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### 1

#### Technical solutions to war powers are a shell game which locks in exceptionalism – their reaction hyper inflates threats when the US isn’t in danger. The violence they recreate is a blind spot which is why we must ask what our national security interests are who is served by those goals as a prior question

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This fearsome sort of legality is largely shielded from our view (that is, from the view of Americans---the ones wielding this legality) with the veil of democracy, knitted together with the thread of process jurisprudence. Within process jurisprudence, there is no inquiry into the fundamental question: allocation of power between the branches to accomplish . . . what? It is very easy to skip that question, and thus easy to slide into or accept circular argumentation.31 With the focus on the distribution of power, arguments about what to do in this so-called war on terror start off with assumptions about the nature of the problem (crudely expressed as violent Jihadists who hate our freedoms) and then appeal to those assumptions to justify certain actions that have come to constitute this “war.” The grip of this circularity, ironically enough, gains its strength from the ideology of legality, the very thing that the Court seeks to protect in this narrative drama, because that ideology fences out considerations of history, sociology, politics, and much else that makes up the human experience. What Judith Shklar observed over forty years ago captures the point here: the “legalism” mindset--which thoroughly infuses the process jurisprudence that characterizes the Hamdi analysis--produces the “urge to draw a clear line between law and nonlaw” which, in turn, leads to “the construction of ever more refined and rigid systems of formal definitions” and thus “serve[s] to isolate law completely from the social context within which it exists.” 32 The pretense behind the process jurisprudence--and here pretense is purpose--is the resilient belief that law can be, and ought to be, impervious to ideological considerations. And so, the avoidance of the “accomplish . . . what?” question is far from accidental; it is the quintessential act of legality itself.33 More than that, this “deliberate isolation of the legal system . . . is itself a refined political ideology, the expression of a preference” that masquerades as a form of judicial neutrality we find suitable in a democracy.34 If the Executive’s asserted prerogative to prosecute a war in a way that will assure victory is confronted with the prior question about what exactly we want to accomplish in that war--if, that is, we confront the question posed by Slavoj Zizek, noted at the outset of this article—then the idea of national security trumping “law” takes on an entirely different analytical hue. Professor Owen Fiss is probably right when he says that the Justices in Hamdi “searched for ways to honor the Constitution without compromising national interests.”35 But that is a distinctly unsatisfying observation if what we are concerned about is the identification of what exactly those “national interests” are.36 We may not feel unsatisfied because, in the context of Hamdi, it undoubtedly seems pointless to ask what we are trying to accomplish, since the answer strikes us as obvious. We are in a deadly struggle to stamp out the terrorist threat posed by Al Qaeda, and more generally, terrorism arising from a certain violent and nihilistic strain of Islamic fundamentalism. Our foreign policy is expressly fueled by the outlook that preemptive attacks is not merely an option, but is the option to be used. In the words of the Bush Administration’s 2002 National Security Strategy document, “In the world we have entered, the only path to safety is the path of action. And this nation will act.”37 O’Connor and the rest of the Court members implicitly understand our foreign policy and the goal to be pursued in these terms, which explains why the Hamdi opinion nowhere raises a question about what it is the so-called “war on terror” seeks to accomplish. After all, the stories we want to tell dictate the stories that we do tell. We want to tell ourselves stories about our own essential goodness and benevolence, our own fidelity to the rule of law; and that desire dictates the juridical story that ultimately gets told. Once one posits that our foreign policy is purely and always defensive, as well as benevolent in motivation,38 then whatever the juridical story—even one where the nation’s highest Court announces that the Executive has no blank check to prosecute a war on terror—the underlying reality inscribed upon the world’s inhabitants, the consequences real people must absorb somehow, is one where “the United States has established that its only limit on the world stage will be its military power.”39 As O’Connor sees it, the real problem here is that, given that the allocation-of-power issue is tied to the goal of eliminating the terrorist threat, we have to reckon with the probability that this allocation is not just an emergency provision, but one that will be cemented into our society, since the current emergency is likely to be, in all practicality, a permanent emergency. But to say we are in a struggle to stamp out a terrorist threat posed by Islamic fundamentalism, and to say that “the only path to safety is the path of action,” conceals--renders invisible, a postmodernist would likely put it--an even more fundamental, and more radical, question: the allocation of power that the Court is called upon to establish is in the service of eliminating a terrorist threat to accomplish . . . what? The standard answer is, our security, which most Americans would take to mean, to avert an attack on our homeland, and thus, as it was with Lincoln, to preserve the Union. And so, we accept as obvious that our dilemma is finding the right security-liberty balance. The problem with that standard answer is two-fold. First, it glosses over the fact that we face no true existential threat, no enemy that genuinely threatens to seize control over our state apparatus and foist upon us a form of government to which we would not consent. That fact alone distinguishes our current war on terrorism from Lincoln’s quest to preserve the Union against secession.40 Second, this we-must-protect-the-Homeland answer is far too convenient as a conversation stopper. When the Bush Administration=’ National Security Strategy document avers that “the only path to safety is the path of action,” we ought to ask what global arrangements are contemplated through that “path of action.” When that document announces that “this nation will act,” it surely cannot suffice to say that the goal is merely eliminating a threat to attain security. All empires and empire-seeking nations engage in aggression under the rubric of self-defense and the deployment of noble-aims rhetoric. These justifications carry no genuine meaning but are devices of the powerful and the privileged, with the acquiescence and often encouragement by a frightened populace, to quell unsettling questions from dissenters within the society.41 Stop and think for a moment, how is it that the nation with the most formidable military might--the beneficiary of the hugest imbalance in military power ever in world history--is also the nation that professes to be the most imperiled by threats throughout the world, often threatened by impoverished peasant societies (Vietnam, Nicaragua, El Salvador, Chile, Granada, etc.)?42 An empire must always cast itself as vulnerable to attack and as constantly being under attack in order to justify its own military aggression. This is most acutely true when the empire is a democracy that must garner the consent of the populace, which explains why so much of governmental rhetoric concerning global affairs is alarmist in tone. The point is that quandaries over constitutional interpretation--ought we be prudential, or are other techniques more closely tied to the text the only legitimate mode of constitutional adjudication--may very well mask what may be the most urgent issue of all, which concerns what exactly this nation’s true identity is at this moment in world history, what it is that we are pursuing. Whereas Sanford Levinson has courageously argued that “too many people >venerate= the Constitution and use it as a kind of moral compass,”43 which leads to a certain blindness, I raise for consideration an idea that Hamdi suppresses, through its narrative techniques, which is that too many people “venerate” this nation without any genuine consideration of the particular way we have, since World War II, manifested ourselves as a nation. I join Levinson’s suspicion that our Constitution is venerated as an idea, as an abstraction, without much thought given to its particulars. It is important to be open to the possibility that the same is true with regard to our nation--the possibility that we venerate the idea of America (undoubtedly worth venerating), but remain (willfully?) ignorant of the particulars of our actual responsibility for the health of the planet and its inhabitants.44 To openly consider such issues is not anti-American--an utterly absurd locution--for to suggest that it is amounts to a denial that U.S. actions (as opposed to rhetoric that leeches off of the promise and ideal of “America”) can be measured by some yardstick of propriety that applies to all nations.45 The very idea of a “yardstick of propriety” requires a prior acceptance of two ideas: one, that we are part of something larger, that we are properly accountable to others and to that larger circumstance; and two, that it is not a betrayal or traitorous for a people within a nation to look within itself.46 Issacharoff and Pildes, the most prominent process theorists, observe that process jurisprudence may be inadequate to address the risk that we “might succumb to wartime hysteria.”47 I would broaden that observation so as to be open to the possibility that the risk goes beyond just wartime hysteria, that our desire for security and military victory, rooted in our repudiation of a genuine universal yardstick of propriety that we willingly apply to ourselves (often called American exceptionalism48)--which means that security and military victory are not ipso facto the same thing--could easily slide us into sanctioning a form of sovereignty that is dangerously outmoded and far out of proportion to what circumstances warrant. Process jurisprudence supposedly has the merit of putting the balance of security and liberty into the hands of the democratic institutions of our government. But what it cannot bring into the field of vision--and what is absolutely banished from view in Hamdi--is the possibility that the democratic institutions themselves, and perhaps even the democratic culture generally, the public sphere of that culture, have been corrupted so severely as to reduce process jurisprudence to a shell game.49 More specifically, the formal processes of governmentality responding to crisis is judicially monitored, but the mythos of our national identity, particularly the idea that every international crisis boils down to the unquestioned fact that the United States at least endeavors to act solely in self defense and to promote some benevolent goal that the entire world ought to stand behind, is manufactured and thus some hegemonic pursuit in this global “war on terror” remains not just juridically ignored, but muted and marginalized in much of our public discussions about it.50 Under process jurisprudence, it is the wording of a piece of legislation, not the decoding of the slogan national security, that ultimately matters. And under process jurisprudence, fundamental decisions have already been made--fundamental decisions concerning the nature of our global ambitions and the way we will pursue them--before the judiciary can confront the so-called security-liberty balance, which means that the analytical deck has been stacked by the time the justiciable question---that is, what we regard as the justiciable question---is posed. Stacking the analytical deck in this way reduces the Court members to the role of technicians in the service of whatever pursuit the sovereign happens to choose.51 This is why it is worth asking what many might regard as a naive, if not tendentious, question: is it true that in the case of Hamdi and other post-9/11 cases, the judiciary’s quandary over allocation of power is actually in the service of genuine security, meaning physical safety of the populace? Does the seemingly obvious answer that we seek only to protect the safety of our communities against naked violence blind us to a deeper ailment within our culture? Is it possible that the allocation of power, at bottom, is rooted in a dark side of our Enlightenment heritage, an impulse within Legality that threatens us in a way similar to the Thanatos drive Freud identified as creating civilization’s discontent?52 Perhaps Hamdi itself, as a cultural document, signals yet another capitulation to the impulse to embrace a form of means-ends rationality that supports the Enlightenment drive to control and subdue.53 Perhaps what Hamdi shows is that 9/11 has not really triggered a need to recalibrate the security-liberty balance, but has actually unleashed that which has already filtered into and corrupted our culture—Enlightenment’s dark side, as the Frankfurt School understood it54’’and is thus one among many cultural documents that ought to tell us we are not averting a new dark age, but are already in it, or at least, to borrow a phrase from Wendell Berry, that we are “leapfrogging into the dark.” 55 It is impossible, without the benefit of historical distance, to answer these questions with what amounts to comforting certitude. But they are worth confronting, since the fate of so many people depends on it, given our unrivaled ability and frightening willingness to use military force. Our culture’s inability to ask such questions in any meaningful way, as opposed to marginalizing those who plead for them to be confronted, is somewhat reminiscent of how early Enlightenment culture treated scientific endeavors. “Science,” during the rise of Enlightenment culture, rebuffed the why question, banished it as a remnant of medieval darkness, because the why-ness of a certain scientific pursuit suggested that certain domains of knowledge were bad, off-limits, taboo. The whole cultural mindset of the Enlightenment was to jettison precisely such a suggestion. That cultural mindset produced a faith all its own, that all scientific pursuits, and by extension all human quests for knowledge, will in the end promote human flourishing. It has taken the devastation of our planet to reveal the folly of that faith, a blind-spot in the Western mind. It may turn out, as a sort of silver lining on a dark cloud, that the terrorism arising from Islamic jihadists may do something similar.

#### Ontology is a prior question; the form of social relations their advocacy embodies rests on faulty epistemology and makes extinction inevitable---vote negative as a form of noncooperation with their political economy

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I. Industrial civilization is on a collision course with life itself. Facilitating its collapse is a deserved and welcomed correction, long overdue. Collapse is inevitable whether we seek to facilitate it or not. Nonetheless, whatever we do, industrial civilization, based as it is on mining and burning finite and polluting fossil fuels, cannot last because it is destroying the ecosystem and the basis of local, cooperative life itself. It knows no limits in a physically finite world and thus is unsustainable. And the numbers of our human species on earth, which have proliferated from 1.6 billion in 1900 to 7 billion today, is the consequence of mindlessly eating oil – tractors, fertilizers, pesticides, herbicides – while destroying human culture in the process. Our food system itself is not sustainable. Dramatic die-off is part of the inevitable correction in the very near future, whether we like it or not. Human and political culture has become totally subservient to a near religion of economics and market forces. Technologies are never neutral, with some being seriously detrimental. Technologies come with an intrinsic character representing the purposes and values of the prevailing political economy that births it. The Industrialism process itself is traumatic. It is likely that only when we experience an apprenticeship in nature can we be trusted with machines, especially when they capital intensive & complicated. The nation-state, intertwined more than ever with corporate industrialism, will always come to its aid and rescue. Withdrawal of popular support enables new imagination and energy for re-creating local human food sufficient communities conforming with bioregional limits. II. The United States of America is irredeemable and unreformable, a Pretend Society. The USA as a nation state, as a recent culture, is irredeemable, unreformable, an anti-democratic, vertical, over-sized imperial unmanageable monster, sustained by the obedience and cooperation, even if reluctant, of the vast majority of its non-autonomous population. Virtually all of us are complicit in this imperial plunder even as many of us are increasingly repulsed by it and speak out against it. Lofty rhetoric has conditioned us to believe in our national exceptionalism, despite it being dramatically at odds with the empirically revealed pattern of our plundering cultural behavior totally dependent upon outsourcing the pain and suffering elsewhere. We cling to living a life based on the social myth of US America being committed to justice for all, even as we increasingly know this has always served as a cover for the social secret that the US is committed to prosperity for a minority thru expansion at ANY cost. Our Eurocentric origins have been built on an extraordinary and forceful but rationalized dispossession of hundreds of Indigenous nations (a genocide) assuring acquisition of free land, murdering millions with total impunity. This still unaddressed crime against humanity assured that our eyes themselves are the wool. Our addiction to the comfort and convenience brought to us by centuries of forceful theft of land, labor, and resources is very difficult to break, as with any addiction. However, our survival, and healing, requires a commitment to recovery of our humanity, ceasing our obedience to the national state. This is the (r)evolution begging us. Original wool is in our eyes: Eurocentric values were established with the invasion by Columbus: Cruelty never before seen, nor heard of, nor read of – Bartolome de las Casas describing the behavior of the Spaniards inflicted on the Indigenous of the West Indies in the 1500s. In fact the Indigenous had no vocabulary words to describe the behavior inflicted on them (A Short Account of the Destruction of the Indies, 1552). Eurocentric racism (hatred driven by fear) and arrogant religious ethnocentrism (self-righteous superiority) have never been honestly addressed or overcome. Thus, our foundational values and behaviors, if not radically transformed from arrogance to caring, will prove fatal to our modern species. Wool has remained uncleansed from our eyes: I personally discovered the continued vigorous U.S. application of the “Columbus Enterprise” in Viet Nam, discovering that Viet Nam was no aberration after learning of more than 500 previous US military interventions beginning in the late 1790s. Our business is killing, and business is good was a slogan painted on the front of a 9th Infantry Division helicopter in Viet Nam’s Mekong Delta in 1969. We, not the Indigenous, were and remain the savages. The US has been built on three genocides: violent and arrogant dispossession of hundreds of Indigenous nations in North America (Genocide #1), and in Africa (Genocide #2), stealing land and labor, respectively, with total impunity, murdering and maiming millions, amounting to genocide. It is morally unsustainable, now ecologically, politically, economically, and socially unsustainable as well. Further, in the 20th Century, the Republic of the US intervened several hundred times in well over a hundred nations stealing resources and labor, while imposing US-friendly markets, killing millions, impoverishing perhaps billions (Genocide #3). Since 1798, the US military forces have militarily intervened over 560 times in dozens of nations, nearly 400 of which have occurred since World War II. And since WWII, the US has bombed 28 countries, while covertly intervening thousands of times in the majority of nations on the earth. It is not helpful to continue believing in the social myth that the USA is a society committed to justice for all , in fact a convenient mask (since our origins) of our social secret being a society committed to prosperity for a few through expansion at ANY cost. (See William Appleman Williams). Always possessing oligarchic tendencies, it is now an outright corrupt corporatocracy owned lock stock and barrel by big money made obscenely rich from war making with our consent, even if reluctant. The Cold War and its nuclear and conventional arms race with the exaggerated “red menace”, was an insidious cover for a war preserving the Haves from the Have-Nots, in effect, ironically preserving a western, consumptive way of life that itself is killing us. Pretty amazing! Our way of life has produced so much carbon in the water, soil, and atmosphere, that it may in the end be equivalent to having caused nuclear winter. The war OF wholesale terror on retail terror has replaced the “red menace” as the rhetorical justification for the continued imperial plunder of the earth and the riches it brings to the military-industrial-intelligence-congressional-executive-information complex. Our cooperation with and addiction to the American Way Of Life provides the political energy that guarantees continuation of U.S. polices of imperial plunder. III. The American Way Of Life (AWOL), and the Western Way of Life in general, is the most dangerous force that exists on the earth. Our insatiable consumption patterns on a finite earth, enabled by but a one-century blip in burning energy efficient liquid fossil fuels, have made virtually all of us addicted to our way of life as we have been conditioned to be in denial about the egregious consequences outsourced outside our view or feeling fields. Of course, this trend began 2 centuries earlier with the advent of the industrial revolution. With 4.6% of the world’s population, we consume anywhere from 25% to nearly half the world’s resources. This kind of theft can only occur by force or its threat, justifying it with noble sounding rhetoric, over and over and over. Our insatiable individual and collective human demands for energy inputs originating from outside our bioregions, furnish the political-economic profit motives for the energy extractors, which in turn own the political process obsessed with preserving “national (in)security”, e.g., maintaining a very class-based life of affluence and comfort for a minority of the world’s people. This, in turn, requires a huge military to assure control of resources for our use, protecting corporate plunder, and to eliminate perceived threats from competing political agendas. The U.S. War department’s policy of “full spectrum dominance” is intended to control the world’s seas, airspaces, land bases, outer spaces, our “inner” mental spaces, and cyberspaces. Resources everywhere are constantly needed to supply our delusional modern life demands on a finite planet as the system seeks to dumb us down ever more. Thus, we are terribly complicit in the current severe dilemmas coming to a head due to (1) climate instability largely caused by mindless human activities; (2) from our dependence upon national currencies; and (3) dependence upon rapidly depleting finite resources. We have become addicts in a classical sense. Recovery requires a deep psychological, spiritual, and physical commitment to break our addiction to materialism, as we embark on a radical healing journey, individually and collectively, where less and local becomes a mantra, as does sharing and caring, I call it the Neolithic or Indigenous model. Sharing and caring replace individualism and competition. Therefore, A Radical Prescription Understanding these facts requires a radical paradigmatic shift in our thinking and behavior, equivalent to an evolutionary shift in our epistemology where our knowledge/thinking framework shifts: arrogant separateness from and domination over nature (ending a post-Ice Age 10,000 year cycle of thought structure among moderns) morphs to integration with nature, i.e., an eco-consciousness felt deeply in the viscera, more powerful than a cognitive idea. Thus, we re-discover ancient, archetypal Indigenous thought patterns. It requires creative disobedience to and strategic noncooperation with the prevailing political economy, while re-constructing locally reliant communities patterned on instructive models of historic Indigenous and Neolithic villages.

### 2

#### Nullification Counterplan

#### The fifty states should invoke their nullification power in order to impose a ban against the use of the President’s war power authority to indefinitely detain based on predictions of future dangerousness.

