## 1AC

Same as rounds 2 and 4

## 2AC

### Solvency

#### --no stripping-- President and DOJ prevents stripping even on policies they oppose

Grove 12 [Tara Leigh,Assistant Professor, William and Mary Law School, The Article II Safeguards Of Federal Jurisdiction, Columbia Law Review March, 2012, L/N]

This Article argues that scholars have overlooked an important (and surprising) advocate for the federal judiciary in these jurisdictional struggles: the executive branch. The Constitution gives the President considerable authority to block constitutionally questionable legislation. The President can veto problematic legislation or use the threat of a veto to urge Congress to pursue other alternatives. Moreover, under Article II's Take Care Clause, the President is in charge of enforcing federal law in the federal courts - a task that he has largely delegated to the Department of Justice (DOJ). n6 The executive branch can use this enforcement authority to ensure that laws are applied in a manner that accords with constitutional values. Drawing on recent social science scholarship, this Article contends that the executive branch has a strong incentive to use this constitutional authority to oppose efforts to curb federal jurisdiction. First, social scientists have argued that the President often expresses his constitutional philosophy through litigation in the federal courts. Accordingly, the President has some incentive to ensure that the federal courts retain jurisdiction over constitutional claims. These presidential incentives are reinforced by the institutional incentives of the DOJ. Relying on theories of path dependence and institutional entrenchment, this Article argues that the DOJ has a substantial interest in defending the authority of the federal judiciary, because it can thereby maintain its own enforcement power. The DOJ has a particularly overriding interest in protecting the [\*253] appellate jurisdiction of the Supreme Court, because the Solicitor General is in charge of all federal litigation at that level. By defending the authority of the Supreme Court, the DOJ can maximize its power and influence over the development of federal law. In sum, this Article contends that the executive branch has strong institutional incentives to oppose the very kind of legislation that scholars find most problematic: restrictions on the Supreme Court's appellate jurisdiction and the federal courts' authority to adjudicate constitutional claims. The executive branch should be inclined to use its constitutional authority to shield the judiciary from such challenges to the federal judicial power. This structural argument has considerable historical support. The executive branch has sought to protect federal jurisdiction in two major ways. First, the executive branch has repeatedly opposed bills targeted at the Supreme Court's appellate review power or at federal jurisdiction over constitutional claims. n7 Notably, that has been true even when the President strongly disagreed with the federal courts' constitutional jurisprudence. For example, during the New Deal era, the Roosevelt Justice Department opposed efforts to eliminate the Supreme Court's appellate jurisdiction over constitutional claims. n8 Likewise, the Reagan Justice Department spoke out against proposals to strip federal jurisdiction over cases involving school prayer and abortion. n9 Other DOJ officials have similarly urged Congress to refrain from enacting jurisdiction-stripping proposals, at times expressly invoking the threat of a presidential veto. Although most jurisdiction-stripping bills have been defeated in the legislative process, some proposals to curb federal jurisdiction have, in recent decades, captured sufficient political support to gain the assent of both Congress and the President. But the executive branch has an additional constitutional tool to limit the impact of such laws: The DOJ controls the enforcement of most federal laws and can urge the federal judiciary to interpret those laws narrowly in order to preserve federal jurisdiction. That is the approach that recent Justice Departments have taken. Both the Clinton and the second Bush Administrations urged the courts to construe broadly worded jurisdiction-stripping statutes, like the Antiterrorism and Effective Death Penalty Act, so as to preserve jurisdiction over federal constitutional claims. n10 The federal courts, of course, could disregard these arguments and independently determine their jurisdiction. But, to the extent that the [\*254] courts are already inclined to interpret jurisdiction-stripping laws narrowly, the DOJ's arguments provide substantial reassurance that such constructions will have the support of a coequal branch of the federal government. And, in practice, the federal judiciary has proven quite receptive to the executive branch's efforts to preserve the scope of federal jurisdiction.

### Allied Coop

#### PRISM backlash solved now

Smith-Clark 7/4/13 (Laura, staffwriter, “EU envoys meet over claims of U.S. spying on European allies” <http://www.cnn.com/2013/07/04/world/europe/europe-us-spying/>)

(CNN) -- Allegations that the United States is spying on its European allies topped the agenda for European Union ambassadors who met Thursday in Brussels, Belgium, as the fallout from claims made by U.S. leaker Edward Snowden widened. The meeting of the ambassadors to the European Union came ahead of talks due to begin Monday on a huge American-EU free trade deal. They were expected to discuss the spying allegations as well as revelations about PRISM, the mass U.S. surveillance program, and a proposal to establish an EU-American working group to improve cooperation, EU spokesman Michael Mann said ahead of the meeting. Allegations that the United States has been conducting surveillance on its European allies have prompted wide concern among European nations. The issue dominated a conversation Wednesday between President Barack Obama and German Chancellor Angela Merkel. "The president assured the chancellor that the United States takes seriously the concerns of our European allies and partners," a White House statement on the phone call said. Joint EU-American discussions are to be held on the collection and oversight of intelligence, and questions of privacy and data protection, starting as soon as Monday, it said.

### Security

#### The role of the ballot is to vote to maximize lives – the impact of the alternative should be weighed v. the impact of the aff – key to aff ground

#### Vote aff despite prior questions—impact timeframe means you gotta act on the best info available

Kratochwil, professor of international relations – European University Institute, 2008 (Friedrich, “The Puzzles of Politics,” pg. 200-213)

The lesson seems clear. Even at the danger of “fuzzy boundaries”, when we deal with “practice” ( just as with the “pragmatic turn”), we would be well advised to rely on the use of the term rather than on its reference (pointing to some property of the object under study), in order to draw the bounds of sense and understand the meaning of the concept. My argument for the fruitful character of a pragmatic approach in IR, therefore, does not depend on a comprehensive mapping of the varieties of research in this area, nor on an arbitrary appropriation or exegesis of any specific and self-absorbed theoretical orientation. For this reason, in what follows, I will not provide a rigidly specified definition, nor will I refer exclusively to some prepackaged theoretical approach. Instead, I will sketch out the reasons for which a pragmatic orientation in social analysis seems to hold particular promise. These reasons pertain both to the more general area of knowledge appropriate for praxis and to the more specific types of investigation in the field. The follow- ing ten points are – without a claim to completeness – intended to engender some critical reflection on both areas. Firstly, a pragmatic approach does not begin with objects or “things” (ontology), or with reason and method (epistemology), but with “acting” (prattein), thereby preventing some false starts. Since, **as historical beings placed in a** specific situations**, we do not have the luxury** of deferring decisions **until we have** found the “truth”, **we have to act and must do so always under time pressures and in the face of incomplete information.** Pre- cisely because the social world is characterised by strategic interactions, what a situation “is”, is hardly ever clear ex ante, because it is being “produced” by the actors and their interactions, and the multiple possibilities are rife with incentives for (dis)information. This puts a premium on quick diagnostic and cognitive shortcuts informing actors about the relevant features of the situ- ation, and on leaving an alternative open (“plan B”) in case of unexpected difficulties. Instead of relying on certainty and universal validity gained through abstraction and controlled experiments, we know that completeness and attentiveness to detail, rather than to generality, matter. To that extent, likening practical choices to simple “discoveries” of an already independently existing “reality” which discloses itself to an “observer” – or relying on optimal strategies – is somewhat heroic. These points have been made vividly by “realists” such as Clausewitz in his controversy with von Bülow, in which he criticised the latter’s obsession with a strategic “science” (Paret et al. 1986). While Clausewitz has become an icon for realists, only a few of them (usually dubbed “old” realists) have taken seriously his warnings against the misplaced belief in the reliability and use- fulness of a “scientific” study of strategy. Instead, most of them, especially “neorealists” of various stripes, have embraced the “theory”-building based on the epistemological project as the via regia to the creation of knowledge. A pragmatist orientation would most certainly not endorse such a position. Secondly, since acting in the social world often involves acting “for” someone, special responsibilities arise that aggravate both the incompleteness of knowledge as well as its generality problem. Since we owe special care to those entrusted to us, for example, as teachers, doctors or lawyers, we cannot just rely on what is generally true, but have to pay special attention to the particular case. Aside from avoiding the foreclosure of options, we cannot refuse to act on the basis of incomplete information or insufficient know- ledge, and the necessary diagnostic will involve typification and comparison, reasoning by analogy rather than generalization or deduction. Leaving out the particularities of a case, be it a legal or medical one, in a mistaken effort to become “scientific” would be a fatal flaw. Moreover, **there still remains the crucial element of “timing” –** of knowing when to act. Students of crises have always pointed out the importance of this factor but, in attempts at building a general “theory” of international politics analogously to the natural sci- ences, such elements are neglected on the basis of the “continuity of nature” and the “large number” assumptions. Besides, “timing” seems to be quite recalcitrant to analytical treatment.

