### 1nc

#### Indefinite detention means holding enemy combatants until the cessation of hostilities – authority for it is codified in the NDAA

**Greenwald, 11** –former Constitutional and civil rights litigator (Glenn, “Three myths about the detention bill” Salon, 12/16, <http://www.salon.com/2011/12/16/three_myths_about_the_detention_bill/>)

Condemnation of President Obama is intense, and growing, as a result of his announced intent to sign into law the indefinite detention bill embedded in the 2012 National Defense Authorization Act (NDAA). These denunciations come not only from the nation’s leading civil liberties and human rights groups, but also from the pro-Obama New York Times Editorial Page, which today has a scathing Editorial describing Obama’s stance as “a complete political cave-in, one that reinforces the impression of a fumbling presidency” and lamenting that “the bill has so many other objectionable aspects that we can’t go into them all,” as well as from vocal Obama supporters such as Andrew Sullivan, who wrote yesterday that this episode is “another sign that his campaign pledge to be vigilant about civil liberties in the war on terror was a lie.” In damage control mode, White-House-allied groups are now trying to ride to the rescue with attacks on the ACLU and dismissive belittling of the bill’s dangers. For that reason, it is very worthwhile to briefly examine — and debunk — the three principal myths being spread by supporters of this bill, and to do so very simply: by citing the relevant provisions of the bill, as well as the relevant passages of the original 2001 Authorization to Use Military Force (AUMF), so that everyone can judge for themselves what this bill actually includes (this is all above and beyond the evidence I assembled in writing about this bill yesterday): Myth # 1: This bill does not codify indefinite detention Section 1021 of the NDAA governs, as its title says, “Authority of the Armed Forces to Detain Covered Persons Pursuant to the AUMF.” The first provision — section (a) — explicitly “affirms that the authority of the President” under the AUMF ”includes the authority for the Armed Forces of the United States to detain covered persons.” The next section, (b), defines “covered persons” — i.e., those who can be detained by the U.S. military — as “a person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners.” With regard to those “covered individuals,” this is the power vested in the President by the next section, (c): It simply cannot be any clearer within the confines of the English language that this bill codifies the power of indefinite detention. It expressly empowers the President — with regard to anyone accused of the acts in section (b) – to detain them “without trial until the end of the hostilities.” That is the very definition of “indefinite detention,” and the statute could not be clearer that it vests this power. Anyone claiming this bill does not codify indefinite detention should be forced to explain how they can claim that in light of this crystal clear provision. It is true, as I’ve pointed out repeatedly, that both the Bush and Obama administrations have argued that the 2001 AUMF implicitly (i.e., silently) already vests the power of indefinite detention in the President, and post-9/11 deferential courts have largely accepted that view (just as the Bush DOJ argued that the 2001 AUMF implicitly (i.e., silently) allowed them to eavesdrop on Americans without the warrants required by law). That’s why the NDAA can state that nothing is intended to expand the 2001 AUMF while achieving exactly that: because the Executive and judicial interpretation being given to the 20o1 AUMF is already so much broader than its language provides. But this is the first time this power of indefinite detention is being expressly codified by statute (there’s not a word about detention powers in the 2001 AUMF). Indeed, as the ACLU and HRW both pointed out, it’s the first time such powers are being codified in a statute since the McCarthy era Internal Security Act of 1950, about which I wrote yesterday.

#### Violation - Force feeding isn’t detention – the plan rules on penological interest, not detention power

**Bennett, 13** – Wells, managing editor of Lawfare (“Oral Argument Recap: Aamer v. Obama,” Lawfare, 10/18/13, <http://www.lawfareblog.com/2013/10/oral-argument-recap-aamer-v-obama/> //Red)

With regard got the merits, Judge Tatel tested Eisenberg’s theory, that force-feeding bears no relationship to a legitimate penological interest. (The legal principle is that when a prison regulation impinges on prisoners’ constitutional rights, then the regulation must bear a reasonable relationship to such an interest.) The judge asked about a long string of detainee-unfavorable cases, cited by the United States, all of which affirmed the government’s legitimate interest in maintaining **security and good order at prisons.** Well, why isn’t that also true at Guantanamo? The lawyer acknowledged the cited authorities, but suggested nevertheless that an alternative approach—that employed under California state law—would better suit the case at bar. The lawyer surmised that JTF-GTMO officials had jumped the gun in some instances, by force-feeding certain detainees (Eisenberg’s clients, presumably) before their hunger strike began to pose a mortal risk. The California regime, he said, could account for this.

#### Vote neg for fairness and education

#### Predictable Limits – their interpretation allows all prison rights issues - explodes the neg research burden

#### Ground – shifts the debate from war powers which changes the nature of our offense

### 1nc

#### Obama is investing capital to delay a new Senate sanctions on Iran until after November 20th – he’ll hold off the vote now

**Gerstein, 11/12/13** (Josh, Politico, “Iran talks delay puts White House on defense”

http://www.politico.com//story/2013/11/iran-talks-delay-white-house-99707.html)

A ten-day delay in talks aimed at negotiating an interim halt to Iran’s nuclear program could allow opponents of such a deal to build momentum on Capitol Hill, analysts said Monday.

For a time last week, it seemed like the Obama administration was eager to complete such a pact in little more than 48 hours from the time officials disclosed that a serious short-term agreement was on the table. That would have allowed the administration to bring such a package to Congress as a done deal, with lawmakers in the position of having to upend an agreement that had the blessing of at least six major world powers.

However, a late snag in the talks — there was still some dispute Monday about who was responsible for the hitch — led the parties to recess, with plans to reconvene Nov. 20. And that delay is essentially forcing the administration into a more public and high-profile defense of more diplomacy with Iran, and the Senate to hold off on a vote on new sanctions against Tehran.

Vice President Joe Biden spoke to Sen. Chuck Schumer (D-N.Y.) Monday to encourage the Senate to avoid any moves that might scuttle the next round of talks, said a source familiar with the conversation, first reported by BuzzFeed.

And Secretary of State John Kerry is expected to brief members of the Senate Banking Committee at a closed-door session later this week, a congressional source said. Kerry spokeswoman Jen Psaki told reporters returning from the Mideast with the secretary that the briefing will take place Wednesday, Reuters reported.

As top Obama administration officials urged the Senate to hold off any new sanctions action, some supporters of a deal with Iran fretted that the administration had waited until now to make a strong push in Congress and with the public for a pact aimed at halting Tehran’s nuclear program.

“I understand the attractiveness of that strategy, but am still doubtful about the wisdom and effectiveness of it, because it essentially means the president wanted to present Congress with a fait accompli, and this Congress doesn’t react very well to that,” said Trita Parsi of the National Iranian American Council.

Parsi said it was clear that the U.S. administration and others wanted to get an interim deal signed before the debate heated up in Congress again on sanctions.

#### **insert random link card here and way highlight down this shell**

#### **Plan’s a perceived loss – that causes Obama’s allies to defect**

Loomis 7 Dr. Andrew J. Loomis is a Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University, “Leveraging legitimacy in the crafting of U.S. foreign policy”, March 2, 2007, pg 36-37, http://citation.allacademic.com//meta/p\_mla\_apa\_research\_citation/1/7/9/4/8/pages179487/p179487-36.php

Declining political authority encourages defection. American political analyst Norman Ornstein writes of the domestic context, In a system where a President has limited formal power, perception matters. The reputation for success—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—is the most valuable resource a chief executive can have. Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms, winners win and losers lose more often than not. Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals. As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies. The central point of this review of the presidential literature is that the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.

#### A limited deal prevents Iranian weaponization – risks proliferation and an Israeli nuclear strike

**Stephens, 11/14/13** – columnist for the Financial Times (Phillip, Financial Times, “The four big truths that are shaping the Iran talks” <http://www.ft.com/intl/cms/s/0/af170df6-4d1c-11e3-bf32-00144feabdc0.html#axzz2kkvx15JT>

The first of these is that Tehran’s acquisition of a bomb would be more than dangerous for the Middle East and for wider international security. It would most likely set off a nuclear arms race that would see Saudi Arabia, Turkey and Egypt signing up to the nuclear club. The nuclear non-proliferation treaty would be shattered. A future regional conflict could draw Israel into launching a pre-emptive nuclear strike. This is not a region obviously susceptible to cold war disciplines of deterrence.

The second ineluctable reality is that Iran has mastered the nuclear cycle. How far it is from building a bomb remains a subject of debate. Different intelligence agencies give different answers. These depend in part on what the spooks actually know and in part on what their political masters want others to hear. The progress of an Iranian warhead programme is one of the known unknowns that have often wreaked havoc in this part of the world.

Israel points to an imminent threat. European agencies are more relaxed, suggesting Tehran is still two years or so away from a weapon. Western diplomats broadly agree that Ayatollah Ali Khamenei has not taken a definitive decision to step over the line. What Iran has been seeking is what diplomats call a breakout capability – the capacity to dash to a bomb before the international community could effectively mobilise against it.

The third fact – and this one is hard for many to swallow – is that neither a negotiated settlement nor the air strikes long favoured by Benjamin Netanyahu, Israel’s prime minister, can offer the rest of the world a watertight insurance policy.

It should be possible to construct a deal that acts as a plausible restraint – and extends the timeframe for any breakout – but no amount of restrictions or intrusive monitoring can offer a certain guarantee against Tehran’s future intentions.

By the same token, bombing Iran’s nuclear sites could certainly delay the programme, perhaps for a couple of years. But, assuming that even the hawkish Mr Netanyahu is not proposing permanent war against Iran, air strikes would not end it.

You cannot bomb knowledge and technical expertise. To try would be to empower those in Tehran who say the regime will be safe only when, like North Korea, it has a weapon. So when Barack Obama says the US will never allow Iran to get the bomb he is indulging in, albeit understandable, wishful thinking.

The best the international community can hope for is that, in return for a relaxation of sanctions, Iran will make a judgment that it is better off sticking with a threshold capability. To put this another way, if Tehran does step back from the nuclear brink it will be because of its own calculation of the balance of advantage.

The fourth element in this dynamic is that Iran now has a leadership that, faced with the severe and growing pain inflicted by sanctions, is prepared to talk. There is nothing to say that Hassan Rouhani, the president, is any less hard-headed than previous Iranian leaders, but he does seem ready to weigh the options.

Seen from this vantage point – and in spite of the inconclusive outcome – Geneva can be counted a modest success. Iran and the US broke the habit of more than 30 years and sat down to talk to each other. Know your enemy is a first rule of diplomacy – and of intelligence. John Kerry has his detractors but, unlike his predecessor Hillary Clinton, the US secretary of state understands that serious diplomacy demands a willingness to take risks.

The Geneva talks illuminated the shape of an interim agreement. Iran will not surrender the right it asserts to uranium enrichment, but will lower the level of enrichment from 20 per cent to 3 or 4 per cent. It will suspend work on its heavy water reactor in Arak – a potential source of plutonium – negotiate about the disposal of some of its existing stocks of enriched uranium, and accept intrusive international inspections. A debate between the six powers about the strength and credibility of such pledges is inevitable, as is an argument with Tehran about the speed and scope of a run down of sanctions.

#### An Israeli strike fails, but triggers World War 3, collapses heg and the global economy

**Reuveny, 10** – professor in the School of Public and Environmental Affairs at Indiana University (Rafael, “Unilateral strike could trigger World War III, global depression” Gazette Xtra, 8/7, - See more at: <http://gazettextra.com/news/2010/aug/07/con-unilateral-strike-could-trigger-world-war-iii-/#sthash.ec4zqu8o.dpuf>)

A unilateral Israeli strike on Iran’s nuclear facilities would likely have dire consequences, including a regional war, global economic collapse and a major power clash.

For an Israeli campaign to succeed, it must be quick and decisive. This requires an attack that would be so overwhelming that Iran would not dare to respond in full force.

Such an outcome is extremely unlikely since the locations of some of Iran’s nuclear facilities are not fully known and known facilities are buried deep underground.

All of these widely spread facilities are shielded by elaborate air defense systems constructed not only by the Iranians but also the Chinese and, likely, the Russians as well.

By now, Iran has also built redundant command and control systems and nuclear facilities, developed early warning systems, acquired ballistic and cruise missiles and upgraded and enlarged its armed forces.

Because Iran is well-prepared, a single, conventional Israeli strike—or even numerous strikes—could not destroy all of its capabilities, giving Iran time to respond.

Unlike Iraq, whose nuclear program Israel destroyed in 1981, Iran has a second-strike capability comprised of a coalition of Iranian, Syrian, Lebanese, Hezbollah, Hamas, and, perhaps, Turkish forces. Internal pressure might compel Jordan, Egypt and the Palestinian Authority to join the assault, turning a bad situation into a regional war.

During the 1973 Arab-Israeli War, at the apex of its power, Israel was saved from defeat by President Nixon’s shipment of weapons and planes. Today, Israel’s numerical inferiority is greater, and it faces more determined and better-equipped opponents. After years of futilely fighting Palestinian irregular armies, Israel has lost some of its perceived superiority—bolstering its enemies’ resolve.

Despite Israel’s touted defense systems, Iranian coalition missiles, armed forces, and terrorist attacks would likely wreak havoc on its enemy, leading to a prolonged tit-for-tat.

In the absence of massive U.S. assistance, Israel’s military resources may quickly dwindle, forcing it to use its alleged nuclear weapons, as it had reportedly almost done in 1973.

An Israeli nuclear attack would likely destroy most of Iran’s capabilities, but a crippled Iran and its coalition could still attack neighboring oil facilities, unleash global terrorism, plant mines in the Persian Gulf and impair maritime trade in the Mediterranean, Red Sea and Indian Ocean.

Middle Eastern oil shipments would likely slow to a trickle as production declines due to the war and insurance companies decide to drop their risky Middle Eastern clients. Iran and Venezuela would likely stop selling oil to the United States and Europe.

From there, things could deteriorate as they did in the 1930s. The world economy would head into a tailspin; international acrimony would rise; and Iraqi and Afghani citizens might fully turn on the United States, immediately requiring the deployment of more American troops.

Russia, China, Venezuela, and maybe Brazil and Turkey—all of which essentially support Iran—could be tempted to form an alliance and openly challenge the U.S. hegemony.

Russia and China might rearm their injured Iranian protege overnight, just as Nixon rearmed Israel, and threaten to intervene, just as the U.S.S.R. threatened to join Egypt and Syria in 1973. President Obama’s response would likely put U.S. forces on nuclear alert, replaying Nixon’s nightmarish scenario.

Iran may well feel duty-bound to respond to a unilateral attack by its Israeli archenemy, but it knows that it could not take on the United States head-to-head. In contrast, if the United States leads the attack, Iran’s response would likely be muted.

If Iran chooses to absorb an American-led strike, its allies would likely protest and send weapons but would probably not risk using force.

While no one has a crystal ball, leaders should be risk-averse when choosing war as a foreign policy tool. If attacking Iran is deemed necessary, Israel must wait for an American green light. A unilateral Israeli strike could ultimately spark World War III.

### 1nc

#### Judicial deference is high – there’s strict adherence to the political question doctrine

Bradley 9-2 (Curtis A., William Van Alstyne Professor of Law – Duke Law School, “War Powers, Syria, and Non-Judicial Precedent,” Lawfare Blog, 2013, http://www.lawfareblog.com/2013/09/war-powers-syria-and-non-judicial-precedent/)

As an initial matter, we need to bracket the issue of whether Obama’s action will weaken his own power as a political matter. This is a complicated issue: on the one hand, it may signal weakness both to Congress and to other nations; on the other hand, if he obtains congressional authorization, he may be in an ultimately stronger political position, as Jack Goldsmith has pointed out. As I understand it, the claim being made by Spiro, Rothkopf, and others is that the power of the presidency more generally is being weakened. How might this happen? Not through an influence on judicial doctrine: Although courts sometimes take account of historic governmental practices when assessing the scope of presidential authority, they have consistently invoked limitations on standing and ripeness, as well as the political question doctrine, to avoid addressing constitutional issues relating to war powers. In the absence of judicial review, what is the causal mechanism by which the “precedent” of Obama seeking congressional authorization for the action in Syria could constrain future presidential action? When judicial review is unavailable, the most obvious way in which the President is constrained is through the political process—pressure from Congress, the public, his party, etc. In an extreme case, this pressure could take the form of impeachment proceedings, but it does not take such an extreme case for the pressure to have a significant effect on presidential decisionmaking. Indeed, it is easy to think of political considerations that might have motivated Obama to go to Congress with respect to Syria.