The counterplans assertion of state nullification power is an effective check on federal authority and is key to revitalizing decentralized federalism

Haworth-Ph.D., Ciceronian Society Foundation-13 (Editor-in-Chief Nomocracy) http://nomocracyinpolitics.com/2013/09/25/real-federalism-includes-taking-interposition-and-nullification-seriously/ Real Federalism Includes Taking Interposition and Nullification Seriously

Crucially missing in this debate is recognition of the importance of States checking federal authority so as to protect their constitutional autonomy and generally maintain themselves as vibrant political entities rather than mere federal lackeys (i.e., self-interested seekers of the Federal Government’s largesse). Both authors miss these points. Greve’s call for “national scale” makes this obvious, but he even explicitly denounces nullification in a separate essay on that topic. Moreover, Reinsch’s refusal to advocate interposition and nullification is also telling. In the sections that follow, I will elucidate the following: (1) why Calhoun’s doctrine of nullification is a constitutional means of preserving the States’ local liberty; (2) how the lack of nullification and interposition has damaged the States viability as independent political entities that do not need federal largesse; and (3) some final thoughts about the importance of interposition and nullification as well as the need to dismiss ad hominem arguments against these doctrines.[1] I. Calhoun’s Doctrine of Nullification as a Constitutional Means of Preserving the States’ Local Liberty: Professor Adam Tate has argued that John C. Calhoun’s advocacy of nullification was crucially focused on maintaining the American union in a manner that preserved the liberty of the States. Liberty here is a State’s political autonomy to self-govern its internal affairs within the framework of reserved powers that it retains via the 1789 Constitution. Calhoun desired union, but he opposed its pursuit via unconstitutional conceptions of federal supremacy that inevitably tended toward the Federal Government usurping powers reserved by the States. He implied his vision for both union and local liberty (and his opposition to federal dominance within the union) in his famous toast at the Jefferson Day Dinner in 1830: “The Union, next to our liberty, most dear.” Nullification, then, is not aimed at disunion; rather, it seeks to maintain a union of States that protects the liberty (i.e., the constitutional political autonomy) of each State via allowing a State to defend itself against federal encroachments. With respect to Calhoun’s constitutional theory, it is important to realize that he viewed the people of each State as a sovereign entity (even after they had ratified the 1789 Constitution) and, hence, capable of (at a minimum) revoking the delegation of powers granted to the Federal Government.[2] Sovereignty includes having supreme, ultimate, and unified power and authority over the internal affairs of people within established territorial boundaries. This is the first and primary issue with respect to federalism, for it elucidates where ultimate authority resides when a dispute arises between a State and the Federal Government. If the people of each State retain sovereignty within its borders, despite delegating powers to the Federal Government via ratifying the Constitution (i.e., a State’s sovereignty is something separate from the sovereign powers it delegates), then a State People can decide to revoke its delegation of powers (to the Federal Government) via secession. With respect to nullification, which is a specific and strong mode of interposition, Calhoun believed that the same State sovereignty issues applied, but nullification is aimed at maintaining union in a manner that appropriately recognizes a State to be the unit-of-sovereignty that has justifiable unilateral authority to determine whether a federal law is unconstitutional (unless and until a State’s nullification is overruled through the Article V amendment process). Calhoun believed that each State People had this ultimate legal authority through their role as original parties to the Constitutional Compact.[3] It was the State People who gave the Constitution life via their ratification; as many of the Framers’ maintained, the Philadelphia Convention merely proposed a new system of union, but it was the States who had the authority to make it fundamental law. Moreover, with respect to the Constitution and its amendments as a constitutional compact, since the State Peoples were original contracting parties (or equivalent in sovereign status to the State Peoples who were the historical contracting parties) and since no higher authority existed to determine whether the Constitution was being appropriately followed by the Federal Government (i.e., whether the Federal Government stays within the scope of its delegated powers), final judgment about whether or not a federal law was constitutional was left to each State People and not a department within the Federal Government (e.g. the federal judiciary) whose very life and authority is a creature-level product granted by creator-level State Peoples.[4] It is also important to note that Calhoun did not view nullification as an act that would make a law unconstitutional throughout the union; rather, the judgment by each State People would only apply within the boundaries of its own State. Furthermore, the judgment of each State People could be reversed via the other States passing a constitutional amendment that was contrary to the decision of the State People in question. If this occurred, a nullifying State People would have to either (1) abide by the new amendment; or (2) secede from the union.[5] Readers can further consider Calhoun’s theory in my article on his Confederation thesis in the 2010 Political Science Reviewer. With respect to the constitutional appropriateness of the compact theory and its concomitant principles of interposition, nullification, and secession, it is appropriate to elaborate on how these were part of the original constitutional tradition, rather than something merely concocted by Calhoun in response to the tariff crisis. First, there is important evidence suggesting that interposition was employed by the States in response to perceived unconstitutional enactments by the Confederation Congress (e.g., its acceptance of the Treaty of Paris of 1783).[6] Second, interposition and secession (and de facto nullification) were understood and endorsed during the ratification debate about the proposed Constitution. [7] Federalists, such as Madison and Hamilton for example, were noted voices for interposition as a means of checking hypothetical federal usurpations. Secession was considered and endorsed as being constitutional by many during the ratification period, and a State’s right to secession ultimately became a de facto part of the Constitution via Congress’s acceptance of the ratifications of New York, Virginia, and Rhode Island, that were all qualified with secession statements. As I have argued elsewhere, such qualifications to the original compact legally inserted recognition of secession as a State reserved power into the Constitution’s terms. Although Calhoun’s elaborate development of nullification doctrine was not explicitly recognized during the Founding, an almost de facto version of it was intended by Virginia’s ratifying convention.[8] Moreover, as Reinsch shows in his above-mentioned first essay, Madison “pen[ed a letter] to Thomas Jefferson in the fall of 1787 that the state governments will stand ready in the case of violations of their reserved powers under the Constitution to retake said powers.” Moreover, a third relevant consideration is the fact that Madison and Jefferson invoked (respectively) interposition and nullification during the Alien and Sedition Act crisis in 1798. Madison drafted the Virginia Resolution, and Jefferson anonymously authored the Kentucky Resolution. The Virginia Resolution was issued by the State’s General Assembly, and it included the following language: That this Assembly doth explicitly and peremptorily declare, that it views the powers of the federal government, as resulting from the compact, to which the states are parties; as limited by the plain sense and intention of the instrument constituting the compact; as no further valid that they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them. Near the end of the document, the Virginia Resolution “declares” the federal laws in question (i.e., the Alien and Sedition Acts) “unconstitutional”: the General Assembly doth solemenly appeal to the like dispositions of the other states, in confidence that they will concur with this commonwealth in declaring, as it does hereby declare, that the acts aforesaid, are unconstitutional; and that the necessary and proper measures will be taken by each, for co-operating with this state, in maintaining the Authorities, Rights, and Liberties, referred to the States respectively, or to the people. This has been considered an example of interposition (i.e., a State protesting and/or combating a federal law it deems to be unconstitutional without affecting its applicability and enforcement within the State), but Jefferson’s Kentucky Resolution goes even further by suggesting that the States can nullify a federal law: That the several states who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction; and that a nullification, by those sovereignties, of all unauthorized acts done under colour of that instrument, is the rightful remedy: That this commonwealth does upon the most deliberate reconsideration declare, that the said alien and sedition laws, are in their opinion, palpable violations of the said constitution; and however cheerfully it may be disposed to surrender its opinion to a majority of its sister states in matters of ordinary or doubtful policy; yet, in momentous regulations like the present, which so vitally wound the best rights of the citizen, it would consider a silent acquiescence as highly criminal: That although this commonwealth as a party to the federal compact; will bow to the laws of the Union, yet it does at the same time declare, that it will not now, nor ever hereafter, cease to oppose in a constitutional manner, every attempt from what quarter soever offered, to violate that compact: AND FINALLY, in order that no pretexts or arguments may be drawn from a supposed acquiescence on the part of this commonwealth in the constitutionality of those laws, and be thereby used as precedents for similar future violations of federal compact; this commonwealth does now enter against them, its SOLEMN PROTEST. Without considering the implications of the Kentucky Resolution’s “nullification” language (i.e., whether it was also a mere act of interposition that took the added step of recognizing the legitimacy of nullification), it is sufficient for our purposes to merely note that Jefferson and Madison employed State interposition and (in Jefferson’s case) the notion of nullification that had been part of a standing constitutional tradition, which dated back to at least 1783 when new States interposed, to some degree, to protest Congress exceeding its authority in authorizing the Treaty of Paris. This tradition was also alive and well during the 1787–89 ratification debate.[9] Fourth, interposition was invoked by New England politicians during the War of 1812 in protest to the federal embargo and, then, its call for conscription. In response to the latter, Daniel Webster, the future nationalist opponent of all things states’ rights, argued: It will be the solemn duty of the State Governments to protect their own authority over their own militia, and to interpose between their citizens and arbitrary power. These are among the objects for which the State Governments exist; and their highest obligations bind them to the preservation of their own rights and the liberties of the people.[10] As Forrest McDonald elucidates, the Hartford Convention took a more moderate course than what was originally expected when it “adopted a resolution endorsing interposition and proposed a number of constitutional amendments to meet New England’s persistent complaints.”[11] Fifth and finally, de facto nullification and interposition was practiced and called for in Northern States during the antebellum period to mitigate undesirable effects of federal fugitive slave laws. Wisconsin, for example, practiced nullification via its State judiciary by repeatedly thwarting the incarceration of Sherman Booth for violating the Fugitive Slave Act via him “aiding in the rescue of a runaway slave from a federal marshall” After his arrest, “Booth requested a writ of habeas corpus from a judge of the Wisconsin supreme court, who granted the writ on the ground that the federal act was unconstitutional.” Although the United States Supreme Court ordered reincarceration, the State supreme court released Booth again. This chain repeated itself from 1855 until the beginning of Civil War.[12] Here it is also worth noting how future anti-states’ rights, pro-union Republicans found their states rights’ mojo when arguing against attempts to expand the federal judiciary’s jurisdiction in various cases related to federal officers who enforced the Fugitive Slave Act. Benjamin Wade, for example, said: “I am no advocate for Nullification, but in the nature of things, according to the true interpretation of our institutions, a State, in the last resort, crowded to the wall by the General Government seeking by the strong arm of its power to take away the rights of the State, is to judge of whether she shall stand on her reserved rights.”[13] This broad swath of constitutional history suggests that Calhoun was systematically developing upon a well-established, constitutionally-grounded tradition of interposition and nullification. Arguably, he developed the most constitutionally-grounded mode of these doctrines in his Discourse on the Constitution and Government of the United States via demonstrating exactly how nullification should be understood according the text of the Constitution as a whole. Moreover, his argument that the people of a State (i.e., the authorities that ratified the Constitution and, hence, gave the Federal Government its delegated powers) should form nullification conventions that represented the State People in its sovereign capacity (i.e., the same institutional arrangement that State Peoples employed to ratify the Constitution) was more constitutionally persuasive than previous articulations of, and attempts at, interposition and nullification. Additionally, one should also note that there is no way to avoid either the Federal Government or a State People being the judge of its own cause in boundary disputes about the scope and limits of federal delegated powers and a State’s reserved powers. The conventionally accepted solution for federalism disputes (i.e., providing one or more departments in the Federal Government—e.g., the Supreme Court or Congress—with the authority to resolve such disputes) will (and has) result(ed) in the Federal Government winning most of these contests. Whereas, viewing each State as the ultimate authority in federalism disputes would likely shift this bias in favor of the States. Although bias, then, is inevitable, State nullification (rather than, for example, federal judicial supremacy) is still appropriate because it is grounded in a more sound understanding of the nature of the Constitution as a compact among States possessing the same sovereign status as those original States who were party to the Constitution’s formation. Accepting the authority of a State, as a final unilateral arbiter for judging the constitutionality of federal laws within their own boundaries, is a far more intellectually intuitive solution than assigning this function to the federal judiciary, which is a mere creature-level institution whose powers are wholly derivative from what has been delegated to it by the States and whose historical performance has entailed prejudicially defending the questionable expansion of the Federal Government’s very limited delegated powers. II. The Lack of Nullification and Interposition Has Damaged the States Viability as Political Entities That Do Not Need Federal Largesse: The general problem that both Greve and Reinsch identify, the travesty system of “cartel federalism” (i.e., States compete with one another to obtain federal revenue to fund programs and conduct operations that they could not afford independently), probably would not have arisen if Calhoun’s confederation thesis, which allowed for nullification (and, hence, interposition), had been further incorporated and maintained within the constitutional system. Reincsh (in concession to Greve) complains, for example, about the States not challenging FDR’s New Deal and their willingness to act as irresponsible political actors in search of federal funding. But there are straightforward explanations for why such undesirable characteristics have arisen. First, States were empowered more by the New Deal Court’s willingness to defer to their regulations via the Court’s presumption of the constitutionality of State regulations. As Randy Barnett shows, such deference to the State laws began with West Coast Hotel v. Parish (1937).[14] This was a remarkable turn from the pre-New Deal Court’s willingness to strike down the States’ attempts to regulate business and industry within their own borders. Although the pre-New Deal Court’s record on federalism is mixed, for it both defended the States’ reserved power as well as allowed federal usurpation, the Court of the late nineteenth century (from the late 1880s forward) and early twentieth century functioned with a pro-nationalist industry bent.[15] When State reserved powers were supportive of industry and commerce, the Court protected them from federal regulation; United States v. E.C. Knight and Hammer v. Dagenhart are good examples. When States regulated and, hence, impeded industry and commerce, the Court was less hospital to their constitutionally retained powers; examples of this are legion—e.g., Santa Clara County v. Southern Pacific Railroad Company, Wabash, St. Louis & Pacific Railroad Co. v. Illinois, Smyth v. Ames, and Lochner v. New York. Second, in a desperate move to challenge plutocracy that dominated the political system during the late nineteenth and early twentieth centuries, the imprudent doctrines of Populism and, then, Progressivism finally gained the upper hand in national politics. This prompted events such as the passage of the Sixteenth and Seventeenth Amendments, which ultimately weakened the States’ political autonomy by removing their diplomatic checks on federal legislation and ultimately creating a low ceiling on the degree that the States could raise revenue by taxing their citizens. Such constitutional changes contributed significantly to the States becoming federal clients who seek to manipulate the disbursement of federal revenue. Without Senators who were beholden to State legislatures, they were now unhinged to directly appeal to the uninformed majorities in their States, which easily co-opted to support nationalist pet-policies rather than serious issues that affected their States’ autonomy. With the creation of the income tax, the Federal Government seriously limited the States’ ability to raise revenue; hence, they ultimately became dependent upon federal grant-in-aid, block grants, etc. As income taxes eventually have increased to significant levels, States were (and are) limited in how much they could (and can) collect in taxes from their citizens because, beyond a certain total tax-level threshold, people will seriously consider relocating to other States with lower taxes. It is important to ascertain the causal connection between these and the lack of interposition and nullification that had been effectively purged from the federal system via the Federal Government’s triumph in the Civil War, which derailed the efficacy and acceptability of the historically correct compact theory of union. If nullification had still been viable after the Civil War, States could have (and many would have) defended themselves from Congressional and Court imposed dominance of nationalist business interests. In such an alternative historical reality, States could have better maintained their hold on regulating businesses that were operating within their borders, as well as protecting internal labor interests. This, in turn, would have allowed farmers, workers, and other such groups to lobby for appropriate State laws and policies, rather than making them feel compelled to compete for reform at the federal level in a manner that ultimately resulted in the rise of Populism and, later, Progressivism. Furthermore, it is important to see how Madison’s Federalist #10 extended-republic-solution-to-majority-factions was not able to preclude various majority-faction crises, some of which resulted in weakening the States. As Adam Tate has observed, Madison’s Federalist 10 solution has often failed to protect the liberty of minority entities (e.g., one or more States with contrary interests to a larger group of States), and Calhoun saw this. Madison thought that the difficulties entailed in forming national majorities, given the “multiplicity and diversity of interests,” would largely preclude the formation and empowerment of majority factions. The history of the United States, however, has demonstrated that this is often not the case; instead, Madison’s Federalist 10, extended-republic scheme has not protected minorities from national majorities imposing unconstitutional federal policies that illegally transgressed upon such minority interests. Moreover, some of these cases, especially during and after the Civil War, resulted in the States becoming weaker entities. During the Antebellum period, Madison’s Federalist 10 solution did not preclude the formation of majority factions that unconstitutionally harmed minorities—i.e., a lone State or a minority section of States, but these tended not to significantly impair the overall strength of States as independent political entities. Interestingly, these instances coincided with a period in which nullification was still viable. Clyde Wilson argues that the imposition of the protective tariff was unconstitutional. The protective tariff sacrificed the Southern Atlantic States (i.e., a minority in the federal union) to the majority interests of the Northeastern and Western States; albeit, South Carolina’s nullification showdown with President Andrew Jackson significantly contributed to resolving this problem in a manner that ultimately reduced the tariff to acceptable levels. The Civil War and Postbellum periods, however, severely damaged the viability of nullification, and this coincided with cases where States became weaker political entities as a result of majority-faction crises. When the Northern States developed an anti-slavery majority faction (i.e., the Republican Party) against the Southern States and were able to begin dominating the Federal Government, the Southern States sensed that their liberty within the union would become increasingly compromised; thus, many elected to protect their liberty by seceding. Such Southern-State resistance through secession had severe consequences for this sectional minority in terms of its States’ viability as independent political entities. In fact, the Southern States were reduced to economically impoverished (and, for a time, politically powerless and dependent) entities once the final conflict, due to their resistance, had passed. Another notable instance of a Postbellum majority-faction crisis that weakened the States occurred when the liberal progressive majority became dominant and both imposed crippling (and unconstitutional) regulations on businesses and significantly encroached upon constitutional State-powers via the New Deal. Here, again, nullification was not an option for dissenting States, and here again States ultimately became weaker, less independent entities as a result. This weakening of the States, however, was not just limited to a sectional minority like it had been for the South after the Civil War; it plagued all of the States. In these Postbellum cases, federal supremacy was used to enforce federal laws that were a boon to the majority faction coalition and a bane to the minorities who suffered under such legislation.[16] Moreover, such examples entailed questionable expansions of federal powers beyond their delegated limits for the sake of advancing the interests of the majority de jour. Finally, these examples illustrate the history of States becoming vulnerable to national majorities during a time in which they ultimately lost their vibrant autonomous status and, hence, had to begin acting as federal clients. Aside from the constitutional argument for nullification, acceptance of Calhoun’s theory—especially his notion of concurrent majorities—would have greatly aided the ability of minorities to protect themselves against the factional policy of the various ruling coalitions. South Carolina’s nullification of the protective tariff had already prompted Congress to enact legislation in order to reduce the tariff from levels that had threatened Southern economic interests. Nullification could have continued this function within the federal union if its acceptability had persisted into the late nineteenth and, then, twentieth centuries. Think, for example, how it might have been used to protect the States where the Grange movement had gained prominence. Think about how States could have challenged questionable Court doctrines like the personal status of corporations. On the other hand, imagine how the prudent States could have used nullification to challenge FDR’s New Deal regulations upon industries operating within their borders. Reinsch’s failure to see the effectiveness of interposition and nullification is somewhat remarkable given his awareness (seen in Part I of his above mentioned federalism essay) of Madison’s position that the “people, not as composing one entire nation, but as composing distinct and independent states to which they respective belong” was the ultimate ratifying authority and that the State governments of these State Peoples could reclaim “said [delegated] powers” within the constitutional system. Reinsch recognizes Madison’s position on these issues within the following passages: But listen to Madison in Federalist 39 on the states and the foundation of the new government: “the constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent states to which they respectively belong. It is to be the assent and ratification of the several states, derived from the supreme authority in each state . . . the authority of the people themselves. The act, therefore, establishing the constitution, will not be a national, but a federal act.” Now join Madison’s argument here in Federalist 39 with a letter he pens to Thomas Jefferson in the fall of 1787 that the state governments will stand ready in the case of violations of their reserved powers under the Constitution to retake said powers. Madison said something remarkably similar in Federalist 44 that should one or more branches of the national government use power beyond constitutional bounds, the state legislatures will mark the violation. The states will “sound the alarm to the people,” Madison says. As the presentation of Calhoun’s theory above suggests, the sovereign nature of each State Peoples is the ultimate basis of the constitutionality of secession, interposition, and nullification. But it was not just Calhoun who understood the importance of interposition and nullification doctrines: (1) the States had interposed against the Confederation Congress; (2) interposition, nullification, and secession had been considered a solution to Federal usurpation during the Founding period; (3) Jefferson and Madison were employing, respectively, nullification and interposition in response to the Alien and Sedition Acts; (4) interposition was invoked by New England politicians during the War of 1812; and (5) nullification and interposition were employed and invoked in reaction to the federal Fugitive Slave Act. Reinsch is fairly close to the compact theory, but Greve is a devout defender of nationalist-oriented capitalism that is a hallmark of neoconservatives and nationalist libertarians, etc. Those cohorts will not recognize the constitutional principles of States’ rights until all hope is lost about controlling the center in order to implement their ideologies. Well-funded representatives of these groups currently operate in the cat-bird’s seat—i.e., District of Columbia based think-tanks—where their ideologies can be advanced through access to and influence upon centralized power; thus, any decrease in central control would be a bane upon their current opportunity to shape public policy for the federal union as a whole. In addition to the essays and books cited within the above mentioned exchange with Reinsch, Greve has co-authored a book with Richard Epstein about federal preemption of the States’ regulation of commerce. Greve has also advocated the Court vigorously defending a “‘commercial Constitution’” aimed at advancing industry and commerce, and he has lambasted nomocratic justices like Scalia and Thomas for allowing their originalism to get in the way of this telocratic vision. While I tend to agree with Greve about the imprudent regulation of business, I cannot condone his willingness to practice ideological constitutionalism that sacrifices the Constitution’s Rule of Law. III. Conclusion: Final Thoughts About the Importance of Interposition Nullification, and the Need to Avoid Bad Arguments Against These Doctrines The above point about well positioned nationalist groups seeking to control federal public policy calls for further reflection about the two main reasons why interposition and nullification are often disparaged by elites and “respectable” citizens: (1) these doctrines are a significant threat to unconstitutional centralization that has taken root during the past 150+ years (especially during the twentieth century); (2) nullification and interposition are frequently associated with their past advocates who have had problematic racial positions (e.g., John C. Calhoun’s strong endorsement of slavery and, then, mid-twentieth century Southern State opposition to federal intervention against their segregation policies). These two reasons often operate as a vicious tag-team: elites who are interested in maintaining centralized control to advance their ideologies will scare “respectable” citizens into rejecting interposition and nullification by emphasizing instances where these doctrines have been associated with racism (and by ignoring the instances where the doctrines were employed to combat slavery, unfair economic policy, and unconstitutional war policy). Given the force of such opposition, the future of interposition and nullification is (in the short-term) in for some rough sledding. Nevertheless, honest, non-racist advocates of these doctrines can effectively begin to counter such bad propaganda by revealing its obvious absurdity–i.e., holding a good constitutional position hostage due to its past associations. Interposition and nullification in and of themselves are not racist. They were used by Northern States during the Antebellum period to avoid enforcement of undesirable federal fugitive slave laws. They were used by the New England States in 1814 to avoid unconstitutional federal policies during the War of 1812. They were used by Jefferson and Madison to protest unconstitutional violations of the First Amendment in the Alien and Sedition Acts. Thus, there is simply no moral problem with taking these doctrines seriously in our own day. Furthermore, it is also quite silly to discount John C. Calhoun’s brilliant constitutional development of interposition and nullification doctrines because he also held problematic views concerning slavery. Doing so would entail committing the ad hominem logical fallacy of undermining an argument by attacking the person who makes the argument, rather than focusing on the merits of the argument independently. Calhoun’s legal analysis regarding the Constitution merits independent evaluation even if, for the sake of argument, his critics are correct that his problematic views on slavery motivated the development of his constitutional analysis. Even if scientists working to operationalize nuclear fission during the Second World War were motivated by a need to create a nuclear bomb that would annihilate an entire city population, this does not mean that the facts about atomic physics, which they discover, should be discounted as inherently evil. The scientific facts and truths discovered stand on their own merits, regardless of the motivations that prompted their development. Since the rationale and conclusions of the latter case can be and are widely accepted, logic demands the same treatment for the former case—i.e., recognizing the independent merit of Calhoun’s constitutional analysis. In our America where vast portions of federal policy is technically illegal because it involves the Federal Government exceeding its constitutionally delegated powers, State interposition and nullification may be the only way to arrest such federal usurpation. Without these States’ rights doctrines, Americans and their States will be virtually powerless as establishment elites continue to invent new creative case law and false constitutional theories that justify the amassing of even more power at the federal level. Without such doctrines of resistance, the current electoral status quo will persist; citizens will continue having to choose between two political parties that are both aimed at maintaining a Congress and President who often support (and definitely do not seriously seek to roll-back) central-level aggrandizement. These considerations (and conclusions from the above analysis) are why real federalism demands taking interposition and nullification seriously. The most plausible path for returning to true constitutional federalism, or even just preserving our current status quo, is through the States defending their reserved powers and the constitutional rights of their citizens by voiding unconstitutional federal laws within their borders. If such a practice became widespread and accepted, the Federal Government would quickly scale back its reach for new powers, if not even begin to return its current power-holdings back to those parties with rightful legal claims to them.