#### Distinctions between terrorists and combatant or civilian are vital to understanding violence—abandoning them justifies more terror and collapses into relativist nihilism

Elshtain 3 **–** professor of social and political ethics, Chicago (Jean, Thinking About September 11, http://www.aft.org/pubs-reports/american\_educator/summer2003/sept11.html, AG)

In a situation in which noncombatants are deliberately targeted and the murder of the maximum number of noncombatants is the explicit aim, using terms like "fighter" or "soldier" or "noble warrior" is not only beside the point but pernicious. Such language collapses the distance between those who plant bombs in cafés or fly civilian aircraft into office buildings and those who fight other combatants, taking the risks attendant upon military forms of fighting. There is a nihilistic edge to terrorism: It aims to destroy, most often in the service of wild and utopian goals that make no sense at all in the usual political ways. The distinction between terrorism, domestic criminality, and what we might call "normal" or "legitimate" war is vital to observe. It helps us to assess what is happening when force is used. This distinction, marked in historic, moral, and political discourses about war and in the norms of international law, seems lost on those who call the attacks of September 11 acts of "mass murder" rather than terrorism and an act of war under international law. It is thus both strange and disheartening to read the words of those distinction-obliterators for whom, crudely, a dead body is a dead body and never mind how it got that way. Many of these same individuals would, of course, protest vehemently, and correctly, were commentators, critics, and political actors to fail to distinguish between the great world religion that is Islam and the terrorists who perpetrated the events of September 11. One cannot have it both ways, however, by insisting on the distinctions one likes and heaping scorn on those who put pressure on one’s own ideological and political commitments. If we could not distinguish between a death resulting from a car accident and an intentional murder, our criminal justice system would fall apart. And if we cannot distinguish the killing of combatants from the intended targeting of peaceable civilians and the deliberate and indiscriminate sowing of terror among civilians, we live in a world of moral nihilism. In such a world, everything reduces to the same shade of gray and we cannot make distinctions that help us take our political and moral bearings. The victims of September 11 deserve more from us.

#### One speech act doesn’t cause securitization – it’s an ongoing process

**Ghughunishvili 10**

Securitization of Migration in the United States after 9/11: Constructing Muslims and Arabs as Enemies Submitted to Central European University Department of International Relations European Studies In partial fulfillment of the requirements for the degree of Master of Arts Supervisor: Professor Paul Roe <http://www.etd.ceu.hu/2010/ghughunishvili_irina.pdf>

As provided by the Copenhagen School securitization theory is comprised by speech act, acceptance of the audience and facilitating conditions or other non-securitizing actors contribute to a successful securitization. The causality or a one-way relationship between the speech act, the audience and securitizing actor, where politicians use the speech act first to justify exceptional measures, has been criticized by scholars, such as Balzacq. According to him, the one-directional relationship between the three factors, or some of them, is not the best approach. To fully grasp the dynamics, it will be more beneficial to “rather than looking for a one-directional relationship between some or all of the three factors highlighted, it could be profitable to focus on the degree of congruence between them. 26 Among other aspects of the Copenhagen School’s theoretical framework, which he criticizes, the thesis will rely on the criticism of the lack of context and the rejection of a ‘one-way causal’ relationship between the audience and the actor. The process of threat construction, according to him, can be clearer if external context, which stands independently from use of language, can be considered. 27 Balzacq opts for more context-oriented approach when it comes down to securitization through the speech act, where a single speech does not create the discourse, but it is created through a long process, where context is vital. 28 He indicates: In reality, the speech act itself, i.e. literally a single security articulation at a particular point in time, will at best only very rarely explain the entire social process that follows from it. In most cases a security scholar will rather be confronted with a process of articulations creating sequentially a threat text which turns sequentially into a securitization. 29 This type of approach seems more plausible in an empirical study, as it is more likely that a single speech will not be able to securitize an issue, but it is a lengthy process, where a the audience speaks the same language as the securitizing actors and can relate to their speeches.

#### Legal reforms restrain the cycle of violence and prevent error replication

Colm O’Cinneide 8, Senior Lecturer in Law at University College London, “Strapped to the Mast: The Siren Song of Dreadful Necessity, the United Kingdom Human Rights Act and the Terrorist Threat,” Ch 15 in Fresh Perspectives on the ‘War on Terror,’ ed. Miriam Gani and Penelope Mathew, <http://epress.anu.edu.au/war_terror/mobile_devices/ch15s07.html>

This ‘symbiotic’ relationship between counter-terrorism measures and political violence, and the apparently inevitable negative impact of the use of emergency powers upon ‘target’ communities, would indicate that it makes sense to be very cautious in the use of such powers. However, the impact on individuals and ‘target’ communities can be too easily disregarded when set against the apparent demands of the greater good. Justice Jackson’s famous quote in Terminiello v Chicago [111] that the United States Bill of Rights should not be turned into a ‘suicide pact’ has considerable resonance in times of crisis, and often is used as a catch-all response to the ‘bleatings’ of civil libertarians.[112] The structural factors discussed above that appear to drive the response of successive UK governments to terrorist acts seem to invariably result in a depressing repetition of mistakes.¶ However, certain legal processes appear to have some capacity to slow down the excesses of the counter-terrorism cycle. What is becoming apparent in the UK context since 9/11 is that there are factors at play this time round that were not in play in the early years of the Northern Irish crisis. A series of parliamentary, judicial and transnational mechanisms are now in place that appear to have some moderate ‘dampening’ effect on the application of emergency powers.¶ This phrase ‘dampening’ is borrowed from Campbell and Connolly, who have recently suggested that law can play a ‘dampening’ role on the progression of the counter-terrorism cycle before it reaches its end. Legal processes can provide an avenue of political opportunity and mobilisation in their own right, whereby the ‘relatively autonomous’ framework of a legal system can be used to moderate the impact of the cycle of repression and backlash. They also suggest that this ‘dampening’ effect can ‘re-frame’ conflicts in a manner that shifts perceptions about the need for the use of violence or extreme state repression.[113] State responses that have been subject to this dampening effect may have more legitimacy and generate less repression: the need for mobilisation in response may therefore also be diluted.

