## 1NC

**1**

**interpretation**

**War powers authority for detention is explicitly limited to detaining enemy combatants**

**Glazier**, Associate Professor at Loyola Law School in Los Angeles, California, **2006**. (David, Boston University International Law Journal, Spring, 2006, 24 B.U. Int'l L.J. 55, FULL AND FAIR BY WHAT MEASURE?: IDENTIFYING THE INTERNATIONAL LAW REGULATING MILITARY COMMISSION PROCEDURE, l/n)

President Bush's decision to consider the terrorist attacks of September 11, 2001, as an act of war has significant legal ramifications. Endorsed by Congress in the Authorization for the Use of Military Force ("AUMF"), [n1](http://www.lexisnexis.com.ezp1.lib.umn.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371143683321&returnToKey=20_T17601046724&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.13051.626107591917#n1) this paradigm shift away from treating terrorism as a crime to treating terrorism as an armed conflict allows the United States to exercise "fundamental incidents of waging war." [n2](http://www.lexisnexis.com.ezp1.lib.umn.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371143683321&returnToKey=20_T17601046724&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.13051.626107591917#n2) **Among** these **fundamental war powers are the authorities to detain enemy personnel for the duration of hostilities, to subject law of war violators to trials in military tribunals, and to exercise subject matter jurisdiction over the full scope of the law of war, rather than over only those offenses defined in U.S. criminal statutes.** [n3](http://www.lexisnexis.com.ezp1.lib.umn.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1371143683321&returnToKey=20_T17601046724&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.13051.626107591917#n3)

**indefinite detention is the process of detaining persons**

**US LEGAL 13** [last modified, US Legal Forms Inc., Indefinite Detention Law and Legal Definition http://definitions.uslegal.com/i/indefinite-detention/]

**Indefinite detention is the practice of detaining an arrested person by a national government or law enforcement agency without a trial.** It may be made by the home country or by a foreign nation. Indefinite detention is a controversial practice, especially in situations where the detention is by a foreign nation. It is controversial because it seems to violate many national and international laws. It also violates human rights laws. **Indefinite detention is seen mainly in cases of suspected terrorists who are indefinitely detained.** The Law Lords, Britain’s highest court, have held that the indefinite detention of foreign terrorism suspects is incompatible with the Human Rights Act and the European Convention on Human Rights. [Human Rights Watch] In the U.S., indefinite detention has been used to hold terror suspects. The case relating to the indefinite detention of Jose Padilla is one of the most highly publicized cases of indefinite detention in the U.S. In the U.S., indefinite detention is a highly controversial matter and is currently under review. Organizations such as International Red Cross and FIDH are of the opinion that U.S. detention of prisoners at Guantanamo Bay is not based on legal grounds. However, the American Civil Liberties Union is of the view that indefinite detention is permitted pursuant to section 412 of the USA Patriot Act.

**“Substantially” means the plan must be across the board**

**Anderson et al, 2005**[Brian Anderson, Becky Collins, Barbara Van Haren & Nissan Bar-Lev, WCASS Research / Special Projects Committee\* Report on: A Conceptual Framework for Developing a 504 School District Policy, http://www.specialed.us/issues-504policy/504.htm]

**A substantial limitation is a significant restriction** as to the condition, manner, or duration **under which an individual can perform a particular major life activity** as **compared** **to** **the** condition, manner, or duration under which the **average person in the general population** can perform that same major life activity.¶ The 504 regulation does not define substantial limitation, and the regulation gives discretion to schools to decide what substantial limitation is. The key here is to be consistent internally and to be consistent with pertinent court decisions.¶ **The issue “Does it substantially limit** the major life activity?” **was clarified by the US Supreme Court** decision on January 8th, 2002 , “Toyota v. Williams”. In this labor related case, **the Supreme Court noted that to meet the “substantially limit” definition**, the **disability must occur across the board** **in multiple environments**, not only in one environment or one setting. The implications for school related 504 eligibility decisions are clear: The disability in question must be manifested in all facets of the student’s life, not only in school.

**Violation: the aff limits invasive body searches, not the practice of detention AND they only affect a subset of detainees**

**Vote neg**

**limits and ground- infinite things we could do to prisoners- ban waterboarding, ban searches, ban solitary confinement- independnetly tiny subsets moot neg ground and allow infinite affs**

**Precision—they render “authority” meaningless on the legal topic- precision key to predictable division of ground**

**Extra topicality is a voter-- proves the resolution is insufficient and makes it a no cost option**

**2**

#### The Executive Branch of the United States should stop invasive body searches that constitute a suspension of Habeus Corpus for Guantanamo prisoners and announce publically that this is administration policy.

**CP solves- functional limits create accountability and don’t link to politics**

**Michaels 11** (Jon, Professor, UCLA School of Law, “The (Willingly) Fettered Executive: Presidential Spinoffs in National Security Domains and Beyond,” *Virginia Law Review,* <http://www.virginialawreview.org/content/pdfs/97/801.pdf>)

These are revealing **case studies**, weighty in their own right and interesting complements to one another. They **give us insight into how** these strategically **important, but largely unknown, responsibilities are administered.** They show how **the Executive, rather than the** Executive’s **usual rivals—Congress and the courts—can constrain public administration**, through mechanisms within the administrative state and outside of it. And, they suggest why **the Executive might welcome those constraints (and possibly others as well)**. The studies bring into focus a new template, one with significant descriptive attributes and predictive power. They reveal an underappreciated phenomenon **where** (1) **legal constraints and political accountability checks over administrative responsibilities are** disabled**, inapplicable, or dangerous;** (2) the Executive seems surprisingly hamstrung by virtue of the absence of constraints; and (3) **the Executive appears to take steps to impose an alternative regime of administrative discipline to better carry out the responsibilities in question**. Combined, the studies reveal two alternative paths **to compensate for the lack of conventional accountability assurances.** With In-Q-Tel, **the Executive uses an external institutional redesign** seemingly **to insulate** the technology incubation process **from perverse political pressures** and to better align principal-agent interests. With CFIUS, **the President employs an internal institutional redesign with the apparent effect of limiting White House control, both for the good of the parties engaged** in the foreign-investment deal **and in service of the President’s larger foreign-policy goals.** Taken in tandem, In-Q-Tel and CFIUS present a **challenge** to **the dominant view of the Executive as power-aggrandizing.** **Equally important, however, is the fact that the acts and mechanisms of self-constraint are not obvious or celebrated. The Executive’s subtlety in these domains thus itself serves as testament to the durability and primacy of the dominant understanding.**

**solves detention**

**Zheng 12**

(Henry Zheng, “NDAA Terrorism Law: Obama and His Unchecked Power Grab” 2012, <http://www.policymic.com/articles/14856/ndaa-terrorism-law-obama-and-his-unchecked-power-grab>, KB)

Holder's response to the criticism is, "There is, quite simply, no inherent contradiction between using military commissions in appropriate cases while still prosecuting other terrorists in civilian courts. Without question, there are differences between these systems that must be – and will continue to be – weighed carefully. Such **decisions about how to prosecute suspected terrorists are core Executive Branch functions." ¶** Essentially, Holder is saying that **the power to determine suspects who will be tried in a normal civilian court or a military tribunal still lies with the president and those under his authority, not Congress or the Supreme Court.**

**restrictions cause adversaries to doubt the credibility of our threats – causes nuclear escalation**

Matthew **Waxman** 8/25/**13**, Professor of Law @ Columbia and Adjunct Senior Fellow for Law and Foreign Policy @ CFR, “The Constitutional Power to Threaten War,” Forthcoming in Yale Law Journal, vol. 123, August 25, 2013, SSRN