#### American federalism is modeled globally.

Krotoszynski 2010

Ronald J., Director of Faculty Research, and Professor of Law, University of Alabama School of Law The Shot (Not) Heard 'Round the World: Reconsidering the Perplexing U.S. Preoccupation with the Separation of Executive and Legislative Powers, Boston College Law Review 51:1 http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3103&context=bclr&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fstart%3D20%26q%3Damerican%2Bmodel%2Bjudicial%2Breview%2Bexecutive%2Binternational%26hl%3Den%26as\_sdt%3D0%2C18%26as\_ylo%3D2009#search=%22american%20model%20judicial%20review%20executive%20international%22

The United States has been both an importer and an exporter of constitutional structure since at least the Federal Convention in 1787, at which the Framers considered a variety of foreign constitutional models, including both contemporary and ancient, when fashioning the Constitution.' Although Great Britain's unwritten constitution pro- vided the most obvious template, it was by no means the only available model.2 By 1787, most states had extensive experience with constitu- tional design.3 The adoption of the Declaration of Independence in 1776 led to a spate of new constitution-making at the state level, as the newly independent former colonies felt it necessary to establish new constitutions for their independent republics.4 The Articles of Confed- eration, drafted in 1776-1777, ratified in 1781, and now largely forgot- ten, also served as the first blueprint for federal governance.5 Thus, as Professor Paul (Harrington correctly states, "[w]hile the idea of a written constitution enforced by national courts was an American novelty, it was less novel than many may suppose."6 Of course, the Framers did not completely abandon the British model of constitutional structure.7 Congress, a bicameral institution, is loosely modeled on the British Parliament, which was—and still is— comprised of two chambers, the House of Commons and the House of Lords.8 Although the manner of selection and underlying purposes differ, the adoption of a bicameral legislature plainly reflects an hom- age to the British model.9 Similarly, specific provisions of the U.S. Con- stitution reflect longstanding British constitutional practices such as the Speech and Debate Clause10 and the Jury Trial Clause." To be sure, the Framers departed from the British model and did so in significant ways.12 The Framers' major structural innovations in- clude a written constitution (as opposed to the unwritten, or only par- tially written, British Constitution), a judiciary vested with the power to review legislative and executive acts for consistency with the Constitu- tion, federalism featuring shared sovereignty between the states and the national government, and the separation of powers between the legisla- tive, executive, and judicial branches of government.13 To this list one could add, by way of amendments quickly adopted by the first Congress and ratified by the states shortly thereafter, a written Bill of Rights.14 Most of these innovations in constitutional design have become commonplace; when other nations turn to the task of drafting a new constitution, the resulting product more often than not includes one or more of these elements.15 The Spanish Constitution, for example, adopted a federalist principle in order to overcome persistent difficul- ties with the status of Catalunya and the Basque Region.16 The South African (Constitution vests the judiciary with a power of judicial review and a duty to enforce entrenched human rights against the more de- mocratically accountable branches of government.17 Moreover, even common law jurisdictions that long maintained the principle of par- liamentary supremacy have moved closer to the U.S. model of en- trenched, judicially enforceable human rights.18 Canada, for example, adopted its (Charter of Rights and Freedoms in 1982, and vested the Canadian judiciary with a qualified power of judicial review.19 Even in the United Kingdom itself, adoption of the Human Rights Act of 1998 reflects a decision to adopt a junior varsity version of the U.S. model of entrenched, judicially enforceable human rights.20 Thus, the U.S. Constitution has provided a persuasive model for other nations engaged in the task of writing a constitution. Judicial re- view and entrenched human rights are, if not a universal aspect of con- stitutions adopted after World War II, quite nearly so.21 As Robert Badinter, former President of the French Conseil Constituuonnel, and Associate Justice of the U.S. Supreme (Court Stephen Breyer have apdy observed, "[t]oday almost all Western democracies have come to be- lieve that independent judiciaries can help to protect fundamental human rights through judicial interpretation and application of written documents containing guarantees of individual freedom."22 Thus, the U.S. constitutional model has proven to be a very successful legal export in many important respects.23 In two significant respects, however, the U.S. template has not garnered many takers: separation of legisla- tive and executive powers, and strict judicial definition and enforce- ment of the boundaries between legislative and executive power.24

#### Prevents global violence and wars-best studies

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**Cross-national studies covering over 100 countries have shown that federalism minimizes violent conflicts whereas unitary structures are more apt to exacerbate ethnic conflicts.** Frank S. **Cohen** (1997) **analyzed ethnic conflicts and inter-governmental organizations** over nine 5-year ––periods (1945-1948 and 1985-1989) **among 223 ethnic groups in 100 countries. He found that federalism** generates increases in the incidence of protests (low-level ethnic conflicts) but **stifles the development of rebellions (high-level conflicts)**. Increased access to institutional power provided by **federalism leads to more low-level conflicts** because local groups mobilize at the regional level to make demands on the regional governments. The perceptions that conflicts occur in federal structure is not entirely incorrect. But the conflicts are low-level and manageable ones. Often, **these are desirable conflicts because they are expressions of disadvantaged groups and** people for equality and justice, and part of a process that consolidates democracy. In addition, **they** also **let off steam so that the protests do not turn into rebellions.** As the demands at the regional levels are addressed, **frustrations do not build up. It checks abrupt and severe outburst. That is why high levels of conflicts are found less in federal countries.** On the other hand, Cohen found high levels of conflicts in unitary structures and centralized politics. According to Cohen (1997:624): Federalism moderates politics by expanding the opportunity for victory. The increase in opportunities for political gain comes from the fragmentation/dispersion of policy-making power… **the compartmentalizing character of federalism also assures cultural distinctiveness by offering dissatisfied ethnic minorities proximity to public affairs. Such close contact provides a feeling of both control and security that an ethnic group gains regarding its own affairs.** In general, such institutional proximity expands the opportunities for political participation, socialization, and consequently, democratic consolidation. Saidmeman, Lanoue, Campenini, and Stanton’s (2002: 118) findings also support Cohen’s analysis that federalism influences peace and violent dissent differently. They used Minority at Risk Phase III dataset and investigated 1264 ethnic groups. According to Saideman et al. (2002:118-120**): Federalism reduces the level of ethnic violence.** In a federal structure, groups at the local level can influence many of the issues that matter dearly to them- education, law enforcement, and the like. Moreover, federal arrangements reduce the chances that any group will realize its greatest nightmare: having its culture, political and educational institutions destroyed by a hostile national majority. **These broad empirical studies support** the earlier **claims** of Lijphart, Gurr, and Horowitz **that power sharing and autonomy** granting institutions **can foster peaceful accommodation and prevent violent conflicts among different groups in culturally plural societies**. Lijphart (1977:88), in his award winning book Democracy in Plural Societies, argues that "Clear boundaries between the segments of a plural society have the advantage of limiting mutual contacts and consequently of limiting the chances of ever-present potential antagonisms to erupt into actual hostility". This is not to argue for isolated or closed polities, which is almost impossible in a progressively globalizing world. The case is that when quite distinct and self-differentiating cultures come into contact, antagonism between them may increase. Compared to federal structure, unitary structure may bring distinct cultural groups into intense contact more rapidly because more group members may stay within their regions of traditional settlements under federal arrangements whereas unitary structure may foster population movement. **Federalism reduces conflicts because it provides autonomy to groups.** Disputants within federal structures or any mechanisms that provide autonomy are better able to work out agreements on more specific issues that surface repeatedly in the programs of communal movement (Gurr 1993:298-299). Autonomy agreements have helped dampen rebellions by Basques in Spain, the Moros in the Philippines, the Miskitos in Nicaragua, the people of Bangladesh’s Chittagong Hill Tracts and the affairs of Ethiopia, among others (Gurr 1993:3190) The Indian experiences are also illustrative. Ghosh (1998) argues that India state manged many its violent ethnic conflicts by creating new states (Such as Andhra Pradesh, Gujurat, Punjab, Harayana, Arunachal Pradesh, Goa, Himachal Pradesh, Meghalaya, Mizoram and Nagaland) and autonomous councils (Such as Darjeeling Gorkha Hill Council, Bodoland Autonomous Council, and Jharkhand Area autonomous Council, Leh Autonomous Hill Development Council). **The basic idea**, according to Ghosh (1998:61), **was to devolve powers to make the ethnic/linguistic groups feel that their identity was being respected by the state.** By providing autonomy, **federalism also undermines militant appeals.** Because effective autonomy provides resources and institutions through which groups can make significant progress toward their objectives, many ethnic activities and supporters of ethnic movements are engaged through such arrangements. Thus **it builds long-term support for peaceful solutions and undermines appeals to militant action** (Gurr 1993:303). Policies of regional devolution in France, Spain and Italy, on the other hand, demonstrate that establishing self-managing autonomous regions can be politically and economically less burdensome for central states than keeping resistant peoples in line by force: autonomy arrangements have transformed destructive conflicts in these societies into positive interregional competition". Federalism for Nepal **Federalism is essential in plural countries like Nepal because it provides cultural autonomy** to different cultural groups within a country. By allowing ethnic groups to govern themselves in cultural and developmental matters, it lessens their conflicts with the central state. Many of the conflicts of the identity movements are in cultural issues like religion, language, education and so on. Once regional governments are established, either the contesting parties from their own governments at the regional level, and decides in those matters, and/or influence the outcome because their proportional presence at the regional level is more than in the national level. Thus, many ethnic and linguistic groups can effectively put more pressure to the regional governments. Under unitary system, numerous regionally concentrated groups have not been able to put pressure on the central government because their population and voice are small at the central context. Even if they are not, their nature will become different. Some of the **conflicts will be regionally focussed. Hence, many of the conflicts will decrease in intensity and strength at the central level.** The bureaucracy will also increasingly reflect the regional composition because the regional governments would hire local people in the administration. Bureaucrats with knowledge of local languages and specific local problems will be able to provide relatively more efficient administration. This will also reduce conflicts. Inclusion of more ethnic members into regional politics and administration will ensure more public politics directed toward regional needs, instead of irrelevant policies directed by the center. This will contribute to reducing conflicts arising out of mal-distribution of resources. If minorities want some form of autonomy to protect and promote their culture, develop their people and regions, and self-determine their future, they are likely to struggle for it unless some autonomy is provided. The struggle might take different form in different periods due to varying circumstances. Even if unfavorable circumstances may lead to non-actions during some periods, **favorable conditions for mobilizations in other periods may lead to more activities**, perhaps in violent ways. The growth of ethnic movements in Nepal after 1990 is an example. Thus, to address the conflicts arising out of issues of identity and cultural rights that are inherent human aspirations, autonomy is essential**. Granting of federalism would in all likelihood bring an end to ethnic insurgencies** like the Khambuwan Mukti Morcha because it meets their major demand. It will also prevent the possibilities of other ethnic insurgencies with demand for federalism. **Territorial federalism can work for the benefit of large ethnic groups concentrated regionally** but may not be able to address problems of the numerous low populated ethnic groups or groups that are not concentrated because they may not form majorities anywhere. For these groups, non-territorial federalism, as in Belgium, Austria etc. may address their needs. In non-territorial federalism, members of ethnic groups have rights to decide about their culture, education, language and so on by electing councils who have jurisdiction over cultural, social and developmental realms. The problems of the dalit and small ethnic groups can be addressed through non-territorial federalism. Federalism and its critics in Nepal The dominant group in Nepal often argues against federalism by raising the fear of secession. I have argued elsewhere that this fear is misplaced. In demanding only a few of the rights that mainly deal with cultural and social issues, the minority groups acknowledge that advantages of staying within the existing nation-state. On the other hand**, devolution helps to avert separatism because granting of devolution meets substantial demand of the minorities.** However, power has to be devolved in ways that make the state and minorities perceive benefit form it. Large numbers of ethnic groups with small population further minimize the secessionist possibilities in Nepal, if any. The lack of resources and difficult topography of settlement in may cases make the creation and sustenance of smaller independent nations difficult, more so when the groups are in a state of under development. On the other hand, experience elsewhere demonstrates that **absence of autonomy may lead to secessionist movements.** Federalism was considered "slippery" in the 60s in Sri Lanka when the Tamils demanded autonomy. Today, autonomy does not satisfy the demands of the movement that arouse out of its denial (Stepan 1999). Hence **federalism, in fact, may contribute in keeping a country together by satisfying communities have power over themselves, there is less need to secede; hence, a federal structure can keep different communities united within a nation-state framework. Where cultural autonomy has not been provided, many countries have seceded or are undergoing civil war or violent ethnic conflicts.** Many in Nepal ignorantly argue that a small country like Nepal does not need a federal structure. However, federal countries like Belgium, Switzerland, Israel, Papua New Guinea, Holland and Austria have less population than Nepal. This belies the widespread fallacy that ‘small’ country like Nepal does not require federalism. The difficult geographic terrain and the problems of transportation and communication, on the other hand, make Nepal effectively larger than its area and population indicates. The perception that Nepal is a small country is due to its sandwiched position between the world’s two most populous countries. In terms of real and effective population, geography and cultural diversity, Nepal is not a small country. In fact, it is the 40th populous country among 227 countries in the world as of 2002 (US Census Bureau 2002). **Federalism in not only in the interests if the marginalized groups, however. It is also in the interests of the dominant community because it lessens the underlying reasons for conflicts. Conflicts are more costly to the privilege sections of the society; hence as a toll for lessening the conflicts, federalism can serve the interests of the dominant community as well.** Excerpts from the book "Nepal Tomorrow: Voices and visions" edited by D.B. Gurung.

### 3

#### The executive branch of the United States should issue and enforce an executive order to impose a ban the use of the President’s war power authority to indefinitely detain based on predictions of future dangerousness.

#### Executive action avoids politics and are fast

Sovacool-Research Fellow Public Policy, University of Singapore-9

Dr. Benjamin K. Sovacool 2009 is a Research Fellow in the Energy Governance Program at the Centre on Asia and Globalization., Kelly E. Sovacool is a Senior Research Associate at the Lee Kuan Yew School of Public Policy at the National University of SingaporeArticle: Preventing National Electricity-Water Crisis Areas in the United States, Columbia Journal of Environmental Law 2009 34 Colum. J. Envtl. L. 333,

¶ Executive Orders also save time in a second sense. The President does not have to expend scarce political capital trying to persuade Congress to adopt his or her proposal. Executive Orders thus save ¶ ¶ presidential attention for other topics. Executive Orders bypass congressional debate and opposition, along with all of the horsetrading and compromise such legislative activity entails.¶ ¶ 292¶ ¶ Speediness of implementation can be especially important when challenges require rapid and decisive action. After the September ¶ ¶ 11, 2001 attacks on the Pentagon and World Trade Center, for ¶ ¶ instance, the Bush Administration almost immediately passed ¶ ¶ Executive Orders forcing airlines to reinforce cockpit doors and ¶ ¶ freezing the U.S. based assets of individuals and organizations ¶ ¶ involved with terrorist groups.¶ ¶ 293¶ ¶ These actions took Congress ¶ ¶ nearly four months to debate and subsequently endorse with ¶ ¶ legislation. Executive Orders therefore enable presidents to ¶ ¶ rapidly change law without having to wait for congressional action ¶ ¶ or agency regulatory rulemaking.

### 4

#### There will be a narrow ruling on Bond now but conservative advocates are pushing.

Donnelly 11-5-13

Tom, Constitutional Accountability Center’s Message Director and Counsel and former Climenko Fellow and Lecturer on Law at Harvard Law School, Constitutional law as soap opera: Bond v. United States http://blog.constitutioncenter.org/2013/11/constitutional-law-as-soap-opera-bond-v-united-states/

Colorful facts aside, in the conservatives’ rendering of Bond, the very fabric of the Republic is at stake. George Will has called it the Term’s “most momentous case,” arguing that the Roberts Court must step in to check a “government run amok.” The Heritage Foundation warns that the case challenges a key lesson that “Americans are taught from a young age” – that “our government is a government of limited powers.” And Ted Cruz frames the legal issue as follows: whether the “Treaty Clause is a trump card that defeats all of the remaining structural limitations on the federal government.” A scary proposition, indeed . . . But will the Court even get this far? Ms. Bond’s primary argument is that the chemical weapons treaty and its implementing statute should be read to exclude her conduct – a question of statutory interpretation and hardly the stuff of Tenthers’ dreams. If the Court decides the case on those grounds, Ms. Bond could very well prevail, while the ruling itself could be rather minor. The main reason that this case may prove “momentous” is that leading conservative academics, advocates, and legal groups are pushing the Roberts Court to turn this case from an interesting-but-far-from-historic statutory case into a monumental constitutional one. While the Court denied a request from Professor Nicholas Rosenkranz and the Cato Institute – the main proponents of the treaty-power-as-dangerous-trump-card theory – for time to press their argument during tomorrow’s hearing, the Court generally rejects such requests from amicus curiae, so we can’t read too much into that. And, following other recent cases addressing the scope of federal power – including, most prominently, the Affordable Care Act case – there is every reason to believe that the Court may wade into the important constitutional issues lurking just beneath the surface in Bond. The primary constitutional issue in the case involves the scope of the federal government’s treaty power – a power that was of central interest to George Washington and his Founding-era colleagues – and, in turn, Congress’s power under the Necessary and Proper Clause to pass laws to implement validly enacted treaties. However, in Bond, conservative legal groups have proceeded to turn the Constitution’s text and history on their head, arguing that the Constitution itself requires a ruling that sharply limits federal power and overturns nearly a century’s worth of precedent – dating back to a 1920 ruling by Justice Oliver Wendell Holmes. Indeed, Bond is just one of several cases this Term featuring an aggressive call by conservatives to overturn well-established precedent. Furthermore, a broad ruling by the Court’s conservatives could significantly limit Congress’s power to enact laws under the Necessary and Proper Clause, generally, opening up new challenges to various government programs and regulations. In the past, the right’s constitutional arguments may have gone unanswered. However, increasingly, leading progressive academics and practitioners have begun to stake their own claim to the Constitution’s text and history – the tired battle between the progressive community’s “living Constitution” and Justice Scalia’s “dead Constitution” replaced by new battles between the left and the right over the Constitution’s meaning. Bond is a clear example of this new dynamic. Rather than ceding the Constitution’s text and history to conservative legal groups, progressives have fought back in Bond with originalist arguments of their own in briefs authored by some of the progressive community’s leading lights, including Walter Dellinger, Marty Lederman, and Oona Hathaway. These briefs – as well as one filed by my organization, Constitutional Accountability Center – remind the Court that, in ditching the dysfunctional Articles of Confederation, the Founders sought to create a strong national government with the power to negotiate treaties with foreign nations, pass laws to fulfill those treaty obligations, and, in turn, enhance the young nation’s international reputation. With progressives fully engaged in the battle over the Constitution’s meaning, the question facing the Court in important constitutional cases is now less about whether the Constitution’s text and history should prevail and more about which side’s version rings truer.

#### Aff is a massive change – kills court capital and will be ignored by the President.

Devins 2010

Neal, Professor of Law at William and Mary, Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants, http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1024&context=facpubs

Without question, there are very real differences between the factual contexts of Kiyemba and Bush-era cases. These differences, however, do not account for the striking gap between accounts of Kiyemba as likely inconsequential and Bush-era cases as "the most important decisions" on presidential power "ever., 20 In the pages that follow, I will argue that Kiyemba is cut from the same cloth as Bush-era enemy combatant decision making. Just as Kiyemba will be of limited reach (at most signaling the Court's willingness to impose further limits on the government without forcing the government to meaningfully adjust its policymaking), Bush-era enemy combatant cases were modest incremental rulings. Notwithstanding claims by academics, opinion leaders, and the media, Supreme Court enemy combatant decision making did not impose significant rule of law limits on the President and Congress. Bush-era cases were certainly consequential, but they never occupied the blockbuster status that so many (on both the left and the right) attributed to them. Throughout the course of the enemy combatant dispute, the Court has never risked its institutional capital either by issuing a decision that the political branches would ignore, or by compelling the executive branch to pursue policies that created meaningful risks to national security. The Court, instead, took limited risks to protect its turf and assert its power to "say what the law is." That was the Court's practice during the Bush years, and it is the Court's practice today.

