Plan causes a compensatory shift to drone strikes – that’s worse and causes drone prolif

RT, 13 (5/3, “US targeted drone killings used as alternative to Guantanamo Bay - Bush lawyer.” http://rt.com/usa/obama-using-drones-avoid-gitmo-747/)

A lawyer who was influential in the United States’ adoption of unmanned aircraft has spoken out against the Obama administration for what he perceives as using drones as an alternative to capturing suspects and sending them to Guantanamo Bay prison camp. John Bellinger, the Bush administration attorney who drafted the initial legal specifications regarding drone killings after the September 11, 2001 terrorist attacks, said that Bush’s successor has abused the framework, skirting international law for political points. “This government has decided that instead of detaining members of Al-Qaeda [at Guantanamo Bay prison camp in Cuba] they are going to kill them,” Bellinger told a conference at the Bipartisan Policy Center, as quoted by The Guardian. Earlier this week Obama promised to reignite efforts to close Guantanamo Bay, where prisoners have gone on a hunger strike to protest human rights violations and wrongful incarcerations. They were his first in-depth remarks on the subject since 2009, when Obama had just recently been elected to office after campaigning on a promise to close the facility. But international law is equally suspect of drone strikes. Almost 5,000 people are thought to have been killed by roughly 300 US attacks in four countries, according to The Guardian. Bellinger maintained that the government has justified strikes throughout Pakistan and Yemen by using the 'War on Terror' as an excuse. “We are about the only country in the world that thinks we are in an armed conflict with Al-Qaeda,” he said. “We really need to get on top of this and explain to our allies why it is legal and why it is permissible under international law." “These drone strikes are causing us great damage in the world, but on the other hand if you are the president and you do nothing to stop another 9/11 then you also have a problem,” he added. Of the 166 detainees at Guantanamo Bay, 86 have been cleared for release by a commission made up of officials from the Department of Homeland Security, Joint Chiefs of Staff and other influential government divisions. White House officials have justified the use of unmanned aircraft by saying the US is at war with Al-Qaeda and that those targeted in drone attacks were planning attacks on America. In the future, experts say, future countries could use the same rationale to explain their own attacks. “Countries under attack are the ones that get to decide whether or not they are at war,” said Philip Zelikow, a member of the White House Intelligence Advisory Board. While the conversation around drones is certainly a sign of things to come, Hina Shamsi of the American Civil Liberties Union encouraged Americans to think about the human rights issues posed by the new technology. It could be another long process, if the Guantanamo Bay handling is any indication. “The use of this technology is spreading and we have to think about what we would say if other countries used drones for targeted killing programs,” Shamsi said. “Few things are more likely to undermine our legitimacy than the perception that we are not abiding by the rule of law or are indifferent to civilian casualties.”

#### Drone prolif escalates and destroys deterrence without strong norms—multiple scenarios for conflict

Michael J. Boyle 13, Assistant Professor, Political Science – La Salle, International Affairs 89: 1 (2013) 1–29

An important, but overlooked, strategic consequence of the Obama administration’s embrace of drones is that it has generated a new and dangerous arms race for this technology. At present, the use of lethal drones is seen as acceptable to US policy-makers because no other state possesses the ability to make highly sophisticated drones with the range, surveillance capability and lethality of those currently manufactured by the United States. Yet the rest of the world is not far behind. At least 76 countries have acquired UAV technology, including Russia, China, Pakistan and India.120 China is reported to have at least 25 separate drone systems currently in development.121 At present, there are 680 drone programmes in the world, an increase of over 400 since 2005.122 Many states and non-state actors hostile to the United States have begun to dabble in drone technology. Iran has created its own drone, dubbed the ‘Ambassador of Death’, which has a range of up to 600 miles.123 Iran has also allegedly supplied the Assad regime in Syria with drone technology.124 Hezbollah launched an Iranian-made drone into Israeli territory, where it was shot down by the Israeli air force in October 2012.125 A global arms race for drone technology is already under way. According to one estimate, global spending on drones is likely to be more than US$94 billion by 2021.126 One factor that is facilitating the spread of drones (particularly non-lethal drones) is their cost relative to other military purchases. The top-of-the line Predator or Reaper model costs approximately US$10.5 million each, compared to the US$150 million price tag of a single F-22 fighter jet.127 At that price, drone technology is already within the reach of most developed militaries, many of which will seek to buy drones from the US or another supplier. With demand growing, a number of states, including China and Israel, have begun the aggressive selling of drones, including attack drones, and Russia may also be moving into this market.128 Because of concerns that export restrictions are harming US competitiveness in the drones market, the Pentagon has granted approval for drone exports to 66 governments and is currently being lobbied to authorize sales to even more.129 The Obama administration has already authorized the sale of drones to the UK and Italy, but Pakistan, the UAE and Saudi Arabia have been refused drone technology by congressional restrictions.130 It is only a matter of time before another supplier steps in to offer the drone technology to countries prohibited by export controls from buying US drones. According to a study by the Teal Group, the US will account for 62 per cent of research and development spending and 55 per cent of procurement spending on drones by 2022.131 As the market expands, with new buyers and sellers, America’s ability to control the sale of drone technology will be diminished. It is likely that the US will retain a substantial qualitative advantage in drone technology for some time, but even that will fade as more suppliers offer drones that can match US capabilities. The emergence of this arms race for drones raises at least five long-term strategic consequences, not all of which are favourable to the United States over the long term. First, it is now obvious that other states will use drones in ways that are inconsistent with US interests. One reason why the US has been so keen to use drone technology in Pakistan and Yemen is that at present it retains a substantial advantage in high-quality attack drones. Many of the other states now capable of employing drones of near-equivalent technology—for example, the UK and Israel—are considered allies. But this situation is quickly changing as other leading geopolitical players, such as Russia and China, are beginning rapidly to develop and deploy drones for their own purposes. While its own technology still lags behind that of the US, Russia has spent huge sums on purchasing drones and has recently sought to buy the Israeli-made Eitan drone capable of surveillance and firing air-to-surface missiles.132 China has begun to develop UAVs for reconnaissance and combat and has several new drones capable of long-range surveillance and attack under development.133 China is also planning to use unmanned surveillance drones to allow it to monitor the disputed East China Sea Islands, which are currently under dispute with Japan and Taiwan.134 Both Russia and China will pursue this technology and develop their own drone suppliers which will sell to the highest bidder, presumably with fewer export controls than those imposed by the US Congress. Once both governments have equivalent or near-equivalent levels of drone technology to the United States, they will be similarly tempted to use it for surveillance or attack in the way the US has done. Thus, through its own over-reliance on drones in places such as Pakistan and Yemen, the US may be hastening the arrival of a world where its qualitative advantages in drone technology are eclipsed and where this technology will be used and sold by rival Great Powers whose interests do not mirror its own. A second consequence of the spread of drones is that many of the traditional concepts which have underwritten stability in the international system will be radically reshaped by drone technology. For example, much of the stability among the Great Powers in the international system is driven by deterrence, specifically nuclear deterrence.135 Deterrence operates with informal rules of the game and tacit bargains that govern what states, particularly those holding nuclear weapons, may and may not do to one another.136 While it is widely understood that nuclear-capable states will conduct aerial surveillance and spy on one another, overt military confrontations between nuclear powers are rare because they are assumed to be costly and prone to escalation. One open question is whether these states will exercise the same level of restraint with drone surveillance, which is unmanned, low cost, and possibly deniable. States may be more willing to engage in drone overflights which test the resolve of their rivals, or engage in ‘salami tactics’ to see what kind of drone-led incursion, if any, will motivate a response.137 This may have been Hezbollah’s logic in sending a drone into Israeli airspace in October 2012, possibly to relay information on Israel’s nuclear capabilities.138 After the incursion, both Hezbollah and Iran boasted that the drone incident demonstrated their military capabilities.139 One could imagine two rival states—for example, India and Pakistan—deploying drones to test each other’s capability and resolve, with untold consequences if such a probe were misinterpreted by the other as an attack. As drones get physically smaller and more precise, and as they develop a greater flying range, the temptation to use them to spy on a rival’s nuclear programme or military installations might prove too strong to resist. If this were to happen, drones might gradually erode the deterrent relationships that exist between nuclear powers, thus magnifying the risks of a spiral of conflict between them. Another dimension of this problem has to do with the risk of accident. Drones are prone to accidents and crashes. By July 2010, the US Air Force had identified approximately 79 drone accidents.140 Recently released documents have revealed that there have been a number of drone accidents and crashes in the Seychelles and Djibouti, some of which happened in close proximity to civilian airports.141 The rapid proliferation of drones worldwide will involve a risk of accident to civilian aircraft, possibly producing an international incident if such an accident were to involve an aircraft affiliated to a state hostile to the owner of the drone. Most of the drone accidents may be innocuous, but some will carry strategic risks. In December 2011, a CIA drone designed for nuclear surveillance crashed in Iran, revealing the existence of the spying programme and leaving sensitive technology in the hands of the Iranian government.142 The expansion of drone technology raises the possibility that some of these surveillance drones will be interpreted as attack drones, or that an accident or crash will spiral out of control and lead to an armed confrontation.143 An accident would be even more dangerous if the US were to pursue its plans for nuclear-powered drones, which can spread radioactive material like a dirty bomb if they crash.144 Third, lethal drones create the possibility that the norms on the use of force will erode, creating a much more dangerous world and pushing the international system back towards the rule of the jungle. To some extent, this world is already being ushered in by the United States, which has set a dangerous precedent that a state may simply kill foreign citizens considered a threat without a declaration of war. Even John Brennan has recognized that the US is ‘establishing a precedent that other nations may follow’.145 Given this precedent, there is nothing to stop other states from following the American lead and using drone strikes to eliminate potential threats. Those ‘threats’ need not be terrorists, but could be others— dissidents, spies, even journalists—whose behaviour threatens a government. One danger is that drone use might undermine the normative prohibition on the assassination of leaders and government officials that most (but not all) states currently respect. A greater danger, however, is that the US will have normalized murder as a tool of statecraft and created a world where states can increasingly take vengeance on individuals outside their borders without the niceties of extradition, due process or trial.146 As some of its critics have noted, the Obama administration may have created a world where states will find it easier to kill terrorists rather than capture them and deal with all of the legal and evidentiary difficulties associated with giving them a fair trial.147 Fourth, there is a distinct danger that the world will divide into two camps: developed states in possession of drone technology, and weak states and rebel movements that lack them. States with recurring separatist or insurgent problems may begin to police their restive territories through drone strikes, essentially containing the problem in a fixed geographical region and engaging in a largely punitive policy against them. One could easily imagine that China, for example, might resort to drone strikes in Uighur provinces in order to keep potential threats from emerging, or that Russia could use drones to strike at separatist movements in Chechnya or elsewhere. Such behaviour would not necessarily be confined to authoritarian governments; it is equally possible that Israel might use drones to police Gaza and the West Bank, thus reducing the vulnerability of Israeli soldiers to Palestinian attacks on the ground. The extent to which Israel might be willing to use drones in combat and surveillance was revealed in its November 2012 attack on Gaza. Israel allegedly used a drone to assassinate the Hamas leader Ahmed Jabari and employed a number of armed drones for strikes in a way that was described as ‘unprecedented’ by senior Israeli officials.148 It is not hard to imagine Israel concluding that drones over Gaza were the best way to deal with the problem of Hamas, even if their use left the Palestinian population subject to constant, unnerving surveillance. All of the consequences of such a sharp division between the haves and have-nots with drone technology is hard to assess, but one possibility is that governments with secessionist movements might be less willing to negotiate and grant concessions if drones allowed them to police their internal enemies with ruthless efficiency and ‘manage’ the problem at low cost. The result might be a situation where such conflicts are contained but not resolved, while citizens in developed states grow increasingly indifferent to the suffering of those making secessionist or even national liberation claims, including just ones, upon them. Finally, drones have the capacity to strengthen the surveillance capacity of both democracies and authoritarian regimes, with significant consequences for civil liberties. In the UK, BAE Systems is adapting military-designed drones for a range of civilian policing tasks including ‘monitoring antisocial motorists, protesters, agricultural thieves and fly-tippers’.149 Such drones are also envisioned as monitoring Britain’s shores for illegal immigration and drug smuggling. In the United States, the Federal Aviation Administration (FAA) issued 61 permits for domestic drone use between November 2006 and June 2011, mainly to local and state police, but also to federal agencies and even universities.150 According to one FAA estimate, the US will have 30,000 drones patrolling the skies by 2022.151 Similarly, the European Commission will spend US$260 million on Eurosur, a new programme that will use drones to patrol the Mediterranean coast.152 The risk that drones will turn democracies into ‘surveillance states’ is well known, but the risks for authoritarian regimes may be even more severe. Authoritarian states, particularly those that face serious internal opposition, may tap into drone technology now available to monitor and ruthlessly punish their opponents. In semi-authoritarian Russia, for example, drones have already been employed to monitor pro-democracy protesters.153 One could only imagine what a truly murderous authoritarian regime—such as Bashar al-Assad’s Syria—would do with its own fleet of drones. The expansion of drone technology may make the strong even stronger, thus tilting the balance of power in authoritarian regimes even more decisively towards those who wield the coercive instruments of power and against those who dare to challenge them.

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The United States Congress should propose an Amendment to the United States Constitution which **clarifies that the preventative detention of material witnesses in the so-called “war on terror” is unconstitutional**. The Amendment should specify that it must be ratified immediately. The necessary states should ratify the Amendment. We’ll clarify.

#### Solves the aff

Miksha 3 (Andre, “Declaring War on the War Powers Resolution”, Valparaiso University Law Review, Spring, 37 Val. U.L. Rev. 651, lexis)

C. The Implications of Modern Warfare A third major problem with the Resolution is that the world is a very different place than it was in 1973. The war powers construct needs to be reconfigured for the post-Cold War era. n187 The proliferation and increased power of intergovernmental organizations and supra-national [\*689] groups is only a small aspect of the change. n188 Warfare continues to change; low-intensity conflicts and small-scale conventional wars have become the norm of modern warfare. n189 Speed in decision-making is at a premium because of advancements in communications, intelligence, and warfare technology. n190 Not only have we benefited from two hundred years of presidential-congressional controversies, but the United States is also fighting wars in a much different manner. n191 Nevertheless, the Constitution vests the sole and exclusive authority to initiate military hostilities in Congress, regardless of the scope, size, or nature of the conflict. n192 The immediacy of contemporary warfare causes a heightened scrutiny of the war powers too. Failed war powers discussions may, in the end, cost lives and not just waste taxpayers' money as in other realms of governmental debate. n193 Contrary to some commentators, the power of the purse is not a sufficient check on the President, nor does the funding of the military act [\*690] as an implicit consent by Congress. n194 One must account for the military realities involved in refusing to fund on-going military operations. War, at the time of the Framers, was much slower; wars lasted years and involved troop movements and communications that were only as fast as a horse or boat. n195 During that period, Congress' deliberative and ensuing check of de-funding a military operation would not be militarily frustrating because armies took so long to coordinate and move. n196 Thus, such a check could be sufficient and historically based, but time is of the essence in today's world. n197 A constitutional amendment allows the government to realign the powers through a process that respects the Constitution's timelessness because the change would be sought and affected through proper constitutional means. n198 IV. THE WAR POWERS AMENDMENT A. Introductory Remarks The War Powers Resolution of 1973 is an unconstitutional determination of the war powers. n199 This Part proposes an alternative in the form of a constitutional amendment, the passage of which would [\*691] satisfy both the Constitution's substantive and procedural requirements. The amendment process will encourage discourse because it is protracted, public, intergovernmental, and intragovernmental. Considering the interests in the balance, a devotion to the righteousness of the process and to the justice of the solution requires nothing less. Surprisingly, most commentators do not suggest a single remedy or solution but only raise questions or possibilities. n200 The repeal of the Resolution hardly seems to be a wise solution, at least by itself, because the Resolution at least sets down some guidelines and a return to pre-1973 jurisprudence would open up a chaotic situation in constitutional law. n201 Serious ends require serious means, and there is no more serious means than a constitutional amendment. n202 Simply put, the amendment [\*692] creates a clear method for the process that will be necessary before introducing U.S. Armed Forces into hostilities.