#### The plan reverses court deference and rules on a political question

Lederman 11 (Martin, Professor of Law – Georgetown University Law Center, “War, Terror, and the Federal Courts, Ten Years After 9/11: Conference\*: Association of American Law Schools' Section on Federal Courts Program at the 2012 AALS Annual Meeting in Washington, D.C.,” American University Law Review, June, 61 Am. U.L. Rev. 1253, Lexis)

Number two: Numerous very important, contested, hotly debated topics have arisen in the last ten years, many of them in the Bush Administration, involving for example interrogation techniques, the scope of detention authority, habeas review, military commissions, targeted killings,and the use of force more broadly. On some of these questions, the federal courts - and the Supreme Court in particular - have had quite a lot to say; and on others, not so much, at least in part because of several different federal courts doctrines that prevent the courts from speaking too much about those. You're all familiar with standing limits, political questions, state secrets, etc. We're going to focus particularly on a couple of them, which are immunity doctrines and the weakening of the Bivens n2 and state court sorts of causes of action.

We will also discuss the fact that there are many people who think the federal courts have become too involved at supervising and resolving substantive questions involving the political branches, including some of Judge Kavanaugh's colleagues, who have been particularly vocal about that, engaging in what appears to be a form of resistance to the Supreme Court's Boumediene n3 decision. By contrast, many other people think the courts have not been nearly involved enough at resolving some of the unresolved questions about the scope of interrogation and detention and military commissions and the like, that might be lingering from the last administration, or occurring now in the new administration, such as with respect to use of force. So that's the second broad topic - whether the federal courts have been too timid or too aggressive in this area.

#### This automatically makes war powers a justiciable issue – this case-specific exception causes a slippery slope that breaks the entire doctrine

Miller 10 (Mathew Edwin, JD – University of Michigan Law School, Associate – Latham & Watkins LLP, “The Right Issue, the Wrong Branch: Arguments against Adjudicating Climate Change Nuisance Claims,” Michigan Law Review, November, 109 Mich. L. Rev. 257, Lexis)

However, to say that cases like American Electric Power are justiciable just because plaintiffs allege a public nuisance begs the question: Why should such claims automatically be justiciable? It contravenes the purpose and articulation of the political question doctrine to suggest that nuisances are categorically justiciable because political questions have historically excluded torts between private parties and have focused instead on governmental issues like gerrymandering, foreign policy, and federal employment. n70 Again, Baker demanded "discriminating" case-by-case inquiries, rejecting "resolution by any semantic cataloguing." n71 Similarly, the fact that other public nuisance claims have not presented political questions in the past should not preclude such a finding in the climate context. n72 Indeed, the argument for nonjusticiability rests on the notion that climate suits are unique and therefore defy classification among tort precedent. n73

 [\*271] Extending the political question doctrine to a public nuisance allegation would surpass precedent in terms of claim-category application. Yet with respect to the theory behind the doctrine, such an extension is proper because cases like American Electric Power would push existing nuisance law to embrace a complex, qualitatively unique phenomenon that cannot be prudentially adjudicated. n74 The Supreme Court has never held that torts cannot present political questions, so prudential constitutional principles should similarly apply to them. This Note simply argues that the facts, claims, parties, and relief demanded in this particular mode of litigation should fall under the nonjusticiability umbrella, wherever its limits may lie. n75 The following analysis of Baker invokes the American Electric Power situation specifically for the sake of convenience, but the arguments therein should be read to apply to injunctive climate nuisance claims generally.

[Continues to Footnore]

n75. This Note does not purport to suggest exactly where the line ought to be drawn in applying the political question doctrine to tort claims. A consideration of the potential doctrinal "slippery slope" - where courts might improperly refuse to adjudicate claims solely on the basis of complexity - is beyond the scope of the present discussion.

#### Violating the political question doctrine on issues of war power causes a wave of litigation – that destroys the effectiveness of US defense contractors

Isenberg 10 (David, Research Fellow – Independent Institute, “Contractor Legal Immunity and the ‘Political Questions’ Doctrine,” CATO Institute, 1-19, <http://www.cato.org/publications/commentary/contractor-legal-immunity-political-questions-doctrine>)

One can easily see why most defense contractors, including private military and security firms working under U.S. government contract, would like to prevent such suits from proceeding. The sheer number of injuries alone gives them reason to want to avoid possible suits. According to ProPublica as of last September 30 the number of private contractors injured in Iraq and Afghanistan totaled 37,652. Of course, not all those injuries are the result of something done wrong. But even a small fraction of them would entail considerable legal costs for a contractor so it is easy to understand why they would want to preventing such suits from being filed in the first place.

As I am not a lawyer the following is derived from Maj. Carter’s article.

Traditionally, the reason given for this is that such cases may involve “political questions” that the Judicial Branch is ill-equipped to decide. Thus defense contractor advocates claim these actions must be dismissed, else there be grim consequences for Government contingency contracting.

But according to Maj. Carter, “the recent developments in political question doctrine case law are significant to the future of Government contingency contracting. However, they are not catastrophic — although portrayed as such by some defense contractor advocates. There will not be an explosion of contracting costs passed on to the Government. There will not be a mass refusal of defense contractors to accept contingency contracts. There will not be chaos on the battlefield. Such predictions are nothing more than “bellowing bungle.”

Carter wrote:

What is the political question doctrine? According to Chief Justice John Marshall, “[q]uestions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in [the U.S. Supreme Court].” In 2004, the Court held “[s]ometimes .. . the law is that the judicial department has no business entertaining [a] claim of unlawfulness — because the question is entrusted to one of the political branches or involves no judicially enforceable rights. Such questions are said to be ‘nonjusticiable,’ or ‘political questions.’”

What this means is that traditionally courts have deferred to the political branches in matters of foreign policy and military affairs. Policy decisions regarding the employment of U.S. military forces in combat belong to the political branches, not the courts. The Supreme Court has held that, due to their “complex, subtle, and professional” nature, decisions as to the “composition, training, equipping, and control of a military force” are “subject always” to the control of the political branches.

Tort suits that challenge the internal operations of these areas of the military are likely to be dismissed as political questions. Yet, notwithstanding the foregoing prohibitions on judicial conduct, the Supreme Court has cautioned, “it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance.” As mentioned earlier, vast precedent exists for judicial involvement in foreign and military affairs. Case law establishes that military decisions are reviewable by federal courts. An assertion of military necessity, standing alone, is not a bar to judicial action. Merely because a dispute can be tied in some way to combat activities does not prevent a court from reviewing it. Although an action arises in a contingency environment, if a case is essentially “an ordinary tort suit” it is well within the competence of the courts to entertain. Courts have underscored the point: no litmus test exists that prohibits judicial action merely because an issue involves the military in some fashion.

Where plaintiffs seek only damages and not injunctive relief, such cases are “particularly judicially manageable.” When such a damages-only lawsuit concerns only a defense contractor (as opposed to the Federal Government), courts have held that such actions do not involve “overseeing the conduct of foreign policy or the use and disposition of military power.” Thus, those actions are less likely to raise political questions than suits against the Government, suits seeking injunctive relief, or both.

Given the enormous amount of money involved in Government contingency contracting and the correspondingly large number of contractors and contractor employees performing GWOT (Global War on Terror) contingency contracts, the number of plaintiffs seeking redress for tortious conduct was certain to rise — and it did. Universally, defendant defense contractors invoked the political question doctrine in order to shield themselves from liability in their performance of GWOT contracts, some with more success than others. The first significant case centered around the tragic events at the Abu Ghraib prison in Iraq.

In Ibrahim v. Titan Corp., Iraqi plaintiffs alleged they were tortured, raped, humiliated, beaten, and starved while in U.S. custody. Apparently fearing a dismissal on sovereign immunity grounds if they sued the U.S. Government, the plaintiffs instead chose to name as defendants the contractors who provided interpreters and interrogators for the prison. The defendants filed a motion to dismiss, alleging the matter involved political questions. The court held the case should not be dismissed at such an early stage on political question grounds, especially because the United States was not a party to the case. Ibrahim is significant because it was the first GWOT case to underscore the need for full factual development of a case prior to an assessment of justiciability.

One particularly interesting point in Carter’s article is this:

Judges and scholars openly speculate about the possible consequences of defense contractor tort liability on the federal procurement process. In Boyle, the Supreme Court warned that “[t]he financial burden of judgments against [] contractors would ultimately be passed through, substantially if not totally, to the United States itself, since defense contractors will predictably raise their prices to cover, or to insure against, contingent liability … .”

Since private military contracting advocates claim that their firms are more cost effective than the government one might reasonably believe that they can be so only by preventing tort suits against them. If the cost of such suits were factored in, the presumed cost effectiveness could conceivably be significantly less, or perhaps ynot exist at all.

Carter asks “is the situation really this dire? Are contractors at a point where, because of increased litigation risks, they will be forced to charge the Government more for their services or elect to not provide services altogether?”

The answers may not be far away. In November 2008, Joshua Eller filed suit in the U.S. District Court for the Southern District of Texas, as a result of injuries he suffered at Balad Air Base, Iraq, while deployed as a contractor employee of KBR from February to November of 2006. The complaint alleges defendants KBR and Halliburton “intentionally and negligently exposed thousands of soldiers, contract employees and other persons to unsafe water, unsafe food, and contamination due to faulty waste disposal systems … .” The complaint also includes allegations of injury from toxic smoke which emanated from an open air burn pit at Balad. The complaint alleges approximately 1,000 other individuals suffered similar injuries and it seeks to combine all of those actions into a single class action lawsuit. More significantly, this action is only one of several suits currently pending that relate to similar KBR activities in Iraq.

The political question doctrine will be a major factor in this coming storm of litigation. With the large number of potential plaintiffs compounded by the seriousness of the conduct and injuries alleged, these suits have the potential to dwarf the damages awards previously sought in earlier GWOT cases. Undoubtedly, KBR will seek to raise the political question doctrine as an absolute bar to these and any similar suits.

Defense contractor advocates warn of “deleterious effects” to the mission and the contractor-military relationship if tort suits against war zone defense contractors are allowed to proceed. They argue such tort claims “frustrate” and “conflict with” the Government’s ability to control contingency operations and would result in compromised logistical support and mission jeopardy. Furthermore, many companies, especially smaller ones, could be deterred from seeking contingency contracts. For those contractors who do elect to proceed, they will seek to insulate themselves from liability by either self-insuring or obtaining insurance coverage, if it is available. The argument continues that such costs will then be passed onto the Government in the form of higher contract prices. But, most alarmingly, some defense contractor advocates claim the impact of such suits “would be far more profound than financial” and defense contractors may, out of a fear of being sued, refuse to follow the military’s instructions altogether.

#### That’s key to operational success in Afghanistan

Schwartz 9 (Moshe, Specialist in Defense Acquisition – Congressional Research Service, “Department of Defense Contractors in Iraq and Afghanistan: Background and Analysis,” Congressional Research Service, 8-23, http://fpc.state.gov/documents/organization/128824.pdf)

The Department of Defense (DOD) increasingly relies upon contractors to support operations in Iraq and Afghanistan, which has resulted in a DOD workforce in those countries comprising approximately an equal number of contractors (200,000) as uniformed personnel (194,000). The critical role contractors play in supporting such military operations and the billions of dollars spent by DOD on these services requires operational forces to effectively manage contractors during contingency operations. Lack of sufficient contract management can delay or even prevent troops from receiving needed support and can also result in wasteful spending. Some analysts believe that poor contract management has also played a role in abuses and crimes committed by certain contractors against local nationals, which likely has undermined U.S. counterinsurgency efforts in Iraq and Afghanistan.

DOD officials have stated that the military’s experience in Iraq and Afghanistan, coupled with Congressional attention and legislation, has focused DOD’s attention on the importance of contractors to operational success. DOD has taken steps to improve how it manages and oversees contractors in Iraq and Afghanistan. These steps include tracking contracting data, implementing contracting training for uniformed personnel, increasing the size of the acquisition workforce in Iraq and Afghanistan, and updating DOD doctrine to incorporate the role of contractors. However, these efforts are still in progress and could take three years or more to effectively implement.

#### Afghan conflict causes global nuclear war

Morgan 7 (Stephen J., Political Writer and Former Member of the British Labour Party Executive Committee, “Better another Taliban Afghanistan, than a Taliban NUCLEAR Pakistan!?”, 9-23, http://www.freearticlesarchive.com/article/\_Better\_another\_Taliban\_Afghanistan\_\_than\_a\_Taliban\_NUCLEAR\_Pakistan\_\_\_/99961/0/)

As the war intensifies, he has no guarantees that the current autonomy may yet burgeon into a separatist movement. Appetite comes with eating, as they say. Moreover, should the Taliban fail to re-conquer al of Afghanistan, as looks likely, but captures at least half of the country, then a Taliban Pashtun caliphate could be established which would act as a magnet to separatist Pashtuns in Pakistan. Then, the likely break up of Afghanistan along ethnic lines, could, indeed, lead the way to the break up of Pakistan, as well. Strong centrifugal forces have always bedevilled the stability and unity of Pakistan, and, in the context of the new world situation, the country could be faced with civil wars and popular fundamentalist uprisings, probably including a military-fundamentalist coup d’état. Fundamentalism is deeply rooted in Pakistan society. The fact that in the year following 9/11, the most popular name given to male children born that year was “Osama” (not a Pakistani name) is a small indication of the mood. Given the weakening base of the traditional, secular opposition parties, conditions would be ripe for a coup d’état by the fundamentalist wing of the Army and ISI, leaning on the radicalised masses to take power. Some form of radical, military Islamic regime, where legal powers would shift to Islamic courts and forms of shira law would be likely. Although, even then, this might not take place outside of a protracted crisis of upheaval and civil war conditions, mixing fundamentalist movements with nationalist uprisings and sectarian violence between the Sunni and minority Shia populations. The nightmare that is now Iraq would take on gothic proportions across the continent. The prophesy of **an arc of civil war** over Lebanon, Palestine and Iraq **would spread to south Asia, stretching from Pakistan to Palestine, through Afghanistan into Iraq and up to the Mediterranean** coast. Undoubtedly, this would also spill over into India both with regards to the Muslim community and Kashmir. Border clashes, terrorist attacks, sectarian pogroms and insurgency would break out. A new war, and possibly **nuclear war,** between Pakistan and India could no be ruled out. Atomic Al Qaeda Should Pakistan break down completely, a Taliban-style government with strong Al Qaeda influence is a real possibility. Such deep chaos would, of course, open a “Pandora's box” for the region and the world. With the possibility of unstable clerical and military fundamentalist elements being in control of the Pakistan nuclear arsenal, not only their use against India, but Israel becomes a possibility, as well as the acquisition of nuclear and other deadly weapons secrets by Al Qaeda. Invading Pakistan would not be an option for America. Therefore a nuclear war would now again become a real strategic possibility. This would bring a shift in the tectonic plates of global relations. It could usher in a new Cold War with **China and Russia pitted against the US**.

### 1nc

**Torture is a necessary evil to solve terrorism**

**Jakab 2005**, Andas Jakab, M. Garcia-Pelayo Fellow Centro de Estudio Politicos y Constitucionales, "Breaching Constititonal Law on Moral Ground in the Fight against Terrorism, 2005, http://www.juridicas.unam.mx/wccl/ponencias/6/99.pdf

**Heroes needed**. This position maintains that Torture is prohibited both by the constitution and statues, and that this legal situation should not be changed (because of the mentioned identity function). It accepts, however, that in certain situations (namely when it is necessary to save innocent lives) it is morally acceptable, or **even required**. It means that there has to be someone who-by a heroic self-sacrificing act-accepts the (risk of) punishment by law in order to save (by getting information through torture) the lives of innocent people**. These heroes** either have to accept the punishment (with a Socratic gesture, to uphold the legal order), or they simply should hope for grace by the respective head of state. IV. We could / should introduce it. This position also views the current legal situation as prohibiting torture but it differs from the former one in two points. Here the prohibition is only a statutory level (so there is no constitutional prohibition), and it also proposes or at least allows for the introduction of the exceptional possibility of life saving torture (with precise procedural safeguards). A possible additional argument is here, that in practice it is happening anyway, so at least we should cover it by (transparent) legal controls, e.g., by a ‘torture warrant’ issued by judged. V. It is already allowed (or **even obligatory**). This position is the real **taboo breaking one**: it states that life saving torture is already allowed (as the protection of **life is more valuable than the protection of dignity**, because **life is a logical precondition of human dignity).** Sometimes the ticking bomb scenarios are modified including a bomb which **causes a painful death by torture**, so we should torture only one terrorist to save maybe millions of **people from death by torture**. Criminal lawyers usually conceptualize the problem as ‘defence of others’, whereas constitutional lawyers argue with concurring fundamental rights (either right to life, or in modified ticking bomb scenario with the right to human dignity of those threatened by torture death). If there is an explicit or implicit general prohibition of torture in the respective legal order, then **its scope should be interpreted in a restrictive way** (teleologische Reduktion), so **allowing for** the narrow exception of **life saving torture**. Torture is considered by these authors as **a necessary evil to avoid an even greater evil.** According to Zippelius and Wurtenberger, torture can never be an obligation of any policeman, but if s/he wants to save an innocent from a death by torture, then torturing the perpetrator might be justified. Whether the policeman will actually do that, should be left to his or her conscience.