A claim previously advanced from a presidentialist perspective is that **stronger¶** legislative **checks on war powers is harmful to coercive and deterrent strategies**, **because¶ it establishes easily-visible impediments to the President’s authority to follow through on¶ threats.** This was a common policy argument during the War Powers Resolution debates¶ in the early 1970s. Eugene Rostow, an advocate inside and outside the government for¶ executive primacy, remarked during consideration of legislative drafts that **any** serious**¶ restrictions on presidential use of force would mean in practice that “no President could¶ make a credible threat to use force as an instrument of deterrent diplomacy, even to head¶ off explosive confrontations**.”178 He continued:¶ In the tense and cautious diplomacy of our present relations with the Soviet¶ Union, as they have developed over the last twenty-five years, **the authority of the¶ President to set clear** and silent **limits** in advance **is** perhaps **the most important of**¶ **all the powers in our constitutional armory** **to prevent confrontations that could¶ carry nuclear implications. …¶** [I]t is the diplomatic power the President needs most under the¶ circumstance of modern life—**the power to make a credible threat to use force in¶ order to prevent a confrontation which might escalate**.179¶ In his veto statement on the War Powers Resolution, President Nixon echoed these¶ concerns, arguing that the law would undermine the credibility of U.S. deterrent and¶ coercive threats in the eyes of both adversaries and allies – they would know that¶ presidential authority to use force would expire after 60 days, so absent strong¶ congressional support they could assume U.S. withdrawal at that point.180 In short, those¶ who oppose tying the president’s hands with mandatory congressional authorization¶ requirements to use force sometimes argue that doing so incidentally and dangerously ties¶ his hands in threatening it. A critical assumption here is that **presidential flexibility**,¶ preserved in legal doctrine, **enhances the credibility of presidential threats to escalate**

**3**

**CIR passes now—new Obama strategy**

Brian **Bennett** and Christi Parsons, “Obama Softens Tone on Immigration Reform,” LOS ANGELES TIMES, 10—24—**13**, [www.latimes.com/nation/la-na-immigration-obama-20131025,0,6755968.story#axzz2ikONvPvJ](http://www.latimes.com/nation/la-na-immigration-obama-20131025,0,6755968.story#axzz2ikONvPvJ)

After months of insisting the House should take up the comprehensive immigration bill that passed the Senate in June, President **Obama changed tactics** Thursday **and said he might consider GOP proposals to overhaul separate parts** of the immigration system. The White House is hoping that public anger at the 16-day government shutdown has so badly damaged **the GOP** that House Republican leaders **will consider immigration** reform as a way **to improve their popularity** with moderate voters. Obama's aides also are intent on showing **the president is willing to compromise**, partly **to counter** GOP **charges** that **he was inflexible** during the bitter shutdown standoff. In remarks at the White House, Obama hinted that he was no longer tied to the Senate bill, the elaborate product of months of intense bipartisan negotiations, to achieve what he has called a major priority for his second term. **Obama** instead signaled that he **might consider** a package of **smaller bills**, if necessary, **as long as they provide a path to citizenship** for the estimated 11 million people in the country without legal status. "If House Republicans have new and different additional ideas on how we should move forward, then we want to hear them. I'll be listening," Obama told several dozen pro-reform activists from labor, business and religious groups. White House spokesman Jay Carney echoed the shift, telling reporters **there are "a variety of ways** that **you can reach the ultimate goal**" **of a bill** that **Obama could sign into law**. "The House's approach will be up to the House," Carney said. "There is a comprehensive bill the House Democrats have put together that is similar to the Senate bill and reflects the president's principles. But the means by which we arrive at our destination is in some ways of course up to the lawmakers who control the houses of Congress." The White House effort to resuscitate a bill that seemed all but dead in the House before the shutdown still faces steep and perhaps insurmountable odds. But **the jockeying** Thursday **raised** at least some **hope** that **compromise remains possible**. "I hope President Obama meant what he said today about listening to new and different ideas presented by House Republicans," House Judiciary Committee Chairman Robert W. Goodlatte (R-Va.) said in a statement. "**The president should work with Congress**, including House Republicans, **to achieve** immigration **reform**, and not against us." In recent weeks, **GOP leaders have worked** behind the scenes **to craft** legislative **proposals that might pass muster** with rank-and-file Republicans and — if joined with a legalization program — could appeal to the White House. Majority Leader Eric Cantor and other House Republicans have met in small groups to write bills that would change parts of the immigration system. GOP **proposals include** adding **high-tech visas**, revamping farm and **low-skilled immigrant** labor **programs, and** ramping up **border security**. "**I expect us to move forward this year** in trying to address reform and what is broken about our system," Cantor said on the House floor Wednesday.

**Defending against court orders costs capital**

Robert J. Pushaw, Professor, Law, Pepperdine University, “Defending Deference: A Response to Professors Epstein and Wells,” MISSOURI LAW REVIEW V. 59, 2004, LN.

More recently, **the Court** denied President Truman's claim of implied Article II power to unilaterally seize and operate domestic steel mills to ensure production of arms for the Korean War n51 and **invalidated** President **Bush's indefinite detention of suspected terrorists**. n52 The Court apparently concluded that the wars against Korea and terrorism posed less immediate and serious threats, and that in any event both **Presidents had gone constitutionally overboard in their responses without specific congressional authorization**. Left unsaid was that Truman in 1952 and **Bush in 2004 lacked the popularity and political capital to disregard the Court's orders**. n53

**Implementation guarantees the link—translating decisions into action is highly politicized**

Charles A. **Johnson**, Professor of Political Science @ Texas A&M University, and Bradley C. Canon, Professor of Political Science @ University of Kentucky, JUDICIAL POLICIES: IMPLEMENTATION AND IMPACT, 19**99**, p.3-4

**Political actors and institutions who follow through on these decisions make the judicial policy**. Certainly, the judges who enforced desegregation in southern school districts or busing decisions anywhere were subject to political pressures from a variety of sources. Similar pressures affected school board decisions regarding the role of religion in schools. **Even presidential politics may become intertwined with judicial policies, as did Richard Nixon's 1968 "law and order" presidential campaign** criticizing the Supreme Court's criminal justice decisions or the explosive issue of abortion in the 1980 presidential election. **Like the Congress, the Supreme Court and lower courts must rely on others to translate policy into action. And like the processes of formulating legislative, executive, and judicial policies, the process of translating those decisions into action is often a political one subject to a variety of pressures from a variety of political actors in the system.**

**Capital key**

Laura **Matthews**, “Immigration Reform Bill: ‘I’m Going to Push to Call a Vote,’ Says Obama,” INTERNATIONAL BUSINESS TIMES, **10—16**—13,

[www.ibtimes.com/2013-immigration-reform-bill-im-going-push-call-vote-says-obama-1429220](http://www.ibtimes.com/2013-immigration-reform-bill-im-going-push-call-vote-says-obama-1429220)