Permutation do the plan and the alt

#### **The plan gives security transformative potential --- alt alone fails and their impact is false**

Nunes, 12 [Reclaiming the political: Emancipation and critique in security studies, João Nunes, Security Dialogue 2012 43: 345,Politics and International Studies, University of Warwick, UK, p. sage publications]

In the works of these authors, one can identify a tendency to see security as inherently connected to exclusion, totalization and even violence. The idea of a ‘logic’ of security is now widely present in the critical security studies literature. Claudia Aradau (2008: 72), for example, writes of an ‘exclusionary logic of security’ underpinning and legitimizing ‘forms of domination’. Rens van Munster (2007: 239) assumes a ‘logic of security’, predicated upon a ‘political organization on the exclusionary basis of fear’. Laura Shepherd (2008: 70) also identifies a liberal and highly problematic ‘organizational logic’ in security. Although there would probably be disagreement over the degree to which this logic is inescapable, it is symptomatic of an overwhelmingly pessimistic outlook that a great number of critical scholars are now making the case for moving away from security. The normative preference for desecuritization has been picked up in attempts to contest, resist and ‘unmake’ security (Aradau, 2004; Huysmans, 2006; Bigo, 2007). For these contributions, security cannot be reconstructed and political transformation can only be brought about when security and its logic are removed from the equation (Aradau, 2008; Van Munster, 2009; Peoples, 2011). This tendency in the literature is problematic for the critique of security in at least three ways. First, it constitutes a blind spot in the effort of politicization. The assumption of an exclusionary, totalizing or violent logic of security can be seen as an essentialization and a moment of closure. To be faithful to itself, the politicization of security would need to recognize that there is nothing natural or necessary about security – and that security as a paradigm of thought or a register of meaning is also a construction that depends upon its reproduction and performance through practice. The exclusionary and violent meanings that have been attached to security are themselves the result of social and historical processes, and can thus be changed. Second, the institution of this apolitical realm runs counter to the purposes of critique by foreclosing an engagement with the different ways in which security may be constructed. As Matt McDonald (2012) has argued, because security means different things for different people, one must always understand it in context. Assuming from the start that security implies the narrowing of choice and the empowerment of an elite forecloses the acknowledgment of security claims that may seek to achieve exactly the opposite: alternative possibilities in an already narrow debate and the contestation of elite power.5 In connection to this, the claims to insecurity put forward by individuals and groups run the risk of being neglected if the desire to be more secure is identified with a compulsion towards totalization, and if aspirations to a life with a degree of predictability are identified with violence. Finally, this tendency blunts critical security studies as a resource for practical politics. By overlooking the possibility of reconsidering security from within – opting instead for its replacement with other ideals – the critical field weakens its capacity to confront head-on the exceptionalist connotations that security has acquired in policymaking circles. Critical scholars run the risk of playing into this agenda when they tie security to exclusionary and violent practices, thereby failing to question security actors as they take those views for granted and act as if they were inevitable. Overall, security is just too important – both as a concept and as a political instrument – to be simply abandoned by critical scholars. As McDonald (2012: 163) has put it, If security is politically powerful, is the foundation of political legitimacy for a range of actors, and involves the articulation of our core values and the means of their protection, we cannot afford to allow dominant discourses of security to be confused with the essence of security itself. In sum, the trajectory that critical security studies has taken in recent years has significant limitations. The politicization of security has made extraordinary progress in problematizing predominant security ideas and practices; however, it has paradoxically resulted in a depoliticization of the meaning of security itself. By foreclosing the possibility of alternative notions of security, this imbalanced politicization weakens the analytical capacity of critical security studies, undermines its ability to function as a political resource and runs the risk of being politically counterproductive. Seeking to address these limitations, the next section revisits emancipatory understandings of security.

### Executive Counterplan

#### C. Judicial Review – key to moderate Muslim cooperation on counter-terror

Sidhu, J.D, 11 (Dawinder S., J.D., The George Washington University; M.A., Johns Hopkins University; B.A., University of Pennsylvania. Mr. Sidhu is an attorney whose primary intellectual focus is the relationship between individual rights and heightened national security concerns, “JUDICIAL REVIEW AS SOFT POWER: HOW THE COURTS CAN HELP US WIN THE POST-9/11 CONFLICT,” NATIONAL SECURITY LAW BRIEF Vol 1, No 1, <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1003&context=nslb>)

The Message to Moderate Muslims If it is the case that the Court itself did not rule in favor of Muslim interests in post-9/11 cases, and at least in one case appears to be quite hostile to or dismissive of Muslim claims of discrimi- nation, how can American judicial review serve to attract moderate Muslims to the United States? Simply, because the essence and allure of judicial review is the legitimate and peaceful process itself—not the substantive outcomes of particular cases. For example, libertarians, civil libertarians, rule of law advocates, and Muslims may be particularly pleased with the decision handed down in Hamdan because a Muslim detainee prevailed against the government. But in the context of legal soft power, Hamdan must be viewed as an affirmation of the American principle of judicial review and the American constitutional design more generally, as well as a reflection of other vital legal values, including the separation of powers and the limited authority of the federal government. Indeed, Hamdan’s lead counsel, Neal Katyal -- perhaps the one person aside from Hamdan with the greatest reason to be especially pleased with the substantive outcome of the Court’s decision— reminded individuals just one day after the opinion was handed down that Hamdan was not a victory for one party, but ultimately a tribute to the American system of laws and thus to America: [On] the lesson of the decision more generally. . . . I had hoped that when we won that the administration would just take a deep breath and think to themselves, ‘well this is actually something great about America.’ Presidents make mistakes. . . . I don’t think that this [decision] is a rebuke to the Bush adminis- tration per se; I think the Founders anticipated that presidents are going to push their power. But, what’s great about America, it seems to me, is that we have a court system . . . that checks the Presi- dent and allows this guy [Hamdan]—a fourth-grade educated Yemini accused of conspiring with one of the worst individuals on the planet, Osama bin Laden—[to] sue the . . . world’s highest, most powerful official, the President of the United States, and says ‘you’re doing something illegal to me, you’re violating your own basic laws.’ What other nation on earth allows people to do that? It’s a great thing about America. We should be celebrating it, I think, and I think the administration should celebrate it as well because it says that we’re different. 231 It is this in this same spirit that the judiciary’s post-9/11 activities should be adjudged and ex- posed for foreign policy purposes. Hamdan happened to be victorious in his case, but there can be little doubt that in each of the other post-9/11 cases discussed here the litigants went through the same open process in which impartial judges, bound by known procedures and precedents, attempted, in good faith and based on the law, to reach a decision that’s faithful to existing caselaw, statutes, and the Constitution as a whole. The regularity and legitimacy of the judicial process, in place since the founding, animates and breathes life into subsidiary concepts, such as the presumption of innocence and the right of appeal, proving they are actual requirements in real cases rather than theoretical platitudes or aspirational goals. And this is so in the aftermath of 9/11, too, with the Supreme Court exploring seriously the arguments and claims of all the parties, including Muslims. Nations threatened, injured, and fearful may be tempted to depart from the norm, and may look to the unusual circumstances of the particular threat to create a novel system of law governed by modifi ed expectations of what is just. But in the post-9/11 context, judicial review has remained a vital cog in the American wartime machine even when the other coordinate branches sought to di- minish or circumscribe its constitutional role, for example with the DTA and MCA. That individu- als may invoke this system to air their grievances, compel the other side to answer for their conduct, and potentially vindicate their rights—even in a time of national stress and hostilities like 9/11—is a testament to the vitality of American law. 232 In short, while specific decisions may satisfy some and rub others the wrong way, the legal process in which the courts neutrally hear individual cases and dispense with them based on facts, evidence, and law is a source of American soft power that deserves wider understanding on the global stage. Muslims and others may be drawn closer to American interests with the knowledge, exemplified by the robust judicial review occurring after 9/11, that this is a nation of laws, not men. As Katyal concluded in his remarks after Hamdan : [I]f we’re going to win the war on terror, we are going to win it through our soft power, we’re going to win it through saying to the world that we actually have a better model than you because in your countries you settle these things through force and fiat, and here we settle them through law, we settle them through law. 2