**Nuke terror causes extinction---equivalent to full-scale nuclear war**

Owen B. **Toon 7**, chair of the Department of Atmospheric and Oceanic Sciences at CU-Boulder, et al., April 19, 2007, “Atmospheric effects and societal consequences of regional scale nuclear conflicts and acts of individual nuclear terrorism,” online: http://climate.envsci.rutgers.edu/pdf/acp-7-1973-2007.pdf

To an increasing extent, people are congregating in the world’s great urban centers, creating megacities with populations exceeding 10 million individuals. At the same time, advanced technology has designed nuclear explosives of such small size they can be easily transported in a car, small plane or boat to the heart of a city. We demonstrate here that a single detonation in the 15 kiloton range can produce urban fatalities approaching one million in some cases, and casualties exceeding one million. Thousands of small weapons still exist in the arsenals of the U.S. and Russia, and there are at least six other countries with substantial nuclear weapons inventories. In all, thirty-three countries control sufficient amounts of highly enriched uranium or plutonium to assemble nuclear explosives. A conflict between any of these countries involving 50-100 weapons with yields of 15 kt has the potential to create fatalities rivaling those of the Second World War. Moreover, even a single surface nuclear explosion, or an air burst in rainy conditions, in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades owing to infrastructure damage and radioactive contamination. As the aftermath of hurricane Katrina in Louisiana suggests, the economic consequences of even a localized nuclear catastrophe would most likely have severe national and **international economic consequences**. Striking effects result even from relatively small nuclear attacks because low yield detonations are most effective against city centers where business and social activity as well as population are concentrated. Rogue nations and **terrorists would be most likely to strike there**. Accordingly, an organized attack on the U.S. by a small nuclear state, or terrorists supported by such a state, **could generate casualties comparable to those** once **predicted for a full-scale nuclear “counterforce” exchange in a superpower conflict**. Remarkably, the estimated quantities of smoke generated by attacks totaling about one megaton of nuclear explosives **could lead to significant global climate perturbations** (Robock et al., 2007). While we did not extend our casualty and damage predictions to include potential medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchinson, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

### 1nc

#### The 1AC ignores the *interconnectedness* and *inherent worth* of every individual; this denies us of our *morality* and *value to life*.

**Henning 09** (Brian; Associate Professor of Philosophy at Gonzaga University; “Trusting in the 'Efficacy of Beauty: A Kalocentric Approach to Moral Philosophy”; Ethics & the Environment- Volume 14, Number 1)//RSW

**Final truths** (whether in religion, morality, or science) **are unattainable** not only due to the finitude and fallibility of human inquirers, but because we live in what the theologian John F. Haught calls an "unfinished universe" (2004). The notion that one could achieve anything like a final or absolute formulation in any field of study presupposes that one's object is static. Thankfully, we do not live in such a universe. Over the last century scientists have consistently discovered that the universe is not a plenum of lifeless, valueless facts mechanistically determined by absolute laws. Rather, we live in a processive cosmos that is a dynamic field of events organized in complex webs of interdependence, rather than a collection of objects interacting via physical laws. The intuition that the universe is fundamentally a clockwork machine successfully guided science in the wake of Newton's inspirational formulation of the laws of mechanics, but this metaphor proved increasingly inadequate as Newton's work was supplanted in the early 20th century by both general relativity and quantum mechanics. Even at its peak, the [End Page 107] mechanical metaphor created difficulties for thinking about human beings, who were never effectively illuminated by the assumption that they were complex machines. At the level of elementary particles, quantum mechanics disclosed a world of wave-like particles spread out in space and inextricably entangled with other particles in the local environment. The notion of autonomous "individual" particles disappeared. Although all metaphors are misleading to some degree, the metaphor of the world as an evolving organism has become more helpful than the old mechanical model of the world as a clock. This, in a sense, is the founding insight of Whitehead's "philosophy of organism," which took as its starting point the view that individuals—particles, plants, and people—are not discrete facts walled off from each other but parts of complex and intersecting wholes. Conceived of as an organic process, every individual is inextricably intertwined and interconnected with every other. The fundamental reality is no longer individual entities but rather the ongoing processes by which they interact and create novel structures. **Once we recognize that every individual—from a subatomic event to a majestic sequoia—brings together the diverse elements in its world in just this way, just here, and just now, we see that nothing is entirely devoid of value and beauty**. This process whereby many diverse individuals are brought together into the unity of one new individual, which will eventually add its energy to future individuals, characterizes the most basic feature of reality and is what Whitehead calls the "category of creativity." On this view, reality is best characterized not as an unending march of vacuous facts, but as an incessant "creative advance" striving toward ever-richer forms of beauty and value. Noting its emphasis on interdependence and interrelation, many scholars have rightly noted that Whitehead's metaphysics is uniquely suited to provide a basis for making sense of our relationship to the natural world.10 Decades before modern ecologists taught us about ecosystems, Whitehead was describing individuals as interrelated societies of societies. No individual, Whitehead insisted, can be understood apart from its relationship to others.11 Indeed, whereas ecologists only explain how it is that macroscopic individuals are related in interdependent systems, Whitehead's organic metaphysics of process provides a rich account of how individuals at every level of complexity—from subatomic events to ecosystems, and from oak trees to galaxies—arise and are perpetuated.12 [End Page 108] What is more, Whitehead's philosophy of organism places a premium on an individual's dependence on and relationship to the larger wholes of which it is a part without making the mistake of subsuming the individual into that larger whole.13 With the philosophy of organism we need not choose between either the one or the many, "the many become one and are increased by one" (Whitehead [1929] 1978, 21). By providing a robust alternative to the various forms of reductive physicalism and destructive dualism that currently dominate many branches of science and philosophy, the philosophy of organism is an ideal position from which to address the complex social and ecological challenges confronting us. First, if who and what I am is intimately and inextricably linked to everyone and everything else in the universe, then I begin to recognize that my own flourishing and the flourishing of others are not independent. Not only do I intimately and unavoidably depend on others in order to sustain myself, with varying degrees of relevance, **how I relate to my environment is constitutive of who and what I am.** As we are quickly learning, we ignore our interdependence with our wider environment at our own peril. Moreover, in helping us to recognizing our connection to and dependence on our larger environment, an organic model forces us to abandon the various dualisms that have for too long allowed us to maintain the illusion that we are set off from the rest of nature. Adopting an organic metaphysics of process forces us finally to step down from the self-constructed pedestal from which we have for millennia surveyed nature and finally to embrace the lesson so compellingly demonstrated by Darwin: humans are not a singular exception to, but rather a grand exemplification of, the processes at work in the universe.14 In this way we ought finally to reject not only the materialisms of contemporary science, but also the dualisms that often undergird our religious, social, political, and moral understandings of ourselves and our relationship to the natural world. As John Dewey concisely put it, **"man is within nature, not a little god outside"** (1929, 351). Until we shed our self-deluding arrogance and recognize that who and what we are as a species is fundamentally bound up in and dependent on the wider scope of events unfolding in the universe, the ecological crisis will only deepen. Taken seriously, our understanding of reality as composed of vibrant, organically interconnected achievements of beauty and value, has a dramatic effect on how we conceive [End Page 109] of ourselves, of nature, and of our moral obligations—morality can no longer be limited merely to inter-human relations. In rejecting modernity's notion of lifeless matter, we come to recognize that **every form of actuality has value in and for itself, for others, and for the whole.** In aiming at and achieving an end for itself, **every individual—no matter how ephemeral or seemingly insignificant—has intrinsic value for itself and in achieving this self-value it thereby becomes a value for others and for the whole of reality.** Every individual, from the most fleeting event in deep space to centuries old redwoods, has value for itself, for others, and for the whole of reality and it is from this character of reality that our moral obligations derive (Whitehead 1938, 111). Given that every individual in our universe, no matter how small or seemingly insignificant, has some degree of value, **the scope of our direct moral concern**15 **can exclude nothing.** Thus, in rather sharp contrast to the invidious forms of anthropocentrism that characterize much of western moral thought, our scope of direct moral concern cannot be limited to humans, to sentient beings, or even to all living beings. Morality is not anthropocentric, but neither is it sentientcentric or biocentric. **In affirming the value of every individual, we must begin to recognize that every relation is potentially a moral relation.** As Whitehead vividly puts it, "The destruction of a man, or of an insect, or of a tree, or of the Parthenon, may be moral or immoral.… Whether we destroy or whether we preserve, our action is moral if we have thereby safeguarded the importance [or value] of experience so far as it depends on that concrete instance in the world's history" (1938, 14–15). Morality is not merely about how we ought to act toward and among other human beings, other sentient beings, or even other living beings. **Morality is fundamentally about how we comport ourselves in the world, how we relate to and interact with every form of existence.**

#### Anthropocentric ordering is the foundation of the war machine and drives the exclusion of populations based on race, ethnicity and gender

Kochi, 09 (Tarik, Sussex law school, Species war: Law, Violence and Animals, Law Culture and Humanities Oct 5.3)//RSW

Grotius and Hobbes are sometimes described as setting out a prudential approach, 28 or a natural law of minimal content 29 because in contrast to Aristotelian or Thomastic legal and political theory their attempt to derive the legitimacy of the state and sovereign order relies less upon a thick con-ception of the good life and is more focussed upon basic human needs such as survival. In the context of a response to religious civil war such an approach made sense in that often thick moral and religious conceptions of the good life (for example, those held by competing Christian Confessions) often drove conflict and violence. Yet, it would be a mistake to assume that the categories of “survival,” “preservation of life” and “bare life” are neutral categories. Rather **survival, preservation of life and bare life as expressed by the Westphalian theoretical tradition already contain distinctions of value** – in particular, **the specific distinction of value between human and non-human life**. “Bare life” in this sense is not “bare” but contains within it a distinction of value between the worth of human life placed above and beyond the worth of non-human animal life. In this respect bare life within this tradition contains within it a hidden conception of the good life. The foundational moment of the modern juridical conception of the law of war already contains within it the operation of species war. The Westphalian tradition puts itself forward as grounding the legitimacy of violence upon the preservation of life, however its concern for life is already marked by a hierarchy of value in which non-human animal life is violently used as the “raw material” for preserving human life. Grounded upon, but concealing the human-animal distinction, the Westphalian conception of war makes a double move: it excludes the killing of animals from its definition of “war proper,” and, through rendering dominant the modern juridical definition of “war proper” the tradition is able to further institutionalize and normalize a particular conception of the good life. Following from this original distinction of life-value realized through the juridical language of war were other forms of human life whose lives were considered to be of a lesser value under a European, Christian, “secular” 30 natural law conception of the good life. Underneath this concern with the preservation of life in general stood veiled preferences over what particu-lar forms of life (such as racial conceptions of human life) and ways of living were worthy of preservation, realization and elevation. The business contracts of early capitalism, 31 the power of white males over women and children, and, especially in the colonial context, the sanctity of European life over non-European and Christian lives over non-Christian heathens and Muslims, were some of the dominant forms of life preferred for preservation within the early modern juridical ordering of war.

#### Our alternative is to vote negative to affirm a non-anthropocentric value system for action and deliberation.

#### Opening discussion to all populations reinvigorates democracy and creates a political paradigm shift.

Sandilands 2000

Catriona Sandilands, Environmental Studies at York University, 2000 [*Ethics and the Environment* 4.2]

But it strikes me that the call for a rethinking of moral standing to include the experiences of nonhuman animals is an interesting and important trajectory for a politics of citizenship. In a phrase. the expansion of our listening to hear "other" expressions, and the legitimation of these expressions as aspects of a common world, is a call for a reconsideration of who "we" as citizens are. To explain: in a recent essay, Iris Marion Young (1996) has pointed out that the practices of deliberative citizenship currently held out as the embodiments of appropriate democratic behaviour‑civility, rational argument, persuasion‑not only rely on a highly particular and culturally bound ideal of speech, but assume a highly particular kind of actor. She argues (perhaps [ironically. in](http://ironically.in) a highly civil, rational, and persuasive sort of way), that these ideals and suppositions are highly exclusionary, banishing to "the private" certain modes of thinking. speaking, and acting that are not only highly important. but are systematically gendered. racialized. and cultured. In order to conceive of a more inclusive practice of democratic speech, we need to welcome practices of storytelling, greeting. and rhetoric, not as a way of including more and different speakers but as a way of genuinely questioning the ways in which different practices of speech engender different understandings of the world, and of learning how to listen differently to the stories that shape our common world.  In my view, this is precisely what ecofeminists are doing when they argue that we need to consider the ways in which human and nonhuman beings‑even if they are not capable of or disposed to civil rationality‑do express their needs. Although, perhaps, we might take as a starting point the need to include "other" expressions of pain and pleasure as a moral question. I think it is also an orientation to the expansion of citizenship: these "other" expressions are expressions of a relationship to a shared and common world, and we must expand the circle of discussion to include both their form and their content. In particular, the inclusion of these "other" forms of speech in the public realm demands that [we. as](http://we.as) speakers, recognize our relationships to the common world of which these "other" voices speak. The "we" expands. As legitimate voices in public conversation, "the cries of factory farm animals," to quote Quiriby (1994). require not only that we shift our listening to hear them, but that we change ourselves as a result of the hearing. The shift from moral to political consideration is a shift from empathy to citizenship: where the former, however valuable, is a relationship that develops from intimacy and intensity, the latter demands that such intimately generated knowledges be given equal consideration in public definitions of the real, the good, and the possible. Such a recognition signals political intersubjectivity, in which a careful listening reveals nonhuman‑and marginalized humyn‑actors to be equal subjects in the common world.  The third ecoferninist proposal for citizenship that I would like to highlight concerns an insight made by Tzvetan 'Iodorov, namely, that "there exist two major forms ol communication, one between [people and people, the other between people and the world (cited in Dallmayr 1996)." Qualitatively different and culturally located, these two knowledges derive, on the one hand, from "the interaction between the person and his/her social group." and on the other. from the interaction "between the per­son and the natural world, the person and the religious universe," Todorov main­[tains-actually. in](http://tains-actually.in) a discussion of the communicative dimensions of the conquest of the Americas‑that Euro-western cultures have focused on the former, and found it  more than conducive to their exploitation and obliteration of other cultures. which  have focused on the latter. In Todorov's view, the ideal of full communication must include attention not only to intrahumam conversations, but to conversations that take place with the divine and the natural, a world of signs. omens, premonitions, smells. and other sensations that overflow human speech and language.  I have written elsewhere about the ways in which this nonspeaking, nonspoken world interrupts the seamless flow of discourse and consciousness, and especially about the ways in which ecofeminism makes space for these interruptions as part of what I have called an "ethical relation to the Real" (Sandilands. 1999). What I would like to emphasize here is that ecofeminists. kindred spirits to Todorov, also insist that communication with "the world" is properly part of the common world of public discussion, an activity of citizenship. I should note here that I have no wish to subsume all modes of communication into the activities of the public sphere, and that the creation of a distinct realm of action requires a certain distinctiveness. Not all speech is public speech, nor should it be: there must be places of privacy, where experiences of wonder or ecstasy or communion are not exposed to the harsh light of public scrutiny (increasingly difficult though this night be in a world of globally‑broadcast talk shows). For things to emerge into public life, there must he spaces to emerge from as much as there must be spaces to emerge to, thus, public life is only part of the human condition. But it strikes me that the desire to communicate with "the world" through the opening of the self to alternative modes of knowing and speaking with nonhunian creatures is also a gesture toward the expansion of the common and public world. Specifically, this expansion aims to include kinds of conversation that have been systeniatically suppressed in Eurowestern traditions, including traditions of democracy.  There is a strong similarity between this proposal and the one of which I have already spoken concerning the intersubjective recognition of nonhuman beings in public life. This proposal. however, demands that we not only recognize the potential intersubjectivity of nonhuman others, but pay closer attention to the non‑intersubjective relations that lie behind and beyond our accustomed modes of human communication. Signs and omens are, Nancy Reagan notwithstanding, generally not considered legitimale information for public debate: the questions that ecoleminists pose in their discussions of spirituality, wonder, and empathic labor, call us to consider their potential place as a mode of communication with the world in the world.  Lest you think I am calling for publically appointed astrologers and oracles‑and am thus totally off my nut‑let me quickly explain. What I think ecofeminists are arguing is for a potentially political openness to nonlinguistic forms of knowledge and experience that already inform human interactions with other humans and with nonhuman natures. These interactions are culturally located and profoundly shaped by [gender. by](http://gender.by) tradition, by colonialism. In their public recognition, again, the call is both for the inclusion of particular and systematically marginalized speakers. but for an ex­panded attention to particular and systematically marginalized forms of communication. I do not mean that spirituality can or should replace public deliberation: I do mean that what Todorov calls communication with the world could he recognized in public discussion as a legitimate and negotiable form of knowledge. In particular, this proposal involves receptivity to forms of intrahuman speech that, perhaps, more profoundly capture or express these "other‑worldly" communications: again, I emphasize the possibilities of storytelling or perhaps, poetry. But, as with all practices of citizenship, this communication is accountable to other forms of knowledge in conversation: what would happen if symbolic narrative met scientific taxonomy met rhetorical persuasion in a forum in which these modes of speech were held equal and accountable? What new understandings of ourselves might we reach. and what common worlds might we discover from our collaboration? Again, the orientation is to opening, to a fuller recognition of a common world that lies between us; Arendt's table is still there. but what the table is made of has shifted.  IV. CAUTIONS ALONG THE ROAD  I would like to conclude this paper with a series of cautions that I think ecofeminissts must take into account in our formulations of citizenship. In my view, ecofeminism holds enormous promise as a politics that attempts to expand the realm of citizenship and to include and legitimate new actors and new forms of speech and knowledge as elements of a genuinely common world. But in this project, there are always dangers: the focus on inclusion, the orientation to expansion and proliferation, always carries with it the possibility of cacophony. of an unconversational repetition of difference without the crucial orientation to showing its place as an element in a common and negotiable world. And the focus on making "the subaltern speak." to borrow a phrase out of context, also carries with it the specter of the regulation of discourse and identity in any and all calls for conversation and accountability.  Ecofeminists. I think, take as their starting point the politicization of marginalized knowledges of gender and nature, the insistence that degraded and undervalued ways of being in the world must he heard in public and understood as rich, complex. and satisfying for the long‑term health of humans and other beings. The specific proposals I have mentioned‑for care as a public principle, for political intersubjectivity with nonhuman beings. and for communication with "the world as part of public discussion of the world‑are all parts of this project. Ecological citizenship requires that the circle of conversation he expanded, yet it also demands that all actors involved are oriented to the changes to self and world wrought by conversation.  This project cannot work if these kriowledges are essentialized: the point is not only to show their particularity and situated practice, but to orient their appearance to the potential creation of commonality. It is, however, the unfortunate case that many ecoleminists‑and others‑feel compelled to resort to essentialist accounts to identify or legitimate their positions. Hence my first set of cautions: one way that this essentialism occurs lies in the process by which the situated activities of caring or empathy or communication with the world are held up as epistemologically privileged for environmental politics without a deep questioning of the social, political, and economic relations in which this situating occurs. Another manifestation of essentialism lies in the political rhetoric by which the family or community or particular culture is held up as the deepest, if not the only site for the development of relations of care or intersubjective recognition. It is in the realm of public conversation, in which different experiences and knowledges of family and community and cultural location are held accountable to each other and to other experiences and knowledges deriving from other spheres of life, that the creation of a common and inclusive world, a renewed citizenship. takes place. To put it simply. citizenship is not community: to forge a relationship to the world requires that we step outside the intimate and familiar and consider ourselves accountable to others whom we may not know. But there is. here, a third problem: the mirror image of an over‑reliance on community is an over‑reliance on a sort of colonizing and equally essentialist universalism that fails to consider its own particularity. In many discussions of deliberative citizenship‑like some versions of social ecology‑there is a strong assumption that only the traditions of civil discussion that are currently understood as "democratic" are ultimately appropriate for discusions of the common world. To foster an expanded ecological citizenship, deliberation must he opened to new forms and topics of conversation so that they can he shown to the common.