When Congress finally passes a bipartisan bill that kicks the fiscal battles over to early next year, the spotlight could return to comprehensive immigration reform before 2013 ends. At least that’s the hope of President Barack Obama and his fellow Chicagoan Rep. Luis Gutierrez, D-Ill., chairman of the Immigration Task Force of the Congressional Hispanic Caucus and one of the most vocal advocates for immigration reform in the House of Representatives. “When we emerge from this crazy partisan eruption from the Republicans, **there will be a huge incentive for sensible Republicans who want to repair some of the damage they have done to themselves,” Gutierrez said in a statement. “Immigration reform remains the one issue popular with both Democratic and Republican voters on which the two parties can work together to deliver real, substantive solutions in the Congress this year.”** Reforming the status quo has consistently been favored by a majority of Americans. Earlier this year, at least two-thirds of Americans supported several major steps to make the system work better, according to a Gallup poll. Those steps include implementing an E-verify system for employers to check electronically the immigration status of would-be employees (85 percent), a path to citizenship for undocumented immigrants, (72 percent), an entry-exit check system to make sure people who enter the country then leave it (71 percent), more high-skilled visas (71 percent) and increased border security (68 percent). The Senate passed its version of a 2013 immigration reform bill in June that includes, but is not limited to, a pathway to citizenship for immigrants without documentation and doubling security on the southern border. But that measure has stalled in the House, where Republicans are adamant they will take a piecemeal approach. The momentum that lawmakers showed for reform has been sapped by the stalemate that that has shut down the government for 16 days and brought the U.S. to the brink of default. The Senate has agreed on Wednesday to a bipartisan solution to break the gridlock. When the shutdown and default threat is resolved (for a time), that’s when **Obama will renew his push** to get Congress to move on immigration reform. On Tuesday the president said **reform will become his top priority. “**Once that’s done, you know, the day after, I’m going to be pushing to say, call a vote on immigration reform,” Obama told Univision affiliate KMEX-TV in Los Angeles. “And if I have to join with other advocates and continue to speak out on that, and keep pushing, I’m going to do so because I think it’s really important for the country. And now is the time to do it.” The president pointed the finger at House Speaker John Boehner, R-Ohio, for not allowing the bill to be brought to the floor for a vote. Boehner had promised that the Senate’s bill would not be voted on unless a majority of the majority in the House supports it -- the same principle he was holding out for on the government shutdown before he gave in. “We had a very strong Democratic and Republican vote in the Senate,” Obama said. “The only thing right now that’s holding it back is, again, Speaker Boehner not willing to call the bill on the floor of the House of Representatives. So we’re going to have to get through this crisis that was unnecessary, that was created because of the obsession of a small faction of the Republican Party on the Affordable Care Act.” Republicans are opposing the Democratic view of immigration reform because of its inclusion of a 13-year path to citizenship for undocumented immigrants. They said this amounted to “amnesty.” Some Republicans prefer to give them legal resident status instead. Immigration advocates have also been urging Obama to use his executive authority to halt the more than 1,000 deportations taking place daily. Like the activists, Gutierrez said the government shutdown didn’t do anything to slow the number of daily deportations. Some Republicans who welcomed Sen. Ted Cruz’s filibuster over Obamacare because it shifted the focus from immigration. “If Ted [didn’t] spin the filibuster, if we don’t make this the focus, we had already heard what was coming,” Rep. Louie Gohmert, R-Texas, told Fox News on Tuesday. “As soon as we got beyond this summer, we were going to have an amnesty bill come to the floor. That’s what we would have been talking about. And that’s where the pivot would have been if we had not focused America on Obamacare.” Still, pro-immigration advocates are hopeful they can attain their goal soon. “**With more prodding from the president** and the American people,” Gutierrez said, “**we can get immigration reform legislation passed in the House and signed into law.”**

#### Immigration reform key to economy --- numerous reasons.

---Innovation ---Investment capital ---Aging workforce

**Huffington Post**, **2-7**-2013, Why Our Economy Demands Immigration Reform, p. http://www.huffingtonpost.com/jonathanmiller/immigration-reform-economy\_b\_2639092.html

When it comes to restoring strong, long-term growth in our nation's economy, there are few solutions more practical, bi-partisan, and urgent than immigration reform. Our current immigration system is rigid, outdated, and simply unable to keep up with demands of the new global marketplace. For our nation to thrive and transcend international competition in the 21st century economy, it is incumbent for us to build an immigration system that welcomes people who share our values, as well as the entrepreneurial spirit that has made our country great. No one can doubt that we are a nation whose foundation was built by immigrants. But did you know that more than 40 percent of today's Fortune 500 companies were founded by an immigrant, or a child of an immigrant? Or that more than 75 percent of all the patents received by the top ten U.S. universities in 2011 had an immigrant inventor? While we celebrate our nation's first immigrants every Thanksgiving -- and while many of us cherish the stories shared by our own family members who made the pilgrimage to our shores -- we too often forget that today, and every day, recent immigrants continue to play a vital role in the American economy. Unfortunately, far too often, our immigration policies drive too many foreign-born entrepreneurs and job creators away, even after we have trained them and given them degrees from American universities. This is not simply a matter of compassion or human interest. This is about the very survival of our economy, way of life, and continued global leadership. We must make it easier for foreign-born, U.S.-educated students to get visas. We must create a startup visa program for entrepreneurs and innovators who want to come to our country to start businesses and hire American workers, especially when they already have U.S. investors to back their ideas. We must be doing everything we can to keep that capital in the U.S., rather than handing the next great idea over to our competitors. Furthermore, with the enormous baby boomer generation set to retire, our current aging workforce simply cannot keep up with the demands. We need many more young workers, both in the high- and low-skilled areas of our economy. The U.S. government estimates that there are more than 3.5 million unfilled jobs in this country, even with high unemployment. Shortages are particularly high in industries with seasonal demands, like agriculture, landscaping, and hospitality. Many hotels and resorts across the country remain at half capacity, even during the busiest tourist seasons, simply because they cannot find enough workers to meet demands. We leave hundreds of millions of dollars in crops out in the fields because we can't hire enough workers to harvest them in time. Unfortunately, our system is not structured in a way that accounts for the ebb and flow of our labor needs. We need a more flexible visa allotment system, and we need to expand the number of employment-based visas that are issued each year. Right now, only 7 percent of all green cards are distributed for employment based reasons, which is clearly far too low.

**Economic collapse causes global nuclear war**

**Merlini,** Senior Fellow – Brookings, **11** [CesareMerlini, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs (IAI) in Rome. He served as IAI president from 1979 to 2001. Until 2009, he also occupied the position of executive vice chairman of the Council for the United States and Italy, which he co-founded in 1983. His areas of expertise include transatlantic relations, European integration and nuclear non-proliferation, with particular focus on nuclear science and technology.A Post-Secular World? DOI: 10.1080/00396338.2011.571015 Article Requests: Order Reprints : Request Permissions Published in: journal Survival, Volume 53, Issue 2 April 2011 , pages 117 - 130 Publication Frequency: 6 issues per year Download PDF Download PDF (~357 KB) View Related Articles To cite this Article: Merlini, Cesare 'A Post-Secular World?', Survival, 53:2, 117 – 130]

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional **conflict** between states, perhaps even**involving** the use of**nuclear weapons**.The crisis **might be triggered by a collapse of the global** economic and **financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace** and democracy**similar to** those of **the first**. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular rational approach would be sidestepped by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism

**4**

**Deference is high and adherence to political question doctrine is strict**

Curtis A. **Bradley**, Professor, Law, Duke University, “War Powers, Syria, and Non-Judicial Precedent,” Lawfare, 9—2—**13**,

[www.lawfareblog.com/2013/09/war-powers-syria-and-non-judicial-precedent/](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.

**Indefinite detention is a political question—the plan destroys the doctrine**

Laura **Pennell**, “The Guantanamo Gap: Can Foreign Nationals Obtain Redress for Prolonged Arbitrary Detention and Torture Suffered Outside the United States,” CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL v. 36, 20**06**, LN.