#### That’s key to solve terror

Ramirez et al, 2k4 (Deborah, professor at Northwestern University School of Law. Sasha Cohen O’Connell, Northeastern University. Rabia Zafer, Northeastern University. “Developing Partnerships Between Law Enforcement and American Muslim, Arab, and Sikh Communities: A Promising Practices Guide” http://www.ace.neu.edu/pfp/downloads/Guide\_Final5.4.04.pdf)

After September 11th, it became increasingly clear that community input and assistance is even more critical to counterterrorism investigations then it was to traditional investigations focused on guns, drugs and violent crime. In traditional investigations, law enforcement is aided in its work by the existence of a crime scene and/or a focus on a specific criminal object, e.g. a weapon or narcotics. In contrast, terrorism investigations focus on information and the nuanced analysis of that information. Further, the primary goal of a counterterrorism investigation is to prevent, detect, and deter crime before it occurs. Both the relevant cultural information and the linguistic expertise needed for accurate analysis reside predominantly in the Arab, Muslim, and Sikh communities in this country; therefore, a community-based approach is not only beneficial to counterterrorism investigations, it is an essential component for success. The Global Perspective The war on terrorism cannot be won with military might alone. The most dangerous threats in this war are rooted in the successful propagation of anger and fear directed at unfamiliar cultures and people. The only way to ultimately counter this type of threat is to address the anger and fear through the presentation and demonstration of alternative paradigms. Currently, extremists – both those abroad who spread anti-Ameriscan propaganda and those at home who tout anti-Arab and Islamophopic messages of hate - are propagating a series of ideas that are based on the notion that Islam is ultimately incompatible with American ideals. Partnerships between American Arab and Muslim communities and law enforcement have the potential to offer an ideological counterweight to this idea. Specifically, the very existence of such partnerships explicitly demonstrates the desire of these communities to actively participate in American life. Additionally these partnerships demonstrate the American government’s need for assistance from these communities. Further, the partnerships envisioned in this Guide may facilitate discussions that would better inform U.S. policies, both domestic and foreign, by including the perspectives of communities who have a unique understanding of international concerns.

#### ---The Executive cannot create remedies on its own- has to be passed as legislation by Congress

Bernstein, Law Prof-Chicago, 12 (ANYA BERNSTEIN, Bigelow Teaching Fellow and Lecturer in Law, The Universityof Chicago Law School, CONGRESSIONAL WILL AND THE ROLE OF THE EXECUTIVE IN BIVENS ACTIONS: WHAT IS SPECIAL ABOUT SPECIAL FACTORS, http://mckinneylaw.iu.edu/ilr/pdf/vol45p719.pdf)

Of course, the judiciary and the legislature are not the only branches that have a hand in crafting remedies. The modern executive branch, with its administrative remedial schemes and its prominent role in the process of legislation, also plays a part. However, as the Bivens case discussed throughout this Article indicates, the Executive’s role in remedy-creation is still subordinate to that of Congress. Administrative remedial schemes must be authorized through a delegation of congressional power to the Executive and are subject to legislative strictures and specifications. Although the President often plays a significant role in the crafting of legislation and must sign a bill into law, it is still Congress that debates and passes it. Responding to these realities, case law 16 regarding constitutional damages consistently looks to congressional will to ensure that judge-made remedies do not disturb the balance of authority between the judiciary and the legislature.

#### Judicial review key to SOP.

Rathod 09 (Jason, Duke University School of Law, J.D, NOT PEACE, BUT A SWORD: NAVY V. EGAN AND THE CASE AGAINST JUDICIAL ABDICATION IN FOREIGN AFFAIRS, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1447&context=dlj)

Egan’s pronouncement of sweeping executive power and call for super-strong deference represents a superficial and flawed view of the separation of powers. To understand why, one must take a step back to gain a better grasp of the purpose and architecture of the Constitution. The Framers divided the government into branches to diffuse power and guard against tyranny.60 The structure of the document confirms this purpose by embedding a notion of checks and balances.61 That is, it generally grants branches the authority to carry out functions that check, and are checked by, the other branches. For example, a plain reading shows that the Constitution distributes powers related to foreign affairs across the branches, rather than vesting those powers exclusively in the executive.62 The Constitution assigns authority to Congress to regulate international commerce, form and maintain armed forces, and declare war. 63 Furthermore, courts are vested with the authority to adjudicate all cases and controversies properly brought before them.64 As Chief Justice John Marshall said in Marbury v. Madison: 65 “The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.”66 Nowhere does the Constitution hint that the judiciary’s obligation ends when a matter touches foreign affairs.67 In fact, if courts were to abdicate their duty, the separation of powers scheme would be threatened as the courts mutated into a “partner in the transgressions of the political branches, instead of a bulwark between them and the individuals who sought the Court’s protection.”68

#### Collapse of SOP risks nuclear war

Redish and Cisar 91(Martin and Elizabeth, prof of law at Northwestern, clerk for judge Bauer, 41 Duke L.J. 449)

3. The Costs of Abandoning Separation of Powers. The most significant problem with the modern attacks on separation of powers is that they completely ignore the very real fears that led to the adoption of the system in the first place. **No critic has adequately demonstrated either that the fears of undue concentrations of political power that caused the Framers to impose separation of powers are unjustified, or that separation of powers is not an important means of deterring those concentrations.** It might be argued that the dangers of tyranny thought to be prevented by the use of separation of powers are at best speculative. After all, no one can predict with certainty that, but for the formal separation of branch power, the nation would be likely to sink into a state of tyranny. It is, then, conceivable that all of the Framers' efforts to separate and check powers have been wasted. But that is a risk inherent in the use of any form of prophylactic protection: We cannot be sure that, but for the use of the protection, the harm we fear would result.