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#### The 1AC’s focus on making American democracy better deflects critical scrutiny from democracy itself – the primary intellectual task should be interrogating democracy as a concept, not merely its specific manifestations

Little 10 (Adrian, Associate Professor and Reader in Political Theory at the University of Melbourne, Political Studies, Vol 58, “Democratic Melancholy: On the Sacrosanct Place of Democracy in Radical Democratic Theory,” p. 975-6)

The main focus in radical democratic theory has been liberalism and the liberal aspect of liberal democracy in particular (see, for example, Brown, 2006a on tolerance; Brown, 2004 on human rights). To this extent, William Connolly argues that his theory challenges ‘the retreat in the academy toward a conservative brand of liberalism that welcomes most heartily a narrow band of perspectives on the cultural economy and the economic culture’ (Connolly, 1999, p. 48). As significant as this critique of liberalism is, it provides a partial account of the limitations of liberal democracy in so far as it fails to note any problems that may emanate from the democratic part of the liberal democratic equation. Thus, although some post-foundational thinkers have been prepared to articulate a critique of democracy (Agamben, 2005; Badiou, 2005b), this approach has been less forthcoming from the major theorists often associated with radical democracy. What is clear, then, is that radical democracy is founded on a belief in the normative superiority of democracy rather than a critical engagement with that foundational principle. This lack of critique of democracy has been noticeable in the work of Brown, Butler and Connolly in North America. These theorists are often cited in radical democratic critiques of liberalism and their work has been highly influential, particularly in demonstrating the limits of liberalism when it comes to grappling with the multiplicity of demands emanating from the politics of identity and difference (Brown, 1995; Butler, 1998; Connolly, 1991; Little and Lloyd, 2009). It is notable then that these eminent critics of liberal democracy have focused intensively on the failings of liberalism and have said relatively little about the problems of democracy. The distinct possibility is that the hegemonic force of discourses of democracy closes spaces of criticism and ensures that potential critics have censored themselves. This problem emanates from an intellectual culture in liberal democracies (the United States in the case of the authors under analysis) that limits ‘what we can hear’ (Butler,2002) and repels criticism of democracy by placing such commentary on the wrong side of the ‘distribution of the sensible’ (Rancière, 2004; 2006). The inability of radical commentators to express their arguments in terms of the problems of democracy contributes to the continued hegemony of liberal democracy. The violence attached to the rule of law, the exclusion of minority perspectives in forging popular sovereignty, the marginalisation of various cultural and socio-economic inequalities in the name of pursuing political equality and so forth are safeguarded from sufficient critical scrutiny. In the absence of this kind of critical, radical democratic analysis, liberal democracies perpetrate various activities that hardly bear scrutiny from a democratic perspective (Ross, 2004; Žižek, 2008). For example, while eulogising the democratic forms that have been established in Western societies, the Coalition of the Willing was prepared to argue that the ends justify the means in preserving democracy from the non-democratic threat posed by the ubiquitous spectre of ‘terrorism’ through processes such as extraordinary rendition (Donohue, 2008; Mertus and Sajjad, 2008; Siddiqui, 2008). This enterprise has devalued and compromised the currency of democracy and impeded debate about the nature of sovereignty and the rule of law.

#### This system makes global warfare and extinction inevitable

Campbell 98 (David, professor of international politics at the University of Newcastle. Writing Security, p. 199 – 202)

An invitation to this line of thought can be found in the later work of Michel Foucault, in which he explicitly addresses the issue of security and the state through the rubric of "governmental rationality."22 The incitement to Foucault's thinking was his observation that from the middle of the sixteenth century to the end of the eighteenth century, political treatises that previously had been written as advice to the prince were now being presented as works on the "art of government." The concern of these treatises was not confined to the requirements of a specific sovereign, but with the more general problematic of government: a problematic that included the government of souls and lives, of children, of oneself, and finally, of the state by the sovereign. This problematic of governance emerges at the intersection of central and centralizing power relationships (those located in principles of universality, law, citizenship, sovereignty), and individual and individualizing power relationships (such as the pastoral relationships of the Christian church and the welfare state).23 Accordingly, the state for Foucault is an ensemble of practices that are at one and the same time individualizing and totalizing: I don't think that we should consider the "modern state" as an entity which was developed above individuals, ignoring what they are and even their very existence, but on the contrary as a very sophisticated structure, in which individuals can be integrated, under one condition: that this individuality would be shaped in a new form, and submitted to a set of very specific patterns. In a way we can see the state as a modern matrix of individualization.24 Foucault posited some direct and important connections between the individualizing and totalizing power relationships in the conclusion to The History of Sexuality, Volume I. There he argues that starting in the seventeenth century, power over life evolved in two complementary ways: through disciplines that produced docile bodies, and through regulations and interventions directed at the social body. The former centered on the body as a machine and sought to maximize its potential in economic processes, while the latter was concerned with the social body's capacity to give life and propagate. Together, these relations of power meant that "there was an explosion of numerous and diverse techniques for achieving the subjugation of bodies and the control of populations, marking the beginning of an era of 'bio-power.' " This era of bio-power saw the art of government develop an overtly constitutive orientation through the deployment of technologies concerned with the ethical boundaries of identity as much (if not more than) the territorial borders of the state. Foucault supported this argument by reference to the "theory of police." Developed in the seventeenth century, the "theory of police" signified not an institution or mechanism internal to the state, but a governmental technology that helped specify the domain of the state.26 In particular, Foucault noted that Delamare's Compendium — an eighteenth-century French administrative work detailing the kingdom's police regulations — outlined twelve domains of concern for the police: religion, morals, health, supplies, roads, town buildings, public safety, the liberal arts, trade, factories, the supply of labor, and the poor. The logic behind this ambit claim of concern, which was repeated in all treatises on the police, was that the police should be concerned with "everything pertaining to men's happiness," all social relations carried on between men, and all "living."27 As another treatise of the period declared: "The police's true object is man." The theory of police, as an instance of the rationality behind the art of government, had therefore the constitution, production, and maintenance of identity as its major effect. Likewise, the conduct of war is linked to identity. As Foucault argues, "Wars are no longer waged in the name of a sovereign who must be defended; they are waged on behalf of the existence of everyone; entire populations are mobilized for the purpose of slaughter in the name of life necessity." In other words, countries go to war, not for the purpose of defending their rulers, but for the purpose of defending "the nation," ensuring the state's security, or upholding the interests and values of the people. Moreover, in an era that has seen the development of a global system for the fighting of a nuclear war (the infrastructure of which remains intact despite the "end of the cold war"), the paradox of risking individual death for the sake of collective life has been pushed to its logical extreme. Indeed, "the atomic situation is now at the end of this process: the power to expose a whole population to death is the underside of the power to guarantee an individual's continued existence."

#### Reject the Aff’s endorsement of democracy in favor of a critical interrogation of the concept – that’s key to contest hegemonic conceptions of democracy.

Little 10 (Adrian, Associate Professor and Reader in Political Theory at the University of Melbourne, Political Studies, Vol 58, “Democratic Melancholy: On the Sacrosanct Place of Democracy in Radical Democratic Theory,” p. 983-985)

The failure to critique democracy in anglophone radical democratic politics reflects both the hegemony of neo-liberalism fused with neo-conservatism as well as the prevalence of the view that democracy is beyond criticism. Democracy has become sacrosanct to the extent that even purportedly radical analysts – at least some of those most influential in North America – have not been prepared to challenge its basic precepts and their implications for contemporary politics. Rather than rescuing democracy from the bastardisation of neo-liberalism by questioning its foundations, they have retreated into a melancholic lament for democracy lost. Brown, perhaps the most alive to these developments, identifies the dangers of such an approach in her critique of Habermasian versions of democracy, arguing: Anxiety about critique, reduction of it to dismissal or mere negativity, is ubiquitous in contemporary political and legal theoretical culture today; it is as if we fear losing any object that we scrutinize too closely or whose ambivalent or corrugated character we expose to the light (Brown, 2000, p. 471). It is just such an anxiety about the critique of democracy that permeates contemporary radical democratic theory; it helps to explain why theorists such as Connolly focus more on ideas such as pluralisation as opposed to those like Laclau who concentrate on ‘the construction of a limited and ultimately impossible people or collective will’ (Howarth, 2008, p. 186, emphasis added). At the same time as the primary American theorists associated with radical democracy have been articulating the invigoration of democracy, theorists associated with a variety of forms of post-foundational politics have been asking questions of democracy and its role in contemporary politics (Badiou, 2005b; Arditi, 2007; Žižek, 2007). Potentially this leads to a number of radical conclusions: the Left has a choice today: either it accepts the predominant liberal democratic horizon (democracy, human rights and freedoms ...), and engages in a hegemonic battle within it, or it risks the opposite gesture of refusing its very terms, of flatly rejecting today’s liberal blackmail that courting any prospect of radical change paves the way for totalitarianism (Žižek, 2000, p. 326, emphases in original). For Slavoj Žižek, this ‘choice’ is a limited one for radicals. Indeed, the hegemonic struggle within liberal democracy is depicted as a utopian pathway towards a ‘capitalism with a human face’. Perhaps, though, we need to recognise that the choices that radical democratic theorists face are more complex than Žižek’s formation suggests and that the hegemonic pursuit of a radicalised democracy is valid. If that is the case, however – if Žižek’s formation is to be rebuffed – then there needs to be much greater critical engagement with the concept of democracy and its various components. It is precisely the reluctance of many theorists discussed in this article that leaves the terrain open for commentators like Žižek to present the options for radical theorists in such stark terms. Put simply, if democratic theorists do want to retain a privileged position for democracy, then they need to grapple with what the term ‘democracy’ actually conveys in contemporary politics. Resistance to the hegemonic project of neo-liberals and neo-conservatives needs more than an articulation of a purer form of democracy than is currently in existence. For example, Connolly’s ethos of pluralisation may well be beneficial but it is unlikely to succeed in the face of the deeply entrenched understanding of what democracy stands for today. For Alain Badiou, the dominant idea of democracy elicits an anti-political sensibility in its status as the signifier of a pursuit of consensus through which Western societies reinforce the view that ‘humanity aspires to democracy, and any subjectivity suspected of not being democratic is regarded as pathological’ (Badiou, 2005b, p. 78). Addressing this sensibility does not require radical democrats to relinquish democracy but it should encourage them to analyse democracy, recognise its flaws and the likely continuation of aspects of these problems in a more radical incarnation. Such a process requires a deconstruction of the terminology in the democratic lexicon – popular sovereignty, rule of law, political equality and so forth – as well as a genealogical investigation of the emergence of the institutions and structures that have been developed under the auspices of this lexicon (Hoy, 2004). Theorists such as Brown, Butler and Connolly have made significant and persuasive contributions to the critique of liberalism in contemporary political theory, but, in an inhospitable environment, they have not subjected democracy to the same levels of critical scrutiny. Laclau comments that it is not the case that: all the elements of an emerging configuration have to be entirely new, but rather that the articulating point, the partial object around which the hegemonic formation is reconstituted as a new totality, does not derive its central role from any logic already operating within the preceding situation (Laclau, 2005, p. 228). What is important here is the fact that any alternative formation to liberal democracy will also be incapable of fully satisfying the pursuit of a consensual combination of the demands of liberty and equality. It is by critically analysing the theory and practice of democracy and evaluating its mechanisms and justifications that we can come to understand its limitations and the exclusions that are inherent in its operation. It is only through such a process that it is possible to comprehend the inevitable failure of democracy to meet the lofty objectives that are set for it in complex societies.

### 1NC

#### The court will strike down aggregate limits now – it’ll be close

Chemerinsky, 8-12 (Erwin, American lawyer and law professor. He is a prominent scholar in United States constitutional law and federal civil procedure. He is the current and founding dean of the University of California, Irvine School of Law, “Symposium: The distinction between contribution limits and expenditure limits,” http://www.scotusblog.com/2013/08/symposium-the-distinction-between-contribution-limits-and-expenditure-limits/)

For almost forty years, since Buckley v. Valeo in 1976, campaign finance law has been based on the distinction between contribution limits and expenditure limits. In Buckley, the Court held that contribution limits – restrictions on the amount that a person gives to a candidate or a committee – are generally constitutional. But expenditure limits – restrictions on what a person spends overall – are unconstitutional. Citizens United v. Federal Elections Commission in 2010 applied this distinction and held that limits on independent expenditures by corporations violate the First Amendment.¶ McCutcheon v. Federal Election Commission provides the Supreme Court with an occasion to reconsider this distinction. The issue in McCutcheon is whether aggregate limits on contributions are constitutional. Specifically, the plaintiffs are challenging the Bipartisan Campaign Reform Act’s $74,600 two-year ceiling on contributions to non-candidate committees and the $48,600 two-year ceiling on donations to candidate organizations.¶ Options: The Court could say . . .¶ The Court certainly could rule on this, even declaring it unconstitutional, without calling into question the constitutionality of all contribution limits. In fact, in Randall v. Sorrell (2006), the Court found Vermont’s limits on contributions to be so restrictive as to violate the First Amendment without reconsidering the basic distinction between limits on contributions and limits on expenditures. Vermont law restricted contributions so that the amount that any single individual could contribute to the campaign of a candidate for state office during a “two-year general election cycle” was $400 for governor, lieutenant governor, and other statewide offices; $300 for state senator; and $200 for state representative. The Court noted that the contribution limits in the Vermont law were lower than those upheld in Buckley or in any other Supreme Court decision, that they were the lowest in the country, and that they were not indexed to keep pace with inflation.¶ The aggregate contribution limits being challenged in McCutcheon are much higher and the Court therefore could distinguish Randall, follow Buckley, and uphold them. Or the Court could strike them down, invalidating aggregate limits as a violation of the First Amendment, but without calling into question all contribution limits. Buckley was based, in part, on the view that large contributions to candidates risk corruption and the appearance of corruption. The Court explained that “[t]o the extent that large contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of our system of representative democracy is undermined. . . . Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions.’’¶ The Court in McCutcheon could say that aggregate limits on the amount that can be contributed do not help to prevent such corruption or appearance of corruption. The Court could say that aggregate limits on contributions are really much more akin to expenditure limits and therefore unconstitutional. The Court could say that the real purpose of aggregate limits is to equalize political influence, a justification for campaign finance laws that the Court expressly rejected in Citizens United. Or the Court could distinguish aggregate limits to candidate committees from those to non-candidate committees, such as political parties.¶ Five votes to reconsider Buckley?¶ Underlying McCutcheon, though, is the question of whether the five conservative Justices want to reconsider Buckley’s holding that contribution limits are generally constitutional. In assessing this, it is important to note that three of these Justices – Antonin Scalia, Anthony Kennedy, and Clarence Thomas – have already called for the distinction between contribution and expenditure limits to be overruled. In his separate opinion in Colorado Republican Federal Campaign Committee v. Federal Election Commission, Justice Thomas declared: “I would reject the framework established by Buckley v. Valeo. . . . Instead, I begin with the premise that there is no constitutionally significant difference between campaign contributions and expenditures: both forms of speech are central to the First Amendment.’’¶ In Nixon v. Shrink Missouri Government PAC (2000), the Supreme Court reaffirmed Buckley’s distinction between contributions and expenditures, but four Justices sharply disagreed. Three Justices – Kennedy, Scalia, and Thomas – expressly declared their desire to overrule Buckley’s approval of contribution limits. Justice Kennedy wrote a strong dissent in which he lamented that ‘‘[t]he Court’s decision has lasting consequences for political speech in the course of elections, the speech upon which democracy depends.’’ He accused the Court of being “almost indifferent’’ to freedom of speech and said that he would overrule Buckley. Justice Thomas, joined by Justice Scalia, wrote a lengthier dissent, which began by declaring: “In the process of ratifying Missouri’s sweeping repression of political speech, the Court today adopts the analytical fallacies of our flawed decision in Buckley v. Valeo….Under the guise of applying Buckley, the Court proceeds to weaken the already enfeebled constitutional protection that Buckley afforded campaign contributions. As I indicated [previously], our decision in Buckley was in error, and I would overrule it.”¶ Therefore, it is likely that Justices Scalia, Kennedy, and Thomas are votes to strike down the aggregate contribution limits in McCutcheon and more generally to find contribution limits to violate the First Amendment. The crucial question in McCutcheon will be whether Chief Justice John Roberts and Justice Samuel Alito will join them and how far they are willing to go in reconsidering the distinction between contributions and expenditures.¶ The Chief Justice and Justice Alito were with Justices Scalia, Kennedy, and Thomas in Citizens United in its strong endorsement of the view that spending of money in election campaigns is political speech protected by the First Amendment and in invalidating limits on independent corporate political expenditures. Roberts and Alito also were with Scalia, Kennedy, and Thomas in Davis v. Federal Election Commission (2008), in declaring unconstitutional the “millionaire’s provision” of the Bipartisan Campaign Finance Reform Act unconstitutional. This provision increased contribution limits for opponents of a candidate who spent more than $350,000 of his or her personal funds. Most recently, in Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett (2011), these five Justices were in the majority to declare unconstitutional a public funding system that increased the contribution and spending limits for those not taking public money based on the amount spent by opponents.¶ By contrast, Justices Ruth Bader Ginsburg, Stephen Breyer, and Sonia Sotomayor strongly dissented in Citizens United, and Justice Elena Kagan, who as Solicitor General argued for the constitutionality of the law in Citizens United, wrote the dissent in Arizona Free Enterprise Club. They are obviously much more likely to uphold the challenged provisions in McCutcheon and to adhere to Buckley’s distinction between contributions and expenditures.¶ What seems absent on the current Court is any Justice who takes the position espoused by Justice John Paul Stevens, that there is no meaningful distinction between contribution and expenditure limits and that expenditure limits should be constitutional. This long has been my view. Elected officials can be influenced by who spends money on their behalf, just as they can be influenced by who directly contributes money to them. The perception of corruption might be generated by large expenditures for a candidate, just as it can be caused by large contributions. Moreover, I agree with Justice Stevens’s statement in his concurrence in Nixon v. Shrink that “[m]oney is property; it is not speech. . . . These property rights are not entitled to the same protection as the right to say what one pleases.’’¶ Prediction¶ Predicting Supreme Court decisions is always tempting and always dangerous. But for what it’s worth, my prediction is that the Court will vote five-four to strike down the aggregate contribution limits being challenged in McCutcheon and that it will do so without overruling the distinction between contributions and expenditures that is at the core of Buckley. When faced to confront the question in some future case, I fear that the Chief Justice and Justice Alito will join Justices Scalia, Kennedy, and Thomas in rejecting this distinction and they well might signal this in McCutcheon.