#### Upholding Missouri v Holland is key to treaties but capital is key.

Spiro 2008

Peter J., Professor of Law, Temple University, Resurrecting Missouri v. Holland, Missouri Law Review http://law.missouri.edu/lawreview/files/2012/11/Spiro.pdf

Even with respect to the Children’s Rights Convention, the balance may change. At both levels, the game is dynamic. On the international plane, as more attention is focused on human rights regimes, the costs of nonparticipation rise. Other countries and other international actors (human rights NGOs, for example) will train a more focused spotlight on U.S. nonparticipation.28 From a human rights perspective, it’s low-hanging fruit; the mere fact that the United States finds itself alone with Somalia outside the regime suffices to demonstrate the error of the American stance as a leading example of deplored American exceptionalism. For progressive advocacy groups focusing on children’s rights, the Convention is emerging as an agenda item.29 More powerful actors, including states and such major human rights groups as Amnesty International and Human Rights Watch, may be unlikely to put significant political resources into the effort, but there is the prospect of a drumbeat effect and accompanying stress to U.S. decisionmakers. 30 In the wake of international opprobrium associated with post-9/11 antiterror strategies, U.S. conformity with human rights has come under intensive international scrutiny. That scrutiny is spilling over into other human rights-related issues; there will be no more free passes for the United States when it comes to rights.31 Human rights may present the most obvious flash point along the Holland front, but it will not be the only one. As Antonia Chayes notes, “resentment runs deep” against U.S. treaty behavior.32 International pressure on the United States to fully participate in widely-subscribed international treaty regimes, some of which could constitutionally ride on the Treaty Power alone, will grow more intense. At the same time that the international price of non-participation rises, a subtle socialization may be working to lower the domestic cost of exercising Holland-like powers. Globalization is massaging international law into the sinews of American political culture. The United States may not have ratified the Convention on the Rights of the Child, for example, but it has acceded to Hague Conventions on abduction33 and adoption,34 as well as optional protocols to the Children’s Rights Convention itself,35 and has enthusiastically pursued an agreement on the transboundary recovery of child support.36 As international law becomes familiar as a tool of family law, the Children’s Convention will inevitably look less threatening even against America’s robust sentiments regarding federalism. Regimes in other areas should be to similar effect and will span the political divide. It is highly significant, for instance, that conservative Americans have become vocal advocates of international regimes against religious persecution, a key factor in the aggressive U.S. stance on Darfur.37 To the extent that conservatives see utility in one regime they will lose traction with respect to principled category arguments against others. Which is not at all to say that Holland will be activated with consensus support. A clear assertion of the Treaty Power against state prerogatives would surely provoke stiff opposition in the Senate and among anti-internationalist conservatives, setting the scene for a constitutional showdown.38 The adoption of a treaty regime invading protected state powers would require the expenditure of substantial political capital. Any president taking the Treaty Power plunge would be well advised to choose a battle to minimize policy controversy on top of the constitutional one. A substantively controversial regime depending on Holland’s authority (say, relating to the death penalty) would increase the risk of senatorial rebuke. Perhaps the best strategy would be to plant the seeds of constitutional precedent in the context of substantively obscure treaties, ones unlikely to attract sovereigntist flak. If a higher profile treaty implicating Holland were then put on the table, earlier deployments would undermine opposition framed in constitutional terms. Such was the case with the innovation of congressional-executive agreements, which, before their use in adopting major institutional regimes in the wake of World War II, had been used with respect to minor agreements in the interwar years.39 In contrast to the story of congressional-executive agreements, advocates of an expansive Treaty Power will have the advantage of Holland itself, that is, a Supreme Court decision on point and not superseded by a subsequent ruling. That would lend constitutional credibility to the proposed adoption of any agreement requiring the Treaty Power by way of constitutional support. But it wouldn’t settle the question in the face of the consistent practice described above. Holland is an old, orphaned decision, creating ample space for contemporary rejection. An anti-Holland posture, the decision’s status as good law notwithstanding, would also be bolstered by the highly credentialed revisionist critique.40 That of course begs the question of what the Supreme Court would do with the question were it presented. The Court could reaffirm Holland, in which case its resurrection would be official and the constitutional question settled, this time (one suspects) for good. That result would comfortably fit within the tradition of the foreign affairs differential (in which Holland itself is featured).41 One can imagine the riffs on Holmes, playing heavily to the imperatives of foreign relations and the increasing need to manage global challenges effectively. The opinion might not write itself, but it would require minimal creativity. Recent decisions, Garamendi notably among them,42 would supply an updated doctrinal pedigree. And since the question would come to the Court only after a treaty had garnered the requisite two-thirds’ support in the Senate, the decision would not likely require much in the way of political fortitude on the Court’s part. It would also likely draw favorable international attention, reaffirming the justices’ membership in the global community of courts.43 IV. CONCLUSION:CONSTITUTIONAL LIFE WITHOUT MISSOURI V. HOLLAND Holland’s judicial validation would hardly be a foregone conclusion. The Supreme Court has grown bolder in the realm of foreign relations. Much of this boldness has been applied to advance the application of international norms to U.S. lawmaking, the post-9/11 terror cases most notably among them.44 The VCCR decisions, on the other hand, have demonstrated the Court’s continued resistance to the application of treaty obligations on the states. In Medellín, where the Court found the President powerless to enforce the ICJ’s Avena decision on state courts, that resistance exhibited itself over executive branch objections. The Court rebuffed the President with the result of retarding the imposition of international law on the states and at the risk of offending powerful international actors.

#### Treaties are key to cooperation on every issue – solve extinction

Koh and Smith 2003

Harold Hongju Koh, Professor of International Law, and Bernice Latrobe Smith, Yale Law School; Assistant Secretary of State for Democracy, Human Rights and Labor, “FOREWORD: On American Exceptionalism,” May 2003, 55 Stan. L. Rev. 1479

Similarly, the oxymoronic concept of "imposed democracy" authorizes top-down regime change in the name of democracy. Yet the United States has always argued that genuine democracy must flow from the will of the people, not from military occupation. 67 Finally, a policy of strategic unilateralism seems unsustainable in an interdependent world. For over the past two centuries, the United States has become party not just to a few treaties, but to a global network of closely interconnected treaties enmeshed in multiple frameworks of international institutions. Unilateral administration decisions to break or bend one treaty commitment thus rarely end the matter, but more usually trigger vicious cycles of treaty violation. In an interdependent world, [\*1501] the United States simply cannot afford to ignore its treaty obligations while at the same time expecting its treaty partners to help it solve the myriad global problems that extend far beyond any one nation's control: the global AIDS and SARS crises, climate change, international debt, drug smuggling, trade imbalances, currency coordination, and trafficking in human beings, to name just a few. Repeated incidents of American treaty-breaking create the damaging impression of a United States contemptuous of both its treaty obligations and treaty partners. That impression undermines American soft power at the exact moment that the United States is trying to use that soft power to mobilize those same partners to help it solve problems it simply cannot solve alone: most obviously, the war against global terrorism, but also the postwar construction of Iraq, the Middle East crisis, or the renewed nuclear militarization of North Korea.

### 5

Patent reform will pass- its top of the docket and PC is key

Hattern, 3-5 – The Hill Correspondent

[Julian, "Congress gets out club for patent ‘trolls’," The Hill, 3-5-14, thehill.com/blogs/hillicon-valley/technology/199954-lawmakers-look-to-push-patent-troll-bill, 13-14]

Proponents of a bill to prevent patent “trolls” from harassing businesses are increasingly optimistic their legislation will become law this year. Lawmakers and a wide swath of different industries have aligned behind the push for a crackdown on the so-called trolls, which sue companies for patent license violations. Supporters of the reform effort claim the lawsuits are often frivolous, but nonetheless force businesses into settlements to avoid lengthy and costly court cases. Plaintiffs in the suits argue they are merely trying to protect their intellectual property and preserve inventors’ ability to innovate. With campaign politics gumming up the works on Capitol Hill, the patent crackdown could be one of the few bills to make it to President Obama’s desk before November, supporters say. “I think that members on both sides of the aisle recognize that this is a big problem affecting people being employed in their district, investments in their district,” said Beth Provenzano, a senior director for government relations at the National Retail Federation. “I think that this does stand a good chance, even in the election year.” The Senate Judiciary Committee, the focus of the patent reform fight, will look to take action on legislation this month, Chairman Patrick Leahy (D-Vt.) said on Tuesday. Sen. Mike Lee (R-Utah) on Wednesday said he hoped the full chamber would vote on the bill in the coming months. In addition to the retailers trade group, associations for restaurants, financial institutions and major tech companies such as Google have pushed for the chamber to approve legislation. The troublesome lawsuits can cost millions, they say, and need to be stopped immediately. Patent-rights holders skeptical of reform claim that bill goes too far and warn it could make it difficult for inventors and universities to profit from their creations. In December, the House overwhelmingly passed the Innovation Act, which would reform much of the patent lawsuit process. Lee and Leahy are pushing a companion bill, the Patent Transparency and Improvements Act, in the Senate. Obama backed the House bill and called for action in his State of the Union address. Supporters hope the president’s backing will help push legislation across the finish line in the Senate. “It meant a lot in the Senate to have the president weigh in like that,” Lee said at an event Tuesday in Washington. “To have it brought up by the president in some very public settings has been **very helpful** to help focus the public attention on the fact that this is hurting a lot of people.” Obama’s support also created momentum in the House, and convinced Democratic lawmakers who might not have been focused on the issue to hop on board, according to Rep. Jared Polis (D-Colo.).

#### Aff derails the agenda

Kriner 10 Douglas L. Kriner (assistant professor of political science at Boston University) “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69.

While congressional support leaves the president’s reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president’s foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president’s political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War. 60 In addition to boding ill for the president’s perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson’s dream of a Great Society also perished in the rice paddies of Vietnam. Lacking the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush’s highest second-term domestic proprieties, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.61 When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

Litigation tanks clean tech industry

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Though in the past I’ve written at length about the morally shaky ground upon which intellectual property policy currently rests, this news calls to attention yet another reason to demand reform in this increasingly convoluted matter. Not only does the abusive use of patents already stifle innovation in well-established sectors of the economy, but it poses a real threat to the prospect of an expedient transition to a sustainable energy economy—a transition whose necessity increases exponentially as our addiction to fossil fuels and the slightly less ominous nuclear power continues to metastasize. What Can We Learn From The Past? Lately, it’s become advantageous to use rhetoric that ignores past wrongs and mishaps in the interest of looking to the future. As if moving forward is best done wearing a set of blinders, it has become popular to downplay the past as if there is nothing to be learned that is worth the time that otherwise could have been spent “advancing”. The truth, however, is that the past and future are inextricably linked by the present. It is in taking time to examine the past now that it is possible to make progress that does not lead to the devastation of those gone before us. It is through the critical assessment—and occasional complete restructuring—of existing systems that we are able to ensure that the systems in place support the goals we as a society set. It is in the continued use of obsolete systems that we are bound to repeat the mistakes of the past from which we ironically wish to distance ourselves. In this case, it is critical to recall the purpose of patents, to find the point at which these plowshares of innovation were fashioned into swords that stifle it, and to right the wrongs in the system that now threaten to prevent us from moving into a sustainable energy future. In the United States, we need look no further than the Constitution to know the purpose of patents. Article I, Section 8 gives Congress the authority “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” In other words, the purpose of the protection that patents provide is simple—temporary protection to promote progress. With such protection, inventors could invest in their inventions without having to fear that someone could just steal the final idea and leave them destitute. The idea was not to provide a way to turn ideas into private property that could then be used to sue people with the same ideas, sell to the highest bidder, or—worst of all—hold economic progress hostage in order to maximize profit. Yet, that’s exactly what has happened. Potential innovators and entrepreneurs—the driving force behind economic progress—are faced with the choice of either starting a business at the risk of being crushed by patent litigation, or going to work for one of the same companies that would have sued them. And to add insult to injury, the price of choosing the latter often includes the complete surrender of those ideas. As a result, a small, increasingly powerful group of companies, who profit from the stagnation of new ideas, are able slow the pace of economic growth so long as it benefits them to do so. In fact, ten firms account for nearly 8 percent of all patents granted in the U.S. since 1977, and as patent litigation and multinational mergers continue to skyrocket, one can only expect that number to increase. While these obstructions to innovation may seem less severe in other sectors of the economy, its importance to the establishment of a sustainable energy economy could not be more severe. This leaves us with one final question: What Can We Do Now? Equally concerning about the idea of disregarding the past in the interest of the future is losing sight of where we currently are. After we’ve gained insight about the pitfalls of the past, it is important to start acting now, not simply plan for future action. Ideals are only as valuable as the action taken to substantiate them. In this case, it is not good enough to hope that things will correct themselves with time. Nor is it realistic. Swords do not evolve into plowshares on their own. They must be heated, hammered and molded back into their life-giving form. Likewise, the use of patents as weapons will not cease voluntarily. To stop this “patent arms race”—which threatens to keep us beholden to war-inciting, disaster-causing, severe-weather-inducing energy sources until it’s too late—we must return to the basic purpose and understanding of intellectual property that was introduced more than two decades ago. Ideas are not property in and of themselves, but the precursors to property. As such, an economy which wishes to progress as the best technologies become available—not when old technologies become less profitable—must treat ideas differently than the products they sometimes yield. They are not objects to be traded or sold. Nor are ideas exclusive to the people that have them. Therefore, patents ought to provide temporary protection for those who actually produce the products their ideas envision. The acquisition of patents by companies who have no plan but to sue individuals and companies who actually want to move the economy forward should be restricted. If an idea’s owner fails to produce the product or goes out of business, that idea should be free to be patented and acted upon by someone else without fear of being sued. Otherwise, we can expect the same kind of obstruction that Intellectual Ventures is known for to spill over into green technology, whose development is already moving at a snail’s pace in this country. In fact, research has shown that “patent thickets” have already placed a substantial weight around the neck of sustainable energy, notably in the development of fuel cells, wind energy, and carbon sequestration. Thanks to legislation like the Bayh-Dole Act, even publicly funded research—which comprises 60 percent of all basic research in the U.S.—is bogged down by the massive expenditures, increased consumer prices and economic limitations that patents have come to embody. If we want to prevent green technology from becoming the latest casualty in the patent arms race, we must be willing to look at the past with a critical eye. If we want to move away from temporary, dangerous sources of energy to safer, more sustainable means, we cannot allow for the continued weaponization of what was meant to help break new ground and stimulate progress.

Clean tech leadership averts key to warming and heg

Klarevas 9 – Professor of Global Affairs

Louis, Professor at the Center for Global Affairs – New York University, “[Securing American Primacy While Tackling Climate Change: Toward a National Strategy of Greengemony](http://www.huffingtonpost.com/louis-klarevas/securing-american-primacy_b_393223.html)”, Huffington Post, 12-15, http://www.huffingtonpost.com/louis-klarevas/securing-american-primacy\_b\_393223.html

By not addressing climate change more aggressively and creatively, the United States is squandering an opportunity to **secure its global primacy** for the next few generations to come. To do this, though, the U.S. must rely on innovation to help the world escape the coming environmental meltdown. Developing the key technologies that will save the planet from global warming will allow the U.S. to outmaneuver potential great power rivals seeking to replace it as the international system's hegemon. But the greening of American strategy must occur soon. The U.S., however, seems to be stuck in time, unable to move beyond oil-centric geo-politics in any meaningful way. Often, the gridlock is portrayed as a partisan difference, with Republicans resisting action and Democrats pleading for action. This, though, is an unfair characterization as there are numerous proactive Republicans and quite a few reticent Democrats. The real divide is instead one between realists and liberals. Students of realpolitik, which still heavily guides American foreign policy, largely discount environmental issues as they are not seen as advancing national interests in a way that generates relative power advantages vis-à-vis the other major powers in the system: Russia, China, Japan, India, and the European Union. Liberals, on the other hand, have recognized that global warming might very well become the greatest challenge ever faced by mankind. As such, their thinking often eschews narrowly defined national interests for the greater global good. This, though, ruffles elected officials whose sworn obligation is, above all, to protect and promote American national interests. What both sides need to understand is that by becoming a lean, mean, green fighting machine, the U.S. can actually bring together liberals and realists to advance a collective interest which benefits every nation, while at the same time, securing America's global primacy well into the future. To do so, the U.S. must re-invent itself as not just your traditional hegemon, but as history's first ever green hegemon. Hegemons are countries that dominate the international system - bailing out other countries in times of global crisis, establishing and maintaining the most important international institutions, and covering the costs that result from free-riding and cheating global obligations. Since 1945, that role has been the purview of the United States. Immediately after World War II, Europe and Asia laid in ruin, the global economy required resuscitation, the countries of the free world needed security guarantees, and the entire system longed for a multilateral forum where global concerns could be addressed. The U.S., emerging the least scathed by the systemic crisis of fascism's rise, stepped up to the challenge and established the postwar (and current) liberal order. But don't let the world "liberal" fool you. While many nations benefited from America's new-found hegemony, the U.S. was driven largely by "realist" selfish national interests. The liberal order first and foremost benefited the U.S. With the U.S. becoming bogged down in places like Afghanistan and Iraq, running a record national debt, and failing to shore up the dollar, the future of American hegemony now seems to be facing a serious contest: potential rivals - acting like sharks smelling blood in the water - wish to challenge the U.S. on a variety of fronts. This has led numerous commentators to forecast the U.S.'s imminent fall from grace. Not all hope is lost however. With the impending systemic crisis of global warming on the horizon, the U.S. again finds itself in a position to address a transnational problem in a way that will benefit both the international community collectively and the U.S. selfishly. The current problem is two-fold. First, the competition for oil is fueling animosities between the major powers. The geopolitics of oil has already emboldened Russia in its 'near abroad' and China in far-off places like Africa and Latin America. As oil is a limited natural resource, a nasty zero-sum contest could be looming on the horizon for the U.S. and its major power rivals - a contest which threatens American primacy and global stability. Second, converting fossil fuels like oil to run national economies is producing irreversible harm in the form of carbon dioxide emissions. So long as the global economy remains oil-dependent, greenhouse gases will continue to rise. Experts are predicting as much as a 60% increase in carbon dioxide emissions in the next twenty-five years. That likely means more devastating water shortages, droughts, forest fires, floods, and storms. In other words, if global competition for access to energy resources does not undermine international security, global warming will. And in either case, oil will be a culprit for the instability. Oil arguably has been the most precious energy resource of the last half-century. But "black gold" is so 20th century. The key resource for this century will be green gold - clean, environmentally-friendly energy like wind, solar, and hydrogen power. Climate change leaves no alternative. And the sooner we realize this, the better off we will be. What Washington must do in order to avoid the traps of petropolitics is to convert the U.S. into the world's first-ever green hegemon. For starters, the federal government must drastically increase investment in energy and environmental research and development (E&E R&D). This will require a serious sacrifice, committing upwards of $40 billion annually to E&E R&D - a far cry from the few billion dollars currently being spent. By promoting a new national project, the U.S. could develop new technologies that will assure it does not drown in a pool of oil. Some solutions are already well known, such as raising fuel standards for automobiles; improving public transportation networks; and expanding nuclear and wind power sources. Others, however, have not progressed much beyond the drawing board: batteries that can store massive amounts of solar (and possibly even wind) power; efficient and cost-effective photovoltaic cells, crop-fuels, and hydrogen-based fuels; and even fusion. Such innovations will not only provide alternatives to oil, they will also give the U.S. an edge in the global competition for hegemony. If the U.S. is able to produce technologies that allow modern, globalized societies to escape the oil trap, those nations will eventually have no choice but to adopt such technologies. And this will give the U.S. a tremendous economic boom, while simultaneously providing it with means of leverage that can be employed to keep potential foes in check**.**

**Extinction**

**Flournoy 11**– (Dec. 2011, citing Feng Hsu, PhD in Engingeering Science, NASA scientist at Goddard Space Flight Center, former research fellow of Brookhaven National Laboratory in the fields of risk assessment, risk-based decision making, safety & reliability and mission assurances for nuclear power, space launch, energy infrastructure and other social and engineering systems, Don Flournoy, PhD, University of Texas, Project Manager for University/Industry Experiments for the NASA ACTS Satellite, Professor of Telecommunications, Scripps College of Communications, Ohio University, "Solar Power Satellites," January, Springer Briefs in Space Development, p. 10-1)

In the Online Journal of Space Communication , Dr. Feng Hsu, a  NASA scientist at Goddard Space Flight Center, a research center in the forefront of science of space and Earth, writes, “The evidence of global warming is alarming,” noting the potential for a catastrophic planetary climate change is real and troubling(Hsu 2010 ) . Hsu and his  NASA colleagues were engaged in monitoring and analyzing climate changes on a global scale, through which they received first-hand scientific information and data relating to global warming issues, including the dynamics of polar ice cap melting. After discussing this research with colleagues who were world experts on the subject, he wrote: I now have no doubt global temperatures are rising, and that global warming is a serious problem confronting all of humanity. No matter whether these trends are due to human interference or to the cosmic cycling of our solar system, there are two basic facts that are crystal clear: (a)there is **overwhelming scientific evidence** showing positive correlations between the level of CO2 concentrations in Earth’s atmosphere with respect to the historical fluctuations of global temperature changes; and (b) the overwhelming majority of the world’s scientific community is in agreement about the risks of a potential catastrophic global climate change. That is, if we humans continue to ignore this problem and do nothing, if we continue dumping huge quantities of greenhouse gases into Earth’s biosphere, humanity will be at dire risk (Hsu 2010 ) . As a technology risk assessment expert, Hsu says he can show with some confidence that the planet will face more risk doing nothing to curb its fossil-based energy addictions than it will in making a fundamental shift in its energy supply. “This,” he writes, “is because the risks of a catastrophic anthropogenic climate change can be potentially **the extinction of human species**, a risk that is simply too high for us to take any chances” (Hsu 2010 ) .

### Case

#### Aff can’t resolve state courts – all the warrants in the racism cards are about capital cases

#### The plan will just be done as a covert action instead of an authorized war power-Congress doesn’t have the means to check it.

Lohmann, director of the Harvard Law National Security Research Committee, 2013 (Julia, “Distinguishing CIA-Led from Military-Led Targeted Killings”, 1-28, http://www.lawfareblog.com/wiki/the-lawfare-wiki-document-library/targeted-killing/effects-of-particular-tactic-on-issues-related-to-targeted-killings/)

The CAS mandates that the President inform the Senate and House Intelligence Committees of all covert actions, and turn over any U.S. government materials that those committees request. Id. § 413b(b). In general, the President must report any covert action to the Intelligence Committees as soon as possible after it is approved, before the action begins. However, in “extraordinary circumstances affecting vital interests of the United States,” the President may choose to inform only the members of the “Gang of Eight”—comprised of the chairmen and ranking minority members of each of the Intelligence Committees, as well as the Speaker and minority leader of the House and the majority and minority leaders of the Senate—rather than the full committees. Id. § 413b(c). In the event that the President decides to use this “extraordinary” route, he or she must provide written justification for limiting disclosure to the Gang of Eight. Id. § 413b(c).¶ The CAS thus seems to give Congress a significant oversight role in the CIA’s targeted killing decisionmaking process. But in reality, Congress arguably has far less power to influence covert actions than one might at first think. For example, L. Britt Snider highlights that, although the congressional committees may serve in an advisory capacity to the President, they cannot veto covert actions. And, while one might argue that Congress can control targeted killings through its power of the purse, Snider counters that Congress’s influence via appropriations is limited, as the President can use the Contingency Reserve Fund to carry out covert actions without explicit congressional approval.