**Assuming there was a judicially cognizable remedy available to foreign national detainees, issues of justiciability present an additional barrier to recovery. The political question doctrine reflects concerns about keeping the federal judiciary from inappropriate involvement in** sensitive political issues that are best addressed by the political branches of government." 3 Under the political question doctrine, a federal court can decline to hear a case that presents such a nonjusticiable political question.214 The doctrine generally "excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch.'215 In addition, **the political question doctrine may also exclude cases when there is an "impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government;.., or the potentiality of embarrassment from multifarious pronouncements by various departments on one question. 2 6 Certainly, the detention of alien prisoners at the GBNB is a sensitive political issue** that is likely to have consequences for U.S. foreign relations. However, the Supreme Court has stated that, "it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance. 21 7 Nevertheless, the D.C. Circuit has warned, "the special needs of foreign affairs must stay our hand in the creation of damage remedies against military and foreign policy officials for allegedly unconstitutional treatment of foreign subjects causing injury abroad. '218 This warning applies to the situation in Guantanamo Bay and reflects the policy that courts should defer to the political branches in addressing problems best resolved by those branches, since the political question doctrine is "primarily a function of the separation of powers. ' 219 Arguably, the **decision to detain foreign nationals at the GBNB during the "war on terror" involves decisions made by the political and not judicial branches of government**. Indeed, Congress's passage of the AUMF and the President's subsequent Detention Order initiated "war on terror" and brought foreign nationals to the GBNB. 22° Furthermore, Article III of the Constitution, which defines the scope of judicial power, "provides no authority for policymaking in the realm of foreign relations or provision of national security. '22' Finally, it would be difficult for a court to award damages for detainees' alleged claims without "expressing lack of the respect due coordinate branches of government. 2 2

**Setting a precedent against the PQD spills over to climate change cases---litigants are turning to the Courts now and asking them to abrogate the PQD**

Laurence H. **Tribe** et al., Professor, Law, Harvard University, “Too Hot for Courts to Handle: Fuel Temperatures, Global Warming, and the Political Question Doctrone,” 1—**10**, <http://www.wlf.org/Upload/legalstudies/workingpaper/012910Tribe_WP.pdf>

Two sets of problems, one manifested at a microcosmic level and the other about as macrocosmic as imaginable, powerfully illustrate these propositions. Not coincidentally, both stem from **concerns about** temperature and its chemical and **climactic effects**, concerns playing an increasingly central role **in the American policy process**. As those concerns **have come to the fore**, **courts have** correspondingly **warmed to the idea of judicial intervention**, drawn by the siren song of making the world a better place and **fueled by the incentives for lawyers to convert public concern into private profit**. In both the fuel temperature and global warming cases, **litigants**, at times justifying their circumvention of representative democracy by pointing to the slow pace of policy reform, **have** **turned to the courts**. By donning the cloak of adjudication, they have found judges for whom the common law doctrines of unjust enrichment, consumer fraud, and nuisance appear to furnish constitutionally acceptable and pragmatically useful tools with which to manage temperature’s effects. Like the proverbial carpenter armed with a hammer to whom everything looks like a nail, those judges are wrong. **For** both retail gasoline and **global climate**, **the judicial application of common law principles provides a constitutionally deficient—and** **structurally unsound**—**mechanism for remedying temperature’s unwanted effects**. **It has been** **axiomatic** **throughout our constitutional history that there exist some questions beyond the proper reach of the judiciary**. In fact, the political question doctrine originates in no less august a case than Marbury v. Madison, where Chief Justice Marshall stated that “[q]uestions in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court.”1 Well over a century after that landmark ruling, the Supreme Court, in Baker v. Carr, famously announced six identifying characteristics of such nonjusticiable political questions, which, primarily as a “function of the separation of powers,” courts may not adjudicate.2 Of these six characteristics, the Court recently made clear that two are particularly important: (1) the presence of “a textually demonstrable constitutional commitment of the issue to a coordinate political department;” and (2) “a lack of judicially discoverable and manageable standards for resolving it.”3 The spectrum of nonjusticiable political questions in a sense spans the poles formed by these two principles. At one pole, **the Constitution’s specific textual commitments shield issues expressly reserved to the political branches from judicial interference**. At the other pole lie **matters** not necessarily reserved in so many words to one of the political branches but nonetheless institutionally **incapable of coherent and principled resolution by courts acting in a truly judicial capacity**; such matters **are protected from judicial meddling by the requirement that “judicial action must be governed by standard, by rule” and** by the correlative axiom that “**law pronounced by the courts must be principled, rational, and based upon reasoned distinctions**.”4 At a deeper level, however, the two poles collapse into one. The reason emerges if one considers issues that courts are asked to address involving novel problems the Constitution’s framers, farsighted though they were, could not have anticipated with sufficient specificity to entrust their resolution to Congress or to the Executive in haec verba. **A perfect exemplar** of such problems **is** the nest of puzzles posed by humaninduced **climate change**. **When matters of that character are taken to court** for resolution by judges, **what marks them as “political**” for purposes of the “political question doctrine” **is** not some problem-specific language but, rather, **the** **demonstrable intractability of those matters to principled resolution through lawsuits**. And one way to understand that intractability is to view it as itself marking the Constitution’s textual, albeit broadly couched, commitment of the questions presented to the processes we denominate “legislative” or “executive”—that is, to the pluralistic processes of legislation and treaty-making rather than to the principle-bound process of judicially resolving what Article III denominates “cases” and “controversies.” In other words, **the judicial unmanageability of an issue serves as** **powerful evidence that the Constitution’s text reserves that issue, even if broadly and implicitly, to the political branches**.5 It has become commonplace that **confusion and controversy have long distinguished the doctrine that determines**, as a basic matter of the Constitution’s separation of powers, **which questions are “political**” in the specific sense of falling outside the constitutional competence of courts and which are properly justiciable despite the “political” issues they may touch. **But that the principles in play have yet to be reduced to any generally accepted and readily applied formula** **cannot mean that courts are simply free to toss the separation of powers to the winds and plunge ahead in blissful disregard** **of the** **profoundly important principles that the political question doctrine embodies**. Unfortunately, that appears to be just what some courts have done in the two temperature-related cases—one involving hot fuels, the other a hot earth— that inspired this publication. In the first, a court allowed a claim about measuring fuels to proceed despite a constitutional provision specifically reserving the issue to Congress. In the second—a case in which the specific issue could not have been anticipated, much less expressly reserved, but in which the only imaginable solutions clearly lie beyond judicial competence—a court, rather than dismissing the case as it ought to have done, instead summarily dismissed the intractable obstacles to judicial management presented by climate change merely because it was familiar with the underlying cause of action. As this pair of bookend cases demonstrates, the political question doctrine is feeling heat from both directions.

**That crushes global coordination necessary to solve climate change**

Laurence H. **Tribe** et al., Professor, Law, Harvard University, “Too Hot for Courts to Handle: Fuel Temperatures, Global Warming, and the Political Question Doctrone,” 1—**10**, <http://www.wlf.org/Upload/legalstudies/workingpaper/012910Tribe_WP.pdf>