The decision regarding whether to employ a particular prophylactic device, then, must come down to a comparison of the costs incurred as a result of the device's use with an estimate of both the likelihood and severity of the feared harm. 125 Although some undoubtedly believe that separation of powers imposes severe costs on the achievement of substantive governmental goals, **it would be inaccurate to suggest that government has been paralyzed as a result of separation of powers. Too much legislation is enacted by Congress to accept such a criticism.** More importantly, in critiquing the failure of the federal government to act, one [\*472] must do so behind a Rawlsian "veil of ignorance": 126 Assuming that abolition of separation of powers would result in an increase in governmental action, we cannot know whether those actions will be ones with which we agree. Moreover, the facilitation of governmental action could just as easily lead to a withdrawal of existing governmental programs that we deem to be wise and just. For example, but for separation of powers, election of Ronald Reagan could have easily led to the abolition of social welfare programs that had been instituted in previous Democratic administrations. Liberals who criticize separation of powers for the constraints it imposes on governmental action should therefore recognize how removal of separation of powers could act as a double-edged sword. Thus, **the costs imposed by maintenance of separation of powers are probably nowhere near as great as critics have suggested**. Whether the costs that we actually do incur are justified by the system's benefits requires us to examine the likelihood and severity of harm that could result if separation of powers were removed. As previously noted, **some might question the likelihood of tyrannical abuse of power if separation of powers were abolished**. After all, England lacks our system of formalistic separation of powers, and democracy still flourishes. Why, then, could we not do the same here? The same could, however, be said of the First Amendment rights of free speech and press: In England, speech and press receive no counter-majoritarian constitutional protection, yet it is probably reasonable to believe that for the most part those institutions flourish there. **Yet few, we imagine, would feel comfortable with the repeal of the First Amendment.** In any event, **the political history of which the Framers were aware tends to confirm that quite often concentration of political power ultimately leads to the loss of liberty**. Indeed, if we have begun to take the value of separation of powers for granted**, we need only look to modern American history to remind ourselves about both the general vulnerability of representative government, and the direct correlation between the concentration of political power and the threat to individual liberty**. 127 [\*473] The widespread violations of individual rights that took place when President Lincoln assumed an inordinate level of power, for example, are well documented. 128 Arguably as egregious were the threats to basic freedoms that arose during the Nixon administration, when the power of the executive branch reached what are widely deemed to have been intolerable levels. 129 Although in neither instance did the executive's usurpations of power ultimately degenerate into complete and irreversible tyranny, the reason for that may well have been the resilience of our political traditions, among the most important of which is separation of powers itself. In any event, **it would be political folly to be overly smug about the security of either representative government or individual liberty**. Although it would be all but impossible to create an empirical proof to demonstrate that our constitutional tradition of separation of powers has been an essential catalyst in the avoidance of tyranny, **common sense should tell us that the simultaneous division of power and the creation of interbranch checking play important roles toward that end**.To underscore the point, one need imagine only a limited modification of the actual scenario surrounding the recent Persian Gulf War. In actuality, the war was an extremely popular endeavor, thought by many to be a politically and morally justified exercise. **But imagine a situation in which a President, concerned about his failure to resolve significant social and economic problems at home, has callously decided to engage** [\*474**] the nation in war, simply to defer public attention from his domestic failures**. To be sure, the President was presumably elected by a majority of the electorate, and may have to stand for reelection in the future. However, at this particular point in time, but for the system established by separation of powers, his authority as Commander in Chief 130 to engage the nation in war would be effectively dictatorial. **Because the Constitution reserves to the arguably even more representative and accountable Congress the authority to declare** **war**, 131 **the Constitution has attempted to prevent such misuses of power by the executive.** 132 **It remains unproven whether any governmental structure other than one based on a system of separation of powers could avoid such harmful results.** In summary, no defender of separation of powers can prove with certitude that, **but for the existence of separation of powers, tyranny would be the inevitable outcome**. But the question is whether we wish to take that risk, given the obvious severity of the harm that might result. Given both the relatively limited cost imposed by use of separation of powers and the great severity of the harm sought to be avoided, one should not demand a great showing of the likelihood that the feared harm would result**. For just as in the case of the threat of nuclear war, no one wants to be forced into the position of saying, "I told you so**."

### Iran

#### Bipart support for sanctions now

**Henry, Fox News, 12-27-13**

(Ed, “Top Dem presses Obama on Iran sanctions after centrifuge surprise”, <http://www.foxnews.com/politics/2013/12/27/top-dem-presses-obama-on-iran-sanctions-after-centrifuge-announcement/>, ldg)

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

#### Even if sanctions don’t pass the process tanks a deal

**Fox News 12-20-13**

(“Obama facing Hill rebellion on Iran sanctions”, <http://www.foxnews.com/politics/2013/12/20/obama-facing-hill-rebellion-on-iran-sanctions/>, ldg)

President Obama is facing a growing insurrection on Capitol Hill over Iran sanctions legislation, with one source telling Fox News the bill is attracting a "flood" of support and another lawmaker vowing to muscle through the legislation with a veto-proof majority if necessary. The momentum comes a day after 26 senators, half of them Democrats, introduced Iran legislation in defiance of the administration -- the bill threatens new sanctions if Tehran does not hold up its end of a newly struck nuclear deal. The president criticized those lawmakers in a year-end press conference on Friday, claiming they were just trying to "look tough." But the legislation could pose a serious challenge to the administration, which warns that even the introduction of such a bill could imperil ongoing nuclear talks MARK HERE. Though the White House has threatened to veto, Sen. Lindsey Graham, R-S.C., told Fox News he's looking to gather enough senators -- 67 -- to override. "If the president wants to veto [the bill], we'll override his veto," he said. "He's making a mistake for the ages, to not keep the pressure on the Iranians." One source told Fox News that, as of mid-day Friday, there were close to 50 senators signing up to co-sponsor. The Republican source said Senate Majority Leader Harry Reid has also taken a significant procedural step to fast-track the bill as early as next month. A Senate Democratic source confirmed that Reid did take a procedural step allowing the Iran sanctions bill to skip the committee process so that it is available for floor action -- but noted that the move doesn't automatically send the measure to the floor.

#### 3. Link non-unique – court rulings undermining Obama now –

#### A. District court ruling found NSA data collection unconstitutional

Ackerman and Roberts 12/16/13 (Spencer and Dan, Washington reporters for the Guardian, “NSA phone surveillance program likely unconstitutional, federal judge rules”, http://www.theguardian.com/world/2013/dec/16/nsa-phone-surveillance-likely-unconstitutional-judge)