#### Capital key to strike down aggregate limits --- Citizens United proves

Gora 8-15 (Joel, professor of law at Brooklyn Law School, “Symposium: McCutcheon v. FEC and the fork in the road,” http://www.scotusblog.com/2013/08/symposium-mccutcheon-v-fec-and-the-fork-in-the-road/#more-168568)

The future of Buckley? Will the McCutcheon case disturb that Buckley equilibrium and call into question the continued validity of contribution limits in general, as some fear? The challengers say it is not necessary to reach that question because, even viewed as contribution limits under the Buckley framework (which they contend requires a much more probing analysis than commonly thought), the aggregate limits are clearly unconstitutional. The aggregate candidate limits are not required to prevent quid pro quo corruption because every separate contribution to a candidate is within the legal base limit. And the aggregate committee caps, claimed to be anti-circumvention safeguards, are constitutionally unnecessary and defective because of all the other statutory and regulatory safeguards in place to insure that the base contribution amount that any one contributor can give to any one party committee cannot be used as a conduit for corruption.¶ But the challengers also contend that the aggregate limits really operate like expenditure limits – i.e., limiting the donor’s overall ability to support a message they endorse, and controlling not just how much can be contributed, but how many candidates and committees the contributor can express support for. Given that, strict scrutiny is the standard of review. To the extent that some of the briefs supporting the law fret that eliminating those aggregate limits will give the wealthy too much political influence and sway, they seem to underscore that these can be viewed as questionable expenditure limits designed to “level the playing field” – the kiss of death for any campaign finance law. Either way, the challengers say, whether viewed as contribution controls or expenditure limits, a careful analysis of the interlocking statutory protections against corruption will show that the aggregate limits fail strict or even close scrutiny and must be struck down.¶ Enter the Roberts Court Of course, the $64,000 question is how the Roberts Court is likely to view these issues. The Court has certainly developed a decided track record on campaign finance issues. Five cases, five decisions striking down various campaign finance mechanisms as violating the First Amendment. Pervading these cases is the application of real strict scrutiny to campaign finance laws, measuring the burdens they impose on candidates, parties and groups, carefully probing in great detail the weight of the justifications offered for the mechanism at issue and showing a deep distrust and a severe skepticism of those justifications. Chief Justice John Roberts wrote a very muscular decision in the Arizona public financing case striking down a scheme that merely gave publicly funded candidates more government financing to counter spending by privately funded candidates. Even that was too much of a burden on the right of the privately funded candidate to spend their own money on their campaign. Here the restrictions are direct and potent and tell the contributor: You’ve expressed enough support for the candidates and party of your choice.¶ As is so often the case, the disposition may come down to Justice Anthony Kennedy. He, of course, is the author of the notorious Citizens United v. Federal Elections Commission (2010) decision, for which, despite its support in some quarters as a proper vindication of core First Amendment rights of all groups and individuals, the Court has taken a brutal battering in the court of public opinion.¶ Many are already raising the specter of the McCutcheon case being another Citizens United, this time dramatically changing the basic law on contribution limits. But McCutcheon and the RNC are not making that argument and are not challenging the validity of the base limits on contributions to candidates or parties. They think they can win within the traditional Buckley framework that permits contribution regulation, but only if properly justified. And Justice Kennedy in Citizens United went out of the way to say that the case involved independent expenditures only, with no direct impact on the validity of contribution limits. But one of the linchpins of his decision was that the only compelling interest that justifies campaign finance limitations is preventing direct quid pro quo corruption. To the extent the supporters of the law seem to be claiming that contributors like McCutcheon might have greater access to and influence on Republican elected officials, these days that does not seem to be much of a winning argument in the Supreme Court.¶ Finally, a win for McCutcheon and the RNC would have one other positive effect. It might give parties and candidates more financial wherewithal to counter the recent rise of “super PACs,” as exaggerated as their electoral impact seemed to be.

#### The plan forces a trade off --- massively spends court capital

McGinnis and Rappaport ’02 (John O., Prof of Law @ Cardozo Law, and Michael B., Prof of Law @ University of San Diego Law, “Our Supermajoritarian Constitution,” 80 Tex. L. Rev. 703)

Significantly, the Supreme Court has not declared these substitutions unconstitutional. In fact, the Court has upheld certain exercises of presidential authority to conclude international agreements that had binding effect [\*768] under domestic law. n276 While the causes of the Court's behavior are complex, the most important reason of the Court's failure to police the treaty clause appears to be its historic deference to the other branches regarding foreign affairs. n277 The consequences of the Court's failure thus underscore that supermajority rules, like other constitutional restraints, often require judicial enforcement.¶ Nevertheless, judicial enforcement of supermajority rules in this area would bump up against the strong institutional reasons that lead courts to defer in foreign affairs. A decision, even if correct as a matter of law, may have dramatically unfortunate consequences that could erode the Court's prestige. n278 For this reason, one may suspect that a Court with many other duties it finds more palatable, like protecting individual rights, might be reluctant to enforce strictly supermajority rules in this area even if clearly given the responsibility to do so. n279 Thus, the enforcement of a supermajority rule in foreign affairs may be more difficult than in the domestic arena, because of the nature of the subject matter.¶ n278. See John O. McGinnis, Constitutional Review by the Executive in Foreign Affairs and War Powers: A Consequence of Rational Choice in the Separation of Powers, 56 Law & Contemp. Probs., Autumn 1993, at 293, 306-07 (contemplating that judicial decisions concerning foreign affairs would jeopardize the political capital of the Court).

#### McCutcheon win strengthens political parties relative to Super PACs

Boschma ’13 (Janie, “Capital Eye Opener, Feb. 27: Lobbyists Worry About SCOTUS Case, Club for Growth Ranks Congress,” http://www.opensecrets.org/news/2013/02/capital-eye-opener-feb-27-1.html)

LOBBYISTS WORRY ABOUT SCOTUS CASE: As we wrote earlier this week, the Supreme Court has agreed to weigh in on whether to remove caps on the total amount an individual can give to candidates and political parties in McCutcheon vs. the Federal Election Commission.¶ Who's most worried about the possible removal of the caps? Lobbyists. They say they actually like the current limit on overall contributions, because it relieves some of the pressure of going to so many fundraisers, especially if they max out early and are no longer legally able to give, according to The Hill. Without a cap, they might be expected to keep attending -- and keep writing checks.¶ As our Research Director Sarah Bryner told The Hill, “Eliminating limits would provide more opportunities for lobbyists to speak with their money, given that they tend to support candidates and parties than super-PACs."¶ And because lobbyists do tend to support parties, getting rid of the cap could give political parties more power to compete with super PACs, which can accept unlimited corporate contributions. Without an overall spending cap, in theory any donor could give the maximum permissible $32,400 to a number of parties or even max out to every congressional or presidential candidate.¶ That could be why the Republican National Committee joined Alabama GOP donor Shaun McCutcheon as a plaintiff in the case. Not only could donors give more overall to a number of committees, national party committees would also not be as limited in how much they can give to candidates. ¶ If the Supreme Court sides with McCutcheon and the RNC (a decision is expected by June), McCutcheon and other big donors like him will be able to contribute to the maximum amount in each category and wouldn't be held back by the overall biennial limits -- currently $123,200, of which a total of $48,600 can go to candidates and $74,600 to PACs and parties.

#### That checks Republican extremism

Weisbrot ’12 (David, Professor of Legal Policy at the United States Studies Centre and Professor of Law and Governance at Macquarie University, “SuperPACs and bags of cash fail to halt Obama's ground game,” http://uselectionwatch12.com/news-room/SuperPACs-and-bags-of-cash-fail-to-halt-Obamas-ground-game)

Obviously, the most worrying aspect of the SuperPAC phenomenon is the disproportionately large voice — and presumably outsized influence — afforded to a small number of extremely wealthy donors. Half of all SuperPAC funding this year was provided by only 22 individuals and corporations. The top 100 donors represented less than four percent of all contributors, but accounted for over 80% of the total funds raised.¶ For the Republican camp, the major contributors included casino mogul Sheldon Adelson (over $60 million); billionaire oil and gas tycoons David and Charles Koch, the principal funders of the Tea Party movement; and Wall Street financiers — 16 of Romney’s top 20, despite the industry having been controversially bailed out by President Obama post-GFC. Left-leaning SuperPACs were best supported by Hollywood and large trade unions — such as the United Auto Workers, the National Education Association and the Service Employees International Union, although Obama has famously raised enormous amounts by accumulating large numbers of small donations, driven by effective use of social media.¶ But was it money well spent? The jury is still out on whether these riches ultimately provided some electoral advantage for candidates and a “return” for donors in the form of added influence, or whether all or most of this money was squandered in screening the relentless negative attack ads that bombarded voters in key swing states. What we know for certain is that after burning through $6billion, the election more or less restored the status quo, with President Obama re-elected, Democrats continuing to control the Senate and Republicans continuing to control the House of Representatives.¶ This masks some churn below the surface, however. The fact that a significant part of the conservative spend was controlled by SuperPACs and true believers, rather than by more pragmatic GOP operatives, helped contribute to the selection of some extreme and unattractive candidates and for the Republican message to skew even more sharply to the right.¶ Party discipline is difficult to maintain when it is divorced from the allocation of precious resources. For example, the GOP tried to distance itself from Missouri Senate candidate Todd Aikin after his infamous “legitimate rape” remarks, but outside money allowed him to remain in the race, and to be defeated in an otherwise very winnable Senate seat for the Republicans.

#### That jacks US/Russian relations – domestic politics key

Sokov 13 (Nicholas – Senior Fellow at the Vienna Center for Disarmament and Non-Proliferation (VCDNP), “US-Russian Relations: Beyond the Reset”, 1/29, http://www.europeanleadershipnetwork.org/us-russian-relations-beyond-the-reset\_459.html)

Looking into the future, most observers of US-Russian relations tend to concentrate on arms control and disarmament – a new treaty to replace New START, missile defense, tactical nuclear weapons and other similar issues. Others pay attention to the human and political rights issues, including first of all the conservative wave that is sweeping through Russia. It is quite sad that nuclear disarmament and political rights dominate the agenda. This only shows that the relationship lacks depth. More than twenty years after the end of the Cold War, trade and investment remain at an extremely low level. They cannot serve as a stabilizer of the relationship (in sharp contrast to Russia’s relations with Europe) and their absence allows other, more volatile and more adversarial issues to top the agenda. Two features are likely to dominate the future of the US-Russian relationship and both will have a negative effect: domestic politics and the political transition in the Middle East and Northern Africa which is commonly known as the “Arab Spring.” Contrary to common opinion, there are very few truly difficult issues on the bilateral agenda that cannot be resolved through negotiation. The increasingly conflictual nature of the relationship results from domestic politics in both countries rather than from strategic, economic, or political differences. A good illustration is the well-known controversy over missile defense. Any decent diplomat could find a solution in a matter of months. Russian concerns concentrate on the fourth – and the last – phase of the American plan (known as the Phased Adaptive Approach), which foresees deployment of systems theoretically capable of intercepting strategic missiles. The solution proposed by Russian military leaders is to limit the capability of the fourth-phase system (for example, through limits on the number of interceptors and the areas of their deployment) so that it does not undermine the existing US-Russian strategic balance while preserving the ability of the American system to intercept a small number of long-range missiles, i.e., to limit the system to its officially proclaimed purpose. In the end, this is about the predictability of the American missile defense capability. The prospect of reaching agreement, however, is barred by the Republican Party, especially its Tea Party wing, which regards any limits whatsoever as anathema. Missile defense is an article of faith. This is not about plans or capabilities: this is about a deeply ideological commitment to unrestricted unilateralism. The increasingly tough and vocal (even shrill) Russian rhetoric also stems from domestic politics. Implementation of phase four of PAA is supposed to begin in the end of this decade and it may be another five to seven years, if not longer, until it begins to affect Russian strategic capability. There is plenty of time to negotiate. However, the rhetoric of the Russian government suggests that the threat is imminent. It is safe to assume that is simply the familiar “rally-around-the-flag” tactic of consolidating the public around the government.