But that being said, if the Second Circuit was implying that such claims are justiciable in part because they are relatively costless, it was wrong again. **In the wake of** the recent **Copenhagen** climate negotiations, **America is at a crossroads** **regarding its energy policy**. At Copenhagen, **the world**—for the first time including both the United States and China—**took a tremulous first step towards a** **comprehensive and truly global solution to climate change**.44 **By securing** a modicum of **international consensus—albeit not yet with binding commitments**—President **Obama laid the foundation for what could** eventually **be a groundbreaking congressional overhaul of American energy policy**, an effort that will undoubtedly be shaped by considerations as obviously political as our energy independence from hostile and unreliable foreign regimes and that will both influence and be influenced by the delicate state of international climate negotiations.45 Against this backdrop, courts would be wise to heed the conclusion of one report that what “makes climate change such a difficult policy problem is that decisions made today can have significant, uncertain, and difficult to reverse consequences extending many years into the future."46 This observation is even more salient given that America—and the world—stand at the precipice of major systemic climate reform, if not in the coming year then in the coming decade. **It would be** **disastrous for climate policy** **if**, as at least one commentator has predicted,47 **courts were to “beat Congress to the punch**” **and begin to concoct common law “solutions” to climate change problems before the emergence of a legislative resolution**. **Not only does judicial action** in this field **require** **costly and irreversible technological change on the part of defendants, but** **the prior existence of an ad hoc mishmash of common law regimes** **will frustrate legislators’ attempts to design coherent and systematic marketbased solutions**.48 Indeed, both emissions trading regimes and carbon taxes seek to harness the fungibility of GHG emissions by creating incentives for reductions to take place where they are most efficient. But **if courts were to require reductions of randomly chosen defendants**—with no regard for whether they are efficient reducers— **they would** **inhibit the effective operation of legislatively-created, market-based regimes by prematurely and artificially constricting the size of the market**. And as one analyst succinctly put it before Congress, “[a]n insufficient number of participants will doom an emissions trading market.”49 There is no doubt that the “Copenhagen Accord only begins the battle” against climate change, as diplomats, bureaucrats, and legislators all now begin the lengthy struggle to turn that Accord’s audacious vision into concrete reality.50 But whatever one’s position in the debate between emissions trading and carbon taxes, or even in the debate over the extent or indeed the reality of anthropogenic climate change, one thing is clear: legislators, armed with the best economic and scientific analysis, and with the capability of binding, or at least strongly incentivizing, all involved parties, are the only ones constitutionally entitled to fight that battle. CONCLUSION Some prognosticators opine that the political question doctrine has fallen into disrepute and that it no longer constitutes a viable basis upon which to combat unconstitutional judicial overreaching.51 No doubt the standing doctrine could theoretically suffice to prevent some of the most audacious judicial sallies into the political thicket, as it might in the climate change case, where plaintiffs assert only undifferentiated and generalized causal chains from their chosen defendants to their alleged injuries. But **when courts** **lose sight of the important limitations that the political question doctrine independently imposes upon judicial power**–even where standing problems are at low ebb, as with the Motor Fuel case–**then** **constitutional governance**, and in turn the protection of individual rights and preservation of legal boundaries, **suffer**. The specter of two leading circuit courts manifestly losing their way in the equally real thicket of political question doctrine underscores the urgency, perhaps through the intervention of the Supreme Court, of restoring the checks and balances of our constitutional system by reinforcing rather than eroding the doctrine’s bulwark against judicial meddling in disputes either expressly entrusted by the Constitution to the political branches or so plainly immune to coherent judicial management as to be implicitly entrusted to political processes. **It is not only the climate of the globe that carries profound implications for our future;** **it is also the** **climate of the times and its implications for how we govern ourselves**.

**Warming causes extinction**

**Sify** 20**10** – Sydney newspaper citing Ove Hoegh-Guldberg, professor at University of Queensland and Director of the Global Change Institute, and John Bruno, associate professor of Marine Science at UNC (Sify News, “Could unbridled climate changes lead to human extinction?”, http://www.sify.com/news/could-unbridled-climate-changes-lead-to-human-extinction-news-international-kgtrOhdaahc.html, WEA)

The findings of the comprehensive report: **'The impact of climate change** on the world's marine ecosystems' **emerged from a synthesis of recent research on the world's oceans, carried out by two of the world's leading marine scientists.** One of the authors of the report is Ove Hoegh-Guldberg, professor at The University of Queensland and the director of its Global Change Institute (GCI). **'We may see sudden, unexpected changes that have serious ramifications** **for** the overall well-being of humans, **including the capacity of the planet to support people.** This is further **evidence that we are well on the way to** the next great **extinction** event,' says Hoegh-Guldberg. 'The findings have enormous implications for mankind, particularly **if the trend continues. The earth's ocean, which produces half of the oxygen we breathe and absorbs 30 per cent of** human-generated **carbon dioxide, is** equivalent to its heart and lungs. This study **shows** worrying **signs of ill-health**. It's as if the earth has been smoking two packs of cigarettes a day!,' he added. 'We are entering a period in which the ocean services upon which humanity depends are undergoing massive change and in some cases beginning to fail', he added. The 'fundamental and comprehensive' **changes to** marine life identified in the report **include rapidly warming and acidifying oceans, changes in water circulation and expansion of dead zones** within the ocean depths. These are driving major changes in marine ecosystems: **less** abundant coral **reefs**, sea grasses and **mangroves** (important **fish** nurseries); fewer, smaller fish; **a breakdown in food chains**; changes in the distribution of marine life; **and more** frequent **diseases and pests** among marine organisms. Study co-author John F Bruno, associate professor in marine science at The University of North Carolina, says **greenhouse gas emissions are modifying many physical** and geochemical **aspects** of the planet's oceans, **in ways 'unprecedented** in nearly a million years'. 'This is causing fundamental and comprehensive changes to the way marine ecosystems function,' Bruno warned, according to a GCI release. These findings were published in Science.

**Warming kills hundreds of millions – it threatens the poorest people in the world.**

**Doebbler 11**. Curtis, International Human Rights Lawyer. Two threats to our existence. Ahram Weekly. July 2011. http://weekly.ahram.org.eg/2011/1055/envrnmnt.htm

**Climate change is widely acknowledged to be the greatest threat facing humanity. It will lead to small island states disappearing from the face of the earth**, **serious global threats to our food and water supplies, and ultimately the death of hundreds of millions of the poorest people in the world over the course of this century**. **No other threat --** including war, nuclear disasters, rogue regimes, terrorism, or the fiscal irresponsibility of governments -- **is reliably predicted to cause so much harm to so many people on earth, and indeed to the earth itself.** The International Panel on Climate Change, which won the Nobel Prize for its evaluation of thousands of research studies to provide us accurate information on climate change, has predicted that under the current scenario of "business-as-usual", **temperatures could rise by as much as 10 degrees Celsius in some parts of the world. This would have horrendous consequences for the most vulnerable people in the world. Consequences that the past spokesman of 136 developing countries, Lumumba Diaping, described as the equivalent of sending hundreds of millions of Africans to the furnace.** Yet for more than two decades, states have failed to take adequate action to either prevent climate change or to deal with its consequences. A major reason for this is that many wealthy industrialised countries view climate change as at worst an inconvenience, or at best even a potential market condition from which they can profit at the expense of developing countries. Indeed, **history has shown them that because of their significantly higher levels of population they have grown rich and been able to enslave, exploit and marginalise their neighbours in developing countries. They continue in this vein.**

**Solvency**

**ONE—Turn, legitimacy**

**A. Plan guts it**

Ernesto J. **Sanchez**, “A Case Against Judicial Internationalism,” CONNECTICUT LAW REVIEW v. 38, December 20**05**, p. 216.