#### New definitions and secret authority.

Zenko 2014

(Micah, Council on Foreign Relations, The True Forever War, Foreign Policy, January 24 http://www.foreignpolicy.com/articles/2014/01/24/the\_true\_forever\_war\_technology\_aumf

However, even if the AUMF was rescinded tomorrow, does anybody doubt that Obama's lawyers would not come up with new (perhaps classified) legal justifications for conducting the exact same drone strikes, special operations raids, and cyberattacks? Moreover, many forget that the day before Bush signed the AUMF into law he also signed a Memorandum of Notification (MON) that remains in effect to this day. Former long-time CIA counterterrorism lawyer John Rizzo described it as "the most comprehensive, most ambitious, most aggressive, and most risky Finding or MON I was ever involved in. One short paragraph authorized the capture and detention of Al Qaeda terrorists, another authorized taking lethal action against them." The public has never seen this 2001 MON, but presumably it could cover all CIA drone strikes, military operations conducted under Title 50 (covert) authorities against al Qaeda affiliates, or NSA cyberattacks against suspected terror groups. And again, for all other authorities or discrete military operations, White House lawyers could produce language that would provide sufficient legal justification to stem off most any opposition from a generally disinterested Congress.

#### Specificity and empirics of our scenario mean you prefer it.

Dipert 6 (Randall, PhD, Professor of Philosophy, University at Buffalo, Buffalo, “Preventive War and the Epistemological Dimension of the Morality of War,” https://www.law.upenn.edu/live/files/1291-dipert-preventive-war)

We have seen a number of reasons why some preventive wars are morally justified. Nevertheless, this justification hinges on what I have called an epistemic threshold. This threshold is the minimum amount of ‘objective certainty’ about the enemy’s intentions, bellicosity, and present and future military resources necessary to justify preemptive or preventive war. It is not merely a subjective certainty in feeling strongly about the extent of evidence for these factors. To be morally justified, one must have, and appreciate, extensive evidence for these factors and the other usual criteria for Just War except Just Cause; one must lack substantial evidence that goes against one of these factors, after a reasonable effort to acquire such evidence. A ‘second order’ objective certainty is also necessary: one must be justified in believing that one’s past record of judging intentions, resources and so on, from the information sources one is now using (e.g., satellite imagery), has usually been correct. It may be instructive here to reflect on the 2003 Iraq War.27 The fact that Iraq turned out not to have weapons of mass destruction, and did not even have quickly constructable facilities to produce them, shows that the Bush administration did not have knowledge of the weapons or facilities. It does not, however, alone entail that it was not objectively certain to the extent required by the epistemic threshold criterion for preventive war. In fact I believe that it was highly rational to believe, and in Grotius’ words was ‘morally certain’, that Iraq had chemical weapons despite what would prove to be its falsehood. (This is a consequence of permitting defeasible or nonabsolutely-certain justification or warrant for knowledge that is now almost universally accepted by epistemologists.) This is debatable, to be sure. However, I am not totally convinced that having chemical weapons of the kind Iraq was reasonably believed to possess alone posed a sufficient threat to justify preventive war. The case for morally justifying preventive war with regard to biological or nuclear weapons almost certainly did not meet the epistemic threshold. This is not to suggest that there were not other morally sufficient reasons, or that there might be some accumulative effect of arguments that are separately, in various respects, weak. Grotius, for one, diminishes the importance of intent, and allows one to change intents in midwar, while retaining its morally justified character. Especially in the recent 2003 Iraq War, there was a constant refrain about the need to acquire international moral approval of the coalition efforts.28 Intuitively, some international assent, especially by sympathetic nations if not the Security Council of the UN, is desirable. Yet it is very difficult to see how this fits into the moral theory of the permissibility of war. However, this reasoning, contrary to our intuitions, seems to leave no place at all for ‘internationalism’ in the moral justification of war (at least as regards its moral permissibility). I would propose that considering the epistemological dimension of morally justified war does give a proper place to our internationalistic inclinations. As is now all too well known, political discussions of the conditions of just war are prone to being blinded by already firm geopolitical worldviews, as well as by past political rhetoric that tend to chain politicians to certain views for the sake of ‘consistency’. The facts of the case, such as intelligence on WMDs, are likewise prone to a certain institutional conformist tendencies\*/and this tendency was well known long before the supposed influences of neoconservatives on the US, and apparently also on foreign intelligence services. For example, when critical policy decisions rest on intelligence, the legendary Sherman Kent,29 proposes that we critically examine existing intelligence, and apply in my terminology ‘second order’ principles, explicitly attaching the probability that various truths are mistaken, based on past incidents of the type of information from such sources. International approval, plays a role in the moral justification of war primarily in this epistemological dimension. I do not think approval of the oddly chosen UN Security Council30 is necessary for a morally justified war, even if it is desirable and should often be sought (for various prudential reasons). The moral criteria must be independent of the Security Council, since they have to reason by some principles and presumably these are the pure moral principles\*/they cannot appeal to a still higher authority. But now suppose that these pure moral principles that the Security Council should use, applied to a single nation’s situation, permits it to go to war. However, the Security Council does not agree to this (perhaps because of a veto) or even prohibits the nation’s action. Rather, the underlying principle is something like this: a failure to persuade numerous like-minded nations of both the relevant facts (e.g., the existence of WMDs), when these nations preferably have some independent intelligence capability, or failure to persuade them of the relevant moral principle embodied in a policy (e.g., that if a nation is as chronically belligerent as Iraq, and has such a WMD capacity, then it can be attacked in advance of its attack), is strong evidence against one’s having met the epistemological threshold for anticipatory war. In the recent situation, the opposition of Russia and France, especially Germany and Mexico, and the unenthusiastic acquiescence of China gave prima facie evidence against having met this threshold; the support of the UK, Italy, Spain, and Poland were, however, probably sufficient to meet my condition. In any case, it is in this epistemological dimension of the philosophy of war, and not anywhere else, that international or international-organization approval plays a role in moral justification.31 It might appear difficult to say much about what precisely this epistemic threshold is. It need not be ‘warrant’ as it is used by epistemologists when discussing conditions for knowledge. 32 Roughly, I think that the evidence at hand both for bellicosity and for the enemy’s possession of military resources constituting, or soon to constitute, a threat (and of their probable offensive nature) must be overwhelming and ‘all but certain’. I do not think that ‘manifest preparations’ for an attack (in Walzer’s terms) are necessary, whatever this means.33 Additionally, our second-order assessment of this evidence must be such that we have good reason to believe that it constitutes good evidence: this source has not mislead us in the past, etc. A second-order assessment is our reasonable estimate of the probability of evidence for our first-order assessment of harm, bellicosity, etc., being correct. The military resources must be such that they are likely, if used in a first-strike, to endanger our nation itself or to pose a severe threat of incapacitating our own military resources. It seems to me\*/although I have not studied this matter at all thoroughly\*/that chemical and biological weapons are indeed terrifying, but are unlikely to be serious in this precise sense. Their dispersal problems as well as the existence of countermeasures tend to lessen their military danger. Nuclear weapons, including dirty bombs, are almost certainly in the ‘severe threat’ category. Several factors raise and lower this threshold. One is the seriousness of the threat. Another is the amount of time until these military resources pose this threat. Still another is a kind of proportionality: minimizing civilian and even military deaths. The epistemic threshold never gets so low that, for example, one may launch a preventive war based on evidence of a nation’s bellicosity or resources that is ‘somewhat likely’.

#### ---Rejecting consequentialism is a conservative strategy that prevents criticism of utopian neoliberal policies which destroy the environment and increase poverty.

McMurry 1996

Andrew, “The Slow Apocalypse: A Gradualistic Theory of The World's Demise,” Popular Culture, Muse

Skeptical of totalizing theories, postmodern intellectuals are reluctant to prophesy doom, but without coherent oppositional narratives to clarify such effects those who profit from the positive spin have the stage to themselves. Thus every sign gets read as its opposite, every trend that points to a decline is seen as the prelude to improvement, and every person becomes a shareholder in the fantasies of the boosters. In this environment of doublethink, the now-routine failure of corporations or nations to provide even short-term security for their members can be glossed as bitter but necessary "medicine," or as the "growing pains" associated with increasing economic "rationalization." We are left in the paradoxical position described in game theory as the "prisoner's dilemma" and in environmental thought as the "tragedy of the commons": the incentive for individuals to ignore the evidence for unqualified disaster far outweighs the personal risks involved in seeking to slow it. Everyone proceeds according to this same calculation, indeed is encouraged to do so, and everyone suffers minimally -- that is, until the collective moment of reckoning is reached. Four Horsemen # What is the hard evidence that taking the long view reveals an apocalypse already in progress? To keep our metaphor intact, we could speak in terms of the "four horsemen." There are the usual ones -- war, famine, disease, pestilence -- but to put a finer point on the apocalypse I'm describing we are better to call our riders 1) arms proliferation, 2) environmental degradation, 3) the crisis of meaning, and, crucially, 4) the malignant global economy.

#### Attempts to foresee existential risks is the best approach to policy-making

Bostrom 02, Professor of Philosophy at Oxford University and Director of the Future of Humanity Institute, ’2 (Nick, March, “Existential Risks: Analyzing Human Extinction Scenarios and Related Hazards” Journal of Evolution and Technology, Vol 9, http://www.nickbostrom.com/existential/risks.html

I shall use the following definition of existential risks: Existential risk – One where an adverse outcome would either annihilate Earth-originating intelligent life or permanently and drastically curtail its potential. An existential risk is one where humankind as a whole is imperiled. Existential disasters have major adverse consequences for the course of human civilization for all time to come. 2 The unique challenge of existential risks Risks in this sixth category are a recent phenomenon. This is part of the reason why it is useful to distinguish them from other risks. We have not evolved mechanisms, either biologically or culturally, for managing such risks. Our intuitions and coping strategies have been shaped by our long experience with risks such as dangerous animals, hostile individuals or tribes, poisonous foods, automobile accidents, Chernobyl, Bhopal, volcano eruptions, earthquakes, draughts, World War I, World War II, epidemics of influenza, smallpox, black plague, and AIDS. These types of disasters have occurred many times and our cultural attitudes towards risk have been shaped by trial-and-error in managing such hazards. But tragic as such events are to the people immediately affected, in the big picture of things – from the perspective of humankind as a whole – even the worst of these catastrophes are mere ripples on the surface of the great sea of life. They haven’t significantly affected the total amount of human suffering or happiness or determined the long-term fate of our species. With the exception of a species-destroying comet or asteroid impact (an extremely rare occurrence), there were probably no significant existential risks in human history until the mid-twentieth century, and certainly none that it was within our power to do something about. The first manmade existential risk was the inaugural detonation of an atomic bomb. At the time, there was some concern that the explosion might start a runaway chain-reaction by “igniting” the atmosphere. Although we now know that such an outcome was physically impossible, it qualifies as an existential risk that was present at the time. For there to be a risk, given the knowledge and understanding available, it suffices that there is some subjective probability of an adverse outcome, even if it later turns out that objectively there was no chance of something bad happening. If we don’t know whether something is objectively risky or not, then it is risky in the subjective sense. The subjective sense is of course what we must base our decisions on.[2] At any given time we must use our best current subjective estimate of what the objective risk factors are.[3] A much greater existential risk emerged with the build-up of nuclear arsenals in the US and the USSR. An all-out nuclear war was a possibility with both a substantial probability and with consequences that might have been persistent enough to qualify as global and terminal. There was a real worry among those best acquainted with the information available at the time that a nuclear Armageddon would occur and that it might annihilate our species or permanently destroy human civilization.[4] Russia and the US retain large nuclear arsenals that could be used in a future confrontation, either accidentally or deliberately. There is also a risk that other states may one day build up large nuclear arsenals. Note however that a smaller nuclear exchange, between India and Pakistan for instance, is not an existential risk, since it would not destroy or thwart humankind’s potential permanently. Such a war might however be a local terminal risk for the cities most likely to be targeted. Unfortunately, we shall see that nuclear Armageddon and comet or asteroid strikes are mere preludes to the existential risks that we will encounter in the 21st century. The special nature of the challenges posed by existential risks is illustrated by the following points: · Our approach to existential risks cannot be one of trial-and-error. There is no opportunity to learn from errors. The reactive approach – see what happens, limit damages, and learn from experience – is unworkable. Rather, we must take a proactive approach. This requires foresight to anticipate new types of threats and a willingness to take decisive preventive action and to bear the costs (moral and economic) of such actions. · We cannot necessarily rely on the institutions, moral norms, social attitudes or national security policies that developed from our experience with managing other sorts of risks. Existential risks are a different kind of beast. We might find it hard to take them as seriously as we should simply because we have never yet witnessed such disasters.[5] Our collective fear-response is likely ill calibrated to the magnitude of threat. · Reductions in existential risks are global public goods [13] and may therefore be undersupplied by the market [14]. Existential risks are a menace for everybody and may require acting on the international plane. Respect for national sovereignty is not a legitimate excuse for failing to take countermeasures against a major existential risk.

## 2NC

### \*\*\*CP

### Perm doesn’t solve

### 2NC Future Presidents Rollback

#### ---Political barriers check – new, stronger constituencies

Branum-Associate Fulbright and Jaworski- 2

Tara L, Associate, Fulbright & Jaworski L.L.P, “President or King? The Use and Abuse of Executive Orders in Modern Day America” Journal of Legislation 28 J. Legis. 1

Congressmen and private citizens besiege the President with demands  [\*58]  that action be taken on various issues. [n273](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n273) To make matters worse, once a president has signed an executive order, he often makes it impossible for a subsequent administration to undo his action without enduring the political fallout of such a reversal. For instance, President Clinton issued a slew of executive orders on environmental issues in the weeks before he left office. [n274](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n274) Many were controversial and the need for the policies he instituted was debatable. [n275](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n275) Nevertheless, President Bush found himself unable to reverse the orders without invoking the ire of environmentalists across the country. [n276](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n276) A policy became law by the action of one man without the healthy debate and discussion in Congress intended by the Framers. Subsequent presidents undo this policy and send the matter to Congress for such debate only at their own peril. This is not the way it is supposed to be.

#### ---Future administrations rarely overturn previous executive orders

Washington Times 8/23/99

“Clinton’s Executive Orders are Still Packing a Punch: Other Presidents Issued More, but His are Still Sweeping” Frank Murray [http://www.questia.com/library/1G1-55543736/clinton-s-executive-orders-still- are-packing-a-punch](http://www.questia.com/library/1G1-55543736/clinton-s-executive-orders-still-%20are-packing-a-punch)

Clearly, Mr. Clinton knew what some detractors do not: Presidential successors of the opposite party do not lightly wipe the slate clean of every order, or even most of them. Still on the books 54 years after his death are 80 executive orders issued by Franklin D. Roosevelt. No less than 187 of Mr. Truman's orders remain, including one to end military racial segregation, which former Joint Chiefs of Staff Chairman Colin Powell praised for starting the "Second Reconstruction." "President Truman gave us the order to march with Executive Order 9981," Mr. Powell said at a July 26, 1998 ceremony marking its 50th anniversary. Mr. Truman's final order, issued one day before he left office in 1953, created a national security medal of honor for the nation's top spies, which is still highly coveted and often revealed only in the obituary of its recipient.

### \*\*\*Solvency

### Terms – 1NC

#### Obama will redefine the words in the plan to increase authority-happens all the time.

**Mitchell, GMU law professor, 2009**

(Jonathan, “Legislating Clear-Statement Regimes in National-Security Law”, January, <http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=jonathan_mitchell>, ldg)

The executive branch’s interpretive theories were far-reaching, and its approach to constitutional avoidance and implied repeal were irreconcilable with the Supreme Court’s precedents. But they provided some political cover for the President by giving his actions a veneer of legality, and may even have protected executive-branch employees from the fear of criminal liability or political reprisals.22 To prevent the executive from continuing to evade Congress’s codified clear-statement requirements in this manner, many proposals have sought to provide more narrow and explicit clear statement requirements in Congress’s framework legislation as well as provisions that withhold funding from activities that Congress has not specifically authorized. For example, Senator Arlen Specter proposed new provisions to FISA stating that no provision of law may repeal or modify FISA unless it “expressly amends or otherwise specifically cites this title,” and that “no funds appropriated or 23 otherwise made available by any Act” may be expended for electronic surveillance conducted outside of FISA. Congress failed 24 to enact Senator Specter’s proposal, but it did enact an amendment to FISA that made the clear-statement regime more explicit, specifying that “[o]nly an express statutory authorization for electronic surveillance” may authorize electronic surveillance outside of FISA’s procedures. And numerous commentators have 25 argued for new provisions in the War Powers Resolution that would withhold funds from military ventures that Congress has not specifically authorized. Yet such proposals are unable to counter 26 the executive branch’s aggressive interpretive doctrines. Executive branch lawyers will remain able to concoct congressional “authorization” from vague statutory language by repeating their assertions that codified clear-statement requirements “bind future Congresses” or that ambiguous language in later-enacted statutes implicitly repeals restrictions in Congress’s framework legislation. Future legislators will continue to acquiesce to the President’s unilateralism when it is politically convenient to do so. And the 27 federal courts’ willingness to enforce clear-statement regimes against the President in national-security law bears no relationship to the codified clear-statement requirements in framework legislation or treaties.28 Congress could produce more effective clear-statement regimes if it precommitted itself against enacting vague or ambiguous legislation from which executive-branch lawyers might claim implicit congressional “authorization” for certain actions. Rather than merely enacting statutes that instruct the executive not to construe ambiguous statutory language as authorizing military hostilities or warrantless electronic surveillance, Congress could establish point-of-order mechanisms that impose roadblocks to enacting such vague legislation in the first place. A point-of-order 29 mechanism would empower a single legislator to object to legislation that authorizes military force, or that funds the military or intelligence agencies. But the point of order would be valid only if the legislation fails to explicitly prohibit or withhold funding for military hostilities beyond sixty days, or warrantless electronic surveillance, unless the bill includes the specific authorizing language that Congress’s framework legislation requires. This device would reduce the likelihood of Congress ever enacting vague or ambiguous legislation that the executive might use to claim “authorization” for extended military hostilities or warrantless electronic surveillance. It would also induces legislators to confront presidents who act without specific congressional authorization by empowering a single legislator to object to legislation necessary to fund the President’s unauthorized endeavors. Yet the political branches have never established such an enforcement mechanism for the clear-statement requirements in national-security legislation, even though they have established such point-of-order devices to enforce precommitments in framework legislation governing the federal budget process. The result is a regime of 30 faint-hearted clear-statement regimes in national-security law—framework legislation that codifies strongly worded clearstatement rules but that lacks any mechanism to induce compliance by future political actors. This may be a calculated choice of members of Congress, or it may reflect the President’s influence in the legislative process. But no one should think that simply legislating more narrow or explicit clear-statement requirements, or adding funding restrictions to Congress’s framework legislation, will prevent the executive from continuing to infer congressional authorization from vague or ambiguous statutory language.

### \*\*\*s

### A2: Observer Effect

#### The observer effect assumes the executive thinks law is binding – that’s not always the case

Deeks, Associate Professor of Law, University of Virginia Law School, 13

(Ashley, October, “The Observer Effect: National Security Litigation, Executive Policy Changes, and Judicial Deference,” University of Virginia School of Law Public Law and Legal Theory Research Paper Series 2013-41, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2338667, accessed 10-18-13, CMM)

The theory that the executive responds to an observer effect contains a¶ critical assumption worth stating plainly: the executive views law—¶ including case law—as binding and tends to comply with it. In The¶ Executive Unbound, Eric Posner and Adrian Vermeule express doubt about¶ this proposition, arguing that the executive is unfettered by legal¶ constraints.21 Their critics highlight various ways in which that statement is¶ false as a descriptive matter, including by offering examples of situations in¶ which the executive has declined to pursue its preferred course of action¶ because it viewed that course as legally unavailable.22 The observer effect¶ offers additional support for the conclusion that the executive branch is¶ attuned to the power of law by showing how the executive internalizes¶ anticipated judicial responses to its policies when drawing policy lines.23¶ Several scholars have expressed an intuition that legal uncertainty plays¶ an important role in limiting the extent to which the political branches¶ aggrandize their own powers.24 However, legal scholarship offers no¶ discussion of why and how uncertainty about judicial involvement affects¶ executive policy choices, particularly in the national security area.25 This¶ section does so. The observer effect results from the confluence of at least¶ three elements: (1) a triggering event; (2) robust jurisdictional or¶ substantive uncertainty; and (3) the likelihood of recurring scenarios.

#### The observer effect doesn’t guarantee full compliance – only enough to justify court deference

Deeks, Associate Professor of Law, University of Virginia Law School, 13

(Ashley, October, “The Observer Effect: National Security Litigation, Executive Policy Changes, and Judicial Deference,” University of Virginia School of Law Public Law and Legal Theory Research Paper Series 2013-41, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2338667, accessed 10-18-13, CMM)

When these three elements are present, the observer effect is likely to¶ come into play. How does the executive react? This Article assumes that¶ the executive branch is, collectively, a rational actor that attempts to¶ maximize the total value of two elements: a sufficiently security-focused¶ policy and unilateral control over national security policymaking. To¶ achieve this goal, the executive often is willing to cede some ground on the¶ first element to retain the second element.

The executive branch therefore often responds to the presence of these¶ three elements by shifting its policy to a position that gives it greater¶ confidence that the courts would uphold it if presented with a challenge to¶ that policy.50 This does not mean, however, that it will establish or revise¶ its policy to a point at which it has full confidence that a court will deem the¶ policy acceptable. Instead, the executive has strong incentives to take a¶ gamble: all the executive needs to do is establish a policy that is close¶ enough to what a court would find acceptable that it alters the court’s¶ calculation about whether to engage on the merits.51 The executive thus¶ will shift from a policy that would prompt nondeference to a policy that¶ allows the court credibly to defer. On occasion, the executive may adopt¶ policies that are more rights protective than what a court eventually¶ requires. In at least one recent case, the executive adopted policies that¶ proved more protective of detainee equities than the court of appeals¶ ultimately demanded.52 With these shifts in policy, the executive narrows¶ the “degree” of deference required to uphold the policy in question because¶ the assertion of executive authority is more modest. The next section¶ provides several real world examples of such policy shifts.