#### Russia relations solve global nuclear war

Allison 11 (Graham, Director – Belfer Center for Science and International Affairs at Harvard’s Kennedy School, and Former Assistant Secretary of Defense, and Robert D. Blackwill, Senior Fellow – Council on Foreign Relations, “10 Reasons Why Russia Still Matters”, Politico, 2011, http://dyn.politico.com/printstory.cfm?uuid=161EF282-72F9-4D48-8B9C-C5B3396CA0E6)

That central point is that Russia matters a great deal to a U.S. government seeking to defend and advance its national interests. Prime Minister Vladimir Putin’s decision to return next year as president makes it all the more critical for Washington to manage its relationship with Russia through coherent, realistic policies. No one denies that Russia is a dangerous, difficult, often disappointing state to do business with. We should not overlook its many human rights and legal failures. Nonetheless, Russia is a player whose choices affect our vital interests in nuclear security and energy. It is key to supplying 100,000 U.S. troops fighting in Afghanistan and preventing Iran from acquiring nuclear weapons. Ten realities require U.S. policymakers to advance our nation’s interests by engaging and working with Moscow. First, Russia remains the only nation that can erase the United States from the map in 30 minutes. As every president since John F. Kennedy has recognized, Russia’s cooperation is critical to averting nuclear war. Second, Russia is our most consequential partner in preventing nuclear terrorism. Through a combination of more than $11 billion in U.S. aid, provided through the Nunn-Lugar Cooperative Threat Reduction program, and impressive Russian professionalism, two decades after the collapse of the “evil empire,” not one nuclear weapon has been found loose. Third, Russia plays an essential role in preventing the proliferation of nuclear weapons and missile-delivery systems. As Washington seeks to stop Iran’s drive toward nuclear weapons, Russian choices to sell or withhold sensitive technologies are the difference between failure and the possibility of success. Fourth, Russian support in sharing intelligence and cooperating in operations remains essential to the U.S. war to destroy Al Qaeda and combat other transnational terrorist groups. Fifth, Russia provides a vital supply line to 100,000 U.S. troops fighting in Afghanistan. As U.S. relations with Pakistan have deteriorated, the Russian lifeline has grown ever more important and now accounts for half all daily deliveries. Sixth, Russia is the world’s largest oil producer and second largest gas producer. Over the past decade, Russia has added more oil and gas exports to world energy markets than any other nation. Most major energy transport routes from Eurasia start in Russia or cross its nine time zones. As citizens of a country that imports two of every three of the 20 million barrels of oil that fuel U.S. cars daily, Americans feel Russia’s impact at our gas pumps. Seventh, Moscow is an important player in today’s international system. It is no accident that Russia is one of the five veto-wielding, permanent members of the U.N. Security Council, as well as a member of the G-8 and G-20. A Moscow more closely aligned with U.S. goals would be significant in the balance of power to shape an environment in which China can emerge as a global power without overturning the existing order. Eighth, Russia is the largest country on Earth by land area, abutting China on the East, Poland in the West and the United States across the Arctic. This territory provides transit corridors for supplies to global markets whose stability is vital to the U.S. economy. Ninth, Russia’s brainpower is reflected in the fact that it has won more Nobel Prizes for science than all of Asia, places first in most math competitions and dominates the world chess masters list. The only way U.S. astronauts can now travel to and from the International Space Station is to hitch a ride on Russian rockets. The co-founder of the most advanced digital company in the world, Google, is Russian-born Sergei Brin. Tenth, Russia’s potential as a spoiler is difficult to exaggerate. Consider what a Russian president intent on frustrating U.S. international objectives could do — from stopping the supply flow to Afghanistan to selling S-300 air defense missiles to Tehran to joining China in preventing U.N. Security Council resolutions.

## Case

### 1NC Solvency

#### No viable alternative to detention

Kempton, 13 – professor of political science and vice president for academic affairs at Franciscan University of Steubenville, Ohio (Daniel R, 6/4. “KEMPTON: A drone war over semantics.” http://www.washingtontimes.com/news/2013/jun/4/a-drone-war-over-semantics/)

Finally — and most importantly — the president has failed to develop a realistic alternative to the war paradigm. Rejecting the tribunal system, Mr. Obama promised to end indefinite detention and to bring the prisoners into the traditional criminal justice system. He also repeatedly promised to close Guantanamo Bay. These promises weren’t kept. Mr. Obama failed not because of a lack of effort, but because of the lack of suitable alternatives. His 2009 trial balloon to move the detainees to the Thomson Correctional Center in Illinois failed to gain popular backing and was abandoned. In 2010, the administration dropped its proposal to hold trials for Khalid Shaikh Mohammed and other Sept. 11 conspirators in New York City when it drew anger from citizens and lawmakers alike. Most recently, his call to transfer Guantanamo Bay detainees to their countries of origin lacks congressional backing. Conservatives oppose it largely because of the high recidivism rate, in excess of 30 percent, among those previously returned. Moreover, those remaining at Guantanamo are the most hardened cases. Even some on the left have concerns with the concept. When the Bush administration used extraordinary rendition to send suspected terrorists, such as Abu Omar, back to their country of origin, torture sometimes resulted. In sum, after years of ideologically driven effort, Mr. Obama has failed to produce a practical — or politically viable — alternative to the Bush paradigm of the “global war on terrorism.” Instead, the tribunal system goes unused, indefinite detention continues, and suspected terrorists — even American ones — are killed without due process, or even the benefits of interrogation, enhanced or otherwise. Verbal acrobatics aside, suspending the use of the term hasn’t brought an end to the reality.

#### Can’t solve – the DOD will just shift detainment overseas

**Merritt, 2005** (Jeralyn, Criminal Defense Lawyer, J.D. 1973, “Rendition Comes Out of the Closet”, TalkLeft, March 11th, http://talkleft.com/new\_archives/009994.html)

A Feb. 5 memorandum from Defense Secretary Donald H. Rumsfeld calls for broader interagency support for the plan, starting with efforts to work out a significant transfer of prisoners to Afghanistan, the officials said. The proposal is part of a Pentagon effort to cut a Guantánamo population that stands at about 540 detainees by releasing some outright and by transferring others for continued detention elsewhere. What's behind the move to reduce the population at Guantanamo? Is it finally some concern for the due process rights of the detainees? Not a chance. In fact, it's just the opposite. The Pentagon doesn't care for the restrictions the U.S. Courts have placed on their actions, so they want to move the show elsewhere--to foreign countries that won't have such concerns. Defense Department officials said that the adverse court rulings had contributed to their determination to reduce the population at Guantánamo, in part by persuading other countries to bear some of the burden of detaining terrorism suspects.

### 1NC Terrorism Turns

#### We’re walking the right line on executive flexibility now – detention’s key to solve terror – multiple internal links

Tomatz and Graham, 13 – Colonel, B.A., University of Houston, J.D., University of Texas, LL.M., The Army Judge Advocate General Legal Center and School (2002); serves as the Chief of Operations and Information Operations Law in the Pentagon; and J.D., University of South Carolina, serves as the Senior Individual Mobilization Augmentee to The Judge Advocate Senior United States Senator from South Carolina (Michael and Lindsey O. “NDAA 2012: CONGRESS AND CONSENSUS ON ENEMY DETENTION.” Air Force Law Review, 69 A.F. L. Rev. 1. Lexis.)

President Obama signed the NDAA "despite having serious reservations with certain provisions that regulate the detention, interrogation, and prosecution of suspected terrorists." n114 While the Administration voiced concerns throughout the legislative process, those concerns were addressed and ultimately resulted in a bill that preserves the flexibility needed to adapt to changing circumstances and upholds America's values. The President reiterated his support for language in Section 1021 making clear that the new legislation does not limit or expand the scope of Presidential authority under the AUMF or affect existing authorities "relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States." n115¶ The President underscored his Administration "will not authorize the indefinite military detention without trial of American citizens" and will ensure any authorized detention "complies with the Constitution, the laws of war, and all other applicable law." n116 Yet understanding fully the Administration's position requires recourse to its prior insistence that the Senate Armed Services Committee remove language in the original bill which provided that U.S. citizens and lawful resident aliens captured in the United States would not be subject to Section 1021. n117 There appears to be a balancing process at work here. On the one hand, the Administration is in lock-step with Congress that the NDAA should neither expand nor diminish the President's detention authority. On the other hand, policy considerations led the President to express an intention to narrowly exercise this detention authority over American citizens.¶ The overriding point is that the legislation preserves the full breadth and depth of detention authority existent in the AUMF, to include the detention of American citizens who join forces with Al Qaida. This is a dynamic and changing conflict. If a home-grown terrorist destroys a U.S. target, the FBI gathers the evidence, and a U.S. Attorney prosecutes, traditional civilian criminal laws govern, and the military detention authority resident in the NDAA need never come into play. This is a reasonable and expected outcome in many cases. The pending strike on rail targets posited in this paper's introduction, where intelligence sources reveal an inchoate attack involving American and foreign nationals operating overseas and at home, however, may be precisely the type of scenario where military detention is not only preferred but vital to thwarting the attack, conducting interrogations about known and hidden dangers, and preventing terrorists from continuing the fight.

#### Terror causes extinction

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

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

### 1NC Circumvention

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

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

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

#### And the courts get stripped

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

Archibald Cox - who knew a thing or two about the necessity of government actors being independent - emphasized that an essential element of judicial independence is that "there shall be no tampering with the organization or jurisdiction of the courts for the purposes of controlling their decisions upon constitutional questions." n2 Applying Professor Cox's precept to current events, we might question whether some recent actions and arguments advanced by the elected branches constitute threats to judicial independence. Congress, for instance, recently passed the Detainee Treatment Act. n3 The Graham-Levin Amendment, which is part of that legislation, prohibits any court from hearing or considering habeas petitions filed by aliens detained at Guantanamo Bay. n4 The Supreme Court has been asked to rule on whether the Act applies only prospectively, or whether it applies to pending habeas petitions as well. It is unclear at this time which interpretation will prevail. n5 But if the Act is ultimately construed as applying to pending appeals, one must ask whether it constitutes "tampering with the ... jurisdiction of the courts for the purposes of controlling their decisions," which Professor Cox identified as a key marker of a violation of judicial independence. All of this, of course, is wholly aside from the question of whether Congress and the President may strip the courts of such jurisdiction prospectively. And it is, of course, also wholly apart from the Padilla case, n6 in which many critics believe that the administration has played fast and loose with the courts' jurisdiction in order to avoid a substantive decision on a fundamental issue of great importance to all Americans. Another possible threat to judicial independence involves the position taken by the administration regarding the scope of its war powers. In challenging cases brought by individuals charged as enemy combatants or detained at Guantanamo, the administration has argued that the President has "inherent powers" as Commander in Chief under Article II and that actions he takes pursuant to those powers are essentially not reviewable by courts or subject to limitation by Congress. n7 The administration's position in the initial round of Guantanamo cases was that no court anywhere had any jurisdiction to consider [\*1311] any claim, be it torture or pending execution, by any individual held on that American base, which is located on territory under American jurisdiction, for an indefinite period. n8 The executive branch has also relied on sweeping and often startling assertions of executive authority in defending the administration's domestic surveillance program, asserting at times as well a congressional resolution for the authorization of the use of military force. To some extent, such assertions carry with them a challenge to judicial independence, as they seem to rely on the proposition that a broad range of cases - those that in the administration's view relate to the President's exercise of power as Commander in Chief (and that is a broad range of cases indeed) - are, in effect, beyond the reach of judicial review. The full implications of the President's arguments are open to debate, especially since the scope of the inherent power appears, in the view of some current and former administration lawyers, to be limitless. What is clear, however, is that the administration's stance raises important questions about how the constitutionally imposed system of checks and balances should operate during periods of military conflict, questions judges should not shirk from resolving.

### Due Process

#### They rollback due process rights for all cases

Mukasey 7—US district judge [MICHAEL B. MUKASEY, “Jose Padilla Makes Bad Law,” Wall Street Journal, August 22, 2007, pg. http://tinyurl.com/lmhup5x]

And third, consider the distortions that arise from applying to national security cases generally the rules that apply to ordinary criminal cases. On one end of the spectrum, the rules that apply to routine criminals who pursue finite goals are skewed, and properly so, to assure that only the highest level of proof will result in a conviction. But those rules do not protect a society that must gather information about, and at least incapacitate, people who have cosmic goals that they are intent on achieving by cataclysmic means. Khalid Sheikh Mohammed, the mastermind of the 9/11 attacks, is said to have told his American captors that he wanted a lawyer and would see them in court. If the Supreme Court rules -- in a case it has agreed to hear relating to Guantanamo detainees -- that foreigners in U.S. custody enjoy the protection of our Constitution regardless of the place or circumstances of their apprehension, this bold joke could become a reality. The director of an organization purporting to protect constitutional rights has announced that his goal is to unleash a flood of lawyers on Guantanamo so as to paralyze interrogation of detainees. Perhaps it bears mention that one unintended outcome of a Supreme Court ruling exercising jurisdiction over Guantanamo detainees may be that, in the future, capture of terrorism suspects will be forgone in favor of killing them. Or they may be put in the custody of other countries like Egypt or Pakistan that are famously not squeamish in their approach to interrogation -- a practice, known as rendition, followed during the Clinton administration. At the other end of the spectrum, if conventional legal rules are adapted to deal with a terrorist threat, whether by relaxed standards for conviction, searches, the admissibility of evidence or otherwise, those adaptations will infect and change the standards in ordinary cases with ordinary defendants in ordinary courts of law.

### Violence decreasing

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

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

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

### Util

#### Evaluate consequences – allowing violence for the sake of moral purity is evil

Isaac 2 (Jeffrey C., Professor of Political Science – Indiana-Bloomington, Director – Center for the Study of Democracy and Public Life, Ph.D. – Yale, Dissent Magazine, 49(2), “Ends, Means, and Politics”, Spring, Proquest)

As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one’s intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the **clean conscience** of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics--as opposed to religion--pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about **unintended consequences** as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with “good” may engender impotence, it is often the pursuit of “good” that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one’s goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

#### Extinction mandates consequentialism

Bok 88 (Sissela, Professor of Philosophy – Brandeis College, Applied Ethics and Ethical Theory, Ed. Rosenthal and Shehadi, p. 202-203)

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 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 a responsibility seriously—perhaps to the point of deceiving, bribing, even killing an innocent person, in order that the world not perish.

#### There’s always value to life

Frankl (Holocaust Survivor) 46 (Victor Frankl, Professor of Neurology and Psychiatry at the University of Vienna, Man’s Search for Meaning, 1946, p. 104)

But I did not only talk of the future and the veil which was drawn over it. I also mentioned the past; all its joys, and how its light shone even in the present darkness. Again I quoted a poet—to avoid sounding like a preacher myself—who had written, “Was Dii erlebst, k,ann keme Macht der Welt Dir rauben.” (What you have experienced, no power on earth can take from you.) Not only our experiences, but all we have done, whatever great thoughts we may have had, and all we have suffered, all this is not lost, though it is past; we have brought it into being. Having been is also a kind of being, and perhaps the surest kind. Then I spoke of the many opportunities of giving life a meaning. I told my comrades (who lay motionless, although occasionally a sigh could be heard) that human life, under any circumstances, never ceases to have a meaning, and that this infinite meaning of life includes suffering and dying, privation and death. I asked the poor creatures who listened to me attentively in the darkness of the hut to face up to the seriousness of our position. They must not lose hope but should keep their courage in the certainty that the hopelessness of our struggle did not detract from its dignity and its meaning. I said that someone looks down on each of us in difficult hours—a friend, a wife, somebody alive or dead, or a God—and he would not expect us to disappoint him. He would hope to find us suffering proudly—not miserably—knowing how to die.

### Reps

#### Privileging representations locks in violence – policy analysis is the best challenge to power

Taft-Kaufman 95 (Jill, Professor of Speech – CMU, Southern Communication Journal, 60(3), Spring)

The postmodern passwords of "polyvocality," "Otherness," and "difference," unsupported by substantial analysis of the concrete contexts of subjects, creates a solipsistic quagmire. The political sympathies of the new cultural critics, with their ostensible concern for the lack of power experienced by marginalized people, aligns them with the political left. Yet, despite their adversarial posture and talk of opposition, their discourses on intertextuality and inter-referentiality isolate them from and ignore the conditions that have produced leftist politics--conflict, racism, poverty, and injustice. In short, as Clarke (1991) asserts, postmodern emphasis on new subjects conceals the old subjects, those who have limited access to good jobs, food, housing, health care, and transportation, as well as to the media that depict them. Merod (1987) decries this situation as one which leaves no vision, will, or commitment to activism. He notes that academic lip service to the oppositional is underscored by the absence of focused collective or politically active intellectual communities. Provoked by the academic manifestations of this problem Di Leonardo (1990) echoes Merod and laments: Has there ever been a historical era characterized by as little radical analysis or activism and as much radical-chic writing as ours? Maundering on about Otherness: phallocentrism or Eurocentric tropes has become a lazy academic substitute for actual engagement with the detailed histories and contemporary realities of Western racial minorities, white women, or any Third World population. (p. 530) Clarke's assessment of the postmodern elevation of language to the "sine qua non" of critical discussion is an even stronger indictment against the trend. Clarke examines Lyotard's (1984) The Postmodern Condition in which Lyotard maintains that virtually all social relations are linguistic, and, therefore, it is through the coercion that threatens speech that we enter the "realm of terror" and society falls apart. To this assertion, Clarke replies: I can think of few more striking indicators of the political and intellectual impoverishment of a view of society that can only recognize the discursive. If the worst terror we can envisage is the threat not to be allowed to speak, we are appallingly ignorant of terror in its elaborate contemporary forms. It may be the intellectual's conception of terror (what else do we do but speak?), but its projection onto the rest of the world would be calamitous....(pp. 2-27) The realm of the discursive is derived from the requisites for human life, which are in the physical world, rather than in a world of ideas or symbols.(4) Nutrition, shelter, and protection are basic human needs that require collective activity for their fulfillment. Postmodern emphasis on the discursive without an accompanying analysis of how the discursive emerges from material circumstances hides the complex task of envisioning and working towards concrete social goals (Merod, 1987). Although the material conditions that create the situation of marginality escape the purview of the postmodernist, the situation and its consequences are not overlooked by scholars from marginalized groups. Robinson (1990) for example, argues that "the justice that working people deserve is economic, not just textual" (p. 571). Lopez (1992) states that "the starting point for organizing the program content of education or political action must be the present existential, concrete situation" (p. 299). West (1988) asserts that borrowing French post-structuralist discourses about "Otherness" blinds us to realities of American difference going on in front of us (p. 170). Unlike postmodern "textual radicals" who Rabinow (1986) acknowledges are "fuzzy about power and the realities of socioeconomic constraints" (p. 255), most writers from marginalized groups are clear about how discourse interweaves with the concrete circumstances that create lived experience. People whose lives form the material for postmodern counter-hegemonic discourse do not share the optimism over the new recognition of their discursive subjectivities, because such an acknowledgment does not address sufficiently their collective historical and current struggles against racism, sexism, homophobia, and economic injustice. They do not appreciate being told they are living in a world in which there are no more real subjects. Ideas have consequences. Emphasizing the discursive self when a person is hungry and homeless represents both a cultural and humane failure. The need to look beyond texts to the perception and attainment of concrete social goals keeps writers from marginalized groups ever-mindful of the specifics of how power works through political agendas, institutions, agencies, and the budgets that fuel them.