#### Ethics first- how we choose to act shapes how we interact with the world.

#### Their advantages are sandcastles built into a fundamentally flawed system of anthropocentrism, accurate knowledge starts with a revaluation of the world.

Weston 09 Anthony Weston, Professor of Philosophy at Elon University, 2009

[*The Incompleat Eco-Philosopher* p. 9-11]

If the world is a collection of more or less ﬁxed facts to which we  must respond, then the task of ethics is to systematize and unify our  responses. This is the expected view, once again so taken for granted  as to scarcely even appear as a “view” at all. Epistemology is prior to  ethics. Responding to the world follows upon knowing it—and what  could be more sensible or responsible than that? If the world is not  “given,” though—if the world is what it seems to be in part because  we have made it that way, as I have been suggesting, and if therefore  the process of inviting its further possibilities into the light is funda-  mental to ethics itself—then our very knowledge of the world, of the  possibilities of other animals and the land and even ourselves in relation  to them, follows upon “invitation,” and ethics must come ﬁ rst. Ethics  is prior to epistemology—or, as Cheney and I do not say in the paper  but probably should have said, what really emerges is another kind of  epistemology—“etiquette,” in our speciﬁ c sense, as epistemology.  But then of course we are also speaking of something sharply  different from “ethics” as usually understood. We are asked not for a  set of well-defended general moral commitments in advance, but rather  for something more visceral and instinctual, a mode of comportment more than a mode of commitment, more ﬂeshy and more vulnerable.  Etiquette so understood requires us to take risks, to offer trust before  we know whether or how the offer will be received, and to move with  awareness, civility, and grace in a world we understand to be capable  of response. Thus Cheney and I conclude that ethical action itself must be “ﬁrst and foremost an attempt to open up possibilities, to enrich the world” rather than primarily an attempt to respond to the world  as already known.  Cheney, true to his nature, also takes the argument on a more  strenuous path, exploring indigenous views of ceremony and ritual.  Once again the question of epistemology turns out to be central.  Euro-Americans, Cheney says, want to know what beliefs are encoded  in the utterances of indigenous peoples. We treat their utterances as  propositional representations of Indigenous worlds. But what if these utterances function, instead, primarily to produce these worlds? Cheney  cites the indigenous scholar Sam Gill on the fundamentally performative function of language. When Gill asks Navajo elders what prayers mean, he reports, they tell him “not what messages prayers carry, but  what prayers do.” More generally, Gill asserts that “the importance of  religion as it is practiced by the great body of religious persons for  whom religion is a way of life [is] a way of creating, discovering, and  communicating worlds of meaning largely through ordinary and common actions and behavior.”11  What then, Cheney and I ask, if this performative dimension of language is fundamental not just in indigenous or obviously religious   settings, but generally? How we speak, how we move, how we carry  on, all the time, also literally brings all sorts of worlds into being—and  thus, again, the ethical challenge put mindful speech, care, and respect  ﬁrst. Indeed we would now go even further. Here it is not so much  that epistemology comes ﬁrst but that, in truth, it simply fades away.  The argument is not the usual suggestion that the West has misunderstood the world, got it wrong, and that we now need to “go back” to  the Indians to get it right. Cheney is arguing that understanding the  world is not really the point in the ﬁ rst place. We are not playing a  truth game at all. What matters is how we relate to things, not what  things are in themselves. Front, center, and always, the world responds.  The great task is not knowledge but relationship.

### 1nc

#### Text – **Congress should propose, and three fourths of the states should ratify, an amendment to the United States Constitution that states that force feeding is unconstitutional.**

#### Amending the constitution solves – it establishes clear and credible war powers authority

Goldstein 88 (Yonkel, J.D. – Stanford Law School and Has the Sweetest of Names, “The Failure of Constitutional Controls over War Powers in the Nuclear Age: The Argument for a Constitutional Amendment,” Stanford Law Review, July, 40 Stan. L. Rev. 1543, Lexis)

The scope of the war-making powers of the executive and legislative branches of the United States government, in the context of the nuclear age, is unclear. The tremendous destructive power of modern arsenals, especially that of atomic weapons, makes this issue one of paramount importance. As the dangers of war have increased exponentially since the time when the Constitution was ratified, the efficacy of the constitutional safeguards which were intended to limit the likelihood of war has dwindled dramatically. The lack of a major nuclear war, so far, may suggest to some that the legal system of controls over United States war powers is operating well. As Professor Spanier states, however, in discussing the principle of civilian control of the military, factors which are extrinsic to the legal system have been primarily responsible for the American military's subservience to civilians. n1 My argument is an analogous one, namely that the system of checks and balances, designed to ensure that entry into war either be in response to an emergency thrust upon the nation or the result of a thorough examination of policy alternatives and considerations, is no longer functioning. Consequently, credit for the lack of nuclear war since World War II belongs more to factors extrinsic to the legal system designed to control American war power than it does to [\*1544] any workable system intended to regulate that power. The constitutional war-making provisions have now been tested; under modern-day pressures they have been found wanting. As a result, it is time to amend the Constitution for both practical and symbolic reasons. A constitutional amendment would have a consciousness-raising effect on the American people. It would signal a clear change from immediate past precedent and, simultaneously, legitimate that change in the most authoritative way possible under our system. The proposed amendment would both (1) clearly establish congressional authority to set policy in all matters relating to the preparation and execution of war, hostilities, aggression, or defense of the United States, American citizens, and American interests, and (2) establish a private right of action against Congress for its failure to make diligent efforts to ascertain the relevant facts, to debate, and to set policy in this area. The first part of this amendment would help to settle any lingering debate over the proper congressional role in defense matters, yet allow the system to retain the flexibility necessary to execute a sound and responsive defense policy; Congress would be able to delegate responsibility and authority however it sees fit. The second part recognizes the appropriateness of a mechanism to allow United States citizens to stimulate congressional and judicial action in order to protect against the risks of nuclear war; courts would not be empowered to judge substantive legislative decisions, but would be able to ensure that Congress, in reaching those decisions, adhere to constitutional principles. Thus, the courts would function similarly to how they have operated in the due process area.

#### The CP builds support through consensus – key to social change and avoids the rollback DA to the aff

Vermeule 4 (Adrian, Professor of Law – Harvard Law School, “Constitutional Amendments and the Constitutional Common Law,” Public Law and Legal Theory Working Paper No. 73, University of Chicago Law School, September, <http://www.law.uchicago.edu/files/files/73-av-amendments.pdf>)

Decision costs and benefits

We must account for the costs of decision making as well as the quality of decisions. A simple view would be that the formal amendment process is too costly to serve as the principal means, or even as an important means, of constitutional updating, just as periodic constitutional conventions are too costly to be practical.

Dennis Mueller denies this view. He suggests instead that the decision costs of the formal amendment process are decision benefits:

The U.S. Constitution contains broad definitions of rights, and the task of amending their definitions to reflect changes in the country’s economic, social and political characteristics has been largely carried out by the Supreme Court. While this method of updating the Constitution’s definition of rights has helped to prevent them from becoming hopelessly out of date, it has failed to build the kind of support for the new definitions of rights that would exist if they had arisen from a wider consensual agreement in the society. The bitter debates and clashes among citizens over civil rights, criminal rights and abortion illustrate this point. . . . Although [alternative procedures for constitutional amendment] may appear to involve greater decision-making costs, they have the potential for building consensus over the newly formulated definitions of rights.82

On this view, it is an illusion that constitutional common law incurs lower decision costs in the long run, even if a given change may be more easily implemented through adjudication in the short run. Although at any given time it is less costly to persuade five Justices to adopt a proposed constitutional change than to obtain a formal amendment to the same effect, the former mode of change incurs higher decision costs over time, because common-law constitutionalism allows greater conflict in subsequent periods.

A benefit of formal amendments, then, is to more effectively discourage subsequent efforts by constitutional losers to overturn adverse constitutional change. Precisely because the formal amendment process is more costly to invoke, formal amendments are more enduring than are judicial decisions that update constitutional rules;83 so losers in the amendment process will less frequently attempt to overturn or destabilize the new rules, in subsequent periods, than will losers in the process of common-law constitutionalism. This point does not necessarily suppose that dissenters from a given amendment come to agree with the enacting supermajority’s judgment, only that they accept the new equilibrium faute de mieux.

Obviously more work might be done to specify these intuitions, but it is at least plausible to think that the simplest view, on which formal amendments incur decisionmaking costs that exceed their other benefits, is untenably crude. The overall picture, rather, is a tradeoff along the following lines. Relative to common-law constitutionalism, the Article V process requires a higher initial investment to secure constitutional change. If Mueller is right, however, constitutional settlements produced by the Article V process will tend to be more enduring over time than is judicial updating, which can be unsettled and refought at lower cost in subsequent periods.

[Note: from the Vermeule article: “constitutional common law is short for something like ‘judge-made constitutional law’.”]

#### Amendments are a predictable alternative to Court action – the CP is fast and solves judicial deference

Denning and Vile 2 (Brannon P., Assistant Professor of Law – Southern Illinois University School of Law, and John R., Political Science Department Chair – Middle Tennessee State University, “The Relevance of Constitutional Amendments: A Response to David Strauss,” Tulane Law Review, November, 77 Tul. L. Rev. 247, Lexis)

B. The Checking Function

Perhaps the most important function that the Article V amending process potentially plays is that it offers a check on the Supreme Court's decisions, short of outright defiance. In fact, of our twenty-seven amendments, at least four were ratified to overturn, or in reaction to, a specific Supreme Court decision. n122 Strauss's argument that many of these Court opinions were aberrant and would not have survived for very long anyway is beside the point. By resort to the amendment process, "We the People" are not dependent upon the Court seeing the errors of its ways and correcting them. The standard amending process does require the cooperation of Congress, but, even here, the Founders provided an alternative in case this institution proved to be unreliable. Although the Article V convention mechanism has not been used, it appears to have prompted Congress to propose amendments on a number of occasions, most notably in the case of the Seventeenth Amendment, providing for direct election of the Senate. That process can be hastened without the interference of, or dependence upon, intermediating institutions.

Strauss may be correct that, absent Article V, the Court or Congress would eventually arrive at the same place as a formal amendment, but, to paraphrase Keynes, eventually we will all be dead. [\*277] Issues of ultimate efficacy aside, it would seem to be psychologically important to have open a process for amendment, lest a polity be unable to loosen the dead hand of the past other than by severing its connections with the past completely through revolution (with all the uncertainty that accompanies such radical surgery), or be unable to escape the occasional ill-starred decision of a branch, like the Supreme Court, which is insulated from the application of ordinary political pressure.

#### Amendments avoid political question doctrine – prior, congressional guidance is key to resolve issues of justiciability – the plan and perm violate SOP by ruling on a political question

Miksha 3 (Andre, Chief Deputy Prosecuting Attorney – Hamilton County Prosecutor's Office (24th Judicial Circuit), “Declaring War on the War Powers Resolution,” Valparaiso University Law Review, 37 Val. U. L. Rev. 651, <http://scholar.valpo.edu/cgi/viewcontent.cgi?article=1264&context=vulr>)

III. THE INFIRMITIES OF THE WAR POWERS RESOLUTION

Given almost thirty years of history, the War Powers Resolution has been criticized as a dead letter and a total failure. n120 Not only has the Resolution been a total failure in fulfilling its stated purposes, but the [\*676] Resolution also suffers from inherent constitutional failings. n121 This Note argues that these ills result from several factors.