#### If Obama thinks it will help prevent a terrorist attack he will circumvent-it would define his presidency

Wolfgang, Washington Times, 2014

(Ben, “Little change expected in U.S. surveillance policy”, 1-16, <http://www.washingtontimes.com/news/2014/jan/16/little-change-expected-in-us-surveillance-policy/print/>)

If the skeptics are correct, President Obama is about to embrace and endorse many of the controversial national-security tools and tactics introduced by his predecessor, despite railing against those policies while campaigning for the Oval Office in 2008.¶ Expectations for Friday's long-awaited address, in which Mr. Obama will outline changes to U.S. spying, surveillance and data-collection efforts, are exceedingly low among privacy advocates and others.¶ They expect the president, while paying lip service to the notion of privacy protections and limited government power, to continue the practices first established by the Bush administration in the aftermath of the Sept. 11, 2001, terrorist attacks.¶ Mr. Obama's shift shouldn't come as a surprise, political analysts say, and can be partly attributed to the fact that it's simply difficult for a president to ever give up authority, especially if that authority is meant to protect American lives. It also may come from the fact that the president fears being viewed by history as the commander in chief who curtailed intelligence-gathering only to see a terrorist attack occur, said William Howell, a politics professor at the University of Chicago who has written extensively on presidential power.¶ "When you're running for office, you may espouse the benefits of a limited executive, but when you assume office, there are profound pressures to claim and nurture and exercise authority at every turn and not to relinquish the powers available to you," Mr. Howell said.¶ Leading up to and during his 2008 presidential campaign, Mr. Obama made it a point to separate himself from Mr. Bush on the national security front, but there remain many notable similarities.¶ Guantanamo Bay still is operational, despite repeated pledges from the president that he'd close the U.S. detentional facility in Cuba and house enemy combatants elsewhere.¶ Mr. Obama has dramatically increased the use of drones to target terrorists abroad — a step the administration vehemently defends as being quicker, more effective and far less dangerous to American personnel than sending in ground troops.¶ U.S. surveillance efforts, rather than having been reined in, have in some ways expanded. In the process, they have caused Mr. Obama significant foreign policy headaches.

### \*\*\*Predictions

### 2NC – A/T Cognitive Bias

#### Aff is worse – asks you to evaluate immediate returns over future ones.

Norman and Delfin 2012

Emma, Co-Editor in Chief of Politics & Policy & formerly an associate professor at the Universidad de las Américas Puebla, and Rafael, researcher in economics at the Universidad de las Américas Puebla, Wizards under Uncertainty: Cognitive Biases, Threat Assessment, and Misjudgments in Policy Making Politics & Policy Volume 40, Issue 3, pages 369–402, June 2012

Voldemort's incorporeal existence minimizes his direct presence in the first five Potter books. In fact, he is encountered by only one central protagonist (Harry) before his public reappearance at the end of the fifth volume. Excepting the showdown at the end of book four, those encounters are either semi-direct and transient, or telepathically experienced. Harry's close friends mostly believe him, as do his teachers, yet few others concur or connect Voldemort's possible return to the progressively violent events in the story. For most, the probability of his return is dismissed because he is never seen as the direct source of danger. Instead, Fudge uses the national press to discredit Potter's claims and depict the boy and his godfather as the “real” threats, ultimately trying Harry in wizard high court and, when that fails, delivering him to the sadistic wiles of Professor Dolores Umbridge and her new school curriculum. Fudge's action targets the wrong threat, and his fixation with Sirius' and Harry's guilt leads him to downplay mounting evidence indicating the right one. This ties in with Gilbert's second feature obstructing accurate threat assessment: direct, clear, and present dangers are prioritized over future possible dangers. Like many species, a large part of the human brain is devoted to respond to immediate threats. In evolutionary terms, humans have learned to predict the future and avoid threats that are not yet coming only relatively recently, and the neural networks responsible are concomitantly small. “That is why we care less about the future than any rational analysis suggests we should . . . it takes a huge amount of cajoling . . . and training to get people to do anything on behalf of their future selves from saving for retirement to flossing” (Gilbert 2010). It is widely understood that global warming will affect the planet seriously at some point in the future and probably within our own lifetimes—but not this weekend. As Fudge's character recognizes in his official labeling of Harry, not Voldemort, as public “Undesirable no. 1,” clear and present dangers trigger stronger concerns than future possibilities where full information about their occurrence is unavailable or uncertain—available information might also be downplayed or adjusted to fit previous anchors. Drawing from findings in behavioral economics that people overwhelmingly opt for immediate rather than future rewards unless the latter are very high (Lehrer 2009; McClure et al. 2004), this feature signals the transgenerational payoff delay involved in any climate change mitigation as an area of obvious concern. In particular, it implies that free riding in international environmental policy has an explanation that runs deeper than rational choice. Nordhaus (2010, 11725-6) presents data showing that if the terms of the 2009 Copenhagen Accord are met, the abatement costs would outweigh the averted damages more than five times from now until 2055. After that critical year, a reversal should occur: damage avoided would exceed costs more than four times. “Asking present generations,” he concludes, “to shoulder large abatement costs would be asking for a level of political maturity that is rarely observed,” (11725) because they lack the appropriate cognitive architecture.

#### Focus on immediate ethical problems at the expense of future threats is function of shitty cognition.

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Minister Fudge, and the heuristic conundrums he symbolizes, captures a great deal about how we caricature the world in order to make sense of it and the problems that stem from doing so. When this simplified worldview lacks careful examination, the resulting biases skew judgments in counter intuitive ways with far reaching repercussions. The findings discussed in this article suggest that, while we might have a hard time accepting it, policy makers and the voting public can and do, make Fudge-like mistakes systematically. Gilbert's features—intentionality, immediacy, rapid change, and moral sentiments—provide the beginnings of a useful framework that can aid in pinpointing the kinds of policy issues most susceptible to biased responses, as well as how and why misjudgments operate within them in different ways. Adding the issues of obesity and immigration to a deeper exploration of Gilbert's original examples of climate change and terrorism, we hope to have highlighted the potential of this area for more rigorous future study across a wider range of policy areas in and beyond political psychology and policy decision making. Specifically, a more precise assessment of under what circumstances this approach holds and where theoretical amendments and enrichment can help propel the heuristics and biases program into more mainstream politics and policy research seems indicated. Both within political science scholarship and beyond it, there is a clear need for decision makers and citizens to be more acutely aware of how pervasive the effects of cognitive biases can be. While only Fudge displays cognitive biases as the dominant part of his character, research predicts that all Rowling's characters should exhibit them if they are to be believable. Many are. Ultra-rational Hermione's moral outrage at how House Elves are treated leads her to fixate on and overemphasize this problem, culminating in her overreactive, culturally biased activism on their behalf—whether they want it or not. Harry anchors his evaluation and expectations of Professor Snape to the initial information he receives about him, around which he skews all new information until the very end of the saga. Even Dumbledore's errors in judgment become important in later books. Dumbledore avoids more biases than most in his tendency to admit that he makes mistakes, that they are sometimes enormous, and that his interpretations of events should be subjected to as much objective thought in light of new information as possible. The pensieve—a magical action-replay device in which he views his own and others' preserved memories from the position of an outsider—exemplifies this acceptance that alternative perspectives are crucial to prudent decision making. His distrust of the discipline of Divination also suggests he is aware that predicting the future can run awry despite one's expertise. Nevertheless, one reason the headmaster is unable to avoid some of his biased decisions is rooted in his over-individualistic failure to divulge or discuss sufficient information to others less intelligent than himself (i.e., everybody). This makes Harry's task even more dangerous, fosters increased uncertainty, and sows dissent between the key protagonists in book seven. Considering Dumbledore's strengths (humility, reflection, awareness) and his failures (individualistic reflection not collective deliberation) begins to reveal a few areas that we muggles can explore to potentially reduce the effects of cognitive bias. Many psychologists who have devoted decades to this area of study have voiced their doubts over the possibility of avoiding cognitive mistakes completely (Ariely 2008, 195-230; Gilbert 2006b, 195-234; Kahneman 2011, 417). Yet the influence of those “blind spots of the mind's eye,” as Gilbert (2006b) calls them, can be minimized. Devoting more attention to what Kahneman (2009) terms “the quality control of decisions” can promote practices of detecting characteristic flaws in a way that aids both individual personal choices, as Dumbledore did, and collective policy decisions, as he did not. Lehrer (2009) points to self-awareness as a means to overcome some decision-making flaws related to commitment and dedication, “willpower, like a bicep, can only exert itself so long before it gives out,” he remarks “it's an extremely limited mental resource.” The more conscious people are that countering the blind spots of the mind is a skill that, like any other, requires conscious and sustained practice, the more scrutiny they are likely to impose upon their decision-making processes. Of particular importance is practicing spotting processes of self-validation (confirmation bias) and developing more willingness to abandon failing projects even if heavy prior investment has occurred. Larrick, Morgan, and Nisbett (1990) show that brief training sessions can help individuals make normative economic decisions. For example, dropping a research project that did not prove worthwhile or supporting the demolition of an old (but expensive) hospital to avoid violations of the sunk cost principle. Gary Klein (2007) recommends “thinking about the future” in a way that can increase “the ability to correctly identify reasons for future outcomes” by as much as 30 percent. Exercises in prospective hindsight function for both collective decision making and individual investment portfolios. Before a decision is taken on a particular plan, a “pre-mortem” is conducted: participants imagine a future scenario in which following that plan subsequently led to failure. Klein suggests that individually recording and discussing as many reasons as possible for why the plan failed provides a good chance that risks that were not anticipated can be identified and addressed. This not only favors a concerted attempt to discover problems in the decision-making process in advance of the outcome. It also legitimizes a positive view of disagreement and doubt in organizations in which pressure for agreement is rife and dissent is seen as disloyal, countering institutional overoptimism and variants of the confirmation bias (Kahneman 2009, 26:30-28:00).

### 2NC – A/T V2L

#### “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).

Live to fight another day – value to life can always be gotten back

Etzioni, 2009 (Amitai, Ph.D. in Sociology from Berkeley, professor of international affairs at The George Washington University, “The Obama Doctrine,” July 21, http://blog.amitaietzioni.org/2009/07/index.html)

Still, one should not overlook that it also has a clear and strong normative underpinning. The observation that we value the right to life more than any other is reflected in the finding that in the criminal codes of all free nations, taking a life is punished much more severely than any other violation of rights. Moreover, ranking the value of life over most, if not all, other values reflects on the elementary but profound truth that the respect for all other rights depends on the sanctity of life. People who are shot dead gain little if they have right to freedom of speech, religion, assembly, and so on. In contrast, those whose lives are well protected can live to fight another day, to struggle to gain their other rights. Hence the profound value of promoting security first.

Existence outweighs value to life

Schwartz, Professor of Medicine, Dartmouth, 2002 [Lisa, Medical Ethics, http://www.fleshandbones.com/readingroom/pdf/399.pdf]

This assertion suggests that the determination of the value of the quality of a given life is a subjective determination to be made by the person experiencing that life. The important addition here is that the decision is a personal one that, ideally, ought not to be made externally by another person but internally by the individual involved. Katherine Lewis made this decision for herself based on a comparison between two stages of her life. So did James Brady. Without this element, decisions based on quality of life criteria lack salient information and the patients concerned cannot give informed consent. Patients must be given the opportunity to decide for themselves whether they think their lives are worth living or not. To ignore or overlook patients’ judgment in this matter is to violate their autonomy and their freedom to decide for themselves on the basis of relevant information about their future, and comparative consideration of their past. As the deontological position puts it so well, to do so is to violate the imperative that we must treat persons as rational and as ends in themselves.

### 1NC – Risk Assessment

#### Our risks are incommensurable with theirs but outweigh, acceleration of society means you need to prioritize survival.

Vlek 2010

Charles, Faculty of Behavioural and Social Sciences, University of Groningen, Judicious management of uncertain risks: I. Developments and criticisms of risk analysis and precautionary reasoning, Journal of Risk Research Vol. 13, No. 4, June 2010, 517–543

Clearly, risk-taking is needed for human survival and development: 'nothing ventured, nothing gained". Many real-life risks can be reasonably well assessed or even calcu- lated beforehand; both the nature of a negative outcome and its probability may be relatively clear a priori. Thus, at least in principle, it is possible to contemplate such risks as either high, medium or low, as either acceptable or not, and/or as more or less controllable by the risk-taker. However, the enormous technological development and economic expansion in the industrial countries since World War II have gradually caused new risks to arise (see the examples in Table 2). These risks may be called 'environmental", but in most cases, public health seems equally at stake, either directly (as in avian influenza) or indirectly (as in GMOs). Page (1978) has described the new environmental risks using nine characteristics: (1) ignorance of mechanism, (2) modest benefits, (3) catastrophic costs, (4) low probability of disaster, (5) internal benefits, (6) external costs, (7) collec- tive risk, (8) latency of effects, and (9) irreversibility of effects. Clearly, such risks are serious, complex, uncertain and socio-politically ambiguous, four 'challenges of contemporary risks' as identified by Klinke et al. {2006; see also Klinke and Renn 2002). Such uncertain, ill-quantifiable risks cannot be clearly delineated, structured, assessed and evaluated. This makes them (gradually) distinct from 'certain', reason- ably quantifiable risks. Further classifications of risk Various risk classification variables became apparent some 30 years ago, when quan- titative risk analysis was launched and scientists from various denominations started lo comment upon it (e.g. Lowrance 1976; Ravetz 1977: Slovic, FischholT. and Licht- enstein 1980; Vlek and Stallen 1980). Key dimensions of perceived risk and risk acceptance were, for example, seriousness of effects ('dread risk'), lack of familiarity, involuntariness of exposure and perceived lack of control. This and the later research uncovered the message that 'risk' is a multidimensional concept that does not easily allow for risk comparisons between rather different activities. R1VM (1988) has distinguished five levels of environmental pollution and risk following spatial extent: the local, regional, fluvial, continental and global levels. The corresponding examples are soil contamination, air pollution, river basin eutrophica- tion, acid precipitation and atmospheric warming. Obviously, the changes from 'local' to 'global' reside in, among others, a larger spatial, social and temporal extent of risk, a diminishing voluntariness of exposure, greater complexity and uncertainty of causal processes, and increasing socio-political ambiguity of cause-effect relationships and effective solution strategies. With regard to large-scale risks, Klinke and Renn (2002, esp. Figure 2) have proposed a heuristic classification of risks, which is summarised here in Table 1. The examples in the right column ofTable 1 illustrate the practical meaning ofthis taxonomy.

### 1NC – Predictions Good

#### ---We solve your turns --- Affirming prediction reclaims the future for the forces of pragmatic political change and sparks ideas on how to overcome problematic futurisms.

Kurasawa 2004

Fuyuki, Constellation, v. 11, no. 4, “Cautionary Tales,” Blackwell

As we float in a mood of post-millennial angst, the future appears to be out of favor. Mere mention of the idea of farsightedness – of trying to analyze what may occur in our wake in order to better understand how to live in the here and now – conjures up images of fortune-telling crystal balls and doomsday prophets, or of eccentric pundits equipped with data-crunching supercomputers spewing forth fanciful prognostications. The future, then, has seemingly become the province of mystics and scientists, a realm into which the rest of us rarely venture. This curious situation goes back to a founding paradox of early modernity, which sought to replace pagan divination and Judeo-Christian eschatology with its own rational system of apprehending time. Thus came into being the philosophy of history, according to which human destiny unfolds teleologically by following a knowable and meaningful set of chronological laws leading to a final state of perfection; Condorcet, Kant, Hegel, and Marx, to name but a few, are the children of this kind of historicism that expresses an unwavering faith in the Enlightenment’s credo of inherent progress over time. Yet in our post-metaphysical age, where the idea of discovering universal and stable temporal laws has become untenable, the philosophy of history lies in ruins. What has stepped into the breach is a variety of sciences of governance of the future, ranging from social futurism to risk management. By developing sophisticated modeling techniques, prognosticators aim to convert the future into a series of predictable outcomes extrapolated from present-day trends, or a set of possibilities to be assessed and managed according to their comparative degrees of risk and reward.1 Although commendable in their advocacy of farsightedness, these scientistic forms of knowledge are hampered by the fact that their longing for surefire predictive models have inevitably come up short. If historicism and scientistic governance offer rather unappealing paradigms for contemplating the future, a turn to the conventional political forecasts of the post-Cold War world order hardly offers more succor. Entering the fray, one is rapidly submerged by Fukuyama’s “end of history,” Huntington’s “clash of civilizations,” Kaplan’s “coming anarchy,” or perhaps most distressing of all, the so-called ‘Bush Doctrine’ of unilateral pre-emption. For the Left, this array of unpalatable scenarios merely prolongs the sense of hope betrayed and utopias crushed that followed the collapse of the socialist experiment. Under such circumstances, is it any wonder that many progressive thinkers dread an unwelcomed future, preferring to avert their gazes from it while eyeing foresight with equal doses of suspicion and contempt? But neither evasion nor fatalism will do. Some authors have grasped this, reviving hope in large-scale socio-political transformation by sketching out utopian pictures of an alternative world order. Endeavors like these are essential, for they spark ideas about possible and desirable futures that transcend the existing state of affairs and undermine the flawed prognoses of the post-Cold War world order; what ought to be and the Blochian ‘Not-Yet’ remain powerful figures of critique of what is, and inspire us to contemplate how social life could be organized differently. Nevertheless, my aim in this paper is to pursue a different tack by exploring how a dystopian imaginary can lay the foundations for a constructive engagement with the future.

#### Predictions solve war – empirics.

Weinstein 2011

Kenneth R., President and Chief Executive Officer of Hudson Institute, Responding to Future Security Challenges, http://www.hudson.org/index.cfm?fuseaction=publication\_details&id=8473

Above all, Kahn was a futurist. He believed in stretching the policy imagination, and, in a term he popularized, "thinking about the unthinkable." When it came to national security, Kahn promoted the view that defense analysts needed to think about a variety of conflict scenarios and to imagine these against the backdrop of shifting geo-strategic landscapes. Kahn, in short, wanted policymakers to have the greatest possible flexibility in responding to future challenges. At the height of the Cold War, Kahn gravitated toward the study of nuclear strategy. While others argued that scenario-planning for a nuclear exchange with the Soviets was immoral as it would encourage the use of nuclear weapons, Kahn argued that there was a moral case for preparing strategies for nuclear conflict. With proper and realistic planning, the adverse consequences of nuclear war could be reduced. Kahn argued that the prevailing wisdom of the time, that any nuclear war would inevitably annihilate both superpowers, was false; his scenario planning exercise showed there was a possibility that one or both sides in a nuclear exchange might survive, however badly damaged. Therefore, he explained, thoughtful debate on the possibilities and consequences of nuclear strategy was needed to reduce its potential damage. History is rife with examples of policy experts failing to imagine what the future might bring. As my colleague Seth Cropsey has noted, the British Royal Navy grossly miscalculated at the end of the 19th century. The Royal Navy had a rule that its fleet in Europe needed to be as large as the next two navies on the Continent combined – under the assumption that future conflict could only take place in Europe. When the Royal Navy faced a budget shortfall, its leaders followed this rule and largely disengaged from east Asia to maintain a high enough level of forces in Europe. In so doing, they ignored the rise of the Imperial Japanese Navy, which then came to be a dominant force in Asia and the cause of immense turmoil for the next half-century. Unfortunately, our defense-policy establishment today is not much different from its counterparts fifty years ago or the British Royal Navy one hundred years ago. We are still not fully imagining what the geo-strategic landscape might look like even a few decades down the line – and what new defense strategies we may need to meet these challenges. And the cuts to the military budget being considered by the Super Committee (on top of a $350 billion budget cut already mandated for the Pentagon over the next decade) rest on the assumption that international conflict in 2050 will only be slightly altered from what it looks like today.

#### Predictions inevitable and solve extinction – rationality.

Danzig 2011

Richard, Chairman of the Board at the Center for a New American Security, Driving in the Dark: Ten Propositions About Prediction and National Security, October 2011, http://www.cnas.org/files/documents/publications/CNAS\_Prediction\_Danzig.pdf

“No one can predict the future” is a common saying, but people quite correctly believe and act otherwise in everyday life. In fact, daily life is built on a foundation of prediction. One expects (predicts) that housing, food and water will be safe and, over the longer term, that saved money will retain value. These predictions are typically validated by everyday experience. As a consequence, people develop expectations about prediction and a taste, even a hunger, for it. If security in everyday life derives from predictive power, it is natural to try to build national security in the same way. This taste for prediction has deep roots.16 Humans are less physically capable than other species but more adept at reasoning.17 Reasoning is adaptive; it enhances the odds of survival for the species and of survival, power, health and wealth for individuals. Reasoning depends on predictive power. If what was benign yesterday becomes unpredictably dangerous today, it is hard to develop protective strategies, just as if two plus two equals four today and five tomorrow, it is hard to do math. Rational thought depends on prediction and, at the same time, gives birth to prediction. Humans are rational beings and, therefore, make predictions.