### Impact D

#### Their impact is a theoretical fabrication

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

Perhaps more alarming though is the outright violence Ashley recommends in response to what at best seem trite, if not imagined, injustices. Inculpating modernity, positivism, technical rationality, or realism with violence, racism, war, and countless other crimes not only smacks of anthropomorphism but, as demonstrated by Ashley’s torturous prose and reasoning, requires a dubious logic to make such connections in the first place. Are we really to believe that ethereal entities like positivism, modernism, or realism emanate a “violence” that marginalizes dissidents? Indeed, where is this violence, repression, and marginalization? As self-professed dissidents supposedly exiled from the discipline, Ashley and Walker appear remarkably well integrated into the academy—vocal, published, and at the center of the Third Debate and the forefront of theoretical research. Likewise, is Ashley seriously suggesting that, on the basis of this largely imaged violence, global transformation (perhaps even revolutionary violence) is a necessary, let alone desirable, response? Has the rationale for emancipation or the fight for justice been reduced to such vacuous revolutionary slogans as “Down with positivism and rationality”? The point is surely trite. Apart from members of the academy, who has heard of positivism and who for a moment imagines that they need to be emancipated from it, or from modernity, rationality, or realism for that matter? In an era of unprecedented change and turmoil, of new political and military configurations, of war in the Balkans and ethnic cleansing, is Ashley really suggesting that some of the greatest threats facing humankind or some of the great moments of history rest on such **innocuous** and largely unknown **nonrealities** like positivism and realism? These are **imagined and fictitious enemies**, **theoretical fabrications** that represent arcane, self-serving debates superfluous to the lives of most people and, arguably, to most issues of importance in international relations.

# 2NC

## CP

### Solvency – 2NC

#### Amending solves the case without hurting the Supreme Court's image or risking rollback

Baker 95 (Thomas E. Baker, Law Prof @ Texas Tech, 1995, “Exercising the Amendment Power,” 22 Hastings Const. L.Q. 325, lexis)

Indeed, the best use of this “republican veto” would be to set aside a Supreme Court decision that itself overrules a prior decision. This would have the immediate effect of reinstating the preferred earlier interpretation. For example, Congress and the state legislatures by vetoing either National League of Cities v. Usery86 or Garcia v. San Antonio Metropolitan Transit Authority, could have settled the debate over the Tenth Amendment, at least for this generation. That would have avoided the constitutional consternation that resulted from the Court’s yo-yoing of its own precedents.88 This usage to set aside judicial overrulings has the potential to reclaim valuable constitutional precedent at only an incremental cost to the Court as an institution.89 The Supreme Court’s recent internal debate over stare decisis for constitutional questions is instructive and provides Congress with some helpful criteria to consider in deciding whether to veto a Supreme Court decision. Such criteria include the narrowness of the margin of the decision, the persuasiveness of the dissents, the lack of allegiance by present members of the Court, the difficulty of consistent application by the lower courts and subsequent Supreme Courts, the extent of reliance on the ruling within the legal community and in society at large, how related doctrines have affected the ruling, and whether the facts and assumptions relied on in the decision have been overcome by subsequent developments.90 The debate over the particular proposal ought to take place on this level of pragmatic argumentation, with full consideration afforded to all relevant and prudential factors,91 including the threshold assumption that there is a higher burden for constitutional change than for legislative matters. Constitutional politics ought to claim the best wisdom of our nation, expressed through the Congress and the state legislatures. How can the Supreme Court be expected to act in response to the exercise of the “republican veto” if the practice becomes routine? If an amendment is proposed by Congress and ratified by the states, then the Court is oath-bound 92 to respect the outcome of the political process.93 In fact, each time Article V has been relied on to overrule a Supreme Court decision, the Justices have adhered to their oaths.94 The Supreme Court, no less than the political branches, must adhere to the rule of law; indeed, the Court as an institution has the most to lose under the rule of man.95 The constitutional dialogue would be enhanced by regular repair to the “republican veto.”96 Under settled understandings of the principle of separation of powers, the decisions when and what to propose and ratify in a “republican veto” are wholly given over to the Article V procedures. The judicial task of interpreting any amendment, including a new amendment setting aside a specific Court decision, necessarily resides with the Supreme Court, as does the continuing obligation to interpret the scope of the underlying provision of the Constitution’ The implied veto of judicial review is subject to the explicit veto of Article V, but the awesome responsibility to interpret the Constitution will remain with the Supreme Court. Once ratified, a “republican veto” will become part and parcel of the same constitutional dynamic.98 Arguably, an amendment that is negative should be preferred over an amendment that attempts affirmatively to state a new constitutional rule for decision. What is needed is a different interpretation, not different language.99 In our constitutional theater, the Supreme Court always will perform center stage, but Article V makes Congress the director, and the people in the states the playwrights. A “republican veto” will oblige the Justices to reinterpret their part as they perform their ongoing role. This is a constitutionally creative collaboration which is textually preferred over the common law methodology within the exclusive domain of the Justices.’°°

#### The CP solves better – plan is more likely to be overturned

Vermeule 4 (Adrian, Prof of Law @ The University of Chicago, “Constitutional Amendments and the Constitutional Common Law” September http://www.law.uchicago.edu/academics/publiclaw/index.html)

A benefit of formal amendments, then, is to more effectively discourage subsequent efforts by constitutional losers to overturn adverse constitutional change. Precisely because the formal amendment process is more costly to invoke, formal amendments are more enduring than are judicial decisions that update constitutional rules;83 so losers in the amendment process will less frequently attempt to overturn or destabilize the new rules, in subsequent periods, than will losers in the process of common-law constitutionalism. This point does not necessarily suppose that dissenters from a given amendment come to agree with the enacting supermajority’s judgment, only that they accept the new equilibrium faute de mieux. Obviously more work might be done to specify these intuitions, but it is at least plausible to think that the simplest view, on which formal amendments incur decisionmaking costs that exceed their other benefits, is untenably crude. The overall picture, rather, is a tradeoff along the following lines. Relative to common-law constitutionalism, the Article V process requires a higher initial investment to secure constitutional change. If Mueller is right, however, constitutional settlements produced by the Article V process will tend to be more enduring over time than is judicial updating, which can be unsettled and refought at lower cost in subsequent periods.

#### War power amendments restrict the President

Telman 1 (Jeremy – Associate, Sidley, Austin, Brown & Wood, J.D. – NYU School of Law, “A Truism That Isn'T True? The Tenth Amendment and Executive War Power”, 2001, 51 Cath. U.L. Rev. 135, lexis)

 [\*146] The Tenth Amendment stands for the general proposition that the federal government is one of limited powers. As such, it cannot co-exist with the theory of inherent executive power. Because there is no question that the Constitution delegates powers over foreign policy and war to the federal government, n39 the Tenth Amendment raises no federalism issues with respect to the war power. However, because it imposes a limitation on all branches of the federal government, the Tenth Amendment addresses the separation of powers among the branches of the federal government and thus helps to determine which branch may exercise delegated powers. Powers delegated to the legislative branch must be exercised by that branch, absent lawful delegation or constitutional amendment. Nothing in the legislative or subsequent history of the Tenth Amendment contradicts this more expansive reading of its significance. Because war powers are allocated to Congress and not to the Executive, the Executive cannot exercise those powers without violating the Tenth Amendment.

### Solves – Domestic Signal

#### The Amendment process publicizes the change and creates massive domestic signals

Denning & Vile 2 (Brannon P, Assistant Prof of Law, Southern Illinois University School of Law; John R, Chair, Dept of Political Science @ Middle Tennessee State University, “The Relevance of Constitutional Amendments: A Response to David Strauss”, November, 77 Tul. L. Rev. 247, lexis)

Proposals for constitutional amendment inevitably attract publicity. The debates in Congress publicize the change and allow a forum for proponents and opponents of the change to make their case both to members of Congress and to those who will eventually be called upon to ratify the amendment, if passed. Even amendments that Strauss would characterize as "do-nothing" amendments (the Twenty-Seventh Amendment, for example) received the attention of Congress and the press 130 that only the most dramatic informal constitutional changes do. The educative function of the debate aside, if proposed and ratified, a formal amendment undeniably changes the Constitution in one significant respect: it adds language to the Constitution. Thus, to every person who bothers to look at a copy of the Constitution, the change will be noticed. This textual referent, being available and apparent, enables more people to understand the fact that there has been constitutional change and to take note of it than if the change comes informally, as the culmination of doctrinal evolution in the Supreme Court or by accretions that harden into custom in the other branches. The publicity accompanying the change may, in fact, increase public expectations that the change will be honored by the other branches, raising the costs of evasion or under-enforcement. 131 [\*280] One might as well argue against a written constitution as against amendments; neither are sure guarantees. There is reason to believe, however, that the American Founders, drawing in part from the Protestant heritage that stressed the authority of written scriptures, were not completely mistaken in believing that written words available for inspection by all may often have a force that words not reduced to writing may not. Not for nothing did Washington's farewell speech refer to constitutional change through explicit, as well as authentic acts. 132 It might be worth remembering that the correspondence between Jefferson and Madison in many ways echoed the debates that had taken place when America separated from England. Students of comparative government know that Great Britain does not have a written constitution. 133 Perhaps more accurately, while parts of the British constitution are written and parts are unwritten, the "constitution" is not perceived - like the American Constitution - to be superior law unchangeable by ordinary legislative means. Although believing that natural law should regulate the conduct of lawmakers, De Lolme argued that the Parliament had the power to do anything but change a woman into a man or a man into a woman - that is, anything other than that which was then considered beyond the realm of human action. 134

#### Only the CP creates lasting discussion

Denning 97 (Brannon P, Research Associate & Senior Fellow, Yale Law School JD, “MEANS TO AMEND: THEORIES OF CONSTITUTIONAL CHANGE”, 65 Tenn. L. Rev. 155, lexis)

Non-Article V change can produce the same sort of "quick decision" as an amendment through direct democracy, which I earlier criticized. In such cases, there is often a rush to address subjects that evoke highly emotional responses and on which there is not even an emerging consensus. Moreover, custom and usage changes are often reactions to specific situations, and not long-term solutions. These constitutional quick fixes at best produce unintended or unanticipated results; at worst, they can furnish dangerous precedents for future political actors. 535 The constitutional decadence to which I alluded above has an atrophying effect on our constitutional discourse as a whole. By "ratifying" change outside Article V, we are encouraged to assume less responsibility for the change we desire. As a result, we become incapable of sustaining a national discussion on important constitutional issues.

### A2: Perm – Do Both

#### Perm links to the court disads – explain

#### Evaluate in offense/defense paradigm – always a risk that the permutation links to the disad but no risk in the world of the CP

### Avoids Court Politics – 1NC

#### Amendments solve the benefits of judicial action and avoid the reputational costs

Vermeule 4 (Adrian, Prof of Law @ The University of Chicago, “Constitutional Amendments and the Constitutional Common Law” September http://www.law.uchicago.edu/academics/publiclaw/index.html)

These points, however, capture only one side of the ledger. Precedent, and the constraint that new decisions be related analogically to old decisions, effect a partial transfer of authority from today’s judges to yesterday’s judges. As against claims of ancestral wisdom, Bentham emphasized that prior generations necessarily possess less information than current generations. If the problem is that changing circumstances make constitutional updating necessary, it is not obvious why it is good that current judges should be bound either by the specific holdings or by the intellectual premises and assumptions of the past. Weak theories of precedent may build in an escape hatch for changed circumstances, but the escape hatch in turn weakens the whole structure, diluting the decisionmaking benefits said to flow from precedent. Another cost of precedent is path dependence. Path dependence is an ambiguous term, but a simple interpretation in the judicial setting is that the order in which decisions arise is an important constraint on the decisions that may be made. Judges who would, acting on a blank slate, choose the constitutional rule that is best for the polity in the changed circumstances, may be barred from reaching the rule, even though they would have reached it had the cases arisen in a different order. Precedent has the effect of making some optimal rules inaccessible to current decisionmakers. When technological change threatened to render the rigid trimester framework of Roe v. Wade obsolete, the Supreme Court faced the prospect, in Pennsylvania v. Casey, that precedent would block a decision revising constitutional abortion law in appropriate ways, even though a decisive fraction of the Justices would have chosen the revised rule in a case of first impression.78 The joint opinion in Casey resorted to intellectual dishonesty, proclaiming adherence to precedent while discarding the trimester framework that previous cases has taken to be the core of Roe’s holding.79 The lesson of Casey is sometimes taken to be that precedent imposes no real constraint, but absent precedent the Justices would have had no need to write a mendacious, and widely ridiculed, opinion. The institutions that participate in the process of formal amendment, principally federal and state legislatures, are not subject to these pathologies. The drafters of constitutional amendments may write on a blank slate, drawing upon society’s best current information and deliberation about values, while ignoring precedent constraints that prevent courts from implementing current learning even if they possess it. The contrast is overdrawn, because legislatures deliberating about constitutional amendments use precedent in an informal way. But precisely because the practice of legislative precedent is relatively less formalized than the practice of judicial precedent, legislative practice may capture most of the decisional benefits of formal precedent while minimizing its costs. Legislatures may draw upon their past decisions purely to conserve on decisionmaking costs, while shrugging off precedential constraints whenever legislators’ best current information clearly suggests that the constitutional rules should be changed.

### Counterplans Solve

#### -- Partial fulfillment of an obligation is sufficient – e.g. the CP

Slote 85 (Michael, Professor of Philosophy – University of Maryland, Common-Sense Morality and Consequentialism, p. 82)

The fact of widespread human suffering makes a moral claim on us not only from the utilitarian or consequentialist point of view, but on common-sense moral grounds as well. Even apart from any responsibility we may have for having made less fortunate other people less well off than they could have been, the common-sense morality of benevolent action seems to regard it as in general wrong never to do anything for those less fortunate people whom one is in a position to help and as morally better to do more for such people rather than less, to sacrifice more of one’s own well-being rather than less in order to give aid to the less fortunate. But this, of course, doesn’t tell us how much one must give in order to give what one morally might to give, to fulfil one’s (imperfect) duty of benevolence. It assumes that it is wrong never to give aid to those worse off than oneself (when one can easily do so, etc.). And it also assumes that it is morally acceptable and morally best (when this involves no violation of side-constraints, etc.) to give all one has to the less fortunate, or, at least, to reduce oneself to the (presumably rising) level of well-being of those one should be trying to help. But these assumptions say nothing about the wide spectrum of cases between giving nothing and giving, as it were, one’s all: and controversy, disagreement, and indecision over where, in that spectrum, the (rough) dividing line between duties and supererogations of benevolence should be drawn have featured time and time again in ethics discussions.