First, the Resolution fails to meet the demands of the Constitution because it designs a new system of war powers inconsistent with principles of separation of powers and accountability. n122 Second, the Resolution has been a total failure due to its weak construction of enforcement mechanisms. n123 Third, the necessities of military command and execution require a more strict and swift system. n124 This Note further argues that the solution to the Resolution's ills and to the necessities of American civilian-military decision-making is a constitutional amendment. n125

A. Constitutional Concerns

Although the Resolution began with genuine and virtuous aspirations, it created a system of powers inconsistent with the Constitution in several ways. The Resolution sought to rearrange the separation of the powers held by two major institutions of American government in which the third branch of government has remained reticent regarding this breach of constitutional principles. n126 The Resolution also defies the constitutional value of discourse and accountability by allowing the President to act unilaterally. n127

1. Separation of Powers and Delegation

The Constitution is the document that established the separation of powers and the structure of the federal government. n128 The Resolution reconceived one part of the separation of powers through a simple act of [\*677] Congress. n129 The reconception was improper because it was inconsistent with principles set forth explicitly in the document and with the principle of delegation of power. On the other hand, a constitutional amendment is appropriate because its subject is the determination of the separation of powers, and it sets the rights and responsibilities of the branches in relation to each other. An amendment would help to solidify the limits and responsibilities of the branches of government in a manner consistent with the Constitution itself.

a. General Constitutional Construction

The Constitution gives to Congress the enumerated power to declare war and to the President the power and responsibility to conduct those operations as Commander in Chief. n130 The Framers' make/declare debate shows that they wished Congress to hold the power to initiate hostilities. n131 The early courts were also clear that the President's role was the prosecution of war. n132

The Resolution allows the President to initiate hostilities in some circumstances, but the Resolution's permission is too broad to be considered a declaration because it does not contemplate an actual situation facing the United States. n133 Thus, by granting the President this power, the Resolution rewrites the separation of powers as conceived by the Constitution. Such a rewrite may not be conducted in violation of the principles laid forth in the Constitution because the Supremacy [\*678] Clause states that federal laws must be made in accordance with the Constitution. n134

Some commentators, however, argue that the Framers purposely left the war powers in a cloudy, uncertain arrangement. n135 It is hard to think that the Framers left this great potential for tyranny and abuse to a purely political process without guidance as to how the balance was to be stricken. n136 Some scholars also argue that the power of the purse was a sufficient check on the President; however, this contention is not valid today. n137 Congressional implied consent, which is argued to flow from the unused power of the purse, cannot be constitutionally sufficient either, although it may be supported by recent history. n138 The Supreme Court has only upheld a claim of implied consent in cases involving a proper delegation of power, and the Resolution does not represent a proper delegation. n139

 [\*679] b. Improper Delegation of Power

Congress may delegate limited powers that it has been given by the Constitution. n140 The courts have become increasingly willing to uphold delegation against constitutional attack, especially when foreign affairs issues are involved. n141 In accordance with the Star-kist Foods test for proper delegation of power, Congress must provide (1) an "intelligible principle" for the executive to follow, (2) a specific policy or objective, and (3) limits circumscribing that power. n142 One may argue that the War Powers Resolution fit these requirements fully and represented a proper delegation of power. However, based on the historical and political developments, a closer legal analysis reveals that the Resolution was not a proper delegation.

The War Powers Resolution states a purpose and policy but does not provide any guidance as to when the President may introduce forces into hostilities. n143 Section 2(a) of the Resolution states the purpose as an effort to "fulfill the intent of the Framers of the Constitution" and "insure that the collective judgment of both Congress and the President will apply to the introduction of United States Armed Forces into hostilities." n144 Although the purpose is allegedly to guarantee the collective judgment of both the Congress and the President, the provisions of the War Powers Resolution are very weak. n145

Section 2(b) states that Congress has the power to make all laws necessary and proper for carrying into execution its own powers and all other constitutional powers. n146 However, Congress may not wholly delegate legislative powers. n147 The courts have allowed Congress some [\*680] leeway in this area, but only where Congress has provided sufficient guidance that the President is not working in a vacuum.

Section 2(c) states that the President may only act pursuant to a declaration of war, specific statutory authorization, or a national emergency created by an attack upon the United States. n148 This section approaches the sort of guidance that the courts have contemplated; however, this construction relies on specific congressional action in two situations and an attack upon the United States in the third. n149 Given the post-Resolution activities of the President, this paragraph seems to have had no import to the Executive. n150 Thus, through the Resolution's application, presidents have failed to comply with this section by claiming a general unilateral right to take action.

Through these provisions, the Resolution does not create an "intelligible principle" by which the President is guided to decide whether to introduce forces. The President has unbridled discretion. In addition, apart from the three specific situations described in section 2(c), the statute lacks a policy for when the President may act. The only prong of the Star-kist Foods test that may actually be satisfied by the Resolution is the limit on the power delegated because the President is allowed to act only within certain but broad circumstances. However, the Resolution does not suggest to the President how he or she must make the determination to introduce armed forces into hostilities. A proper delegation of power requires no less.

c. Impossible Delegation of Legislative Power

Nevertheless, Congress generally lacks the constitutional ability to delegate legislative powers. n151 Article I of the Constitution makes it clear that all enumerated legislative powers are vested in Congress. n152 In 1892, the Supreme Court recognized the principle that Congress cannot [\*681] constitutionally delegate legislative power to the President. n153 As recently as 1989, the Court reaffirmed that mandate. n154 The war powers are indeed legislative powers and may not be delegated in whole. n155 However, the courts have allowed Congress to delegate purely legislative powers under some circumstances, such as the Federal Sentencing Guidelines, but those delegations involved only a part of the legislative power as Congress merely used the agencies to work out the minute details. n156 This is not the case with the Resolution because Congress neither provided clear guidance nor limited the actual role of the subordinate.

d. The Courts

The courts have been very reserved in foreign affairs matters, but an amendment may make the interpretation of war powers a clear constitutional issue requiring the Supreme Court's analysis. The courts have avoided adjudication of disputes arising under the War Powers Resolution because of the justiciability doctrines of impasse, ripeness, standing, and political question. n157

### 1nc util

#### Upholding life is the ultimate moral standard.

Uyl and Rasmussen,profs. of philosophy at Bellarmine College and St. John’s University, 1981 (Douglas Den and Douglas, “Reading Nozick”, p. 244)

Rand has spoken of the ultimate end as the standard by which all other ends are evaluated. When the ends to be evaluated are chosen ones the ultimate end is the standard for moral evaluation. Life as the sort of thing a living entity is, then, is the ultimate standard of value; and since only human beings are capable of choosing their ends, it is the life as a human being-man's life qua man-that is the standard for moral evaluation.

**Solving Extinction comes first. You have to be alive to be ethical.**

**Gelven, 1994**

[Michael, Prof. Phil. – Northern Illinois U., “War and Existence: A Philosophical Inquiry”, p. 136-137]

**The personal pronouns, like "I" and "We," become governed existentially by the possessive pronouns, like "ours," "mine," "theirs"; and this in turn becomes governed by the adjective "own." What is authentic becomes what is our own as a way of existing.** The meaning of this term is less the sense of possession than the sense of belonging to. It is a translation of the German eigen, from which the term eigentlich (authentic) is derived. **To lose this sense of one's own is to abandon any meaningfulness, and hence to embrace nihilism**. To be a nihilist is to deny that there is any way of being that is our own; for the nihilist, what is one's own has no meaning. The threat here is not that what is our own may yield to what is not, but rather that the distinction itself will simply collapse. **Unless I can distinguish between what is our own and what is not, no meaningfulness is possibleat all**.  This is the foundation of the we-they principle. The pronouns in the title do not refer to anything; they merely reveal how we think. Like all principles, this existential principle does not determine specific judgments, any more than the principle of cause and effect determines what the cause of any given thing is. The we-they principle is simply a rule that governs the standards by which certain judgments are made. Since it is possible to isolate the existential meanings of an idea from the thinglike referent, the notions of we-ness and they-ness can be articulated philosophically. On the basis of this primary understanding, it is possible to talk about an "existential value," that is, the weight o. rank given to ways of existing in opposition to other kinds of value, such as moral or psychological values. But the principle itself is not, strictly speaking, a principle of value; it is an ontological principle, for its foundation is in the very basic way in which I think about what it means to be. **The ground of the we-they principle is, quite simply, the way in which we think about being. Thus, it is more fundamental than any kind of evaluating or judging.**  One of the things that the authentic I can do, of course, is to concern itself with moral questions. **Whether from a deontological sense of obligation or from a utilitarian projection of possiblehappiness, an I that considers these matters nevertheless is presupposed by them.** Although authenticity and morality are distinct, a sense of who one is must precede a decision about how to act. Thus, the question of authenticity comes before the question of obligation. And **since the worth of the I is generated from the prior worth of the we, it follows there can be no moral judgment that cancels out the worth of the I or the We**. This is not to say that anything that benefits the we is therefore more important than what ought to be done. It is merely to say that **any proper moral judgment will in fact be consistent with the integrity of the we.** Thus, I would be morally prohibited from offending someone else merely for my own advantage, but no moral law would ever require me to forgo my existential integrity. This is true not only for moral questions but for any question of value whatsoever: **all legitimate value claims must be consistent with the worth of the I and the We. It is only because my existence matters that I can care about such things as morality, aesthetics, or even happiness**. Pleasure, of course, would still be preferable to pain, but to argue that one ought to have pleasure or even that it is good to have pleasure would simply reduce itself to a tautology: if I define pleasure as the satisfaction of my wants, then to say I want pleasure is tautological, for I am merely saying that I want what I want, which may be true but is not very illuminating.  **The existential worth of existing is thereforefundamental and cannot be outranked by any other consideration. Unless I am first meaningful, I cannot be good; unless I first care about who I am, I cannot genuinely care about anything else, even my conduct.To threaten this ground of all values, the worth of my own being, then becomes the supreme assaultagainst me. To defend it and protect it is simply without peer. It is beyond human appeal or persuasion.**

### 1nc predictions

### 1nc torture

**No torture at Guantanamo**

**Carafano, 06** – James, vice president foreign and defense policy studies at Heritage (“Myths of Guantanamo,” Heritage, 10/6/06, http://www.heritage.org/research/commentary/2006/10/myths-of-guantanamo //Red)

Myth #1: Detainees are abused and tortured. According to the officers I talked to, high-value detainees were interviewed, on average, about once a week for two to four hours. They are handcuffed to the floor, and the interrogators talk to them. That's about it. **There is no torture or inhuman punishment.** There are no solitary confinement facilities at Guantanamo. The detainees have more access and better access to health care than the soldiers and the dependents on the island. The new detention facilities built at the camp are exactly like the most modern federal prison facilities in the United States. Myth #2: Detainees are forgotten and abandoned. There are, on average, two lawyers and three reporters for every detainee in Guantanamo. The International Committee of the Red Cross has a presence there, on average, about one out of every three days. And committee representatives have unaccompanied access to the detainees whenever they want it. International organizations, including the Organization for Security and Cooperation in Europe and the European Parliament, have inspected the facilities as well.

**Courts lack the institutional capacity to shift towards HR observance**

**Williams, 08** – Daniel R., Associate Professor, Northeaster University School of Law (“A DISCUSSION OF BOUMEDIENE V. BUSH: WHO GOT GAME? BOUMEDIENE V. BUSH AND THE JUDICIAL GAMESMANSHIP OF ENEMY-COMBATANT DETENTION,” New England Law Review, Fall 2008, Lexis //Red)

The government pressed the point that Guantanamo detainees are outside the reach of the Constitution because they are being held in Cuba, and Cuba has "sovereignty" over Guantanamo Bay, with the United States as a mere leaseholder. This argument was pigeonholed into a highly formalistic deployment of the Eisentrager three-factor test, with the government essentially arguing that a prison site in post-War Germany is constitutionally indistinguishable from a post-9/11 prison site in Guantanamo Bay. The Court expended some analytical energy in dissecting that claim, finding the historical record and judicial precedent inconclusive. But once we grasp that the Court's holding is, more than anything else, about the judiciary staying in the War-on-Terror game, the government's "sovereignty" argument becomes a side issue, and its importance is only revealed by the fact that it "raises troubling separation-of-powers concerns." n61 Kennedy knows the "sovereignty" argument is part of the War-on-Terror game. Placing captured suspected terrorists in Guantanamo detention camps opened up possibilities for all sorts of power-enhancing arguments for the executive branch - most crucially and disturbingly, arguments about the inapplicability of the Geneva Conventions and the discretion to torture, which is defined away so that the interrogation techniques are no longer "torture." n62 What the executive branch is doing with the "sovereignty" argument, Kennedy recognizes, is seeking license to "switch the Constitution on or off at will," simply by relocating the site of unconstitutional activity off the shores of the United States. n63 That on-off switch that Guantanamo represents has to be ripped from the circuitry of government, the Court essentially holds, because "the writ of habeas corpus is itself an indispensable mechanism for monitoring the separation of [\*14] powers." n64 The government's maneuver in placing detainees at Guantanamo, where it has unfettered control and authority, and then using the "sovereignty" argument to suggest that those detainees are beyond the territorial boundaries where fundamental constitutional rights are recognized, is, as a matter of gamesmanship, both obvious and crude - defensible nonetheless, the dissent says - and Boumediene likely put an end to it. n65 As noted earlier, the majority opinion is a big target for the shots delivered by the two dissents precisely because it confirms the picture that has already emerged from the Court's War-on-Terror jurisprudence - namely, that it **is concerned with process and allocation of power and not so much with substantive rights.** But the problem here is not the substance-process distinction. The Boumediene dissents can score devastating points once we buy into the "war" locution and imagery. It is indeed difficult to avoid, seeming absurdly out of touch when the goal of expanding constitutional rights is being adjudicated on behalf of highly dangerous enemy combatants in an ongoing war where the battlefield is everywhere. Process arguments should be made in such a discursive environment. The real problem here emanates from the lack of a vocabulary to capture what is in fact happening in this War on Terror. How else to explain the complete absence of a single reference to the disturbing fact that it has been quite easy to be deemed an enemy combatant? n66 The vocabulary of war and combat leads the dissent to speak misleadingly of capturing individuals "on the battlefield," with U.S. soldiers striving to triumph over obvious combatants allied with a transparent enemy while military commanders are too burdened with the task of warehousing these obvious enemy combatants to be bothered with legalistic concerns. These concerns would absurdly arise from giving captured individuals habeas rights. Soldiers have to fight, not serve subpoenas, Roberts snickers. n67 But what of the fact that many, if not most, of these captured "detainees" are deemed to be [\*15] "enemy combatants" because some bounty-seeking villager looks to get heftily rewarded by doing the Afghani-equivalent of "dropping a dime" on someone they dislike. If there has been reckless indifference in the way people have been detained within the United States, in the wake of 9/11, imagine the magnitude of that reckless indifference in "war zones" like Afghanistan and Pakistan. Given that unstated reality, the Boumediene majority exhibits justifiable concern over the inability of detainees to present exculpatory evidence, and the Boumediene dissent exhibits either willful blindness or inexcusable bad faith in diminishing the problems detainees encounter in countering the government's often feeble evidence. But the dissent can accomplish its argumentative game-playing precisely because the majority seems incapable of articulating the on-the-ground realities as to why such exculpatory evidence - or at least, strong doubt-creating evidence - would routinely exist in this so-called War on Terror where reckless indifference seems to characterize appropriately much of the executive-branch's policymaking. The impoverished discourse that characterizes the jurisprudence of our War on Terror ineluctably leads to what I have elsewhere called a mere "**veil of administrative decency**" on what is shamefully indecent. n68 Unless we discover some other way to talk and theorize about the so-called War on Terror, n69 **we will not just relive, but will magnify, the folly, the outrages, and the paralysis of the War on Drugs, with deadlier and more tragic consequences.**

**Plan doesn’t create a precedent – return to judicial deferral is inevitable**

**Pushaw, 09** – Robert J., James Wilson Endowed Professor, Pepperdine University School of Law (“CREATING LEGAL RIGHTS FOR SUSPECTED TERRORISTS: IS THE COURT BEING COURAGEOUS OR POLITICALLY PRAGMATIC?,” Notre Dame Law Review, vol. 84, no. 5, 2009, http://www3.nd.edu/~ndlrev/archive\_public/84ndlr5/Pushaw.pdf //Red)