A federal judge in Washington ruled on Monday that the bulk collection of Americans’ telephone records by the National Security Agency is likely to violate the US constitution, in the most significant legal setback for the agency since the publication of the first surveillance disclosures by the whistleblower Edward Snowden. Judge Richard Leon declared that the mass collection of metadata probably violates the fourth amendment, which prohibits unreasonable searches and seizures, and was "almost Orwellian" in its scope. In a judgment replete with literary swipes against the NSA, he said James Madison, the architect of the US constitution, would be "aghast" at the scope of the agency’s collection of Americans' communications data. The ruling, by the US district court for the District of Columbia, is a blow to the Obama administration, and sets up a legal battle that will drag on for months, almost certainly destined to end up in the supreme court. It was welcomed by campaigners pressing to rein in the NSA, and by Snowden, who issued a rare public statement saying it had vindicated his disclosures. It is also likely to influence other legal challenges to the NSA, currently working their way through federal courts. The case was brought by Larry Klayman, a conservative lawyer, and Charles Strange, father of a cryptologist killed in Afghanistan when his helicopter was shot down in 2011. His son worked for the NSA and carried out support work for Navy Seal Team Six, the elite force that killed Osama bin Laden. In Monday’s ruling, the judge concluded that the pair's constitutional challenge was likely to be successful. In what was the only comfort to the NSA in a stinging judgment, Leon put the ruling on hold, pending an appeal by the government. Leon expressed doubt about the central rationale for the program cited by the NSA: that it is necessary for preventing terrorist attacks. “The government does not cite a single case in which analysis of the NSA’s bulk metadata collection actually stopped an imminent terrorist attack,” he wrote. “Given the limited record before me at this point in the litigation – most notably, the utter lack of evidence that a terrorist attack has ever been prevented because searching the NSA database was faster than other investigative tactics – I have serious doubts about the efficacy of the metadata collection program as a means of conducting time-sensitive investigations in cases involving imminent threats of terrorism.” Leon’s opinion contained stern and repeated warnings that he was inclined to rule that the metadata collection performed by the NSA – and defended vigorously by the NSA director Keith Alexander on CBS on Sunday night – was unconstitutional. “Plaintiffs have a substantial likelihood of showing that their privacy interests outweigh the government’s interest in collecting and analysing bulk telephony metadata and therefore the NSA’s bulk collection program is indeed an unreasonable search under the fourth amendment,” he wrote. Leon said that the mass collection of phone metadata, revealed by the Guardian in June, was "indiscriminate" and "arbitrary" in its scope. "The almost-Orwellian technology that enables the government to store and analyze the phone metadata of every telephone user in the United States is unlike anything that could have been conceived in 1979," he wrote, referring to the year in which the US supreme court ruled on a fourth amendment case upon which the NSA now relies to justify the bulk records program.

#### B. And ruled against the Obamacare birth control mandate

Pye 12/27/13 (Jason, “Christian colleges win court challenge over Obamacare’s contraception mandate”, http://www.unitedliberty.org/articles/16020-christian-colleges-win-court-challenge-over-obamacares-contraception-mandate)

The Obama Administration received another legal blow today over a controversial rule requiring that employers — including many faith-based schools and businesses — provide health plans that cover emergency birth control. U.S. District Court Judge Lee Rosenthal ruled in favor of two Texas-based colleges — East Texas Baptist University and Houston Baptist University — that challenged the contraceptive mandate on the grounds that it violated religious freedom protected under the Religious Freedom Restoration Act of 1993 (RFRA). He also issued an injunction against the Department of Health and Human Services (HHS) from enforcing the mandate. “The courts have identified several ‘less restrictive means’ of serving the interests the government has identified than a total denial of the religious exemption request,” wrote Rosenthal, who serves on the U.S. District Court for the Southern District of Texas. He identified a few different ways to provide contraception to employees without the mandate. “The result is to find and conclude that plaintiffs have shown both a substantial likelihood of succeeding on the merits of their claim that the mandate and accommodation substantially burden the plaintiffs’ religious exercise and the absence of a genuine factual dispute material to this determination,” he noted. “The government has failed to show that the mandate and accommodation are the least restrictive means of advancing a compelling government interest.” In granting the injunction, Rosenthal explained that “[p]rotecting constitutional rights and the rights under RFRA are in the public’s interest.” The contraceptive mandate would include coverage for the morning after pill, Plan B and Ella, which religious groups and business owners consider to be tantamount to abortion. Though this is yet another victory for religious freedom, this decision won’t be the final word on the contraception mandate. The Supreme Court agreed last month to hear Sebelius v. Hobby Lobby Stores. The respondent in the case has argued against the mandate on RFRA grounds.

#### No impact to a deal and too many obstacles

**Hibbs, Carnegie Nuclear Policy Program senior associate, 12-30-13**

(Mark, “A Year of Too-Great Expectations for Iran”, <http://carnegieendowment.org/2013/12/30/year-of-too-great-expectations-for-iran/gxbv>, ldg)

If all goes according to plan, sometime during 2014 Iran will sign a comprehensive final agreement to end a nuclear crisis that, over the course of a decade, has threatened to escalate into a war in the Middle East. But in light of the unresolved issues that must be addressed, it would be unwise to bet that events will unfold as planned. Unrealistic expectations about the Iran deal need to be revised downward. In Geneva on November 24, Iran and the five permanent members of the United Nations Security Council—China, France, Russia, the United Kingdom, and the United States—plus Germany agreed to a Joint Plan of Action. For good reason, the world welcomed this initial agreement because it squarely put Iran and the powers on a road to end the crisis through diplomacy. The deal calls for Tehran and the powers to negotiate the “final step” of a two-stage agreement inside six months. In the best case, the two sides will with determination quickly negotiate that final step. Iran will demonstrate to the International Atomic Energy Agency (IAEA) that its nuclear program is wholly dedicated to peaceful uses and agree to verified limits on its sensitive nuclear activities for a considerable period of time. In exchange, sanctions against Iran will be lifted. An effective final deal could emerge. But Iran and the West will continue to have major differences whether or not there is a final nuclear pact. Residual mutual suspicion is significant, and the United States and Iran have competing hardwired security commitments in the region. The United States will not pivot away from Israel and the Arab states in the Persian Gulf, and Iran will not abandon the Alawites in Syria and push Hezbollah to renounce force. The November deal will not lead to a transformation of the West’s relations with Iran, and the act of signing a deal will not mean Washington and Tehran have somehow overcome their multiple fundamental differences and become partners, as some observers either hope or fear.MARK HERE THE CLOCK IS TICKING U.S. Secretary of State John Kerry knew what he was talking about when he announced in Geneva that the initial step of the Iran nuclear deal had been agreed to and warned that “now the really hard part begins.” The Joint Plan of Action says that Iran and the powers “aim to conclude” the final agreement in “no more than one year.” But the issues that remain to be resolved and the amount of work that needs to be done could delay agreement on the final step for many months. The main problem is not that Iran will refuse to implement what it agreed to in the initial deal. It will almost certainly stop producing and installing more uranium-enrichment centrifuges, limit that enrichment to no more than 5 percent U-235 (enriching to higher levels would bring Iran closer to weapons-grade material), and convert its enriched uranium gas inventory to less-threatening oxide. It is also likely to halt essential work on the Arak heavy-water reactor project, where Iran is developing the capability to produce plutonium, which can be used for making nuclear weapons. Tehran has every incentive to comply with these measures. Were it to cheat, Iran’s adversaries, convinced that Iran cannot be trusted, would be vindicated and would gain leverage to add sanctions or use force. Iran knows this. Instead, the potential showstoppers looming before the parties concern matters that the negotiation of the final step itself must resolve. Crucially, the Joint Plan of Action left open how Iran, the powers, and the IAEA would resolve two critical matters: unanswered questions about sensitive and potentially embarrassing past and possibly recent Iranian nuclear activities, and unfulfilled demands by the UN Security Council that Iran suspend its uranium-enrichment program. Since 2006, Tehran has refused to comply with the Security Council’s suspension orders, and since 2008, it has refused to address allegations leveled by the IAEA that point to nuclear weapons research and development by Iran. The Joint Plan of Action is deliberately vague about how to handle these issues, not because Western diplomats were naive but in part because the powers intended the initial deal to build confidence. That means that groundbreaking and dealmaking were paramount, inviting bold statements, not nitty-gritty outlines. Also leading to this outcome is the fact that when the United States revved up the negotiation this fall in direct bilateral talks with Iran, what was originally a four-step road map became a two-step process featuring an initial step and a final step, with the fine print of steps two and three in the original scheme left to be worked out. If the parties do not work out the two major challenges they face, the negotiation may fail. If differences result in a stalemate, Iran’s hardliners could gain the upper hand, continue pursuing unfettered nuclear development, and eventually terminate the initial accord. Alternatively, U.S. lawmakers could respond to a lack of progress by adding to Iran’s sanctions burden, which would likewise doom the negotiation. There is much at stake.