## Kritik

### War

**Their form of democracy makes violence inevitable and escalates to global WMD conflict – only the alternative solves.**

Morgareidge 1 (Clayton – professor emeritus of philosophy at Lewis and Clark University, The Global Panopticon, 2/6, p. http://www.lclark.edu/~clayton/commentaries/global.html)

As the world’s only remaining superpower, the United States is a super state. It does not directly govern the world, but it sure exercises hegemony over it. It establishes alliances and forms of cooperation wherever possible, and **uses threats, intimidation and violence** wherever it must. Its mission is to manage the process of globalization -- no small task. Globalization is an immense transformation, and it requires increasingly sophisticated forms of information and control. In the 1970s, the French philosopher Michele Foucault elaborated a conception of power/knowledge which I think helps us understand what current US foreign and military policies are about. One of the techniques of power/knowledge is the Panopticon, a design for prisons recommended by Jeremy Bentham in the mid 19th Century. According to this model, a guard tower stands in the center of a circular bank of cells many tiers high. The cells have windows on both sides -- on the side facing the guard tower and on the opposite side letting in light from outside. "All that is needed, then," writes Foucault, "is to place a supervisor in a central tower and to shut up in each cell a madman, a patient, a condemned man, a worker or a school boy." (200). "The cells are like so many cages, so many small theatres, in which each actor is alone, perfectly individualized and constantly visible." Hence the major effect of the Panopticon is "to induce in the inmate a state of consciousness and permanent visibility that assures the automatic functioning of power. So to arrange things that the surveillance is permanent in its effects, even if it is discontinuous in its actions; that the perfection of power should tend to render its actual exercise unnecessary…." (201) Although the panopticon was never actually constructed as a prison, this ideal of perfect information and control, or power/knowledge, showed up in a variety of schemes for public administration as early as the end of the 17th Century -- for example, in the control of a population facing an outbreak of plague. Foucault writes, "…[T]he image of the plague stands for all forms of confusion and disorder…" (199). The invisibility of the controlling authority in the Panopticon model is "a guarantee of order." If the inmates are convicts, there is no danger of a plot, an attempt at collective escape, the planning of new crimes for the future, bad reciprocal influences; if they are patients, there is no danger of contagion; if they are mad~~men~~ there is no risk of their committing violence upon one another; if they are schoolchildren, there is no copying, no noise, no chatter, no waste of time; if they are workers, there are no disorders, no theft, no coalitions, none of those distractions that slow down the rate of work, make it less perfect or cause accidents.(201) The Panopticon… must be understood as a generalizable model of functioning; a way of defining power relations in terms of…everyday life.… The Panopticon must not be understood as a dream building: it is the diagram of a mechanism of power reduced to its ideal form; it … [is] a pure architectural and optical system; it is in fact a figure of political technology that may and must be detached from any specific use." (205) So what is the plague, the disorder that the American super-state, the administrator and orchestrator of global order must contend with? One authoritative list of America's tasks in the world comes from Samuel Huntington writing in Foreign Affairs: In the past few years the United States has, among other things, attempted or been perceived as attempting more or less unilaterally to do the following: pressure other countries to adopt American values and practices regarding human rights and democracy; prevent other countries from acquiring military capabilities that could counter American conventional superiority; enforce American law extraterritorially in other societies; grade countries according to their adherence to American standards on human rights, drugs, terrorism, nuclear proliferation, and now religious freedom; apply sanctions against countries that do not meet American standards on these issues; promote American corporate interests under the slogans of free trade and open markets; shape World Bank and International Monetary Fund policies to serve those same corporate interests; intervene in local conflicts in which it has relatively little direct interest; bludgeon other counties to adopt economic policies and social policies that will benefit American economic interests; promote American arms sales abroad while attempting to prevent comparable sales by other countries; …expand NATO…; undertake military action against Iraq and later maintain harsh economic sanctions against the regime; and categorize certain countries as 'rogue states,' excluding them from global institutions because they refuse to kowtow to American wishes. (continues on next page…) The Panopticon in the 21st Century model, does not accomplish these goals perfectly and without violence. Thus, for example, what our President calls the "routine" bombing of Iraq, which the British prime minister Tony Blair recently acknowledged serves the need for the West to keep a tight grip on 'vital oil supplies." But this bombing is coordinated by intensive aerial surveillance of Iraq: again, power/knowledge at work. To go with the intense observation of the Panopticon, the superstate requires precise and immediate means of punishment and destruction. This is clearly what today's military planners have in mind, as is all too obvious in these recent remarks of George W. Bush. First, listen to how he identifies the dangers, the plagues that face us: The grave threat from nuclear, biological and chemical weapons has not gone away with the cold war, it has evolved into many separate threats, some of them harder to see and harder to answer, and the adversaries seeking these tools of terror are less predictable, more diverse. With shared intelligence and enforcement, we must confront the threats that come in a shipping container or in a suitcase. And here is his description of the kind of power needed to counter these threats. Notice how information is woven into this power. Power is increasingly defined not by size, but by mobility and swiftness. Advantage increasingly comes from information, such as the three-dimensional images of simulated battle that I have just seen. Safety is gained in stealth and forces projected on the long arc of precision-guided weapons. The best way to keep the peace is to redefine war on our terms.… On land, our heavy forces will be lighter. Our light forces will be more lethal. All will be easier to deploy and to sustain. In the air, we'll be able to strike across the world with pinpoint accuracy, using both aircraft and unmanned systems. In the oceans, we'll connect information and weapons in new ways, maximizing our ability to project power over land. In space, we'll protect our network of satellites, essential to the flow of our commerce and the defense of our common interests. This project of total remote control of nations and peoples is mind-boggling. It's the globalization of the Panopticon, the ideal of complete information coming into the center from every point on the globe, knowledge of the movements and intentions of every group and individual, together with the ability to punish or destroy at will whatever elements the superstate determines stand in the way of its objectives. The panoptical dream, taken to the global level, is to instill among all nations and peoples a sense that they are being watched by a supreme power, exactly like the biblical eye of God, **with the power to punish instantaneously**. Once achieved, this state of consciousness would mean that actual violence could be used very rarely -- just enough to keep the fear of it alive. What is more important is the constant consciousness of surveillance. Foucault's central lesson about techniques of power like the Panopticon is that they are not conscious and evil conspiracies. They are, instead, patterns or models of thought and action that grow up in the historical circumstances of exercising power, and today, those circumstances are the global imperatives of corporate penetration. The task of the revolutionary mole is to bring these patterns of power out into the open, to dig them out of the ground where they can be subjected to democratic discussion. Foucault also tells us that where there is power, there is resistance; no form of power has ever been able to realize its dream of complete control. It is also the task of the revolutionary mole to organize that resistance, and to create cooperative images of the world order that can displace the corporate world order managed by the super-state.

**Constructing democracy as a product makes coercive democratization and regime change inevitable.**

Hobson 9 (Christopher, Post-Doctoral Fellow in the Department of International Politics, Aberystwyth University, Alternatives 34, “The Limits of Liberal-Democracy Promotion,” p. 390-391, ebsco)

Coercive democratization has become an issue of central concern following the US-led regime change in Afghanistan and Iraq. One of the most damaging legacies of Bush’s “freedom agenda” has been the subsequent tendency to equate democracy promotion with regime change. Nonetheless, it would be unwise to veer too far in the opposite direction and dismiss these cases as aberrations. Coercive democratization is not in contradiction with liberal-democracy promotion, but actually an outgrowth and extension of the framework developed in the 1990s, as examined above. It commences with the way democracy is conceived. Understanding democracy in procedural terms implies it may be reasonably straightforward to export, as it is reduced to a matter of installing a set of institutions.30 More expansive conceptions of democracy may be less amenable to this kind of logic. The comparative ease of establishing liberal democracy—when understood in limited, procedural terms—is reinforced by the downplaying of arguments for the necessity of certain socioeconomic preconditions. The prevailing activist conception of democratic transitions instead suggests there is no need to wait: Any state is “ready” for democracy if sufficient political will is generated. Whereas preconditions arguments suggest skepticism about what external intervention can achieve, the agency-centered approach is one far more amenable to intervention to trigger democratization. External actors can play a poten- tially determinative role by helping to facilitate political action. This may encourage coercive democratization if either the political will is lacking and needs to be generated, or the conditions for agency are prevented by unfavorable local conditions.

## AT: Perm

-- The perm still links – focusing critiques on neoliberalism sidelines criticism of democracy as a concept– extend 1NC Little.

-- No net benefit – there’s only a risk including the Aff blocks criticism – prefer the Alt alone.

-- Severs – jettisoning the 1AC’s affirmation of democracy and democracy assistance makes them a moving target – severance is a voting issue since it takes away all neg ground, crushing fairness and education.

-- Affirming democracy forecloses criticism – the Alt is mutually exclusive with the Aff.

Little 10 (Adrian, Associate Professor and Reader in Political Theory at the University of Melbourne, Political Studies, Vol 58, “Democratic Melancholy: On the Sacrosanct Place of Democracy in Radical Democratic Theory,” p. 971-2)

While the primary target in this trend has been political liberalism and, in particular, deliberative formations of democracy, it also challenges the unsophisticated discourses of democracy that permeate popular political argument (Žižek, 2004). Most notable here are the arguments that have juxtaposed democracy with terrorism in the aftermath of the 2001 attacks on the World Trade Center (Badiou, 2005a, ch. 8; Honderich, 2006). These arguments rely upon a number of tropes and presuppositions about democracy that are largely unsustainable, such as a clear dichotomy between democratic regimes and those that use violence. The logic underpinning uncritical representations of democracy neglects the complexity of democratic forms and the kinds of contingency that radical democrats draw attention to. Nonetheless, it is a potent logic in contemporary liberal democracies and it contributes to the almost sacrosanct status of democracy in contemporary political theory (Mann, 2006). While democracy may be defended in terms of ideas such as popular sovereignty, the rule of law, political participation or representation, the precise form that these concepts take in different democratic societies varies enormously. What this demonstrates is that democracy is not ‘a regime or political ethos capable of generating its own binding force and aim, capable of animating and gathering itself as a regime’ (Brown, 1998, p. 426). This article contends that this absence entails that democracy should be understood as a vessel that can contain a wide range of practices and institutions. As such, democracy and the concepts that underpin it require critical evaluation. Ironically, though, as we shall see, it is precisely this kind of analysis that many associated with radical democracy have shied away from. Perhaps then, the strength of contemporary liberal democracy has been not only in articulating a simple message and understanding of democracy, but also its capacity to quieten theorists who might be regarded as those most likely to engage in a radical democratic critique. For post-structuralist theorists such as Ernesto Laclau, there is a void at the heart of democracy that enables it to operate as a ‘floating signifier’. On this understanding, ‘hegemony is understood as the process of fixing the meaning of a floating signifier ... around a particular nodal point’ (Norval, 2004, p. 158; see also Laclau, 1996). This contingency in the meaning of democracy is significant because, in the ‘absence of a set of ideas that form, cohere, stabilize, and direct a social body’(Brown,1998,p.426), neo-liberals and neo-conservatives in particular have established hegemony over the dominant interpretations of democracy. This begs the question that Wendy Brown hinted at in the late 1990s: is democracy worth retaining? If so, why and how can radical democrats reclaim it from the dominant hegemonic forces? The risk of contemporary democracy – if not the inherent paradox – is that at the same time as it opens up opportunities for a more radical politics, it closes down these possibilities through excessive proceduralism and policing of the political order (Mouffe, 2000). For Brown, a radical democratic politics means ‘culturing attachments that enable freedom, equality, and cultural inclusion’ ( Brown, 1998, p. 427) but this is precisely the territory on which the hegemonic hold of neo-liberals and neo-conservatives has been forged (albeit inadequately and improbably, as Brown points out). This necessitates a political strategy that unsettles and disrupts these concepts at the heart of the neo-liberal/neo-conservative hegemony, a politics that recognises the unattainable nature of democratic ideals and, thus, the ‘constitutive failure’ at the heart of democracy’s foundations and its continuation.

### 2NC Gender Module

**Democracy assistance fosters gender violence.**

Handrahan 1 (Lori M., Professorial Lecturer, School of International Service, American University, Gendering Ethnicity: Implications for Democracy Assistance, p. 73-74)

Moreover, feminists have argued that there is a persistent political marginalization of women's views within the development process, "especially at the level of development planning in institutions such as state bureaucracies and development organizations" (Goetz 1997:2), and this certainly holds true for the USAID/Kyrgyzstan context. This marginalization of women is reproduced on both the individual levels, through USAID and partner organization's interaction with society during implementation of the democracy program and through the less overt but equally pervasive exclusion of women from democratic theory. By replicating Western gender discrimination and reinforcing the patriarchal systems of the host country, democracy assistance programs consciously and unconsciously reproduce and strengthen gender biases inherent in the history of Western democracy. USAID democracy assistance compounds the inherent gender problems of the Western model by a planning and design process that is heavily biased towards men. Original democratization project plans are created in Washington, D.C. by elite members of America's democracy ("democratic experts" as they are known), who have been schooled in Western theory of democracy and citizenship. These "democracy experts," themselves members of a "virtually all male white priesthood," are steeped in Western democratic history (Monica Harrington in True 1993:81). In the case of assistance to Kyrgyzstan, for example, at the time of this field research— 1999, the USAID/ Kyrgyzstan staff members was all male. Of the possible ten USAID representatives in Washington and the regional USAID office in Almaty, Kazakstan, there was one USAID female staff member in Almaty. Of the possible 60 directors of US private voluntary organizations (PVO), both in Washington and Kyrgyzstan, only three were women; a PVO office in Kyrgyzstan and two PVO offices in Washington. Therefore, 93% of US democracy assistance USAID staff members and partner organizations, both in Washington and in Kyrgyzstan, were male. Gender discrimination is further reinforced and compounded by a tendency to adhere to local gender codes in the countries where USAID operates. Western donors are concerned with creating good relations with the power elite of the country in question. Because of this donors often mirror, reinforce, and/or reward their male national counterparts. A desire to establish good relations produces a desire to please that promotes Western adherence to local gender codes, restrictions, and structures, "flus behavior is exacerbated in post-Soviet societies where the political is personal and male (Temkina 1996:213). In the case of Kyrgyzstan, not atypical of the FSU, also in 1999 the local government leaders, oblast akims, were 100% male. The heads of regional administrations, sub-oblasi level government, were 99% men. Leadership positions within The White House of Kyrgyzstan was staffed by 62% men. Men constituted 98% of all department heads. 1 The Jogorku Kenesh, the Parliament of Kyrgyzstan, was represented by 96% men, increased from 70% during the USSR. The political "opposition" leaders supported by USAID funds were 100% men (Zairash 1998).