### A2: Probabilistic Thinking

#### We are obviously not worst case planning-that begs the question of the DA, but they set the bar too high.

**De Mesquita, NYU politics professor, 2011**

(Bruce, “Fox-Hedging Or Knowing: One Big Way To Know Many Things”, 7-18, <http://www.cato-unbound.org/2011/07/18/bruce-bueno-de-mesquita/fox-hedging-or-knowing-one-big-way-to-know-many-things/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+cato-unbound+%28Cato+Unbound%29>, DOA: 1-29-12, ldg)

It is hard to say which is more surprising, that anyone still argues that we can predict very little or that anyone believes expertise conveys reliable judgment. Each reflects a bad habit of mind that we should overcome. It is certainly true that predictive efforts, by whatever means, are far from perfect and so we can always come up with examples of failure. But a proper assessment of progress in predictive accuracy, as Gardner and Tetlock surely agree, requires that we compare the rate of success and failure across methods of prediction rather than picking only examples of failure (or success). How often, for instance, has The Economist been wrong or right in its annual forecasts compared to other forecasters? Knowing that they did poorly in 2011 or that they did well in some other selected year doesn’t help answer that question. That is why, as Gardner and Tetlock emphasize, predictive methods can best be evaluated through comparative tournaments. Reliable prediction is so much a part of our daily lives that we don’t even notice it. Consider the insurance industry. At least since Johan de Witt (1625–1672) exploited the mathematics of probability and uncertainty, insurance companies have generally been profitable. Similarly, polling and other statistical methods for predicting elections are sufficiently accurate most of the time that we forget that these methods supplanted expert judgment decades ago. Models have replaced pundits as the means by which elections are predicted exactly because various (imperfect) statistical approaches routinely outperform expert prognostications. More recently, sophisticated game theory models have proven sufficiently predictive that they have become a mainstay of high-stakes government and business auctions such as bandwidth auctions. Game theory models have also found extensive use and well-documented predictive success on both sides of the Atlantic in helping to resolve major national security issues, labor-management disputes, and complex business problems. Are these methods perfect or omniscient? Certainly not! Are the marginal returns to knowledge over naïve methods (expert opinion; predicting that tomorrow will be just like today) substantial? I believe the evidence warrants an enthusiastic “Yes!” Nevertheless, despite the numerous successes in designing predictive methods, we appropriately focus on failures. After all, by studying failure methodically we are likely to make progress in eliminating some errors in the future. Experts are an easy, although eminently justified, target for critiquing predictive accuracy. Their failure to outperform simple statistical algorithms should come as no surprise. Expertise has nothing to do with judgment or foresight. What makes an expert is the accumulation of an exceptional quantity of facts about some place or time. The idea that such expertise translates into reliable judgment rests on the false belief that knowing “the facts” is all that is necessary to draw correct inferences. This is but one form of the erroneous linkage of correlation to causation; a linkage at the heart of current data mining methods. It is even more so an example of confusing data (the facts) with a method for drawing inferences. Reliance on expert judgment ignores their personal beliefs as a noisy filter applied to the selection and utilization of facts. Consider, for instance, that Republicans, Democrats, and libertarians all know the same essential facts about the U.S. economy and all probably desire the same outcomes: low unemployment, low inflation, and high growth. The facts, however, do not lead experts to the same judgment about what to do to achieve the desired outcomes. That requires a theory and balanced evidence about what gets us from a distressed economy to a well-functioning one. Of course, lacking a common theory and biased by personal beliefs, the experts’ predictions will be widely scattered. Good prediction—and this is my belief—comes from dependence on logic and evidence to draw inferences about the causal path from facts to outcomes. Unfortunately, government, business, and the media assume that expertise—knowing the history, culture, mores, and language of a place, for instance—is sufficient to anticipate the unfolding of events. Indeed, too often many of us dismiss approaches to prediction that require knowledge of statistical methods, mathematics, and systematic research design. We seem to prefer “wisdom” over science, even though the evidence shows that the application of the scientific method, with all of its demands, outperforms experts (remember Johan de Witt). The belief that area expertise, for instance, is sufficient to anticipate the future is, as Tetlock convincingly demonstrated, just plain false. If we hope to build reliable predictions about human behavior, whether in China, Cameroon, or Connecticut, then probably we must first harness facts to the systematic, repeated, transparent application of the same logic across connected families of problems. By doing so we can test alternative ways of thinking to uncover what works and what doesn’t in different circumstances. Here Gardner, Tetlock, and I could not agree more. Prediction tournaments are an essential ingredient to work out what the current limits are to improved knowledge and predictive accuracy. Of course, improvements in knowledge and accuracy will always be a moving target because technology, ideas, and subject adaptation will be ongoing. Given what we know today and given the problems inherent in dealing with human interaction, what is a leading contender for making accurate, discriminating, useful predictions of complex human decisions? In good hedgehog mode I believe one top contender is applied game theory. Of course there are others but I am betting on game theory as the right place to invest effort. Why? Because game theory is the only method of which I am aware that explicitly compels us to address human adaptability. Gardner and Tetlock rightly note that people are “self-aware beings who see, think, talk, and attempt to predict each other’s behavior—and who are continually adapting to each other’s efforts to predict each other’s behavior, adding layer after layer of new calculations and new complexity.” This adaptation is what game theory jargon succinctly calls “endogenous choice.” Predicting human behavior means solving for endogenous choices while assessing uncertainty. It certainly isn’t easy but, as the example of bandwidth auctions helps clarify, game theorists are solving for human adaptability and uncertainty with some success. Indeed, I used game theoretic reasoning on May 5, 2010 to predict to a large investment group’s portfolio committee that Mubarak’s regime faced replacement, especially by the Muslim Brotherhood, in the coming year. That prediction did not rely on in-depth knowledge of Egyptian history and culture or on expert judgment but rather on a game theory model called selectorate theory and its implications for the concurrent occurrence of logically derived revolutionary triggers. Thus, while the desire for revolution had been present in Egypt (and elsewhere) for many years, logic suggested that the odds of success and the expected rewards for revolution were rising swiftly in 2010 in Egypt while the expected costs were not. This is but one example that highlights what Nobel laureate Kenneth Arrow, who was quoted by Gardner and Tetlock, has said about game theory and prediction (referring, as it happens, to a specific model I developed for predicting policy decisions): “Bueno de Mesquita has demonstrated the power of using game theory and related assumptions of rational and self-seeking behavior in predicting the outcome of important political and legal processes.” Nice as his statement is for me personally, the broader point is that game theory in the hands of much better game theorists than I am has the potential to transform our ability to anticipate the consequences of alternative choices in many aspects of human interaction. How can game theory be harnessed to achieve reliable prediction? Acting like a fox, I gather information from a wide variety of experts. They are asked only for specific current information (Who wants to influence a decision? What outcome do they currently advocate? How focused are they on the issue compared to other questions on their plate? How flexible are they about getting the outcome they advocate? And how much clout could they exert?). They are not asked to make judgments about what will happen. Then, acting as a hedgehog, I use that information as data with which to seed a dynamic applied game theory model. The model’s logic then produces not only specific predictions about the issues in question, but also a probability distribution around the predictions. The predictions are detailed and nuanced. They address not only what outcome is likely to arise, but also how each “player” will act, how they are likely to relate to other players over time, what they believe about each other, and much more. Methods like this are credited by the CIA, academic specialists and others, as being accurate about 90 percent of the time based on large-sample assessments. These methods have been subjected to peer review with predictions published well ahead of the outcome being known and with the issues forecast being important questions of their time with much controversy over how they were expected to be resolved. This is not so much a testament to any insight I may have had but rather to the virtue of combining the focus of the hedgehog with the breadth of the fox. When facts are harnessed by logic and evaluated through replicable tests of evidence, we progress toward better prediction.

#### Possibilistic thinking is vital in response to terrorism

Lee Clarke 6, Ph.D., Associate Professor of Sociology at Rutgers University, Worst Cases: Terror and Catastrophe in the Popular Imagination, 2006, p. 21-22

The idea of the worst case draws our attention to the past and pushes it into the future. For thinking about worst cases involves both thinking about negative futures and evaluating past events as superlatively bad. “What’s the worst than can happen?” we ask children. Most people can look back and say, “That was the worst day of my life.” Such thinking and evaluating is fundamentally about the expansion and contraction of imagination. Labeling something “the worst” involves both prospective and retrospective orientations to disaster. Let me say a few more words about that. Sometimes we imagine futures that are particularly awful or construct scenarios that are overwhelmingly bad or sad, then attach the worst case moniker to them. Since the 9/11 terrorist attacks many people and organizations have created projections of that sort. Government leaders have made solemn announcements regarding when another attack might be coming—especially after it was discovered that officials actually had pretty good indications that something big was coming before September 11. Everyone has been urged to go on “high alert.” Reporters and others have set off to assess preparedness levels at nuclear plants, water treatment facilities, and key points on the electric power grid. Some of the 9/11 terrorists were reported to have asked questions of airport personnel in the small south Florida town of Belle Glade. Belle Glade is a farming community and crop dusters are a common sight there. Those reports were probably false, but at the time they prompted worst case projections about the use of crop dusters to distribute chemical or biological weapons. Similar speculation followed reports of a March 2001 visit by Mohammed Atta, a key player in the September 11 attacks, to a small town in Tennessee. Tanks at a nearby plant hold 250 tons of sulfur dioxide, and the plant’s worst case scenario said that perhaps sixty thousand people could be killed or hurt if it were sabotaged. Recall the EPA-required scenarios I mentioned earlier. Journalists looked through some of those scenarios after 9/11 and discovered that many of America’s most populated areas are next to facilities with large amounts of toxic chemicals. For example, in Kearny, New Jersey—which is very close to Manhattan—there’s a facility that has 180,000 pounds of sulfur dioxide which, if released in a toxic cloud, could kill or injure twelve million people. Similar scenarios exist for Los Angeles, Detroit, and Philadelphia. Officials of the companies responsible for these dangerous chemicals say they’re taking precautions that make such a catastrophe “unlikely”—there’s that short risk ruler again. That’s not very reassuring, though, because terrorists aim precisely to create unlikely horrors, which is to say they aim to make worst cases. To construct prospective worst cases, like the ones I just mentioned, we must somehow imagine the unimaginable. That isn’t easy to do. Before they built the Tacoma Narrows Bridge, engineers calculated that it would perform well under its own weight and the weight of the traffic it was to carry. That sort of projection often gets us into trouble, because once people convince themselves that they have imagined the worst then they stop imagining more possibilities. The engineers didn’t consider the possibility that wind could set up a wave in the deck of the suspension bridge that would, if sustained, shake the thing apart, but that’s exactly what happened on November 7, 1940, only four months after it opened to traffic. Their thinking was trapped in experience, depending on past successes and failures for models of what could go wrong. I’ll explore later how worst case thinking expands and contracts the imagination. For now, I just want to make the point that prospective worst case thinking is doomed to failure, in an absolute sense, because the mere act of imagining a worst case renders it something less of one. An emergency planner captured the idea well when he said, “People who are terrorists and sociopaths don’t have the normal thinking we have, so they would imagine things that would never occur to most of us. I would never say, ‘Oh, yeah, we’re as prepared as we can be.’ ”13 Forward-looking worst case creation isn’t just about terrorists. Millennialists, millenarians, and other religiously inspired apocalyptics do it when they look forward to the end of the world. Organizations do it too, when they make plans and scenarios for chemical facilities, such as those noted above or the contingency plans the U.S. Army has developed in case of a major mishap at its facilities for destroying our chemical weapons stockpile. To look at prospective worst cases is to look at how people think about and judge the future and their place in it.

#### Probabalism fails to adequately account for extreme events --- possibilism is necessary for preventing worst case scenarios

Lee Clarke 7, Ph.D., Associate Professor of Sociology at Rutgers University, “Thinking Possibilistically in a Probabalistic World,” Significance, December, 2007, <http://leeclarke.com/docs/clarke%20thinking%20possibilistically%20-%20Significance.pdf>

Disastrous extreme events are increasing in frequency and in their consequences, in modern times at least, but we are poorly prepared to deal with them. We are poorly prepared organisationally and we are poorly prepared cognitively. Consider how the US government, or at least parts of it, failed to respond to hurricane Katrina or to prevent even some of the disastrous events of 9/11. The problem in those cases—and many others could be recounted with ease—was not ignorance or lack of resources. Rather the problem was that bureaucratic organisations are best suited to responding to routine problems. They are not good at dealing with the unusual. Similarly, but more generally, we need a vocabulary that allows us to talk sensibly about extremes. Such phenomena—commercial aeroplane crashes, tornadoes in London, a nuclear explosion in Paris—are, after all, rare oddities, unfamiliar challenges to individuals and organisations alike. Statistically, we might say they are out near the fourth or fifth standard deviation from the mean, although it must be said that trying to imagine a “mean” for such outsized events may make little sense. A normal or Gaussian curve does not exist for category 5 hurricanes (called typhoons in the Northern Pacific Ocean, west of the dateline), but we still need a way to think about them. One reason we lack the cognitive tools necessary to make sense of extreme events is that people cannot live on the knife edge of disaster all the time—it is too frightening, too exciting. Most of daily life must be fairly boring: it is human nature to assume that today is going to be just like yesterday, because most days are like that. True, there are individuals and organisations whose expertise is explicitly in dealing with non-standard conditions—trauma surgeons, smoke jumpers (who parachute in to fight forest fi res) or special terrorist units within MI5, for example—but these are rare. Our favoured tool for understanding aggregations of events, probability theory, has insufficient flexibility for extreme events; indeed, it is often quite misleading. Yet, over the past 200–300 years we have come to equate thinking probabilistically with thinking rationally. This happens in academic fields (most obviously in economics) and in policy arguments (e.g. about how to allocate money for regulation or terrorist threats). The great thinkers in the history of probability, Quetelet and Johann Bernoulli, for example, struggled to conceptualise sampling, populations, normal curves, regression to the mean and so on. Their efforts led to wondrous advancements in thinking about causes and effects as matters of likelihood and contingency, rather than mystical forces that were (and are) unavailable for scientific inquiry. And probabilism, as an approach to the future, clearly aids decision making and otherwise helps us get through the day. But it is not enough to help us understand extreme events. Consider the strange case of Pascal’s wager, which is sometimes held to be the first time that probability was used in a fairly formal way to make an important decision. Cross-classifying the proposition that God exists (or not) and belief in God (or not), the wager leads to the inarguable conclusion that the best bet is to believe in God. If a believer errs, she has only wasted time, but if a nonbeliever errs he faces, it is said, the probability of eternal damnation. In fact, the classical interpretation of Pascal’s calculus is only partially correct. The bet that God exists is a sensible one to take because of the consequences of being wrong. Pascal’s wager is not about the likelihood of being right or wrong, it is about burning in hell. Possibilistic thinking Pascal’s recommendation is an example of “possibilistic thinking”, and it suggests a new approach, a new way of talking about the future. Possibilistic thinking draws our attention to the consequences of events in a more emphatic way than does probabilistic thinking. Probability theory is often too sensitive to the extremely low likelihoods of rare events, and might even counsel that we not worry too much about chlorine rail cars trundling through London, because the likelihood of an unplanned release (either by accident or by terrorist) is low. Possibilistic thinking, however, leads us to wonder, “yes, but what if the trains have a particularly bad day?”

#### Balancing probabalism and possibilism is essential --- their aff crowds out the possibilistic thinking that’s necessary for responding to risks

Lee Clarke 6, Ph.D., Associate Professor of Sociology at Rutgers University, Worst Cases: Terror and Catastrophe in the Popular Imagination, 2006, p. 41-43

The arguments of the anti-Cassandras, whatever their political predilections, rest on the idea of probabilism. More than that, they actually equate probabilistic thinking with reason and rationality: people who don’t think the way they do are labeled irrational, or worse. Don’t get me wrong. We need probabilistic thinking. We need to think in terms of chances and odds and likelihoods. But we shouldn’t concentrate so much on probabilities that we forget the possibilities. Failing to keep a proper balance skews our vision; as a result our ability to learn about danger, and safety, is stunted or at least hampered. It must be acknowledged, though, that thinking in terms of worst cases is a peculiar way of thinking about the future. At least it’s peculiar for modern people. We’ve grown so used to approaching the future probabilistically that it seems natural. But it’s been only a few hundred years that we’ve known what probability is! A huge amount of early mathematical effort was spent on thinking through the throwing of dice. Mathematicians were most concerned to figure out how to conceptualize causes, as a repudiation of determinism, and to decrease uncertainty about the physical and social universe. Stephen Stigler, a noted statistician from the University of Chicago, says that one of seventeenthcentury Swiss mathematician Jacob Bernoulli’s great contributions was to puzzle out “the vague notion that the greater the accumulation of evidence about the unknown proportion of cases, the closer we are to certain knowledge about that proportion.” That is, the bigger the sample size of some thing, the closer to knowing something true about that thing. Today, this idea is taken for granted.9 Adolphe Quetelet, a gifted mathematical thinker of the 1800s, created several fascinating ideas that we now take for granted. One of those was the notion of the “average man,” which he thought could be used to establish what was normal for a particular group of people. Quetelet put forth the idea that “the greater the number of individuals observed, the more do individual peculiarities, whether physical or moral, become effaced, and allow the general facts to predominate, by which society exists and is preserved.” These great thinkers were conceptualizing sampling, populations, and other, related ideas, all of which are indispensable in the modern world. More important, they, along with others, were gradually creating the modern conception of probability. What they created was a collection of ideas about how things happen. These ideas are ones that even nonspecialists have heard of: the normal curve, the average man or event, regression to the mean. Taken together, these ideas comprise what we call probability. It is certainly an advance to think of causes and effects as matters of contingencies and likelihoods, rather than mystical actions of gods and magic. But, like other aspects of modernity, the consequences of probabilism are not all good. One problem is that when it comes to worst cases there are no average events. There’s no real equivalent to the “average man.” How could we talk about a normal distribution of extreme events? Even though they happen a lot, I don’t think trying to plot them on a curve would be very helpful. That’s one reason we see them as odd or rare—it’s hard to see common elements and to apply the usual broadly familiar concepts of statistics. But the key problem is that equating probabilism with reason crowds out consequential thinking. If we imagine the future in terms of probabilities, then risks look safe. That’s because almost any future big event is unlikely. You’re probably not going to die tomorrow. Terrorists probably won’t destroy the White House, the Sears Tower, and Harvard University all in the same day. Four tornadoes probably won’t converge on Toledo at the same time. Thinking in terms of probabilities will usually lead to the conclusion that most actions are safe. If we imagine the future in terms of possibilities, however, horrendous scenarios appear. Could there be an accidental detonation of a nuclear weapon? Yes, there could. Could a hurricane stall over Miami, slip back out to sea, then loop back into Miami again? Definitely. Could an asteroid obliterate Los Angeles? No doubt about it. Of course, the future we imagine doesn’t have to be filled with doom and gloom. It could just as readily be one of hope and achievement. Could enlightenment and equality spread throughout the world? Could war be eliminated? Could we eliminate hunger? The answer is yes to all of these. The point is not, then, that thinking in terms of the possible is necessarily negative: worst cases are generically similar to best cases. Still, there is an affinity between worst case approaches and possibilism.

### A2: Black Swans

#### Not a reason to not worry about them.

**Cornell, Stanford Management Science and Engineering professor, 2012**

(Elisabeth, “On “Black Swans” and “Perfect Storms”: Risk Analysis and Management When Statistics Are Not Enough”, Risk Analysis Volume 32, Issue 11, pages 1823–1833, November 2012, Wiley, ldg)

Whether a rare event is a “black swan” or a “perfect storm” is often in the eyes of the beholder and may not matter that much in practice. Problems arise when these terms are used as an excuse for failure to act proactively. As stated by Augustine (“Law” XLV(81)): “One should expect that the expected can be prevented, but the unexpected should have been expected.” Clearly, one cannot assess the risks of events that have really never been seen before and are truly unimaginable. In reality, there are often precursors to such events. The best approach in that case is thus a mix of alertness, quick detection, and early response. By contrast, rare combinations of known events that can place heavy loads on human or technical systems can be anticipated and their probabilities assessed based on a systematic risk analysis anchored in history and fundamental knowledge. Risk management procedures can then be designed to face these events, within limits of risk tolerance and resource constraints. In any case, “it was a ‘black swan’ or “a ‘perfect storm’” is not an excuse to wait until a disaster happens to take safety measures and issue regulations against a predictable situation.

## 1NR

### Overview

#### --Extinction.

Muchiri 2000

Michael Kibaara, Staff Member at Ministry of Education in Nairobi, “Will Annan finally put out Africa’s fires?” Jakarta Post, March 6, https://www.thejakartapost.com/news/2000/03/06/will-annan-finally-put-out-africa039s-fires.html

Statistics show that AIDS is the leading killer in sub-Saharan Africa, surpassing people killed in warfare. In 1998, 200,000 people died from armed conflicts compared to 2.2 million from AIDS. Some 33.6 million people have HIV around the world, 70 percent of them in Africa, thereby robbing countries of their most productive members and decimating entire villages. About 13 million of the 16 million people who have died of AIDS are in Africa, according to the UN. What barometer is used to proclaim a holocaustif this number is not a sure measure? There is no doubt that AIDS is the most serious threat to humankind, moreserious than hurricanes, earthquakes, economic crises, capital crashes or floods. It has no cure yet. We are watching a whole continent degenerate into ghostly skeletons that finally succumb to a most excruciating, dehumanizing death. Gore said that his new initiative, if approved by the U.S. Congress, would bring U.S. contributions to fighting AIDS and other infectious diseases to $325 million. Does this mean that the UN Security Council and the U.S. in particular have at last decided to remember Africa? Suddenly, AIDS was seen as threat to world peace, and Gore would ask the congress to set up millions of dollars on this case. The hope is that Gore does not intend to make political capital out of this by painting the usually disagreeable Republican-controlled Congress as the bad guy and hope the buck stops on the whole of current and future U.S. governments' conscience. Maybe there is nothing left to salvage in Africa after all and this talk is about the African-American vote in November's U.S. presidential vote. Although the UN and the Security Council cannot solve all African problems, the AIDS challenge is a fundamental one in that it threatens to wipe out man. The challenge is not one of a single continent alone because Africa cannot be quarantined. The trouble is that AIDS has no cure -- and thus even the West has stakes in the AIDS challenge. Once sub-Saharan Africa is wiped out, it shall not be long before another continent is on the brink of extinction. Sure as death, Africa's time has run out, signaling the beginning of the end of theblack race and maybe the human race.

#### ---Turns the case – global warming amplifies all existing inequalities.

Hoerner & Robinson 2008

J. Andrew, Nia, A Climate of Change: African Americans, Global Warming, and a Just Climate Policy for the U.S., Environmental Justice and Climate Change Initiative, http://www.wholecommunities.org/pdf/Climate%20of%20Change\_Final\_6-29-08.pdf

Global warming ampliﬁes nearly all existing inequalities. Under global warming, injustices that are already unsustainable become catastrophic. Thus it is essential to recognize that all justice is climate justice and that the struggle for racial and economic justice is an unavoidable part of the ﬁght to halt global warming. Sound global warming policy is also economic and racial justice policy. Successfully adopting a sound global warming policy will do as much to strengthen the economies of low-income communities and communities of color as any other currently plausible stride toward economic justice.