The fourth reason against an internationalist approach to judicial decisionmaking in cases with solely domestic implications involves the danger of becoming too concerned with international public opinion on specific American practices. Simply put, if the arguments the Roper amicus diplomats' briefs advanced -- that American courts should consider how foreign laws would approach a domestic issue for the sake of international approval -- becomes enshrined in law in one instance, it is possible that future judges will have license to do the same in other circumstances and in a manner that may more clearly conflict with established, and otherwise more definitely constitutional, American legal practice. In terms of **the** fifth and final argument against **judicial internationalism, the fact that unelected judges will be** the ones **doing so can only weaken the judiciary's legitimacy in the eyes of the American population, since that very legitimacy depends on "making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation**." 174

**B. Flips solvency**

**Hansford 06** (Thomas Hansford, Assistant Professor of Political Science, University of South Carolina and James Spriggs, Associate Professor of Political Science, University of California, Davis, “The Politics of Precedent on the U.S. Supreme Court,” p. 18-24)

Judges promote legitimacy because they recognize that it encourages acceptance of and compliance with their decisions (Gibson 1989; Mon¬dak 1990, 1994; Tyler and Mitchell 1994). In our view of Supreme Court decision making, the justices value legitimacy for instrumental reasons, namely, as a means to the end of producing efficacious policy (see Epstein and Knight 1998). As discussed more fully below, **court decisions are not self-executing** and thus **third parties must implement them before they have any real effects. Since legitimacy** encourages compliance, **it enhances the power of courts and facilitates their ability to cause legal and political change.** Landes and Posner (1976, 273) make this point when stating: "No matter how willful a judge is, he is likely to follow precedent to some extent, for if he did not the practice of decision according to precedent (stare decisis, the lawyers call it) would be undermined and the precedential significance of his own decisions thereby reduced." Justice Stevens (1983, 2) reiterates this point by noting that stare decisis "obvi¬ously enhances the institutional strength of the judiciary." The significance of institutional and decisional legitimacy follows from two well-known characteristics of the judiciary. While these features apply to all courts, we will discuss them in the context relevant for our purposes-the U.S. Supreme Court. First, unlike elected officials or bureaucrats, the justices are expected to provide neutral, legal justifica¬tions for their decisions (Friedman et al. 1981; Maltz 1988). One important element of this expectation is that the justices show respect for the Court's prior decisions (Powell 1990). A recent national survey, for instance, demonstrates that the American public expects the Court to decide based on legal factors (Scheb and Lyons 2001). Nearly eighty-five percent of respondents to this survey indicated that precedent should have some or a large impact on the justices' decisions. By contrast, over seventy-three percent of respondents thought that whether judges were Democrats or Republicans should have no influence on their decisions. As these data indicate, Americans overwhelmingly believe in the idea that judges should make decisions based on neutral, legal criteria. Second, **the Court lacks significant implementation powers and thus relies on its external reputation to encourage implementation of and compliance with its decisions**. Alexander Hamilton pointed this idea out in Federalist 78: "The judiciary on the contrary has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither Force nor Will, but merely judgment; and must ultimately depend upon the aid of the executive arm for the efficacy of its judgments." The basic idea is that the Court must rely on third parties to implement its policies, and a central way to promote compliance is through fostering institutional and decisional legitimacy (see Knight and Epstein 1996). **If the Court**, or a particular majority opinion, **is perceived as** somewhat **illegitimate, then** the **prospects for compliance may decrease.** The power of the Court, that is, rests on its "prestige to persuade" (Ginsburg 2004, 199).

**TWO—Turn, stripping**

**A. They cause**

David **Gordon**, senior fellow, Ludwig von Mises Institute, MISES DAILY, 11—4—**08**, <http://mises.org/daily/3185>)

So far, you may ask, what is original about that? Do not many other critics of the Court attack its at-times-bizarre interpretive methods? Quirk's originality rests in his taking literally, and emphasizing, a part of the Constitution that most writers ignore. According to Article III, Section 2, the jurisdiction of the Supreme Court lies almost totally up to Congress. The Court has original jurisdiction only in cases involving disputes among the states and in cases where foreign diplomats are a party. Its appellate jurisdiction is subject to whatever "rules and exceptions" Congress chooses to make. So far as lower federal courts are concerned, they stand completely at the mercy of Congress. If it wished to do so, Congress could abolish the lower federal courts altogether. Thus, **if Congress does not like the decision of the Court** in Roe v Wade and its successor cases, **it can take away the right of the Court to hear any cases on appeal** that involve abortion. True enough, that would still leave the decision on the books, and it would presumably be binding on other courts; but in practice, it might be difficult to sustain it. If a court decided to allow restrictions on Roe contrary to the mandate of the Supreme Court, this ruling could not then be appealed to that court for reversal. Congress might, by getting rid of the federal courts completely, leave abortion entirely in the hands of the state courts. In like fashion, of course, for other controversial areas. Quirk points out that until 1875, the lower federal courts did not have the right to hear appeals from state court decisions about federal law. By using its Article III powers, **Congress could radically reshape constitutional law**. One might at first think that Quirk has made a mistake. Is he not blowing out of proportion a passage that really deals only with setting up rules of procedure for the federal courts? History buffs will be aware of the famous case of ex parte McCardle (1868), in which the Reconstruction Congress withdrew the right of the Court to hear a case, while that very case was pending before the Court; but is not this use of Article III an aberration? Surely, like the famous Tenure of Office Act, this was an example of how extreme that Congress was, rather than a guide to sound constitutional practice. To those inclined to think so, the ruling of the Court in McCardle will come as a surprise. It fully recognized the right of Congress to withdraw its jurisdiction. The Court said, “We are not at liberty to inquire into the motives of the legislature. We can only examine its powers under the Constitution; and the power to make exceptions to the appellate jurisdiction of this court is given by express words… It is quite clear, therefore, that this court cannot proceed to pass judgment in this case, for it no longer has jurisdiction of the appeal; and the judicial duty is not less fully performed by declining ungranted jurisdiction than in exercising firmly that which the Constitution and the laws confer. (pp. 289–90) It is Quirk's great merit to show that **Congress's power to limit the federal courts is a recurring theme in American history**. Quirk is a Jeffersonian; and he points out that Jefferson and his followers feared the potential for abuse in federal judicial power and acted to curb it. The Federalists had secured the appointment of a number of Federalist judges in the Judiciary Act of 1801. The Republicans replied to the Judiciary Act of 1801 by repealing it in the Judiciary Act of 1802. The 1802 act repealed "federal question" jurisdiction. It stripped the new judges of their offices. (p. 178) Congressional power under Article III is far from a theoretical question. Congress has in fact acted to limit the federal courts in several notable instances. By the early 1930s, a majority of Congress had come to think that the courts often acted in an improperly antilabor way by issuing injunctions that forbade unions to strike. Employers who claimed that unions were a threat to their property did not have to go through the long and involved process of a civil suit. Once an injunction against a union had been issued, the court could instead hold the union in contempt and inflict civil and criminal penalties. Accordingly, in the Norris-LaGuardia Act (continually misspelled in the book), Congress, exercising its Article III authority, **took away the power of** federal **courts to issue injunctions in labor cases**. An interesting question, not discussed in the book, is why Franklin Roosevelt did not resort to this tactic in his disputes with the Court. Again, in the 1950s, there was a Congressional outcry against several Supreme Court decisions that were deemed unduly protective of the civil liberties of members of the Communist Party. Senator William Jenner introduced a bill to withdraw the appellate jurisdiction of the Court in such cases; and although the measure failed to pass, its constitutionality was not seriously challenged.[2] Opponents, such as Senator Jacob Javits of New York, claimed rather that the bill was unwise. One eminent law professor, Arthur J. Freund, who opposed the Jenner Bill, responded in this way when asked whether it was constitutional to limit the Supreme Court's jurisdiction: "You can't challenge the constitutionality of a constitutional provision" (p. 234). The famous Engel v. Vitale (1962) decision, which held recitation by a public school teacher of a prayer in class to be unconstitutional, and the failure of a proposed constitutional amendment to overturn it to gain sufficient votes, aroused Senator Jesse Helms in 1979 to propose a "stripper" bill, as this sort of legislation is called, but it also failed of passage. In a number of instances, though, **Congress has in fact stripped the federal courts of jurisdiction, and** several **such laws remain on the books today**. In recent years, a number of scholars have maintained that the Article III power of Congress is limited and that it cannot, e.g., bring it about that a constitutionally protected right is withdrawn from judicial scrutiny. Supporters of this position can appeal to the weighty authority of Justice Story, who thought that Congress was required to extend the full "judicial power" mentioned in the Constitution to the federal courts. Quirk successfully shows, though, that there is an extremely strong case that Congress does have the power to strip the federal courts of jurisdiction.