**Gender violence makes nuclear war inevitable.**

Reardon 93 (Betty A., Director of the Peace Education Program at Teacher’s College Columbia University, Women and Peace: Feminist Visions of Global Security, p. 30-32)

In an article entitled “Naming the Cultural Forces That Push Us toward War” (1983), Charlene Spretnak focused on some of the fundamental cultural factors that deeply influence ways of thinking about security. She argues that patriarchy encourages militarist tendencies. Since a major war now could easily bring on massive annihilation of almost unthinkable proportions, why are discussions in our national forums addressing the madness of the nuclear arms race limited to matters of hardware and statistics? A more comprehensive analysis is badly needed . . . A clearly visible element in the escalating tensions among militarized nations is the macho posturing and the patriarchal ideal of dominance, not parity, which motivates defense ministers and government leaders to “strut their stuff” as we watch with increasing horror. Most men in our patriarchal culture are still acting out old patterns that are radically inappropriate for the nuclear age. To prove dominance and control, to distance one’s character from that of women, to survive the toughest violent initiation, to shed the sacred blood of the hero, to collaborate with death in order to hold it at bay—all of these patriarchal pressures on men have traditionally reached resolution in ritual fashion on the battlefield. But there is no longer any battlefield. Does anyone seriously believe that if a nuclear power were losing a crucial, large-scale conventional war it would refrain from using its multiple-warhead nuclear missiles because of some diplomatic agreement? The military theater of a nuclear exchange today would extend, instantly or eventually, to all living things, all the air, all the soil, all the water. If we believe that war is a “necessary evil,” that patriarchal assumptions are simply “human nature,” then we are locked into a lie, paralyzed. **The ultimate result of unchecked terminal patriarchy will be nuclear holocaust**. The causes of recurrent warfare are not biological. Neither are they solely economic. They are also a result of patriarchal ways of thinking, which historically have generated considerable pressure for standing armies to be used. (Spretnak 1983) These cultural tendencies have produced our current crisis of a highly militarized, violent world that in spite of the decline of the cold war and the slowing of the military race between the superpowers is still staring into the abyss of nuclear disaster, as described by a leading feminist in an address to the Community Aid Abroad State Convention, Melbourne, Australia: These then are the outward signs of militarism across the world today: weapons-building and trading in them; spheres of influence derived from their supply; intervention—both overt and covert; torture; training of military personnel, and supply of hardware to, and training of police; the positioning of military bases on foreign soil; the despoilation of the planet; ‘intelligence’ networks; the rise in the number of national security states; more and more countries coming under direct military rule; 13 the militarization of diplomacy, and the interlocking and the international nature of the military order which even defines the major rifts in world politics.

**-- Tinkering with existing democracy is insufficient and forecloses criticism – the Alt must come first.**

Little 10 (Adrian, Associate Professor and Reader in Political Theory at the University of Melbourne, Political Studies, Vol 58, “Democratic Melancholy: On the Sacrosanct Place of Democracy in Radical Democratic Theory,” p. 971-2)

The hegemonic position of contemporary liberal democracy has meant that most recent debates in political theory have been focused on ways to improve existing systems by, for example, making them more deliberative or participatory (Dryzek, 2000; Mutz, 2006; Parkinson, 2006). While these debates have merit in their own terms, several theorists have alluded to the problematic nature of many of the assumptions within democratic theory that do not feature in the prevailing literature. Jean-Luc Nancy, for example, points to the way in which once the belief is established that democracy ‘is the only kind of political regime that is acceptable to an adult, emancipated population ... then the very idea of democracy fades and becomes blurred and confusing’ (Nancy, 2006, p. 1). It is vital then that critical theorists of democracy explain and analyse the prevailing features of modern democracy that can generate problems such as those emanating from broad conceptions of sovereignty and the democratic subject through to the implications of the operation of key democratic concepts such as representation, participation, political equality and the rule of law. The issue at stake is whether it is sufficient for radical democratic theorists to concentrate on the problems of liberal democracy or whether there is something inherent in democratic politics that should also be the subject of critical scrutiny. This is not just a matter of challenging contemporary democratic practice because many political theorists criticise the operation of liberal democracies for, among other things, narrow proceduralism, exclusionary practices and violent behaviour. For example, Iris Marion Young draws attention to the way in which institutional and procedural democratic models privilege certain types of behaviour and forms of communication over others (Young, 1990). Anne McNevin points to the exclusionary nature of the framing of asylum policies and the general political closure in many states today that facilitates restrictive interpretations of the democratic subject (McNevin, 2007). And Ted Honderich has pointed to the way in which democratic politics has historically been infused with elements of violence and notes the ways in which democracy and violence continue to intersect with each other in the post-9/11 global environment (Honderich, 2006). There has also been a renewed tendency in recent literature to highlight the trend of emaciated democracy that characterises much of the world today. Taking the United States as a primary example, Sheldon Wolin (2008) argues that elite-driven politics is perverting democracy and generating new forms of totalitarianism. Not dissimilarly, Larry Bartels (2008) highlights the impact of social and economic inequality on the quality of democratic politics in America. For this article the key issue at stake in these examples is not so much that they outline problems of liberal democracy but that these criticisms could be directed at alternative forms of democracy too. The implication that this article explores is the possibility that it is democracy itself that requires critical analysis rather than its specifically liberal manifestation (problematic as that may be). The key argument emerging from that discussion revolves around the extent to which radical democratic politics needs to engage more specifically with limitations related to the key assumptions of democratic politics.

### Criticism/Alt

**Criticism must be directed at democracy itself – the Aff’s approach make violence inevitable.**

Little 6 (Adrian, Senior Lecturer in Political Theory at the University of Melbourne, Theoria, December, “Theorizing Democracy and Violence: The Case of Northern Ireland,” p. 72-73, Ebsco)

All of this suggests that it is advisable to take a more radical and critical approach to contemporary discourses on democracy and, in particular, the relationship between democracy and violence. In recent years there has been a growth of literature that seeks to address and challenge the consensus-based rationalism of much liberal democratic theory (Ranciere 1999; Mouflfe 2000, 2005; Badiou 2005). In general these radical theories eschew perceptions of democracy that focus on the form of political institutions and focus instead on the way in which democracies tend to exclude or marginalize oppositional voices in the process of legitimizing existing institutions. Here procedures are used to police the boundaries of political discourse and the appropriateness of challenging or critical perspectives. Thus, the procedures that exist in liberal democracies are established as just (and sometimes as neutral) and promoted as the most legitimate methods of acting politically. In this sense democracy serves to censor the articulation of opposition and to question the legitimacy of voices that find no expression in formal political discourse. Moreover, it does so in such a manner in liberal democratic theory to suggest that these processes generate social and political consensus, that is, that lead to rational and agreed upon understandings of how society should be organized. This 'common sense' approach feeds into 'a doctrine of consensus, which is in effect the dominant ideology of contemporary parliamentary States' (Badiou 2005: 18). On the contrary, radical democratic arguments tend to concur with Foucault's approach: We have to interpret the war that is going on beneath the peace; peace itself is a coded war. We are therefore at war with one another; a battle- front runs through the whole of society, continuously and permanently, and it is this battlefront that puts all of us on one side or the other. There is no such thing as a neutral subject. We are all inevitably someone's adversary. (Foucault 2004: 50) It is important to note however that democracies do not necessarily have to resort to overt violence to repress critical voices. In this vein Judith Butler notes not only the importance of dissent to democratic politics, but also the way in which it has been marginalized in the wake of the 2001 attacks in New York. Various labels have been attached to certain critical arguments concerning American policy and these labels have become censorious means of silencing alternative perspectives. Butler points out that one way of quelling dissent is to label the critic with 'an uninhabitable identification', which can preclude them from public debate or discourage them from engaging in democratic politics." Thus: To decide what views will count as reasonable within the public domain ... is to decide what will and will not count as the public sphere of debate ... The foreclosure of critique empties the public domain of debate and democratic contestation itself, so that debate becomes the exchange of views among the like-minded, and criticism, which ought to be central to any democracy, becomes a fugitive and suspect activity. (Butler 2004: xx) It should not be lost on the world given recent events that the failure to engage with alternative perspectives and beliefs to our own can generate aggressive and often bloody reactions. This is not to say that engagement alone can prevent violent atrocities but that it is possible that such interaction may lessen the propensity of those who reject the modus operandi of liberal democracy to countenance such strategies. This requires an opening out of democracy and a willingness to interact with perspectives that are critical of democracy itself.'^ It demands recognition that democracy is an 'unfinished project' that can be refined and improved through engagement with critics. Moreover, it implies that there is not a simplistic, clear-cut distinction between democracy and violence. Instead we need to appreciate the murky complexities of politics and with that the capacity of political actors to move from violent methods to peaceful ones and back again. Democracy, then, should not be conceived as the antithesis of violence; instead the two cohabit the space of politics.

## Case

### Moral Absolutism Bad – 2NC

#### -- The Aff is moral evasion – consequentialism is best

Nielson 9 (Kai, Professor of Philosophy – University of Calgary, Ethics: The Big Questions, Ed. Sterba, p. 189-190)

In so treating the fat man‑not just to further the public good but to prevent the certain death of a whole group of people (that is to prevent an even greater evil than his being killed in this way)‑the claims of justice are not overriden either, for each individual involved, if he is reasonably correct, should realize that if he were so stuck rather than the fat man, he should in such situations be blasted out. Thus, there is no question of being unfair. Surely **we must choose between evils** here, but is there anything more reasonable, more morally appropriate, than choosing the lesser evil when doing or allowing some evil cannot be avoided? That is, where there is no avoiding both and where our actions can determine whether a greater or lesser evil obtains, should we not plainly always opt for the lesser evil? And is it not obviously a greater evil that all those other innocent people should suffer and die than that the fat man should suffer and die? Blowing up the fat man is indeed monstrous. But letting him remain stuck while the whole group drowns is still more monstrous. The consequentialist is on strong moral ground here, and, if his reflective moral convictions do not square either with certain unrehearsed or with certain reflective particular moral convictions of human beings, so much the worse for such commonsense moral convictions. One could even usefully and relevantly adapt herethough for a quite different purpose‑an argument of Donagan’s. Consequentialism of the kind I have been arguing for provides so persuasive “a theoretical basis for common morality that when it contradicts some moral intuition, it is natural to suspect that intuition, not theory, is corrupt.” Given the comprehensiveness, plausibility, and overall rationality of consequentialism, it is not unreasonable to override even a deeply felt moral conviction if it does not square with such a theory, though, if it made no sense or overrode the bulk of or even a great many of our considered moral convictions, that would be another matter indeed. Anticonsequentialists often point to the inhumanity of people who will sanction such killing of the innocent, but cannot the **compliment be returned** by speaking of the **even greater** inhumanity, conjoined with **evasiveness**, of those who will allow even more death and far greater misery and then excuse themselves on the ground that they did not intend the death and misery but merely forbore to prevent it? In such a context, such reasoning and such forbearing to prevent seems to me to constitute a **moral evasion**. I say it is evasive because rather than steeling himself to do what in normal circumstances would be a horrible and vile act but in this circumstance is a harsh moral necessity, he [it] allows, when he has the power to prevent it, a situation which is still **many times worse**. He tries to keep his ‘moral purity’ and [to] avoid ‘dirty hands’ at the price of **utter moral** **failure** and what Kierkegaard called ‘double‑mindedness.’ It is understandable that people should act in this morally evasive way but this does not make it right.

#### -- Nuclear policy must be judged consequentially

Callahan 73 (Daniel, Ph.D. and Senior Fellow – Harvard Medical School, The Tyranny of Survival, p. 59)

Motives and means are only two dimensions of moral reasoning. Consequences are the third, and many philosophers as well as practical politicians believe that the consequences are the most important criterion by which the morality of nuclear policies should be judged. When the potential consequences are so enormous, “otherwise honorable concerns with perfection, virtue, rights, and the doctrine of double effect simply give way.

#### -- Extraordinary circumstances justify utility

Donnelly 85 (Jack, College of the Holy Cross, The Concept of Human Rights, p. 58)

But suppose that the sacrifice of one innocent person would save not ten but a thousand, or a hundred thousand, or a million people. All things considered, trading one innocent life for a million, even if the victim resists most forcefully, would seem to be not merely justifiable but demanded. Exactly how *do* we balance rights (in the sense of 'having a right'), wrongs (in the sense of 'what is right') and interests? Do the numbers count? If so, why, and in what way? If not, why not? Ultimately the defender of human rights is forced back to human nature, the source of natural or human rights. For a natural rights theorist there are certain attributes, potentialities and holdings that are essential to the maintenance of a life worthy of a human being. These are given the special protection of natural rights; any ‘utility’ that might be served by their infringement or violation would be indefensible, literally inhuman — except in genuinely extraordinary circumstances, the possibility of which cannot be denied, but the probability of which should not be overestimated. **Extraordinary circumstances** do force us to admit that, at some point, however rare, the force of utilitarian considerations builds up until quality is transformed into quality.

#### Perception of weakness increases terrorism – history votes neg

D'Souza 7 (Dinesh, fellow at the Hoover Institution at Stanford University, “How the left led us into 9/11,” LA Times, 1/18, lexis)

Clinton's policies also helped to provoke 9/11. After the Cold War, leading Islamic radicals returned to their home countries. Bin Laden left Afghanistan and went back to Saudi Arabia; Ayman Zawahiri returned to Egypt. They focused on fighting their own rulers -- what they termed the "near enemy" -- in order to establish states under Islamic law. But in the mid- to late 1990s, these radicals shifted strategy. They decided to stop fighting the near enemy and to attack the "far enemy," the U.S.¶ The world's sole superpower would seem to be much more formidable than local Muslim rulers such as Hosni Mubarak in Egypt or the Saudi royal family. Bin Laden argued, however, that the far enemy was actually weaker and more vulnerable. He was confident that when kicked in their vital organs, Americans would pack up and run. Just like in Vietnam. Just like in Mogadishu.¶ **Bin Laden saw his theory of American weakness vindicated during the Clinton era** . In 1993, Islamic radicals bombed the World Trade Center. The Clinton administration did little. In 1996, Muslim terrorists attacked the Khobar Towers facility on a U.S. base in Saudi Arabia. No response. In 1998, Al Qaeda bombed two U.S. embassies in Africa. Clinton responded with a few perfunctory strikes in Sudan and Afghanistan. These did no real harm to Al Qaeda and only strengthened the perception of American ineptitude. In 2000, Islamic radicals bombed the U.S. destroyer Cole. Again, the Clinton team failed to act. By his own admission, **Bin Laden concluded that his suspicion of American pusillanimity and weakness was correct. He became emboldened to plot the 9/11 attacks** .¶ Still, the 2001 attacks might have been averted had the Clinton administration launched an effective strike against Bin Laden in the years leading up to them. Clinton has said he made every effort to get Bin Laden during his second term. Yet former CIA agent Michael Scheuer estimates that there were about 10 chances to capture or kill Bin Laden during this period and that the Clinton people failed to capitalize on any of them.¶ Between 1996 and mid-2000, Bin Laden was not in deep hiding. He gave sermons in Kandahar's largest mosque. He talked openly on his satellite phone. He also granted a number of media interviews: in 1996, with author Robert Fisk; in 1997, with Peter Arnett of CNN; in 1998, with John Miller of ABC News; in 1999, with a journalist affiliated with Time magazine. Isn't it strange that all these people could find Bin Laden but the Clinton administration couldn't?¶ Two lessons can be drawn from these sorry episodes. The first one, derived from Carter's actions, is: In getting rid of the bad regime, make sure that you don't get a worse one. This happened in Iran and could happen again, in Iraq, if leading Democrats in Congress have their way. The second lesson, derived from Clinton's inaction, is that **the perception of weakness emboldens our enemies.** If the Muslim insurgents and terrorists believe that the U.S. is divided and squeamish about winning the war on terror**,** they are likely to escalate their attacks **on Americans** abroad and at home. In that case, 9/11 will be only the beginning.

#### The aff prevents effective intel-sharing by allies – they’ll fear sensitive info will get out

**McCarthy, 4** (Andrew, former federal prosecutor, National Review Online, ‘Abu Ghraib & Enemy Combatants”, 5/11, <http://www.nationalreview.com/mccarthy/mccarthy200405110832.asp>)

First, as long as we are in active hostilities, searching judicial proceedings to probe the detentions would not only interrupt interrogations to gather new intelligence but also inform the enemy of our current state of information; further, they would discourage our allies from sharing strategic and tactical intelligence with us for fear that it might be revealed in court. All of these factors would inevitably cause combat casualties to American and allied forces that would not otherwise have happened. Second, our forces are frequently in a position where the options on the battlefield include killing and capturing. The prospect of adversarial judicial proceedings would incentivize our forces to choose killing over the merciful alternative of capture-and-detention, necessarily resulting in more widespread loss of life than would otherwise have happened.