### AT: No Warming Impact

#### Climate change ends all life – runaway climate hothouse earth.

Farley 2010

John, Professor of physics and astronomy @ UNLV, Monthly Review Vol 62 issue 4 september 2010 <http://monthlyreview.org/2010/09/01/our-last-chance-to-save-humanity>

If the sea level rises 70 meters (250 feet), it would not extinguish all human life. After all, hominids have existed on earth for several million years, and homo sapiens more than a hundred thousand, surviving numerous ice ages, during which ice sheets a mile thick covered areas that came to be Boston and New York City. But the world population during the last ice age, ten thousand years ago, has been estimated at five million. It is now six billion. It is human civilization that is unlikely to survive a flooding catastrophe. According to the penultimate chapter, The Venus Syndrome, it might be even worse. Hansen posits a possible future earth, in which a “runaway greenhouse effect” takes over: anthropogenic global warming from greenhouse gases causes increased water vapor in the atmosphere, which in turn causes further warming. The methane clathrate deposits are destabilized, releasing vast amounts of methane in the atmosphere. The oceans become acidified by dissolution of carbon dioxide from the atmosphere. This could eliminate all life on Earth. This is speculation, of course. But Venus, the planet most similar to earth, has a very strong greenhouse effect, much stronger than earth’s. In the absence of atmospheric greenhouse gases, the surface temperature of the earth would be -18°C (0°F). The actual observed temperature of the Earth is 15°C (59°F). Thus, the greenhouse effect on the Earth raises the temperature by 33°C (59°F). On Venus, the surface temperature, in the absence of the greenhouse effect, would be -41°C (-42°F), well below the melting point of ice. A very strong greenhouse effect raises the surface temperature to the observed temperature of 464°C (867°F). The greenhouse effect on Venus is a staggering 505°C (909°F), creating a planetary surface hot enough to melt lead (!!), which requires “only” 327°C (621°F).

#### Warming will happen faster than they think, makes adaptation impossible and extinction likely.

Jamail 2013

Dahr, independent journalist, is the author of the just-published Beyond the Green Zone: Dispatches from an Unembedded Journalist in Occupied Iraq, citing tons of super qualified people, “The Great Dying” redux? Shocking parallels between ancient mass extinction and climate change, Salon, December 2013, http://www.salon.com/2013/12/17/the\_great\_dying\_redux\_shocking\_parallels\_between\_ancient\_mass\_extinction\_and\_climate\_change\_partner/

Climate-change-related deaths are already estimated at five million annually, and the process seems to be accelerating more rapidly than most climate models have suggested. Even without taking into account the release of frozen methane in the Arctic, some scientists are already painting a truly bleak picture of the human future. Take Canadian Wildlife Service biologist Neil Dawe, who in August told a reporter that he wouldn’t be surprised if the generation after him witnessed the extinction of humanity. All around the estuary near his office on Vancouver Island, he has been witnessing the unraveling of “the web of life,” and “it’s happening very quickly.” “Economic growth is the biggest destroyer of the ecology,” Dawe says. “Those people who think you can have a growing economy and a healthy environment are wrong. If we don’t reduce our numbers, nature will do it for us.” And he isn’t hopeful humans will be able to save themselves. “Everything is worse and we’re still doing the same things. Because ecosystems are so resilient, they don’t exact immediate punishment on the stupid.” The University of Arizona’s Guy McPherson has similar fears. “We will have very few humans on the planet because of lack of habitat,” he says. Of recent studies showing the toll temperature increases will take on that habitat, he adds, “They are only looking at CO2 in the atmosphere.” Here’s the question: Could some version of extinction or near-extinction overcome humanity, thanks to climate change — and possibly incredibly fast? Similar things have happened in the past. Fifty-five million years ago, a five degree Celsius rise in average global temperatures seems to have occurred in just 13 years, according to a study published in the October 2013 issue of the Proceedings of the National Academy of Sciences. A report in the August 2013 issue of Science revealed that in the near-term Earth’s climate will change 10 times faster than at any other moment in the last 65 million years. “The Arctic is warming faster than anywhere else on the planet,” climate scientist James Hansen has said. “There are potential irreversible effects of melting the Arctic sea ice. If it begins to allow the Arctic Ocean to warm up, and warm the ocean floor, then we’ll begin to release methane hydrates. And if we let that happen, that is a potential tipping point that we don’t want to happen. If we burn all the fossil fuels then we certainly will cause the methane hydrates, eventually, to come out and cause several degrees more warming, and it’s not clear that civilization could survive that extreme climate change.” Yet, long before humanity has burned all fossil fuel reserves on the planet, massive amounts of methane will be released. While the human body is potentially capable of handling a six to nine degree Celsius rise in the planetary temperature, the crops and habitat we use for food production are not. As McPherson put it, “If we see a 3.5 to 4C baseline increase, I see no way to have habitat. We are at .85C above baseline and we’ve already triggered all these self-reinforcing feedback loops.” He adds: “All the evidence points to a locked-in 3.5 to 5 degree C global temperature rise above the 1850 ‘norm’ by mid-century, possibly much sooner. This guarantees a positive feedback, already underway, leading to 4.5 to 6 or more degrees above ‘norm’ and that is a level lethal to life. This is partly due to the fact that humans have to eat and plants can’t adapt fast enough to make that possible for the seven to nine billion of us — so we’ll die.” If you think McPherson’s comment about lack of adaptability goes over the edge, consider that the rate of evolution trails the rate of climate change by a factor of 10,000, according to a paper in the August 2013 issue of Ecology Letters. Furthermore, David Wasdel, director of the Apollo-Gaia Project and an expert on multiple feedback dynamics, says, “We are experiencing change 200 to 300 times faster than any of the previous major extinction events.” Wasdel cites with particular alarm scientific reports showing that the oceans have already lost 40% of their phytoplankton, the base of the global oceanic food chain, because of climate-change-induced acidification and atmospheric temperature variations. (According to the Center for Ocean Solutions: “The oceans have absorbed almost one-half of human-released CO2 emissions since the Industrial Revolution. Although this has moderated the effect of greenhouse gas emissions, it is chemically altering marine ecosystems 100 times more rapidly than it has changed in at least the last 650,000 years.”) “This is already a mass extinction event,” Wasdel adds. “The question is, how far is it going to go? How serious does it become? If we are not able to stop the rate of increase of temperature itself, and get that back under control, then a high temperature event, perhaps another 5-6 degrees [C], would obliterate at least 60% to 80% of the populations and species of life on Earth.”

### Uniqueness

#### Elite pressure will force median justices to engage in impression management – conservative backlash from the aff will force the court’s hand in Bond.

Baum and Devins 2010

Lawrence and Neal, Law Profs at Ohio St and William & Mary, Why the Supreme Court Cares About Elites, Not the American People http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2149&context=facpubs

As we have suggested already, legal academics may be an especially salient audience within the legal profession. The news media may also be a salient audience, and the impact of these two groups is parallel in some important respects. The potential salience of academics and the news media has three different sources. First, the news media and academia play an important role in deﬁning the Justices’ status and reputation within their own inner circles. Supreme Court Justices read the newspapers, as do their family and friends. Their clerks and the advocates who appear before them typically served as the editors of the nation’s leading law reviews, and many of their clerks will become academics—writing journal articles and books about their handiwork. Supreme Court Justices, moreover, are part of the larger law school culture. They frequently travel to law schools and have strong ties to the elite schools that they and their clerks attended.143 Second, the news media and academia also deﬁne the Justices’ status and reputation to society at large.144 Political elites in general and the news media in particular play a signiﬁcant role in opinion formation among the mass public. Indeed, on issues “that are not ideologized in the mass public,” there is a convergence between elite opinion (typically reinforced by Supreme Court decision making) and public opinion—as “media discussion [of a Court decision] and elite behavior” change public norms in ways that “reduce the differences between the pattern of elite and mass opinion on an issue.”145 Third, whereas the mass public knows very little about the speciﬁc decisions of the Court,146 elites are far more likely to pay attention to reports on Court decision making. In other words, elites are the principal consumers of media reports about the Court, especially in specialized media such as legal newspapers and blogs. The media’s inﬂuence in shaping the Justices’ decision making is something that we will take up in Part III, when we discuss whether there is empirical evidence backing the so-called Greenhouse effect, whereby Justices shift their views to reﬂect the left-leaning values of media and academic elites.147 At this point, two observations are in order: First, there is little question that Justices pay attention to reports about the Court and about themselves personally in the news media. Although the Justices interact with reporters far less than their counterparts in the other branches, such interactions are not rare148 and they are becoming more common. Justices may engage in those interactions for several reasons, but it is likely that an interest in shaping news coverage is one of those reasons.149 Second, there is good reason to think that the Court’s swing Justices are especially sensitive to their reputations among academic and media elites. Swing Justices typically have comparatively weak legal policy preferences, and as such, are more likely to engage in externally focused impression management.150 In particular, rather than seeking to win the esteem of some ideologie cally identiﬁable group, swing Justices are often drawn to the norm of judicial independence and the idea that a neutral, impartial arbiter would not join one or another faction that regularly favors liberal or conservative outcomes.151 For example, Justice Anthony Kennedy—the super median on today’s Roberts Court—seems particularly concerned with his public persona. According to one of his law clerks, Justice Kennedy “‘would constantly refer to how it’s going to be perceived, how the papers are going to do it, [and] how it’s going to look.’”152 On the very day that the Court reafﬁrmed Roe in Planned Parenthood v. Casey, Justice Kennedy told a reporter that “‘[s]ometimes you don’t know if you’re Caesar about to cross the Rubicon or Captain Queeg cutting your own tow line.’”153 No doubt, Justice Kennedy may be an extreme case. Nevertheless, there is good reason to think that swing Justices are more apt to be externally focused and, as such, more interested in press and academic commentary about the Court. D. SUMMARY Social psychology provides important insights into Supreme Court decision making. Unlike political science models which emphasize the pursuit of legal policy preferences, social psychology highlights how issues of self presentation also contribute to the choices Justices make. In so doing, social psychology takes into account both the legal policy preferences of Justices (by recognizing that a Justice will only back up legal or policy positions that are roughly in sync with their personal preferences) and a Justice’s interest in power and reputation (by recognizing that a Justice’s preferences and votes—consciously or unconsciously—are inﬂuenced by audiences they care about). By highlighting how Justices take audiences into account, this Part has called attention to divergences between the social psychology and political science models. At the same time, it is important to recognize that both models anticipate that Justices will diverge from favored policy positions to pursue other objectives. Political science models that argue that the Court accommodates itself to public opinion, for example, anticipate that Justices will calibrate their decision making to stave off public disapproval. The social psychology model, on the other hand, highlights the pivotal role that personal motivation plays in judicial decision making. There is reason to think that political science models that view public opinion as a signiﬁcant inﬂuence on the Justices anticipate greater divergence by the Justices from positions that reﬂect their policy preferences than does the social psychology model. Social psychology anticipates that the formation of legal policy preferences is driven by both ideological and personal motivations, so there is likely to be considerable agreement between Justices’ preferences and the preferences of the audiences that are most important to them. In contrast, any mechanisms that lead to agreement in preferences between the Justices and the general public are likely to be weaker. Social psychology is important for three other related reasons. First, even though the Supreme Court Justices are members of a single Court, it is wrong to describe the Court as a unitary body. Not only do the Justices have different legal policy preferences, they also place different values on power and reputation—including their willingness to be associated with ideologically identiﬁable groups. Second, in looking at the Supreme Court as a conglomeration of individual preferences, social psychology—consistent with the political science models— calls attention to the often pivotal role that median Justices play in Court decision making.154Unlike the political science models, however, social psychology calls attention to the important role that audiences play in the decision making of median Justices. Third, and ﬁnally, social psychology is instructive in understanding which audiences matter most to Justices. Supreme Court Justices are elites whose reference groups are also elites. And although there are both liberal and conservative elite audiences—so that highly ideological Justices are likely to garner praise from the interest groups they identify with so long as they generally support the positions of those groups—the Court’s swing Justices are especially likely to look to the media, law professors, and lawyers’ groups like the American Bar Association. These are the very audiences that will dissect and write about the Justices’ opinions, both in specialty journals for the legal profession and in books and articles that reach across elite audiences (and ultimately ﬁlter to the mass public).155 As it turns out, these audiences are left-leaning, at least on civil liberties issues, in the current era.156 For that reason, it is to be expected that Supreme Court decision making will sometimes favor these elite preferences over the preferences of the American people.157

### Link

#### Intervening in presidential powers during wartime decks court capital – gives a perception of siding with the enemy

Cole 2011 - Professor, Georgetown University Law Center (Winter, David, “WHERE LIBERTY LIES: CIVIL SOCIETY AND INDIVIDUAL RIGHTS AFTER 9/11,” 57 Wayne L. Rev. 1203, Lexis)

Indeed, a court concerned about conserving its own institutional power might be more likely to defer during times of crisis. One cannot be certain how the public will respond to a decision. Ruling for "the enemy" during wartime could be a risky proposition. A court primarily concerned about maintaining its institutional capital might therefore make the strategic choice to defer in times of crisis so as to avoid showdowns that could undermine its legitimacy, thereby preserving its power for ordinary [\*1252] times. n273 Accordingly, it is not obvious that the Supreme Court's own institutional interests in times of crisis push it in the direction of intervention, rather than deference or avoidance.

### Narrow v. Broad

#### Court will make a narrow ruling now – won’t hurt broader prez powers.

Williamson 11-11-13

Edwin, served as in the George H.W. Bush Administration, Bond v. United States: Response from Edwin Williamson http://www.lawfareblog.com/2013/11/bond-v-united-states-response-from-edwin-williamson/

I largely disagree with John’s post because it describes only two outcomes that the Court is being urged to reach. The first position is the one put forth by the U.S. government, and is supported by the amicus brief organized by John and submitted by some former State Department Legal Advisers, which—for reasons that will become clear—did not include me. According to this position, given a valid, non-self-executing treaty, Congress is free to pass any legislation that purports to execute a treaty, even if elements of the legislation are not necessary to the implementation of the U.S.’s obligations under the treaty. Any holding to the contrary would limit the President’s treaty-making power. The second position is put forward by some conservatives, and is perhaps best exemplified in an amicus brief submitted by Nick Rosenkranz and others: Congress cannot enact legislation that executes a treaty unless it is acting within one of the powers enumerated in Article I, and therefore, Missouri v. Holland should be overruled. In fact, though, there is a third argument: the one put forward by Paul Clement on behalf of Ms. Bond. According to this argument, the legislation implementing the CWC as applied to Ms. Bond is unconstitutional because it is an exercise of police power in respect to a “local” event with no national or international nexus. I emphasize the nexus modifier, because it was continually left out by others when they tried to summarize Paul’s argument, including in the U.S. government brief, in the Solicitor General’s oral argument, and in the Legal Advisers’ brief. Because the implementing legislation, as applied to Ms. Bond, has nothing to do with the U.S.’s obligations under the CWC, it cannot be justified under the Necessary and Proper Clause, and it would not limit the President’s treaty-making power in the slightest if the Court held accordingly.I have asked John and the former Legal Advisers who joined his brief if they would have reported Ms. Bond’s use of toxic chemicals under Article IV(9) of the CWC ). None indicated that they would have done so. With respect to Nick Rosenkranz’s argument, such a holding would not implicate Missouri v. Holland. It would neither require an overruling nor constitute an expansion. For this case to be similar to Missouri v. Holland, in that case the U.S. government would have had to have applied federal hunting rules not only to migratory birds, such as ducks, but also to non-migratory birds, such as quail.

#### Court will anticipate curbing over Missouri – Bricker amendments prove. Means capital is uniquely key.

NZELIBE 2011

Jide, professor of law @ Northwestern, PARTISAN CONFLICTS OVER PRESIDENTIAL AUTHORITY, WILLIAM AND MARY LAW REVIEW http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1216&context=facultyworkingpapers&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fq%3Dbricker%2Bamendment%2Bmissouri%2Bv%2Bholland%26btnG%3D%26hl%3Den%26as\_sdt%3D0%252C18%26as\_ylo%3D2009#search=%22bricker%20amendment%20missouri%20v%20holland%22

Given this dynamic, we might expect Republican or right-leaning constituencies to prefer a constitutional vision that would make it less likely that these human rights treaties would have any impact on domestic law. Left-leaning interest groups and academic activists, on the other hand, might prefer to construe the treaty power broadly and seek out strategies to overcome any institutional barriers through the use of courts.132 But for both parties, a preference for or against greater constraints on the President’s treaty power in human rights might not be driven by abstract convictions about the proper role of international law or global institutions in national politics. Rather, party leaders might have pushed for different visions of the treaty power in human rights because of perceptions about how such treaties would help or hurt their respective constituencies.133 At bottom, both the left and the right tended to view these domestic institutional arrangements as a set of obstacles to be taken advantage of or maneuvered around in pursuit of political objectives.134 The famous postwar controversy surrounding Senator Bricker’s efforts to amend the Constitution is an example of a partisan conflict concerning presidential authority over substantive human rights policies. Conservative senators in the early 1950s denounced the postwar draft U.N. human rights treaties as a partisan ploy by the left to get around domestic legislative obstacles to progressive legislation.135 President Eisenhower empathized with his coparti-sans’ hostility to these treaties. For instance, he appointed James Byrnes, a well-known human rights treaty skeptic and critic of Truman’s internationalist and civil rights policies, to replace Eleanor Roosevelt as U.N. Delegate.136 But this appointment— coupled with reassurances from President Eisenhower’s Secretary of State, John Foster Dulles, that Eisenhower’s administration would never negotiate or seek ratification of any of the draft U.N. human rights treaties—hardly satisfied Senate Republicans.137 They wanted to take more concrete steps to forestall the possibility that any President would ever be able to negotiate these treaties and have them bind other domestic political actors.138 Ultimately, the goal of these conservative senators was to overrule the Supreme Court’s decision in Missouri v. Holland, which seemed to suggest that the scope of the treaty clause was not subject to the same Tenth Amendment constraints as regular legislation.139 Senator Bricker, a former Republican nominee for Vice President and one of the leading legislative critics of the New Deal, sponsored an amendment that would have sharply curtailed the President’s treaty power by requiring “that treaties shall only be implemented by legislation ‘which would be valid in the absence of treaty.’”140 Although Eisenhower opposed ratifying these postwar human rights treaties, he also viewed Senator Bricker’s proposal to amend the Constitution as an interference with the President’s treaty power.141 Nonetheless, an overwhelming majority of Republicans, as well as a number of southern Democrats in the Senate, eventually supported Bricker’s proposal.142 By contrast, Eisenhower found his institutional interests being most vociferously championed in the Senate by Democratic Party leaders such as Lyndon Johnson of Texas.143 At bottom, the Bricker Amendment would have increased the veto players required for domestically binding treaties by not only requiring separate legislation to implement the treaty but also by requiring that such treaties be subject to federalist constraints.144 Although Senator Bricker’s proposed amendment narrowly failed to garner the two-thirds support required in the Senate to meet the first constitutional hurdle,145 it set the stage, in part, for the United States’ contemporary practice of attaching reservations or declarations to human rights treaties to ensure that such treaties have no domestic legally binding effects.146 In the modern era, opponents of the domestic incorporation of human rights treaties have been able to achieve many of their objectives without having to resort to the kind of constitutional change Senator Bricker envisioned,147 perhaps vindicating the view of some commentators that the amendment movement was a form of overkill.148 The broad Republican support in the Senate for constraining the President’s treaty authority during the Eisenhower administration, even though a copartisan was in the White House, reflects the reality that most of the key right-leaning constituencies, including business and ideological groups, felt uniformly threatened by these postwar U.N. human rights treaties. In other words, there was no obvious intracoalitional division within the Republican Party because the core of the conservative base considered any political benefits from the domestic incorporation of these treaties to be largely one-sided in favor of the left.149 Even if these treaties were negotiated or ratified by a Republican administration, there was no reason to suppose that such an administration could shape them to be more solicitous to the human rights interests favored by certain right-leaning constituencies, such as stronger protection of individual property rights.150 Indeed, some of the key state signatories who played an important role in drafting these U.N. conventions, such as the Soviet Union, had already ensured that such treaties eschewed property rights protections.151 In sum, the perceived distributional policy effects of these U.N. human rights treaties were sufficiently asymmetric that Republican politicians saw neither short-term nor long-term benefits from making such treaties domestically binding. And for the most part, the right-leaning constituencies’ perception of the U.N. treaties as an institutional structure that would yield unfavorable policy outcomes trumped any loyalty those constituencies had to the institutional prerogatives of their copartisan in the White House. The illustrations above are generally consistent with a strategic partisan approach to presidential authority: elected officials seek to relax constraints on presidential authority with respect to issues in which they have an advantage over the political opposition, but seek greater constraints on presidential authority otherwise. CONCLUSION Using examples drawn from postwar American history, this Essay seeks to contribute to the rational choice literature that explores the sources of political preferences for expansive or restrictive presidential authority. It argues that political parties may sometimes push for visions of presidential authority that narrowly advance their electoral or policy objectives, especially when there is sufficient textual ambiguity over the Constitution’s allocation of authority between the political branches. But such partisan logic to the evolution of presidential authority is in tension with the prevailing notion that the separation of powers embodies a stable institutional rule that constrains actors across the political spectrum. Finally, this partisan dynamic challenges the notion that instrumental revisions to presidential authority, to the extent they exist, stem almost exclusively from the conflicting institutional preferences between the occupant of the White House and members of Congress.

### AT: Ideology

#### Not true for prez powers cases – extremely visible.

Curry 2006

Todd, PoliSci Master’s Thesis, THE ADJUDICATION OF PRESIDENTIAL POWER IN THE U.S. SUPREME COURT: A PREDICTIVE MODEL OF INDIVIDUAL JUSTICE VOTING, University of Central Florida Summer 2006

If the predominant theory of Supreme Court decision-making, the attitudinal model, were applied to this subset of cases, despite the uniqueness of the political ramifications (which amount to direct judicial interaction with the executive branch), the balance of power issues that arise, and the distinct constitutional questions, it may be expected that justices would still simply vote their policy preferences because the attitudinal model assumes that all individual level decision-making by the Supreme Court justices is a function of ideology. This theory is too simplistic to account for the complexities that arise in separation of power cases, in particular in cases that involve presidential power. Therefore, while acknowledging the importance of a justice’s attitude in decision-making, this study postulates that there are multiple attitudinal and extra-attitudinal factors that may influence a justice’s individual level decision-making. Following the research of Yates (2002) and others, this study theorizes that, Supreme Court cases in which the president or presidential power is being adjudicated, the attitudinal model of judicial decision-making may not completely account for the justices’ individual decision-making process because in these highly salient cases, the presence of external and political cues may influence the justices because highly salient cases such as these may call into question the very legitimacy of the Court. Since there are numerous political and external factors that can affect the justices’ decision-making process in cases involving presidential power, there will be numerous hypotheses in order to test this theory.