History also suggests the **unlikelihood that** Hamdi, Rasul, Hamdan, and Boumediene are the **vanguard of an enduring switch** to aggressive judicial review to protect individual rights during wartime. Many scholars have approvingly cited Justice Kennedy’s majestic declaration that “[t]he laws and Constitution are designed to survive, and remain in force, in extraordinary times. Liberty and security can be reconciled; and in our system they are reconciled within the frame- work of the law.”373 This rhetoric echoes the words of Ex parte Milligan: “The Constitution . . . is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances.”374 But recall that the Court in Milligan confessed that it had not followed the Constitution during the Civil War,375 and that its promise to enforce constitutional law “at all times” **was broken within a year.**376 Cases like Ex parte Quirin similarly reveal that, contrary to Justice Kennedy’s wishful thinking, the Court during “extraordinary times” often does not deliberatively interpret the Constitution and laws in a way that best reconciles liberty and security.377 It is naïve to suppose that our current Justices are so uniquely brave and noble that they will be immune to similar pressures—especially if a crisis were to arise on a par with the Civil War or World War II.378 Indeed, history teaches that, during wartime, judicial discretion has been the better part of valor. The Court has always showed much greater deference to the government (sometimes **bordering on abdication**) when it has exercised military powers than when it has regulated domestic affairs. The precise degree of deference has reflected the factual, legal, and political circumstances of each case, although certain considerations have emerged as especially important—the severity of the crisis, the President’s political strength, approval of his actions by Congress, and the nature of the legal rights at stake.379 These factors have invariably persuaded the Court to yield to a powerful President like Lincoln or Roosevelt who, with the support of Congress, responded to a pressing threat to national security.380 Even in conflicts less serious than the Civil War and World War II, the Justices typically have respected the President’s judgment that a particular military measure had to be implemented.381 The Court has invalidated such laws only in relatively rare cases like Milligan382 and Youngstown, 383 when a wildly unpopular President like Johnson or Truman independently took actions that struck a majority of Justices as unnecessary and offensive to fundamental legal rights.384 I suspect that, in time, the “enemy combatant” decisions will be placed into this final category. A group of Justices pragmatically exploited a golden opportunity to announce new legal limits on the President when his approval ratings had hit Truman-like lows, the immediate post-September 11 crisis had long since faded and hence Bush’s initial get-tough approach seemed too severe, and individual liberty in its most basic form was at stake. The only sharp break from the past was the Court’s willingness to thwart executive action that enjoyed the approval of Congress, either expressly (Hamdi and Boumediene) or implicitly (Rasul and Hamdan). The most plausible reason for this newfound aggressiveness was Congress’s own historically abysmal approval ratings. Moreover, in Boumediene the Court had the added advantages that Bush was a lame duck, that the new President would likely alter detainee policy and perhaps shut down Guantanamo, and that economic woes had displaced terrorism as the voters’ chief concern.385 I anticipate, however, that **when the next military crisis rears its** ugly **head, the Court will uphold whatever policies the President deems prudent** to meet the danger. Fortunately, the Court could support such a deferential judgment by relying upon the precedent that it took such pains to distinguish rather than overrule, such as Eisentrager, Quirin, and The Prize Cases. 386 CONCLUSION The War on Terrorism has aroused such powerful emotions on both sides of the debate that **it becomes easy to ascribe to Supreme Court decisions a significance that they do not actually possess.** On the one hand, the liberal dream that Hamdi, Rasul, Hamdan, and Boumediene have ushered in a new age of heroic judicial defense of constitutional rights during wartime **will probably not come true.** On the other hand, the conservative nightmare voiced by Justice Scalia and his followers that the federal judiciary will forever be embroiled in overseeing military policy (for example, through millions of habeas corpus proceedings brought by captured soldiers) also seems overly dramatic. In the midst of such a heated controversy, history sheds cold but bright light. America has experienced cycles before in which the Court asserted broad authority to review the exercise of war powers. But that approach has never lasted. Rather, the Justices typically have exercised their discretion to yield to the political branches in military matters, **often because they had no other realistic choice.** This history suggests that the “**enemy combatant**” **cases will not have a profound lasting impact.**

### 1nc i-law

**Restricting detention doesn’t solve – international law is structurally incapable of preventing abuses**

**Shiner, 06** – Phil, solicitor at Public Interest Lawyers and a Visiting Professor at London Metropolitan University (“Guantanamo is small part of bigger picture,” Birmingham Post & Mail, 2006, accessed at http://www.thefreelibrary.com/Guantanamo+is+small+part+of+bigger+picture%3B+Birmingham+lawyer+Phil...-a0145497271 //Red)

Guantanamo Bay, the US practice of extraordinary renditions, and the UK's reliance on diplomatic assurances when deporting foreign nationals at risk of torture, are all undeniably bad things. Lately, however, the British media have tended to focus almost exclusively on these relatively narrow human rights issues to the **detriment of the bigger picture**. An analysis of recent political events might explain why Tony Blair will not cross the White House over Guantanamo Bay or other issues, and challenges us to resist extremely worrying developments within international law in the present era. It must be understood that the Blair and Bush Administrations stand together in pushing forward a new project. They use the attacks of 9/11 and the rhetoric of a 'war on terror' for a very different agenda. This becomes clear from, for example, the recent speeches of Tony Blair and John Reid, the outgoing Defence Secretary. These speeches build on earlier ones, such as Blair's speech in his constituency in March 2004, and earlier events, for example, the political row when it became clear that existing international law would not sanction the attack on Iraq in March 2003. One can summarise this agenda from a UK perspective: in the era of global capitalism the international community is increasingly interdependent. It must act together to enforce global values and meet global concerns. There is a fundamental clash between, on the one hand, progress and modernity and, on the other, extremism and conflict. Extremism is defined as Muslim fundamentalism or terrorism. This clash about civilisation is hugely determinate of the UK's future. The **international community needs to reform its institutions**, in particular the UN and its Security Council, to ensure that international law does permit the international community to take preemptive action if a state threatens these global values. Such action may have to be **justified through the language of humanitarian intervention** so that another exception to the prohibition on the use of force in international relations can be opened up. **This exception will allow future interference** in the affairs of a sovereign state if there is 'actual or threatened repression'. What is key here is that this project is already well underway. Both states have already demonstrated on ample occasions that when international law gets in the way **they will find devices to change it**, **or** they will **ignore it.** For instance, both have used the Security Council as a legislative body to manipulate international law.

**Detention doesn’t violate i-law**

**Bellinger, 06** – John, (former) State Department legal adviser (“State's Legal Adviser Discusses U.S. Detainee Issues, Guantanamo,” IIP Digital, 5/25/06, http://iipdigital.usembassy.gov/st/english/texttrans/2006/05/20060525171122eaifas5.608767e-02.html#axzz2eo5DHm7j //Red)

A: First, there are no "boys" in Guantanamo. The handful of juvenile detainees originally taken to Guantanamo, as soon as their ages were learned, were immediately transferred to a separate detention facility on Guantanamo Bay, separated from the older detainees, and were then housed in a communal facility, taught English, math, and reading, and given daily exercise and sports. They were subsequently released to their home countries, and have said they were treated well. Second, we do not agree that the detention of detainees on Guantanamo is in violation of international law. The US Government believes **the US is in a legal state of armed conflict** with Al Qaida. Al Qaida has said it is at war with us. It has attacked our embassies, our ships, our cities, and has killed more than 3000 people. Under the traditional rules of war, it is entirely legal to hold the combatants of the opposing army until the end of the conflict, without trial or access to lawyers. We do not believe that the detainees are simply criminals who were captured by the police and who must be given criminal trials. Rather, many of them were captured on the battlefield in Afghanistan by US or coalition forces acting pursuant to a UN Mandate. While we understand fully the concerns critics have raised about the detention of Al Qaida and Taliban detainees at Guantanamo, **we** believe we **are acting fully consistently with international law.** In addition, in most cases, contrary to calls by critics for trials of the detainees, in most cases they did not violate US laws when they travelled from their home countries to train in acts of terrorism in Al Qaida training camps. But does the fact that they did not violate existing US criminal laws mean that they did nothing wrong and should be released? We think not. We believe that **they were combatants who were fighting us in an armed conflict.**

**Even if it does, that proves US policy will still contradict international interpretations of the law**

**International law violations inevitable**

**Greenan, 13** – Matthew, independent journalist, political commentator and foreign policy analyst with a degree in international relations (“A Flagrant Disregard for the Rule of Law,” Greenan Report, 8/3/12, http://greenanreport.wordpress.com/2013/08/03/a-flagrant-disregard-for-the-rule-of-law/ //Red)

As the last remaining superpower, in a unipolar world, the US will do anything to maintain its hegemony and feels any action it conducts is legitimate, legal and moral due to its superpower status. This **flagrant disregard for the rule of law** and unparalleled hypocrisy has never been more present. After violating their own domestic and international standard for the protection of whistleblowers, by tirelessly hunting down Edward Snowden, the US has now turned to threatening diplomatic relations with Russia for giving him his due process of asylum, under international law. This comes only weeks after the international community was threatened into following US demands, when the US clearly breached the Vienna Convention, one of the most important international laws, by forcing down the Bolivian President Evo Morales jet. On the other hand, despite the US claiming Edward Snowden is a wanted criminal, who violated US law and must immediately be returned to face the US justice system, former US CIA agent Robert Seldon Lady convicted of kidnapping in 2009 by an Italian court walks free. Lady along with twenty-two other CIA agents, are wanted by Italian authorities for torturing and kidnapping Islamic cleric Hassan Mustafa Osama Nasr, back in 2003 during the CIA extraordinary rendition program. Arrested in Panama, it only took one day for Panama’s authorities to back down to US hegemony, allowing for Lady to escape the Italian justice system and return safely to US soil. For all those that follow US international relation from an unbiased perspective, **US actions are nothing new.** The US has always had one rule for itself, and another rule for any other state. However, what makes thing’s different is the US hypocrisy and global hegemony is now laid bare for all to see. The question now is will the international community and the general public alike pressure the US government to uphold to the rule of law it so often preaches? Or will we continue to allow the US to set its own international standards, dependent on its own foreign and domestic objectives?

**Alt cause – Bagram triggers the whole aff**

**Knefel, 13** (John, “Bagram: The Other Guantanamo,” Rolling Stone, 7/23/13, http://www.rollingstone.com/politics/news/bagram-the-other-guantanamo-20130723#ixzz2eql9HdL3 //Red)

Though the detainees at Bagram aren't mentioned often in the U.S., Chris Rogers, who focuses on conflict-related detention at the Open Society Foundations, says that the prison remains a **problem for America's image** in the Middle East. "For Afghans, Pakistanis and many others around the world, **Bagram is a symbol of hypocrisy and injustice**," says Rogers. "Ending the war in Afghanistan, and closing the chapter of war-on-terror detention that both Guantanamo and Bagram have come to symbolize, means the U.S. has to resolve detainees' cases and end their legal limbo." In March, the U.S. military transferred the majority of control of the prison at Bagram, which it calls the Detention Facility in Parwan, to the Afghan government. The transfer was scheduled to happen months earlier, but tensions between the two countries – including U.S. fears that Afghanistan would release prisoners the U.S. wants held – delayed the turnover. The U.S. is scheduled to remove significant numbers of troops from Afghanistan by December 2014, but how many remains undecided. Pentagon spokesperson Todd Breasseale says in an email that the third country nationals held by the U.S. "at the small part of Parwan that we still use are all [Law of War] detainees" – the same authority that applies to nearly every detainee at Guantanamo. (There are currently 166 detainees held at Guantanamo, 86 of whom have been deemed transferrable because they are not threats to U.S. national security.) That legal rationale allows the U.S. to hold prisoners until the end of hostilities in the war against al Qaeda, which Pentagon officials have suggested could last as much as another 20 years. It remains unclear what the future holds for the prison at Bagram, though Belhadi, the attorney in Pakistan, is not optimistic. "Our impression is that Bagram **will remain open** even after U.S. combat operations cease in December 2014," he says. The way forward for his individual clients and the rest of the detainees is also unclear. There is a significant danger that they could be tortured if they are turned over to the Afghans, and Belhadi says the Afghans don't want them anyway: "They're aware of the diplomatic hurdles involved in repatriation and want no part in it." Rogers, at Open Society, says the U.S. knows "the clock is ticking" in these cases, and that "as the U.S. withdraws its forces and ends its combat mission in Afghanistan, it will not have the same legal basis to capture and detain individuals." How does the U.S. military see the impending drawdown in Afghanistan affecting its legal authority to hold detainees? When asked if Bagram will stay open past December 2014, Breasseale, the Pentagon spokesperson, says detainees will continue to be held "through to when final disposition is decided," but that the U.S. "maintains that it shall not give up the humane – and ultimately reversible – option of removing enemy combatants from the battlefield." As of now, Belhadi says six detainees – three of whom are his clients – are scheduled to be repatriated to Pakistan in September of this year, due in part to litigation his firm has brought before the Lahore High Court. Whether U.S. courts have jurisdiction to order detainees released from Bagram remains partially unsettled, though the outlook for the detainees doesn't look good. Following the U.S. Supreme Court's 2008 ruling in Boumediene v. Bush, which extended habeas corpus rights to detainees held at Guantanamo, lawyers for Bagram detainees sought to have those rights applied to their clients. After an initial win, the case – known as al-Maqaleh v. Gates – was overturned on appeal, heard again unsuccessfully with additional evidence in district court, and is currently on its second round of appeals. Amin Al-Bakri, a Yemeni held by the U.S. without charge since 2002 and one of three petitioners in the al-Maqaleh case, "was tortured and coercively interrogated in CIA custody at undisclosed 'black site' locations," according to Golnaz Fakhimi, a lawyer with CUNY law school who represents al-Bakri. She adds that her client has been cleared for release three separate times. "The indefinite detention of Amin and other rendered non-Afghans at Bagram contrasts starkly with President Obama's renewed promise to close Guantánamo," says Fakhimi. "The contrast reveals that his promise to close Guantanamo is not necessarily a promise to end the practice of indefinite detention that makes Guantanamo so problematic." Rogers is even more blunt in his characterization. "Right now," he says, "**Bagram is another Guantanamo Bay that you've heard less about.**"

**Authoritarian states don’t follow norms — their “US justifies others” arg is naive**

John O. **McGinnis 7**, Professor of Law, Northwestern University School of Law. \*\* Ilya Somin \*\* Assistant Professor of Law, George Mason University School of Law. GLOBAL CONSTITUTIONALISM: GLOBAL INFLUENCE ON U.S. JURISPRUDENCE: Should International Law Be Part of Our Law? 59 Stan. L. Rev. 1175

The second benefit to foreigners of distinctive U.S. legal norms is information. The costs and benefits of our norms will be visible for all to see. n268 Particularly in an era of increased empirical social science testing, over time we will be able to analyze and identify the effects of differences in norms between the United States and other nations. n269 Such diversity benefits foreigners as foreign nations can decide to **adopt our good norms and avoid our bad ones**.

The only noteworthy counterargument is the claim that U.S. norms will have more harmful effects than those of raw international law, yet other nations will still copy them. But both parts of this proposition seem doubtful. First, U.S. law emerges from a democratic process that creates a likelihood that it will cause less harm than rules that emerge from the nondemocratic processes [\*1235] that create international law. Second, other democratic nations can use their own political processes to screen out American norms that might cause harm if copied.

Of course, many nations remain authoritarian. n270 But our norms are not likely to have much influence on their choice of norms. Authoritarian states are likely to select norms that serve the interests of those in power, regardless of the norms we adopt. It is true that **sometimes they might cite our norms as cover for their decisions. But the crucial word here is "cover."** **They would have adopted the same rules, anyway.** The cover may bamboozle some and thus be counted a cost. But this would seem marginal compared to the harm of allowing raw international law to trump domestic law.

### 1nc militarism

#### US won’t do more mindless interventions

**Mandelbaum 11** (Michael Mandelbaum, A. Herter Professor of American Foreign Policy, the Paul H. Nitze School of Advanced International Studies, Johns Hopkins University, Washington DC; and Director, Project on East-West Relations, Council on Foreign Relations, “CFR 90th Anniversary Series on Renewing America: American Power and Profligacy,” Jan 2011) http://www.cfr.org/publication/23828/cfr\_90th\_anniversary\_series\_on\_renewing\_america.html?cid=rss-fullfeed-cfr\_90th\_anniversary\_series\_on-011811&utm\_source=feedburner&utm\_medium=feed&utm\_campaign=Feed:+cfr\_main+(CFR.org+-+Main+Site+Feed)

MANDELBAUM:  I think it is, Richard.  And I think that this period really goes back two decades.  I think the wars or the interventions in Somalia, in Bosnia, in Kosovo, in Haiti belong with the interventions in Afghanistan and Iraq, although they were undertaken by different administrations for different reasons, and had different costs.  But all of them ended up in the protracted, unexpected, unwanted and expensive task of nation building.

Nation building has never been popular.  The country has never liked it.  It likes it even less now.  And I think we're not going to do it again.  We're not going to do it because there won't be enough money.  We're not going to do it because there will be other demands on the public purse.  We won't do it because we'll be busy enough doing the things that I think ought to be done in foreign policy.  And we won't do it because it will be clear to politicians that the range of legitimate choices that they have in foreign policy will have narrowed and will exclude interventions of that kind.  So I believe and I say in the book that the last -- the first two post-Cold War decades can be seen as a single unit.  And that unit has come to an end.