### Link – Detention

#### Courts are stripped if they make controversial detention ruling

Katz 9 (Martin J. – Interim Dean and Associate Professor of Law, University of Denver College of Law; Yale Law School, J.D, “GUANTANAMO, BOUMEDIENE, AND JURISDICTION-STRIPPING: THE IMPERIAL PRESIDENT MEETS THE IMPERIAL COURT”, Constitutional Commentary, Summer, 25 Const. Commentary 377, lexis)

A second context in which jurisdiction-stripping has been proposed - and actually passed - is during times of armed conflict. During such times, Congress has occasionally attempted to restrict federal court jurisdiction as a way to maximize the President's ability to wage war - for example, permitting him to detain those seen as an impediment to the war effort. n11 It was a statute such as this that was at issue in Boumediene. In the Detainee Treatment Act of 2004 and Military Commission Act of 2006, n12 Congress (1) created a non-judicial procedure for determining whether certain individuals are "enemy combatants," and thus subject to detention, and (2) limited the ability of the federal courts to review such determinations. Generally, when Congress has passed, or even proposed, jurisdiction-stripping legislation, it has spawned debate over whether such legislation is or would be constitutional. This debate has engaged the minds of many of the country's finest constitutional scholars. n13 [\*381] It is beyond the scope of this Article to revisit the debates of these constitutional scholars. My purpose here is not to weigh in on the question of how courts should address jurisdiction-stripping statutes (though this Article does implicate that issue). Rather, my purpose here is to address how the Supreme Court - after centuries of largely avoiding the debate - has now suggested answers to certain fundamental questions in that debate. Accordingly, this Part will identify some of the fundamental questions in that debate. The primary question is when, if ever, Congress can strip jurisdiction from the federal courts. However, for Congress to be able to do this, it would need to exercise two distinct powers: (1) the power to strip jurisdiction from the lower federal courts, and (2) the power to strip appellate jurisdiction from the Supreme Court. So this section will begin by examining both of those powers before examining whether Congress can combine those powers in order to preclude all federal court jurisdiction. n14 [\*382] This Part will also show how the Court has gone to great lengths to avoid providing definitive answers to these questions (particularly to the question of the ability of Congress to preclude all federal court jurisdiction). A. Stripping Jurisdiction from Lower Federal Courts The first question in the jurisdiction-stripping debate is whether Congress can restrict the jurisdiction of the lower federal courts (district courts and circuit courts) to hear a particular type of case. This question assumes that only the lower federal courts are closed - that the Supreme Court's original and appellate jurisdiction remains intact. n15 Proponents of allowing this form of jurisdiction-stripping point to the text of Article III, which gives Congress the power to "ordain and establish" lower federal courts. n16 The argument is that (1) the Ordain and Establish Clause gave Congress discretion over whether to create lower federal courts, and (2) if Congress could decline to create lower federal courts, then Congress can limit such courts' jurisdiction. n17 Most commentators today seem to accept the basic idea that the Ordain and Establish Clause permits Congress to restrict or even eliminate the jurisdiction of the lower federal courts. n18 [\*383] Some of these commentators have also suggested that there might be limits on this power. For example, nearly all commentators have suggested that the "ordain and establish" power is limited by substantive provisions elsewhere in the Constitution, such as the Equal Protection Clause; so Congress could not, for example, preclude jurisdiction only over cases brought by African Americans or Catholics. n19 Also, as noted above, most of the commentators who believe Congress has the power to limit lower federal court jurisdiction assume that some alternative court would remain open to hear the cases in question - an assumption which is likely incorrect in a case like Boumediene. n20 But subject to these two potential limits, n21 the "traditional view" is that Congress can exercise its "ordain and establish" power to close lower federal courts. n22 The courts, too, n23 seem largely to accept the "traditional view" - that Congress has the power to restrict lower federal court jurisdiction. The Supreme Court has, on at least five occasions, suggested that Congress can limit lower federal court jurisdiction pursuant to the Ordain and Establish Clause. n24 However, none of these cases appears to have tested the potential [\*384] limits on the exercise of this power. n25 As I will discuss below, Boumediene suggests such a limit. n26

#### Stripping likely in detention cases

Crandall 10 (Carla – J.D. Candidate, April 2011, J. Reuben Clark Law School, Brigham Young University, “Comparative Institutional Analysis and Detainee Legal Policies: Democracy as a Friction, Not a Fiction”, 2010, 2010 B.Y.U.L. Rev. 1339, lexis)

The same day, the Court issued a similarly reasoned opinion in Rasul v. Bush. n95 In Rasul, the majority held that federal courts had jurisdiction to adjudicate habeas corpus petitions filed by foreign nationals detained at Guantanamo Bay, Cuba. n96 After a lengthy historical review of the purpose of the writ, the Court reached its conclusion based on the fact that "habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." n97 In other words, the Court again appeared to rest its conclusion on its perceived duty to serve as a check against executive overreach. Such reasoning was criticized, however, by the dissenters. n98 They argued that, in light of Congress's superior institutional competence over national security issues, Congress, rather than the Court, should have addressed any perceived executive overreach. n99 The fact that it failed to do so, the dissenters asserted, should have served as a signal that Congress evidently approved of the President's actions. n100 Both the executive and legislature responded swiftly to these decisions. On July 7, 2004, just days after the Hamdi and Rasul decisions, the executive issued an order establishing procedures whereby detainees could challenge their designation as enemy combatants. n101 To effect this purpose, the order created Combatant Status Review Tribunals (CSRTs), which essentially incorporated into their operational procedures the minimal due process protections the Court had required in Hamdi. n102 Likewise, in 2005, Congress passed the Detainee Treatment Act (DTA), essentially overruling Rasul by statutorily stripping federal courts of jurisdiction [\*1357] to hear habeas petitions filed by foreign nationals detained at Guantanamo Bay. n103 What apparently was not clear, however, was whether the DTA applied to cases pending at the time of its passage. In Hamdan v. Rumsfeld, the Court answered this question with a resounding "no." n104 Perhaps more importantly, Hamdan also established that the military commissions that had been created to try detainees violated federal law largely because of their procedural departures from the Uniform Code of Military Justice and Geneva Conventions. n105 While the Court accepted that the AUMF had "activated the President's war powers ... including the authority to convene military commissions," it found no indication that either the AUMF or DTA authorized an approach denying procedural safeguards contained in standard military commissions. n106 Again, Congress responded with great haste, passing the Military Commissions Act (MCA) within four months of the Hamdan decision. n107 In addition to authorizing the military commissions that the executive had established for the war on terror, the MCA also clarified that federal courts were stripped of jurisdiction to hear habeas petitions of Guantanamo detainees, regardless of when their cases were filed. n108 Notably, however, even as the MCA was being debated, several senators expressed concern about the bill. n109 One specifically noted that the United States had lost its "moral compass," while another stated that, though the MCA was "patently unconstitutional on its face," he would nevertheless vote for the bill since "the court [would] clean it up." n110

### A2: No Value to Life

#### Life has intrinsic value that is unattached to instrumental capacity

Penner 5 (Melinda, Director of Operations – STR, “End of Life Ethics: A Primer”, Stand to Reason, http://www.str.org/site/News2?page=NewsArticle&id=5223)

Intrinsic value is very different. Things with intrinsic value are valued for their own sake. They don’t have to achieve any other goal to be valuable. They are goods in themselves. Beauty, pleasure, and virtue are likely examples. Family and friendship are examples. Something that’s intrinsically valuable might also be instrumentally valuable, but **even if it loses its instrumental value**, its intrinsic value remains. Intrinsic value is what people mean when they use the phrase "the sanctity of life." Now when someone argues that someone doesn’t have "quality of life" they are arguing that life is only valuable as long as it obtains something else with quality, and when it can’t accomplish this, it’s not worth anything anymore. It's only instrumentally valuable. The problem with this view is that it is entirely subjective and changeable with regards to what might give value to life. Value becomes a completely personal matter, and, as we all know, our personal interests change over time. There is no grounding for objective human value and human rights if it’s not intrinsic value. Our legal system is built on the notion that humans have intrinsic value. The Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that each person is endowed by his Creator with certain unalienable rights...." If human beings only have instrumental value, then slavery can be justified because there is nothing objectively valuable that requires our respect. There is nothing other than intrinsic value that can ground the unalienable equal rights we recognize because there is nothing about all human beings that is universal and equal. Intrinsic human value is what binds our social contract of rights. So if human life is intrinsically valuable, then it remains valuable even when our capacities are limited. Human life is valuable even with tremendous limitations. Human life remains valuable because its value is not derived from being able to talk, or walk, or feed yourself, or even reason at a certain level. Human beings don’t have value only in virtue of states of being (e.g., happiness) they can experience.

#### Value to life can’t be calculated

Schwartz 2 (Lisa, M.D., Associate Professor of Medicine – Dartmouth College Medical School, et al., Medical Ethics: A Case Based Approach, www.fleshandbones.com/readingroom/pdf/399.pdf)

The first criterion that springs to mind regarding the value of life is usually the quality of the life or lives in question: The quality of life ethic puts the emphasis on the type of life being lived, not upon the fact of life. Lives are not all of one kind; some lives are of great value to the person himself and to others while others are not. What the life means to someone is what is important. Keeping this in mind it is not inappropriate to say that some lives are of greater value than others, that the condition or meaning of life does have much to do with the justification for terminating that life.1 Those who choose to reason on this basis hope that if the quality of a life can be measured then the answer to whether that life has value to the individual can be determined easily. This raises special problems, however, because the idea of quality involves a value judgment, and value judgments are, by their essence, subject to indeterminate relative factors such as preferences and dislikes. Hence, quality of life is difficult to measure and will vary according to individual tastes, preferences and aspirations. As a result, no general rules or principles can be asserted that would simplify decisions about the value of a life based on its quality.

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### A2: Grondon

#### Realism is inevitable

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

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

#### Doesn’t cause war

**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.

#### Threats are real

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

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

#### They have to apply it specifically to U.S.-Russian relations- security cannot be used as a blanket term – our specific impact is good

**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).

### A2: Pol Institutions Bad

**Their criticism is a retreat from political change – causes suffering to occur while philosphers talk- makes the impact inevitable- only the plan can solve**

**McClean, 2001** (David, New School University, "The Cultural Left and the Limits of Social Hope," Conference of the Society for the Advancement of American Philosophy, [http://www.american-philosophy.org/archives/2001%20Conference/Discussion%20papers/david\_mcclean.htm](http://www.americanphilosophy.org/archives/2001%20Conference/Discussion%20papers/david_mcclean.htm))

Yet for some reason, at least partially explicated in Richard Rorty's Achieving Our Country, a book that I think is long overdue, **leftist critics continue to cite and refer to** the eccentric and often a priori ruminations of **people like** those just mentioned, and a litany of others including **Derrida. Deleuze. Lvotard**. Jameson, **and Lacan. who are** to me hugely more **irrelevant** than Habermas **in their** narrative **attempts to sueeest policy prescriptions** (when they actually do suggest them) aimed at curing the ills of homelessness, poverty, market greed, national belligerence and racism. I would like to suggest that **it is time for** American **social critics who are enamored with this eroup**. those who actually want to be relevant, **to recognize that they have a disease**, and a disease regarding which I myself must remember to stay faithful to my own twelve step program of recovery. **The disease is the need for elaborate theoretical "remedies" wrapped in neological and multi-syllabic jargon**. These elaborate theoretical remedies are more "interesting," to be sure, than the pragmatically settled questions about what shape democracy should take in various contexts, or whether private property should be protected by the state, or regarding our basic human nature (described, if not defined (heaven forbid!), in such statements as "We don't like to starve" and "We like to speak our minds without fear of death" and "We like to keep our children safe from poverty"). As Rorty puts it, "When one of today's academic leftists says that some topic has been 'inadequately theorized,' you can be pretty certain that he or she is going to drag in either philosophy of language, or Lacanian psychoanalysis, or some neo-Marxist version of economic determinism. .. . **These futile attempts to philosophize one's way into political relevance are a symptom of what happens when a Left retreats** from activism **and adopts a spectatorial approach** to the problems of its country. Disengagement from practice produces theoretical hallucinations''(italics mine).\*^1 Or as John Dewey put it in his The Need for a Recovery of Philosophy, "I believe that philosophy in America will be lost between chewing a historical cud long since reduced to woody fiber, or an apologetics for lost causes,.... or a scholastic, schematic formalism, unless it can somehow bring to consciousness America's own needs and its own implicit principle of successful action." Those who suffer or have suffered from this disease Rorty refers to as the Cultural Left, which left is juxtaposed to the Political Left that Rorty prefers and prefers for good reason. Another attribute of the Cultural Left is that its members fancy themselves pure culture critics who view the successes of America and the West, rather than some of the barbarous methods for achieving those successes, as mostly evil, and who view anything like national pride as equally evil even when that pride is tempered with the knowledge and admission of the nation's shortcomings. In other words, the Cultural Left, in this country, too often dismiss American society as beyond reform and redemption. And Rorty correctly argues that this is a disastrous conclusion, i.e. disastrous for the Cultural Left. I think it may also be disastrous for our social hopes, as I will explain. **Leftist American culture critics might put their considerable talents to better use if they bury some of their cynicism about America's social and political prospects and help forge public and political possibilities** in a spirit of determination to, indeed, achieve **our** country - the country of Jefferson and King; the country of John Dewey and Malcom X; the country of Franklin Roosevelt and Bayard Rustin, and of the later George Wallace and the later Barry Goldwater. To invoke the words of King, and with reference to the American society, the time is always ripe to seize the opportunity to help create the "beloved community," one woven with the thread of agape into a conceptually single yet diverse tapestry that shoots for nothing less than a true intra-American cosmopolitan ethos, one wherein both same sex unions and faith-based initiatives will be able to be part of the same social reality, one wherein business interests and the university are not seen as belonging to two separate galaxies but as part of the same answer to the threat of social and ethical nihilism. **We who fancy ourselves philosophers would do well to create from within ourselves and from within our ranks a new kind of public intellectual who has both a hungry theoretical mind and who is vet capable of seeing the need to move past high theory to other important questions that are less bedazzling and "interesting" but more important to the prospect of our flourishing** - questions such as "How is it possible to develop a citizenry that cherishes a certain hexis, one which prizes the **character** of the Samaritan on the road to Jericho almost more than any other?" or "How can we square the political dogma that undergirds the fantasy of a missile defense system with the need to treat America as but one member in a community of nations under a "law of peoples?" The new public philosopher might seek to understand labor law and military and trade theory and doctrine as much as theories of surplus value; the logic of international markets and trade agreements as much as critiques of commodification, and the politics of complexity as much as the politics of power (all of which can still be done from our arm chairs.) **This means going down deep into the guts of our quotidian social institutions, into the grimy pragmatic details where intellectuals are loathe to dwell but where the officers and bureaucrats of those institutions take difficult and often unpleasant, imperfect decisions that affect other peoples' lives, and it means making honest attempts to truly understand how those institutions actually function in the actual world before howling for their overthrow commences**. **This might help keep us from being slapped down in debates by true policy pros who actually know what they are talking about but who lack awareness of the dogmatic assumptions from which they proceed, and who have not vet found a good reason to listen to jargon-riddled lectures from philosophers** and culture critics with their snobish disrespect for the so-called "managerial class."

### A2: Structural Violence

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

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

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

#### War causes structural violence – not the other way around

**Goldstein 1** (Joshua, Professor of International Relations – American University, War and Gender: How Gender Shapes the War System and Vice Versa, p. 412)

First, peace activists face a dilemma in thinking about causes of war and working for peace. Many peace scholars and activists support the approach, “if you want peace, work for justice.” Then, if one believes that sexism contributes to war one can work for gender justice specifically (perhaps among others) in order to pursue peace. This approach brings strategic allies to the peace movement (women, labor, minorities), but rests on the assumption that injustices cause war. **The evidence** in this book **suggests that causality runs** at least as **strongly the other way**. War is not a product of capitalism, imperialism, gender, innate aggression, or any other single cause, although all of these influence wars’ outbreaks and outcomes. Rather, war has in part fueled and sustained these and other injustices.9 So, “if you want peace, work for peace.” Indeed, if you want justice (gender and others), work for peace. Causality does not run just upward through the levels of analysis, from types of individuals, societies, and governments up to war. It runs downward too. Enloe suggests that changes in attitudes towards war and the military may be the **most important way** to “reverse women’s oppression.” The dilemma is that peace work focused on justice brings to the peace movement energy, allies, and moral grounding, yet, in light of this book’s evidence, the emphasis on injustice as the main cause of war seems to be **empirically inadequate**.