**B. Turns the aff**

Tom **Clarke**, Department of Political Science, Emory University, THE LIMITS OF JUDICIAL INDEPENDENCE, 20**10**, p. 161-162.

In this vein, students of the separation of powers have recognized that congressional hostility toward the Court may be an important component of the strategic interaction between the institutions. Noting confrontations between the branches – such as those discussed in Chapter 2 – as well as more regular patterns of interinstituional tension, these scholars have focused on congressional hostility in its role as an institutional threat to exercise power (Segal, Westerland, and Lindquist, Forthcoming; McNollgast 1995, Rosenberg 1992). That is, the focus on congressional “saber rattling” – through either committee hearings (Segal, Westerland, and Lindquist, Forthcoming) or even Court-curbing (Rosenberg 1992) – has been primarily concerned with the potential for Congress to use its constitutional powers to formally sanction the Court. For example, Friedman and Harvey (2003, 17) note, “[t]here are numerous weapons a sitting Congress can apply against a Supreme Court deemed to be recalcitrant, including jurisdiction stripping, budget cutting, Court packing, and even the impeachment of Supreme Court Justices.” One study has even briefly noted **the** possible **connection between institutional confrontations and the Court’s *legitimacy***. **“If…[Congress** and the President] **succeed in overriding the Court’s interpretation, the Court will certainly pay a policy** price…**The Court also may bear a cost in terms of its *legitimacy*. Every override of the Court’s interpretation will chip away at its legitimacy** even if only marginally. Given that the Justices’ ability to achieve their policy goals hinges on their legitimacy, **because they lack** the **power to enforce their decisions, any erosion of the Court’s legitimacy is a concern**.” (Epstein, Knight Martin 2001, 598)

### Advantage

#### 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.

**Terrorists will obtain nuclear weapons—multiple potential sources**

**Neely 13** (Meggaen, research intern for the Project on Nuclear Issues, 3-21-13, "Doubting Deterrence of Nuclear Terrorism" Center for Strategic and International Studies) csis.org/blog/doubting-deterrence-nuclear-terrorism

**The risk that terrorists will set off a nuclear weapon on U.S. soil is disconcertingly high.** While a terrorist organization may experience difficulty constructing nuclear weapons facilities, **there is significant concern that terrorists can obtain a nuclear weapon or nuclear materials.** The fear that **an actor could steal a nuclear weapon** or fissile material **and transport it to the U**nited **S**tates has long-existed. It takes a great amount of time and resources (including territory) to construct centrifuges and reactors to build a nuclear weapon from scratch. **Relatively easily-transportable nuclear weapons**, however, **present one opportunity to terrorists.** For example, **exercises similar to the recent Russian movement of nuclear weapons from munitions depots to storage sites may prove attractive targets. Loose nuclear materials pose a second opportunity. Terrorists could use them to create a crude nuclear weapon similar to the gun-type design of Little Boy. Its simplicity** – two subcritical masses of highly-enriched uranium – **may make it attractive to terrorists.** While such a weapon might not produce the immediate destruction seen at Hiroshima, the radioactive fall-out and psychological effects would still be damaging. These two opportunities for terrorists differ from concerns about a “dirty bomb,” which mixes radioactive material with conventional explosives.

**Nuke terror causes extinction—equals a 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.

#### All lives are infinitely valuable, the only ethical option is to maximize the number saved

Cummisky **96** (David, professor of philosophy at Bates, “Kantian Consequentialism”, p. 131)

Finally, even if one grants that saving two persons with dignity cannot outweigh and compensate for killing one—because dignity cannot be added and summed in this way—this point still does not justify deontological constraints. On the extreme interpretation, why would not killing one person be a stronger obligation than saving two persons? If I am concerned with the priceless dignity of each, it would seem that I may still save two; it is just that my reason cannot be that the two compensate for the loss of the one. Consider Hill's example of a priceless object: If I can save two of three priceless statutes only by destroying one, then I cannot claim that saving two makes up for the loss of the one. But similarly, the loss of the two is not outweighed by the one that was not destroyed. Indeed, even if dignity cannot be simply summed up, how is the extreme interpretation inconsistent with the idea that I should save as many priceless objects as possible? Even if two do not simply outweigh and thus compensate for the loss of the one, each is priceless; thus, I have good reason to save as many as I can. In short, it is not clear how the extreme interpretation justifies the ordinary killing/letting-die distinction or even how it conflicts with the conclusion that the more persons with dignity who are saved, the better.8

**This moral tunnel vision is complicit with the evil they criticize**

Jeffrey **Issac** (professor of political science at Indiana University) 20**02** Dissent, Spring, ebsco

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

**In a nuclear world we have to weigh consequences.**

Sissela **Bok** (Professor of Philosophy) 19**98** Applied Ethics and Ethical Theory, Ed. David Rosenthal and Fudlou Shehadi

The same argument can be made for Kant’s other formulations of the Categorical Imperative: “So act as to use humanity, both in your own person and in the person of every other, always at the same time as an end, never simply as a means”; and “So act as if you were always through actions a law-making member in a universal Kingdom of Ends.” **No one with a concern for humanity could** consistently **will to risk eliminating humanity** in the person of himself and every other **or to risk the death of all members in a universal Kingdom of Ends for the sake of justice. To risk their collective death for the sake of following one’s conscience would be,** as Rawls said, **“irrational, crazy.” And to say that one did not intend such a catastrophe, but** that one **merely failed to stop other persons from bringing it about would be beside the point when the end of the world was at stake. For although it is true that we cannot be held responsible for most of the wrongs that others commit,** the Latin maxim presents a case where **we would have to take such a responsibility seriously—perhaps to the point of** deceiving, bribing, **even killing an innocent person, in order that the world not perish.**

**Predictions are possible—it’s not all chaos and uncertainty**

**Levine 13** (Steve, Bernard L. Schwartz Fellow at the New America Foundation, 1/7/13, “The 14 rules for predicting future geopolitical events” Quartz) http://qz.com/40960/the-14-rules-for-predicting-future-geopolitical-events/

**Nations are eccentric. But they also have threads of repeated history through which we can discern what comes next. For five centuries**, since Ivan the Terrible, **for instance, Russia has been characterized by one-man rule, an exaggerated sense of identity, and an acceptance of often deadly cruelty toward individual citizens. Therefore, it is not surprising that those traits are the bricks and mortar of** Vladimir **Putin’s rule today. Many political scientists dismiss** the **detection of such trends as “deterministic.”** **Some insist that**, unlike in economics and statistics, **there is** as yet in fact **no useful algorithm for foreseeing events**—the only tool available to political forecasters is their own intuition. **But it is vapid to observe the world, its nations and peoples as an unfathomable mob. History is not a science—but neither is it pure chaos.** In an interview with Quartz last fall, statistician Nate Silver rejected the possibilityokhamf predicting geopolitics in the way that he forecasts US elections, and he has a point. Yet, to borrow his own phrase, **you can pick out the signal from the noise, and from that derive the likely direction if not the outcome of events.**