#### No impact

**Thompson, 03** [Michael, founder and editor of Logos and teaches political theory at Hunter College, CUNY. His new book, Islam and the West: Critical Perspectives on Modernity has just been released from Rowman and Littlefield Press, “Iraq, Hegemony and the Question of American Empire”, http://www.logosjournal.com/thompson\_iraq.htm]

It is rare that political debates typically confined to the left will burst into the mainstream with any degree of interest, let alone profundity. But this has not been the case with the question of American empire and the recent military campaigns in places such as Iraq and Afghanistan. For many on the left, this was a political question with a cut and dried answer: the American-led military campaign was a clear expression of its imperial policies and motives, the object of which is economic global dominance. But in some ways, such assumptions voiced by much of the American and European left, specifically among its more dogmatic and sectarian strains, mischaracterize and even misunderstand the reality of American global power and the possible contributions of the western political tradition more broadly.

With each passing day the events in Iraq deliberately evoke the question of American empire, and not without good reason. The neoconservative position on this has been to see American policies and its position in the world as that of a hegemon: a nation which seeks to lead the constellation of world nations into the end of history itself where the fusion of "free" markets and liberal democracy is seen to be the institutional panacea for the world's ills and with this the enlargement of capital's dominion. But the deepening morass of the occupation of Iraq belies such intentions. Paul Bremer's statement that "we dominate the scene [in Iraq] and we will continue to impose our will on this country," is a concise statement betraying not America's imperial motives, but, rather, the way that its hegemonic motives have ineluctably been pushed into a logic of imperial control. America has, in other words, become **an empire by default**, not by intention, and the crucial question now is: how are we to respond?

But the charge of America-as-empire is not as obvious as many have assumed even though many superficial elements of its history point to that conclusion. Students of American political history know of the dual policies of American empire from the late 19th and early 20th centuries. "Gunboat Diplomacy" was the imperial policy of backing up all foreign territorial policies with direct military force. From the Philippines to Cuba, Grenada and Haiti, this was an effective policy, copied from the British and their acts in the Opium War, which allowed the United States to extend itself as a colonial power.

## 2nc

### 2nc solvency

#### Third – is coherence – amendments are key.

Vermeule 4 (Adrian, Professor of Law – Harvard Law School, “Constitutional Amendments and the Constitutional Common Law,” Public Law and Legal Theory Working Paper No. 73, University of Chicago Law School, September, <http://www.law.uchicago.edu/files/files/73-av-amendments.pdf>)

I shall not question (iii) here, although there is much to be said in praise of incoherence in law, especially in constitutional law. Good coherence is better than incoherence, but bad coherence is worse than incoherence; coherence raises the stakes of constitutional decisionmaking by propagating either good or bad decisions through the legal system. Nor shall I question the dubious historical premise of the argument—that the framers designed a coherent constitutional scheme, as opposed to aggregating competing values and preferences, through horse-trading, into a patchwork document. Those issues aside, the rationale offered in (ii) exemplifies the nirvana illusion that underpins the generic case against amendments. The comparison between the framers’ globally coherent design, on the one hand, and piecemeal amendment on the other is not the right comparison to make. The principal substitute for formal amendment is not formal constitutional conventions, but judicial updating of constitutional law through flexible interpretation. The question, then, is whether piecemeal amendment produces greater incoherence than piecemeal judicial updating, carried out in particular litigated cases, by judicial institutions whose agenda is partly set by outside actors.

There is little reason to believe the latter process more conducive to coherence than the former, and much evidence to suggest that judicial decisionmaking produces a great deal of doctrinal incoherence. We should disavow any implicit picture of judgemade constitutional law as an intricately crafted web of principles whose extension and weight has been reciprocally adjusted. Precisely because judicial updating requires overrulings, reinterpretations, and other breaks in the web of prior doctrine, a system that relies on judicial updating to supply constitutional change—the system that the generic case tends to produce—generates internal pressures towards incoherent doctrine. Constitutional adjudication in America, let us recall, has produced both Plessy v. Ferguson and Brown v. Board, both Lochner v. New York and West Coast Hotel v. Parrish, both Myers v. United States and Humphrey’s Executor, both Dennis v. United States and Brandenburg v. Ohio, both Wickard v. Filburn and Lopez v. United States, both Bowers v. Hardwick and Lawrence v. Texas. Whatever else can be said about this judicial work-product, and whatever other justifications can be given for judge-made constitutional law, deep inner coherence does not seem either a plausible description of the terrain or even a plausible regulative ideal for the system.

#### Framing issue – none of their evidence is comparative – amendments are better

Vermeule 4 (Adrian, Professor of Law – Harvard Law School, “Constitutional Amendments and the Constitutional Common Law,” Public Law and Legal Theory Working Paper No. 73, University of Chicago Law School, September, <http://www.law.uchicago.edu/files/files/73-av-amendments.pdf>)

II. The Generic Case Against Constitutional Amendment

I shall introduce the generic case against constitutional amendment with the following passage, from an essay by Kathleen Sullivan:

[R]ecent Congresses have been stricken with amendment fever. More constitutional amendment proposals have been taken seriously now than at any other recent time. Some have even come close to passing. . . . Many of these amendment are bad ideas. But they are dangerous apart from their individual merits. [The Constitution] should be amended sparingly, not used as a chip in short-run political games. This was clearly the view of the framers, who made the Constitution extraordinarily difficult to amend.27

The remainder of the essay elaborates this thesis. Americans have traditionally been reluctant to amend the Constitution, for good reasons. First, it is “a bad idea to politicize the Constitution,” because “the more a Constitution is politicized, the less it operates as a fundamental charter of government.”28 We should particularly beware of amendments that “impose a controversial social policy,” such as the Eighteenth Amendment (repealed by the Twenty-First).29 “Amendments that embody a specific and debatable social or economic policy allow one generation to tie the hands of another, entrenching approaches that ought to be revisable in the crucible of ordinary politics.”30 Second, “writing short-term policy goals into the Constitution . . . nearly always turn[s] out to have bad and unintended structural consequences,” in part because “amendments are passed piecemeal. The framers had to think about how the entire thing fit together.”31 Third, a “danger lurking in constitutional amendments is that of mutiny against the authority of the Supreme Court. . . . [The Court’s] legitimacy is salutary, for it enables the court to settle or at least defuse society’s most ideologically charged disputes.”32 This argument is the clearest statement of a view that I take to be widespread both within and without the legal academy.

33 In the academic and popular commentaries that track Sullivan’s argument, the verbal formulas vary—sometimes the injunction is against “tampering” with the Constitution, sometimes the emphasis is on the “divisiveness” of constitutional amendments, sometimes the core point is that only “structural” amendments or amendments expanding “individual rights” are permissible—but the common intellectual premise is something like Sullivan’s idea: there is a generic class of reasons to believe that the amendment process is systematically or presumptively suspect.

I will claim, however, that the generic case against amendment rests on the nirvana fallacy: generic arguments typically fail to compare amendments with the institutional alternatives for producing constitutional change, principally constitutional common law. The alternative to constitutional amendment is not, as generic arguments often imply, a stable subconstitutional order; the alternative is continual judicial updating of the Constitution through flexible common-law constitutionalism. That practice fares no better, and in many cases worse, on the margins of institutional performance the generic case takes to be valuable.

#### **Fourth – changing the language of the constitution is the sole determiner of war powers**

Reveley 81 (Walter Taylor, Associate Director – University of Virginia's Miller Center of Public Affairs, Coordinating Attorney – Miller Center's National War Powers Commission, *War Powers of the President and Congress: Who Holds the Arrows and the Olive Branch?*, p. 268-9)

The war powers, it is often said, are creatures of politics, not law: They are defined by the play of power, scarcely touched by beliefs about what the Constitution requires. Under this notion, the Constitution is useful principally to rationalize the workings of realpolitik. Thus, whenever the President or Congress has the political strength to preempt one war power or another, the seizure is termed a constitutional prerogative. Whenever a President's diplomatic or military policy suits us, we find its making "plainly" committed to him by the Constitution. When his policy goes sour, we brazenly conclude that Congress after all is the constitutional arbiter. History provides some support for this tawdry view of the war powers, but also evidence of its limitations.

These powers have traditionally been shaped by more than politics. Beliefs about what the Constitution requires have also proved crucial---beliefs drawn largely from the language of the document, its Framers' and Ratifiers' debates, and the country's evolving values and needs. The behavior of the President and Congress, like that of most other Americans, has been strongly influenced by what they have understood to be their legal obligations, not just by the political strength at their disposal.

Any notion of politics as the sole key to the war powers ignores a second reality as well. Particular relations between the President and Congress can come into being by legislative fiat, responsive to beliefs about what the Constitution requires. These relations can then shape the future play of politics. Through war-power legislation the President can be encouraged to inform Congress in detail of his initiatives for war or peace. The legislators can be similarly encouraged to state their views if the statute provides them with unavoidable occasions for so doing. And both branches can be driven to build broader collaborative bridges to one another by just such an executive necessity to report and congressional necessity to assume responsibility.

Who holds the arrows and who the olive branch? In no small part, answers do spring from our beliefs about the Constitution's requirements. That understanding has often been clouded, never more than during the past generation. But given the experience of the past forty years with intense American involvement abroad and prior experience with isolation and nonintervention, we have within grasp a mature hold on how to divide authority between the President and Congress over war and peace.

### 2nc perm both

#### Waiting until the amendment process is completely over is key – the plan and perm have the Court act without authorized sovereignty

Wilson 95 (James G., Professor of Law – Cleveland State University, “Surveying the Forms of Doctrine on the Bright Line-Balancing Test Continuum,” Arizona State Law Journal, Fall, 27 Ariz. St. L.J. 773, Lexis)

B. Limited Supreme Court Sovereignty and the Art of Overruling

Applying the concept of "sovereignty" to the American legal system is one of the more difficult American jurisprudential problems. There are no obvious answers to determining who has the last word; how they can exercise it; and when they have it. Is the President sovereign during a time of Civil War? The average soldier when ordered to fire upon rebellious citizens? The people? The electorate? The amendment process under Article V? Doesn't Congress have some form of majoritarian legislative sovereignty? The Tenth Amendment cases reflect judicial disagreements over the meaning of state sovereignty. John Stuart Mill claimed individuals also have a sphere of sovereignty: "Over himself, over his own body and mind, the individual is sovereign." n294 This complexity constitutes another virtue of the American legal system, exemplifying its divide and conquer approach to power. n295

 [\*834] This section shall focus on yet another example of limited sovereignty: Supreme Court sovereignty. On one level, the ever-changing majorities on the Supreme Court have limited sovereignty, because they are not absolutely bound by prior Supreme Court decisions. Supreme Court majorities cannot "entrench" their opinions to protect them from future Supreme Court majorities. For example, no doctrine or rule can preclude five future Justices from adopting Judge Learned Hand's argument that Marbury v. Madison n296 was wrongly decided, because the constitutional text does not authorize Supreme Court review over congressional legislation, n297 or from overruling McCulloch v. Maryland, perhaps by aggressively using Dean Choper's argument that all federal-state issues are nonjusticiable. n298 The Court could legitimately withdraw from all constitutional judicial review until the country passed an appropriate amendment. Only the populace can use the amendment process either to entrench or to repudiate permanently Supreme Court doctrine.

#### Independently – the process of amendment is a political question – judicial involvement wrecks the doctrine

Chemerinsky 94 (Erwin, Professor of Law – University of Southern California, “Guaranteeing a Republican Form of Government: Cases Under the Guarantee Clause Should Be Justiciable,” University of Colorado Law Review, Fall, 65 U. Colo. L. Rev. 849, Lexis)

Despite these arguments, the political question doctrine is clearly here to stay. Therefore, in this article, my focus is not on whether there should be such a doctrine, but instead, accepting its existence, what should be its content?

Matters should be deemed to be a political question only if there is reason to believe that the judiciary is ill-suited to enforce a particular constitutional provision and a likelihood that the other branches of the federal government will do a superior job at interpreting and enforcing the provision. In other words, the political question doctrine should be reserved for instances where there is a special reason for the judiciary not to be involved and a reason for confidence that the provision will be interpreted and enforced by Congress and/or the President. I suggest that this approach to the political question doctrine is descriptively consistent with most of the cases and that it is normatively the best approach to the political question doctrine.

Initially, it should be noted that most of the areas where the Court has used the political question doctrine fit these criteria. In addition to the Guarantee Clause, the Supreme Court has approved the use of the political question doctrine in only five other areas: the process for ratifying constitutional amendments; impeachment and removal of officials from office; foreign policy decision-making; training of state national guards; and decisions by national political parties.

In Coleman v. Miller, n15 a plurality of the Court declared that Congress has "sole and complete control over the amending process, [\*854] subject to no judicial review." n16 Coleman involved the question of whether a state could approve a proposed constitutional amendment twelve years after having rejected it. The Supreme Court denied review, and Justice Black, writing for a plurality, said that the process of amending the Constitution is a political question: "Article V . . . grants power over the amending of the Constitution to Congress alone. . . . The process itself is 'political' in its entirety, from submission until an amendment becomes part of the Constitution, and is not subject to judicial guidance, control or interference at any point." n17

There is a strong reason for the judiciary to refuse to become involved in the amendment process. Constitutional amendments are the only way for the political process to directly overturn a Supreme Court decision interpreting the Constitution. Therefore, courts should not become involved in the primary mechanism for checking the judiciary. n18 The proposed amendment at issue inColeman was intended to overturn an earlier Supreme Court decision denying Congress the power to regulate child labor. n19

### 2nc perm do cp

#### Judicial restrictions are imposed by courts – counterplan is imposed by congress

Kang 6 (Michael, Assistant Professor – Emory University School of Law, “De-Rigging Elections: Direct Democracy and the Future of Redistricting Reform”, 2006, 84 Wash. U. L. Rev. 667, lexis)

The Court's general reluctance to restrict partisan gerrymandering appeared motivated by a lack of judicial confidence. Judicial restriction of gerrymandering would draw courts, which are putatively nonpartisan and apolitical institutions, n39 into the untenable position of managing what is fundamentally a political exercise. Justice Kennedy emphasized the difficulty for courts of "acting without a legislature's expertise" and the unwelcome task of removing from the democratic process "one of the most significant acts a State can perform to ensure citizen participation in republican self-governance." n40 Indeed, challenges to gerrymanders demand more of courts than simply striking down excessively partisan plans. Today, judicial intervention against gerrymandering almost necessarily brings with it active judicial management of the redistricting process. A court that strikes down a redistricting plan, for whatever reason, n41 invariably is drawn into authorship of a new redistricting plan to replace it, or a close interaction with legislators working to formulate a new plan (or both). n42 Courts "become active players often placed in the uncomfortable role of determining winners and losers in redistricting, and, therefore, elections." n43 When courts have involved themselves in redistricting matters, namely in racial gerrymandering and one person, one vote cases, [\*675] the courts have drawn heavy criticism. n44 Even so, Justice Stevens predicted that "the present "failure of judicial will' will be replaced by stern condemnation of partisan gerrymandering." n45 Greater judicial direction of the redistricting process is a price that Justice Stevens and reformers seem happy to pay. They are more than willing to trade the costs of judicial entanglement for the perceived benefits of judicial oversight in redistricting. I further discuss the costs of this approach in Part III.

### 2nc delay

#### Here’s comparative evidence – amendments are the quickest way for change

Domino effect-- Provides a symbol for tangible changes in the political process🡪 invigorates the base to push for more changes

Denning and Vile 2 (Brannon P., Assistant Professor of Law – Southern Illinois University School of Law, and John R., Political Science Department Chair – Middle Tennessee State University, “The Relevance of Constitutional Amendments: A Response to David Strauss,” Tulane Law Review, November, 77 Tul. L. Rev. 247, Lexis)

Strauss concedes that, in addition to setting "rules of the road," amendments also suppress outliers. n69 But he belittles this function, too: "Probably the most accurate description of amendments that suppress outliers ... is that they allow near-unanimity to become unanimity a little sooner ... ." n70 Outliers, he assures us, "might not have held out much longer" in the face of small-c-constitutional change spurred by other branches and commanding popular support. n71 The Thirteenth Amendment, Strauss writes, "at most ... abolished slavery only in the four border states ... that had not joined the Confederacy." n72 He considers it a "foregone conclusion" that eighteen-year-olds would "soon" have been voting in federal and state elections, whether or not the Twenty-Sixth Amendment was submitted to the states. n73 "Pollock had all the earmarks of a precedent that was destined to be overruled" and that eventual overruling would have ended the "sideshow" over the constitutionality of the income tax. n74 Forces urging the direct election of senators "were on their way to prevailing ... with or without a formal constitutional amendment "; again, the suppression of outliers was only a matter of time. n75 According to Strauss, "the best estimate is that if the suffragists had been forced to concentrate solely on the state level [as opposed to securing relief through a constitutional amendment ], they would have achieved substantial but not complete success within a few years." n76

 [\*265] But such statements are counterfactual and unverifiable (How much longer? At what cost would outliers be suppressed? Did other branches have the political will to suppress outliers?). Moreover, they again reflect Strauss's firm belief that changes of the "right" sort will eventually fix themselves into our constitutional regime with or without the amendment process. n77 So what does it matter, he seems to argue, when they occur? We submit that it matters very much when they occur, particularly to the beneficiaries of the change. By effecting those changes through the amendment process, the potential beneficiaries have an opportunity to engage the engine of popular sovereignty in making their favored change part of the Constitution sooner, rather than later. Otherwise, there is simply no way of knowing how long it will take for unanimity to prevail (history suggests that there will always be at least one holdout). For someone living in an outlier state, it is cold comfort to be told that change will "eventually" come "soon," but that nothing more can be done to hasten it. One may just as soon see fulfillment of the communist hope for the eventual withering away of the state first.