#### US action checks the impact

**Alcaro, European Foreign and Security Policy Studies research fellow, 2012**

(Riccardo, “Avoiding the Unnecessary War. Myths and Reality of the West-Iran Nuclear Standoff”, March, online pdf, ldg)

There are at least three countries that might feel compelled to catch up with Iran: Turkey, Egypt, and Saudi Arabia. However, no automatism should be presumed. Turkey is part of a nuclear-armed military alliance, NATO, hosts US nuclear weapons in its bases, and has recently agreed to install parts of a US-built and NATO-run ballistic missile defence system on its soil. These are all good reasons for Turkey to remain a non-nuclear-weapon state.34 Saudi Arabia has developed over time a deep relationship with the United States ranging from counter-terrorism cooperation to Saudi massive presence in American financial markets - which would work as a US-imposed brake to Saudi potential nuclear ambitions. Furthermore, the nuclear dispute with Iran has prompted the United States to undertake a military build-up in the Persian Gulf, coupled with pledges of US military aid packages not only to Saudi Arabia but also to the smaller Gulf states. On one occasion, US Secretary of State Hillary Rodham Clinton even went as far as to predict the extension of the US “nuclear umbrella” over its allies in the Gulf if Iran indeed went nuclear.35 Similarly to Turkey, Saudi Arabia has at least as many good reasons to forgo the nuclear military path than do otherwise. Egypt is a more complicated case. The Egyptians have historically struggled to resist the temptation of the atomic bomb. A key factor behind their restraint has been massive US assistance (worth over one billion dollars a year, most of which in military aid), which is to continue to have a moderating effect even on a post-Arab Spring Egypt. In fact, whatever government emerges from the unwieldy political process ongoing in Egypt would be ill-advised if it added yet another complication to the mountain of political and economic problems it is set to cope with. Egypt’s dire need for foreign assistance, both political and financial, would not be well served if the new government in Cairo were to flirt with dreams of an indigenous nuclear arsenal. In addition, all three aforementioned countries are compliant parties to the NonProliferation Treaty.MARK HERE US security guarantees, financial assistance, and “moral” persuasion are to be factored in when assessing the motivations that Turkey, Saudi Arabia or Egypt might have to remain committed to the treaty. But they are part of a broader strategic calculus extending beyond the bargain with the United States. The NPT has been an effective, if imperfect, means to avoid uncontrolled proliferation of nuclear weapon states for over forty years. While Iran’s withdrawal would deal a severe blow to this fundamental pillar of international security, a nuclear arms race in the Gulf would all but vanquish its residual authority. Together with US pledges of aid and security guarantees, the unwillingness of Turkey, Egypt and Saudi Arabia to take responsibility for the near collapse of the international non-proliferation regime make a nuclear arms race an unlikely prospect.

## 1AR

### Case

#### Ex Post review of drone strikes would effectively constrain executive action

Jaffer, Director-ACLU Center for Democracy, 13 (Jameel Jaffer, Director of the ACLU's Center for Democracy, “Judicial Review of Targeted Killings,” 126 Harv. L. Rev. F. 185 (2013), <http://www.harvardlawreview.org/issues/126/april13/forum_1002.php>)

Since 9/11, the CIA and Joint Special Operations Command (JSOC) have used armed drones to kill thousands of people in places far removed from conventional battlefields. Legislators, legal scholars, and human rights advocates have raised concerns about civilian casualties, the legal basis for the strikes, the process by which the executive selects its targets, and the actual or contemplated deployment of armed drones into additional countries. Some have proposed that Congress establish a court to approve (or disapprove) strikes before the government carries them out. While judicial engagement with the targeted killing program is long overdue, those aiming to bring the program in line with our legal traditions and moral intuitions should think carefully before embracing this proposal. Creating a new court to issue death warrants is more likely to normalize the targeted killing program than to restrain it. The argument for some form of judicial review is compelling, not least because such review would clarify the scope of the government’s authority to use lethal force. The targeted killing program is predicated on sweeping constructions of the 2001 Authorization for Use of Military Force (AUMF) and the President’s authority to use military force in national self-defense. The government contends, for example, that the AUMF authorizes it to use lethal force against groups that had nothing to do with the 9/11 attacks and that did not even exist when those attacks were carried out. It contends that the AUMF gives it authority to use lethal force against individuals located far from conventional battlefields. As the Justice Department’s recently leaked white paper makes clear, the government also contends that the President has authority to use lethal force against those deemed to present “continuing” rather than truly imminent threats.These claims are controversial. They have been rejected or questioned by human rights groups, legal scholars, federal judges, and U.N. special rapporteurs. Even enthusiasts of the drone program have become anxious about its legal soundness. (“People in Washington need to wake up and realize the legal foundations are crumbling by the day,” Professor Bobby Chesney, a supporter of the program, recently said.) Judicial review could clarify the limits on the government’s legal authority and supply a degree of legitimacy to actions taken within those limits. It could also encourage executive officials to observe these limits. Executive officials would be less likely to exceed or abuse their authority if they were required to defend their conduct to federal judges.Even Jeh Johnson, the Defense Department’s former general counsel and a vocal defender of the targeted killing program, acknowledged in a recent speech that judicial review could add “rigor” to the executive’s decisionmaking process. In explaining the function of the Foreign Intelligence Surveillance Court, which oversees government surveillance in certain national security investigations, executive officials have often said that even the mere prospect of judicial review deters error and abuse.

### Vtl\*\*\*\*\*\*

#### “No value to life” doesn’t outweigh---prioritize existence because value is subjective

Torbjörn Tännsjö 11, the Kristian Claëson Professor of Practical Philosophy at Stockholm University, 2011, “Shalt Thou Sometimes Murder? On the Ethics of Killing,” online: http://people.su.se/~jolso/HS-texter/shaltthou.pdf

I suppose it is correct to say that, if Schopenhauer is right, if life is never worth living, then according to utilitarianism we should all commit suicide and put an end to humanity. But this does not mean that, each of us should commit suicide. I commented on this in chapter two when I presented the idea that utilitarianism should be applied, not only to individual actions, but to collective actions as well.¶ It is a well-known fact that people rarely commit suicide. Some even claim that no one who is mentally sound commits suicide. Could that be taken as evidence for the claim that people live lives worth living? That would be rash. Many people are not utilitarians. They may avoid suicide because they believe that it is morally wrong to kill oneself. It is also a possibility that, even if people lead lives not worth living, they believe they do. And even if some may believe that their lives, up to now, have not been worth living, their future lives will be better. They may be mistaken about this. They may hold false expectations about the future.¶ From the point of view of evolutionary biology, it is natural to assume that people should rarely commit suicide. If we set old age to one side, it has poor survival value (of one’s genes) to kill oneself. So it should be expected that it is difficult for ordinary people to kill themselves. But then theories about cognitive dissonance, known from psychology, should warn us that we may come to believe that we live better lives than we do.¶ My strong belief is that most of us live lives worth living. However, I do believe that our lives are close to the point where they stop being worth living. But then it is at least not very far-fetched to think that they may be worth not living, after all. My assessment may be too optimistic.¶ Let us just for the sake of the argument assume that our lives are not worth living, and let us accept that, if this is so, we should all kill ourselves. As I noted above, this does not answer the question what we should do, each one of us. My conjecture is that we should not commit suicide. The explanation is simple. If I kill myself, many people will suffer. Here is a rough explanation of how this will happen: ¶ ... suicide “survivors” confront a complex array of feelings. Various forms of guilt are quite common, such as that arising from (a) the belief that one contributed to the suicidal person's anguish, or (b) the failure to recognize that anguish, or (c) the inability to prevent the suicidal act itself. Suicide also leads to rage, loneliness, and awareness of vulnerability in those left behind. Indeed, the sense that suicide is an essentially selfish act dominates many popular perceptions of suicide. ¶ The fact that all our lives lack meaning, if they do, does not mean that others will follow my example. They will go on with their lives and their false expectations — at least for a while devastated because of my suicide. But then I have an obligation, for their sake, to go on with my life. It is highly likely that, by committing suicide, I create more suffering (in their lives) than I avoid (in my life).

### 2AC Perm

#### Perm do both – policy is responsive and even if the alt is coopted it’s the only way to solve.

Kurki 2011

Milja, The Limitations of the Critical Edge: Reflections on Critical and Philosophical IR Scholarship Today, Principal Investigator of ‘Political Economies of Democratisation’, a European Research Council-funded project based at the International Politics Department, Aberystwyth University, Millennium: Journal of International Studies 40(1) 129–146 September 2011

We have yet another call to a new beginning, another meta-theoretical debate for the consumers of international relations theory. This is the easy part, and I support it as far as it goes. However, now it is time to move beyond introductions and openings to concrete applications, to the construction and illustration of viable alternatives. It is important that we proceed in this manner not because these alternatives are necessarily going to be ‘better’, closer to ‘truth’ or more ‘real’ in some sense than prevailing theoretical explanations; but in order to demonstrate the possibility of alternative – possibly, but not necessarily, superior – conceptualisations, that are otherwise widely held to be self-evident by the vast majority of scholars of IR.53 There have been many calls for more critical and philosophical debate in IR; yet, just how critical are all these debates and what effects do they have? What is the purpose of critical IR theory or philosophical reflection, and what is the purpose of the supposed theoretical diversity that the critical voices bring into IR? Many, in my view, misunderstand their purpose. Biersteker summarises my own view perfectly. The point of philosophical reflection and post-positivism, he argues, is not to provide ‘pluralism without purpose, but a critical pluralism, designed to reveal embedded power and authority structures, provoke critical scrutiny of dominant discourses, engage marginalised peoples and perspectives and provide a basis for alternative conceptualisations’.54 There is a purpose to critical theory that needs to be acknowledged, reflected upon and ‘practised’; both inside and outside academia. At present, it seems to me that relatively little such engagement takes place; not because critical theorists are ‘lazy’ or wrong-headed, but because the disciplinary environment and professional structures favour disassociation and depoliticisation even of these strands of thought. Strategic thinking of critical theorists is not missing, but it is oriented in such a way that does not facilitate real-world political changes. In the era of the expansion of the image of homo oeconomicus in academia too, much remains to be done in reinvigorating critical theoretical thought. At present, we have many theoretically sophisticated but practically disinvested scholars. This renders IR, and especially philosophical and critical theory within it, rather useless in challenging global structures and paradigms of domination. But what can we do about this? Arguably, revisions of conceptual categories and their political underpinnings, as well as spaces to think about alternatives, are needed more than ever. But how do we generate them, or, in Cox’s or Murphy’s words, how can IR academics help in generating such alternatives? We can do so in a few ways. We can do so by passing on the torch by continuing to teach critical theory: as Hoffman usefully reminds us, theorising itself (and passing it on through teaching) is a critical practice in itself.55 We can also do so today by continuing to fight the cuts to social science research in universities and the constriction of space for free thought within universities. We can also seek to obtain, but also seek to reshape, the kind of research funding that is provided by funding councils or states. This takes some perseverance, for it is not easy to argue for conceptual or philosophical engagement, let alone critical praxaeology, at a time of crisis or for reform within bureaucratic and conservative structures. Yet, this brings in another core aspect of the challenge faced by critical theorists, which is that we must also seek to engage with the world: to act in it as well as analyse it. We must engage the social groups and NGOs, but also the elites and bureaucrats. We can do so and we must try and do so; partly because these elites (and also NGO elites) are actually more well-meaning and even reflective than many academics give them credit for; and because, in my experience, they are very capable of understanding both the pros and cons, limits and possibilities, of alternative frameworks and actions when concretely presented with them. This is not to say that significant structural and ideological constraints do not exist to generating alternative political scenarios – they do – but the structures are only partly, and in many cases only secondarily, supported, even by governmental or intergovernmental elites. These elites may be a good ally, rather than an enemy, in re-shifting international political and economic paradigms. The result of a new kind of engagement with the empirical and the practical is not necessarily a victory of critical theory; critical theory rarely – indeed never, it would seem – ‘wins’, that much is a clear lesson of history. Yet, it can occasionally activate, motivate and, indeed, ‘enthral’ people, as well as giving them hope and impetus to achieve change. Despite its sceptical outlook, critical and philosophical theory is still valuable in reminding us that, while it does not seem so, we do not live in a world without any alternatives.

#### Rejection only insulates security from effective criticism – the permutation solves best

Waever, 1995 (Ole, Senior Researcher, Center for Peace & Conflict Research , On Security, ed. Ronnie D. Lipschutz, pg. 56-7)

An agenda of minimizing security in this sense cannot be based on a classical critical approach to security, whereby the concept is critiqued and then thrown away or redefined according to the wishes of the analyst. The essential operation can only be touched by faithfully working with the classical meaning of the concept and what is already inherent in it. The language game of security is, in other words, a jus necessitatis for threatened elites, and this it must remain. Such an affirmative reading, not at all aimed at rejecting the concept, may be a more serious challenge to the established discourse than a critical one, for it recognizes that a conservative approach to security is an intrinsic element in the logic of both our national and international political organizing principles. By taking a serioulsy this “unfounded” concept of seucity, it is possible to raise a new agenda of security and politics. This further implies moving from a positive to a negative agenda, in the sense that the dynamics of securitization and desecuritization can never be captured so long as we proceed along the normal critical track that assumes security to be a positive value to be maximized.