### 2nc symbol

#### Amendments send a BETTER signal – comparative ev

Dixon 12 (Rosalind, Assistant Professor of Law – University of Chicago Law School, “Comments on Michel Rosenfeld's the Identity of the Constitutional Subject: Amending Constitutional Identity,” Cardozo Law Review, 33 Cardozo L. Rev. 1847, Lexis)

At an evidentiary level, constitutional amendment proposals have a far greater capacity than most other sources to provide courts, and other decision-makers, with reliable information about both the strength and breadth of legislative (and popular) views on constitutional meaning. In many cases, courts themselves are also explicitly open to considering such information in interpreting various open-ended constitutional provisions.

The fact that, in most countries, the public as a whole tends to identify more clearly with constitutions than statutes means that, all else being equal, the act of proposing a constitutional amendment will carry higher political costs for proponents than equivalent proposals to create change by legislative means. For legislators, this means that by simply invoking the rubric of constitutional amendment, they can provide a credible signal to courts - and other actors - about the strength of their views on constitutional meaning. n30

Compared to ordinary legislation, constitutional amendment procedures also give legislators broader scope to express disagreement with courts about constitutional meaning, consistent with respecting commitments to the rule of law. n31 This means that, in general, both actual constitutional amendments - and most constitutional amendment proposals - will also be truer guides than ordinary legislation to the true scope of disagreement between courts and legislatures over questions of constitutional meaning or public values. n32

At a more formal, doctrinal level, constitutional amendments can also play an important role in helping expand or reset the analogical baseline for subsequent constitutional reasoning. n33 Changes of this kind will be significant, in common-law systems in particular, because the ultimate analogical baseline for constitutional reasoning clearly matters in many cases. The broader that baseline is, in general, the easier it will also be for subsequent decision-makers to establish an analogy between new and established constitutional arguments or claims.

## 1nr

### at:w/m OCOs

#### They say they meet cyber operations –counter definition - Offensive cyber operations seek coercive rival action – any other interpretation snowballs to include defensive and informational objectives – this interpretation is the most precise

Belk and Noyes, 12 [Robert Belk is a Naval aviator and Politico-Military Fellow, studying international and global affairs at the Harvard Kennedy School. In his 16 years of service, he has made four carrier-based deployments and one ground-based deployment to Iraq. Following graduation, he is scheduled to report to the Naval Operations staff in the Pentagon to develop and execute Navy network and cybersecurity policy. Matthew Noyes studies international security policy and is a senior associate with the cybersecurity practice at Good Harbor Consulting. Prior to attending the Harvard Kennedy School, he served for five years as an infantry officer in the US army serving multiple tours in Iraq. Following graduation he plans to continue working on cybersecurity issues. He has a degree in Computer Science and Applied Computational Mathematics from the University of Washington. On the Use of Offensive Cyber Capabilities, A policy analysis on offensive US Cyber Policy, p. pdf]

Some, but not all, cyber actions are directed towards accomplishing strategic objectives; these actions are cyber operations. We follow the JP 1-2 definition of objective as “The clearly defined, decisive, and attainable goal toward which every operation is directed.” Cyber operations pose a much graver security dilemma than mere actions, because they indicate a sustained and dedicated campaign and the presence of an organized adversary. Thus, policy for engaging in, or responding to, cyber operations must be different than engaging in or responding to mere cyber actions. Determining that a particular observed cyber action is part of a cyber operation can be difficult, but can still be achieved through examining the characteristics of various cyber actions to determine whether they are a part of a sustained campaign or not. Identifying a cyber operation is simpler than divining intent**,** because it only requires determining that there exists a goal and a dedicated campaign to achieve it. It does not require determining what that goal is or who is attempting to achieve it. Advanced Persistent Threats (APTs)29 are one common example of observed actors engaging in cyber operations. Their activities are typically identified as operations before the precise intent of the operation is determined. 28 (Brito & Watkins, 2012) 29 An APT is an organization with the capability and the intent to persistently and effectively conduct offensive cyber operations against a specific targeted organization. 21 The objective of an operation can be offensive, defensive, or informational in nature. Offensive objectives are those seeking to coerce rival action, impose harm, or degrade rival capabilities. Defensive objectives are those seeking to secure one’s own systems, and preserve freedom of operation. Informational objectives seek either to access or to expose information that is not generally, or publically, available. There exists some overlap between these three categories. For example, one may degrade rival capabilities as part of a counter-attack, giving an operation both an offensive and defensive characteristic. However, these categories are still useful for characterizing external cyber operations based on the nature of the objectives sought. Determining which of the three categories the objective of an observed cyber operation fits into requires significant analysis to further define intent and may not be readily apparent. However, we believe that it is often possible to determine the type of objectives a cyber operation is pursuing through its effects and design, and policy responses can be tailored accordingly. Offensive external cyber operations pose the most severe policy problems, but defensive external cyber operations, such as counter-attacks, also require the attention of policy makers, and may be an area for early progress in international cyber norm setting and policy making.

### 2nc contextual violations

#### There is a distinction between detention and force feeding – force feeding is a question of prisoners’ rights and has no bearing on detention power

**Bateman, 13** (Lauren, “Oral Argument Preview: Aamer v. Obama,” Lawfare, 10/17/13, <http://www.lawfareblog.com/2013/10/oral-argument-preview-aamer-v-obama/> //Red)

Merits Assuming the court has jurisdiction, can the detainees demonstrate their entitlement to preliminary injunctive relief? The answer turns on resolution of **a legal test**, **which balances the interests, private and public**, involved in the entry (or not) of an injunction against force-feeding. Here, the appellants’ position is two-fold: first, they say that JTF-GTMO’s force-feeding protocol does not advance a legitimate **penological interest**, as it must in order to pass legal muster; moreover, there is no legitimate interest in violating the detainees’ human rights (by force-feeding them) in order to prolong another legal violation (their indefinite detention at Guantanamo). It’s a double-whammy, that ultimately shakes out in favor of the detainees’ position. The government responds with precedent. Courts have, according to its brief, consistently held that the government has a legitimate interest in **involuntarily feeding hunger striking prisoners.** As for appellants’ complaints about their indefinite detention, or the pain of force-feeding, such “**assertions in no way undercut respondents’ legitimate interests in preserving petitioners’ lives, safeguarding the health of all detainees, and maintaining order** and safety at Guantanamo Bay.” The government urges, then, that “the balance of harms and public interest point in favor of preserving the health and safety of persons held in government custody, for whose welfare the public has assumed responsibility.”

#### They’re distinct questions

**Chong, 13** – editor of the Yale Law Journal (“Government Files Response in Aamer v. Obama,” Lawfare, 9/10/13, <http://www.lawfareblog.com/2013/09/government-files-response-in-aamer-v-obama/> //Red)

First, the courts have repeatedly held that the government has a “legitimate interest in providing life-saving nutritional and medical care in order to preserve the life and prevent suicidal acts of **individuals in its care and custody.**” Although the detainees attempt to distinguish their case on the grounds it involves indefinite detention, the government’s “legitimate interests in preserving life, preventing suicide, and enforcing prison security and discipline **are in no way dependent on the length or status of petitioners’ detention.**” The detainees’ separate claim that involuntary feeding is painful, degrading and unethical is, according to the government, both “incorrect” and without bearing on the government’s legitimate interest in keeping detainees alive. Nor is force-feeding out of step with international norms as articulated by the International Criminal Tribunal for the Former Yugoslavia and the European Court of Human Rights.

#### Detainee conditions are a separate question from detention power – at very least the plan also effects other forms of detention, means they’re extra t – that’s an independent voting issue

**Delery, 13** – Stuart F., Assistant Attorney General (“BRIEF FOR APPELLEES” IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, AAMER V OBAMA, <http://www.lawfareblog.com/wp-content/uploads/2013/09/2013-09-04-Aamer-v.-Obama-Appellee-Brief.pdf> //Red)

Under the Safley standard, courts “**must accord substantial deference to the professional judgment of prison administrators**, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them.” Overton v. Bazzetta, 539 U.S. 126, 132 (2003). **This is especially the case in the area of medical care.** See, e.g., Inmates of Allegheny Cnty. Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979) (stating that federal courts will “disavow any attempt to second-guess the propriety or adequacy of a particular course of treatment” chosen by prison doctors) (quotation marks omitted); Martinez v. Mancusi, 443 F.2d 921, 924 (2d Cir. 1970) (“Obviously, courts cannot go around secondguessing doctors.”). And such deference is particularly appropriate here, where the professional judgment being exercised is that of a military commander in charge of safety on a military base that holds numerous foreign enemy combatants. Courts have repeatedly recognized the government’s legitimate interest in providing life-saving nutritional and medical care in order to preserve the life and prevent suicidal acts of individuals in its care and custody. See generally In re Soliman, 134 F. Supp. 2d 1238, 1255-56 (N.D. Ala. 2001) (noting that that “Federal Courts generally have approved of force-feeding hunger striking inmates . . . State courts also have upheld the right to force-feed hunger-striking prisoners”), vacated as moot, 296 F.3d 1237 (11th Cir. 2002); Op. at 13, App. 154 (citing cases). For example, the Second Circuit has held that involuntary feeding is supported by “compelling governmental interests, such as the preservation of life, prevention of suicide, and enforcement of prison security, order, and discipline[.]” In re Grand Jury Subpoena, 150 F.3d 170 (2d Cir. 1998) (per curiam); see also Bezio v. Dorsey, 989 N.E.2d 942, 950 (N.Y. 2013) (“[T]here is virtually universal recognition among appellate courts that an inmate hunger strike can have a significant destabilizing impact on the institution[.]”). Finding no constitutional violation when a prison threatened to feed a fasting inmate involuntarily, the Eighth Circuit has recognized that “preservation of prisoners’ health is certainly a legitimate objective, and prison officials may take reasonable steps to accomplish this goal.” Garza v. Carlson, 877 F.2d 14, 17 (8th Cir. 1989). And the Seventh Circuit has concluded that “either prisoners don’t have such an interest [in committing suicide], or it is easily overridden.” Freeman v. Berge, 441 F.3d 543, 546 (7th Cir. 2006). The reasons for this, the court noted “are practical. . . . If prisoners were allowed to kill themselves, prisons would find it even more difficult than they do to maintain discipline, because of the effect of a suicide in agitating the other prisoners. Prison officials who let prisoners starve themselves to death would also expose themselves to lawsuits by the prisoners’ estates.” Id. at 547; see generally Al-Zahrani v. Rodriguez, 669 F.3d 315 (D.C. Cir. 2012) (damages lawsuit against government officials related to suicide of Guantanamo Bay detainees). The district court thus correctly concluded that petitioners have not shown a likelihood of success on the merits of their claim because the government has a legitimate interest in providing life-saving nutritional and medical care: “As his custodian, the United States cannot ‘allow’ any person held in custody to starve himself to death.” Op. at 13, App. 154. 2.a. **Petitioners attempt to distinguish their case as one involving** “**indefinite detention**,” Pet. Br. at 29-30; according to petitioners, “force-feeding to prolong such detention cannot serve any legitimate penological interest,” id. at 32; see also id. at 39 (“The indefinite nature of appellants’ detention distinguishes this case from a line of cases that have approved force-feeding of hunger-striking prisoners as reasonably related to the legitimate penological interest in maintaining prison security and discipline.”). **But respondents’ legitimate interests in preserving life, preventing suicide, and enforcing prison security and discipline are in no way dependent on the length or status of petitioners’ detention**—indeed, **if accepted, petitioners’ argument would bar prison administrators from preventing the suicide of any person with a life sentence.** Moreover, multiple courts have rejected challenges to involuntary feeding brought by prisoners who claimed they were subject to indefinite detention. See In re Grand Jury Subpoena, 150 F.3d at 171; In re Soliman, 134 F. Supp. 2d at 1245, 1258. In each case, the court concluded that the government had legitimate interests in preserving life and maintaining order and safety regardless of the status of the prisoner’s detention. See generally In re Soliman, 134 F. Supp. 2d at 1255 (“Federal Courts generally have approved of force-feeding hunger striking inmates, regardless of whether the person was a **convicted prisoner, a pre-trial detainee, or a person held pursuant to a civil contempt order.**”). The fact that petitioners are presently detained pursuant to the Authorization for the Use of Military Force, as informed by the laws of war, as opposed to a criminal conviction or authority, **is irrelevant to the question** whether respondents have a legitimate interest in administering life-saving nutrition and medical care to preserve petitioners’ health and life.

#### Topical affs – include prosecution and release, the plan isn’t

**Delery, 13** – Stuart F., Assistant Attorney General (“BRIEF FOR APPELLEES” IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, AAMER V OBAMA, <http://www.lawfareblog.com/wp-content/uploads/2013/09/2013-09-04-Aamer-v.-Obama-Appellee-Brief.pdf> //Red)

For the same reasons, the public interest lies with maintaining the status quo. The public interest surely lies in preserving the health and safety of persons held in government care and custody, for whose welfare the public has assumed responsibility, and in avoiding the threat to good order, and to the safety of detainees and military personnel alike, should hunger striking detainees be allowed to perish. See Op. at 14, App. 155 (“If an injunction were granted, Petitioners would be permitted to refuse food and endanger their lives and health, possibly to the point of death. This would be contrary to the Government’s duty to provide life-saving medical care to persons in custody and would undermine the security and safety of the Guantanamo facility and the detainees housed there.”). While petitioners assert that “[t]he Nation’s best interest lies in its government . . . **ending indefinite detention** at Guantánamo Bay by either prosecuting those detainees who should be prosecuted or releasing those who have been cleared for release,” Pet. Br. at 46, **the relief they seek in the motion at issue is not their prosecution or release**, but is instead an order that would preclude the government from providing petitioners with life-saving nutritional and medical care that prevents them from committing suicide by starvation while in the government’s custody. There is no public interest in such an outcome. Given the potentially dire consequences that could flow from granting petitioners’ motion, the balance of harms and the public interest clearly weigh against the relief petitioners seek.

### at: framers intent

#### Framers intent is silly—use the text provided to discern the best standard, not their feelings

**Weaver, 7** (Aaron, PhD candidate in politics and society, “An Introduction to Original Intent.” Fall (Baylor University: J.M. Dawson Institute of Church-State Studies): 1-9. http://www.thebigdaddyweave.com/BDWFiles/originalism.pdf)

Discovering the “original intent” behind the religion clauses of the First Amendment is much more difficult than Edwin Meese, Antonin Scalia or any other 21 Ibid, originalist wants to admit. Contrary to the revisionist history being pushed by originalists who desire extensive government accommodation of religion, the founders did not always agree with one another. We simply can not determine with sufficient accuracy the collective intent of the Founding Fathers and the Framers of the Free Exercise Clause and the Establishment Clause

of the First Amendment. Those scholars in search of “original intent” have returned with strikingly inconsistent accounts of original intent. Thus, the originalism of Scalia, Meese, and Rehnquist is ambiguous at best and downright dishonest at worst. We do not know nor can we be expected to accurately determine the intent or understanding of what the First Amendment meant to each person who cast their vote. After all, delegates to the Constitutional Convention were voting on the text of the First Amendment, not Madison’s writings or the private correspondence of the Framers. The text of the First Amendment reigns supreme. Authorial intent must take a backseat to the actual text. Justices should examine the text first and scour it for as much meaning as it will generate before turning to extrinsic evidence of intent. However, original intent is hardly irrelevant but simply subordinate to the text. Extrinsic evidence does not control the text. The text controls the text.