**Scenario planning based on linear predictions is both possible and necessary to avoid extinction**

**Kurasawa 4** (Professor of Sociology, York University of Toronto, Fuyuki, Constellations Volume 11, No 4, 2004).

Moreover, keeping in mind the sobering lessons of the past century cannot but make us wary about humankind’s supposedly unlimited ability for problemsolving or discovering solutions in time to avert calamities. In fact, the historical track-record of last-minute, technical ‘quick-fixes’ is hardly reassuring. What’s more, most of **the** serious **perils** that **we face today** (e.g**., nuclear waste, climate change**, global **terrorism, genocide and** civil **war) demand complex, sustained, long-term strategies of planning, coordination, and execution**. On the other hand, an examination of fatalism makes it readily apparent that **the idea that humankind is doomed from the outset puts off any attempt to minimize risks** for our successors, essentially **condemning them to face cataclysms unprepared. An a priori pessimism is also unsustainable** given the fact that **long-term preventive action has had (and will continue to have) appreciable beneficial effects**; the examples of **medical research**, the **welfare state, international humanitarian law**, as well as **strict environmental regulations** in some countries stand out among many others. The evaluative framework proposed above should not be restricted to the critique of misappropriations of farsightedness, since it can equally support public deliberation with a reconstructive intent, that is, democratic discussion and debate about a future that human beings would freely self-determine. Inverting Foucault’s Nietzschean metaphor, we can think of genealogies of the future that could perform a farsighted mapping out of the possible ways of organizing social life. They are, in other words, interventions into the present intended to facilitate global civil society’s participation in shaping the field of possibilities of what is to come. Once competing dystopian visions are filtered out on the basis of their analytical credibility, ethical commitments, and political underpinnings and consequences, groups and **individuals can assess** the remaining **legitimate catastrophic scenarios through** the lens of genealogical **mappings of the future.** Hence, **our first duty consists in addressing the present-day causes of eventual perils, ensuring** that**the paths we decide upon do not contract** the range of options available for our **posterity**.42 Just as importantly, the practice of genealogically inspired farsightedness nurtures the project of an autonomous future, one that is socially self-instituting. In so doing, we can acknowledge that **the future is a human creation instead of the product of metaphysical and extra-social forces** (god, **nature, destiny, etc**.), and **begin to reflect upon and deliberate about** the kind of **legacy we want to leave** for those who will follow us. **Participants in global civil society** can then **take** – and in many instances have already taken – a **further step by committing themselves to** socio-political **struggles forging a world order that**, aside from **not jeopardizing human and environmental survival**, is designed to rectify the sources of transnational injustice that will continue to inflict needless suffering upon future generations if left unchallenged.

**liberalism solves their biopower offense**

**Dickinson**, History Prof at UC Davis**, ‘4** (Edward, “Biopolitics, Fascism, Democracy: Reflections On Our Discourse Concerning 'Modernity’” Central European History, Vol 37, p 1-48)

In short, **the continuities between early twentieth-century biopolitical discourse and the practices of the welfare state in our own time are unmistakable**. Both are instances of the "disciplinary society" and of biopolitical, regulatory, social-engineering modernity, and they share that genealogy with more authoritarian states, including the National Socialist state, but also fascist Italy, for example. And it is certainly fruitful to view them from this very broad perspective. **But that analysis can easily become superficial and misleading, because it obfuscates the profoundly different strategic and local dynamics of power in** the **two kinds of regimes**. Clearly **the democratic welfare state is not only formally but also substantively quite different from totalitarianism**. Above all, again, **it has nowhere developed the fateful, radicalizing dynamic that characterized National Socialism** (or for that matter Stalinism), the psychotic logic that leads from economistic population management to mass murder. Again, there is always the potential for such a discursive regime to generate coercive policies. In those cases in which the regime of rights does not successfully produce "health," such a system can — and historically does — create compulsory programs to enforce it. But again, **there are political and policy potentials and constraints in such a structuring of biopolitics that are very different from those of National Socialist Germany. Democratic biopolitical regimes require, enable, and incite a degree of self-direction and participation that is functionally incompatible with authoritarian or totalitarian structures**. And **this pursuit of biopolitical ends through a regime of democratic citizenship does appear**, historically, **to have imposed increasingly narrow limits on coercive policies, and to have generated a "logic" or imperative of increasing liberalization**. Despite limitations imposed by political context and the slow pace of discursive change, I think this is the unmistakable message of the really very impressive waves of legislative and welfare reforms in the 1920s or the 1970s in Germany.90 Of course it is not yet clear whether this is an irreversible dynamic of such systems. Nevertheless, **such regimes are characterized by sufficient degrees of autonomy** (and of the potential for its expansion) **for sufficient numbers of people that I think it becomes useful to conceive of them as productive of a strategic configuration of power relations that might fruitfully be analyzed as a condition of "liberty**," just as much as they are productive of constraint, oppression, or manipulation. At the very least, **totalitarianism cannot be the sole orientation point for our understanding of biopolitics**, the only end point of the logic of social engineering. This notion is not at all at odds with the core of Foucauldian (and Peukertian) theory. Democratic welfare states are regimes of power/knowledge no less than early twentieth-century totalitarian states; these systems are not "opposites," in the sense that they are two alternative ways of organizing the same thing. But they are two very different ways of organizing it. The concept "power" should not be read as a universal stifling night of oppression, manipulation, and entrapment, in which all political and social orders are grey, are essentially or effectively "the same." Power is a set of social relations, in which individuals and groups have varying degrees of autonomy and effective subjectivity. And discourse is, as Foucault argued, "tactically polyvalent." **Discursive elements** (like the various elements of biopolitics) **can be combined in different ways to form parts of quite different strategies (like totalitarianism or the democratic welfare state);** they cannot be assigned to one place in a structure, but rather circulate. The varying possible constellations of power in modern societies create "multiple modernities," modern societies with quite radically differing potentials.91 Biopolitics: Who Is Doing What To Whom? This understanding of the democratic and totalitarian potentials of biopolitics at the level of the state needs to be underpinned by a reassessment of how biopolitical discourse operates in society at large, at the "prepolitical" level. I would like to try to offer here the beginnings of a reconceptualization of biopolitical modernity, one that focuses less on the machinations of technocrats and experts, and more on the different ways that biopolitical thinking circulated within German society more broadly. It is striking, then, that the new model of German modernity is even more relentlessly negative than the old Sonderweg model. In that older model, premodern elites were constantly triumphing over the democratic opposition. But at least there was an opposition; and in the long run, time was on the side of that opposition, which in fact embodied the historical movement of modern- ization. In the new model, there is virtually a biopolitical consensus.92 And that consensus is almost always fundamentally a nasty, oppressive thing, one that partakes in crucial ways of the essential quality of National Socialism. Everywhere biopolitics is intrusive, technocratic, top-down, constraining, limiting. Biopolitics is almost never conceived of— or at least discussed in any detail — as creating possibilities for people, as expanding the range of their choices, as empowering them, or indeed as doing anything positive for them at all. Of course, at the most simple-minded level, it seems to me that **an assessment of the potentials of modernity that ignores the ways in which biopolitics has made life tangibly better is somehow deeply flawed**. To give just one example, **infant mortality in Germany in 1900 was just over 20 percent**; or, in other words, one in five children died before reaching the age of one year. By 1913, it was 15 percent; **and by 1929** (when average real purchasing power was not significantly higher than in 1913) **it was only 9.7 percent**.93 **The expansion of infant health programs** — **an enormously ambitious, bureaucratic, medicalizing, and sometimes intrusive, social engineering project** — **had a great deal to do with that change. It would be bizarre to write a history of biopolitical modernity that ruled out an appreciation for how absolutely wonderful and astonishing this achievement — and any number of others like it — really was**. There was a reason for the "Machbarkeitswahn" of the early twentieth century: many marvelous things were in fact becoming machbar. In that sense, it is not really accurate to call it a " Wahn" (delusion, craziness) at all; **nor is it accurate to focus only on the "inevitable" frustration of "delusions" of power**. Even in the late 1920s, many social engineers could and did look with great satisfaction on the changes they genuinely had the power to accomplish.

**Traditional security studies incorrectly deflate threats –voting neg is necessary to reverse this trend**

**Schweller 4**

Randall L. Schweller, Associate Professor in the Department of Political Science at The Ohio State University, “Unanswered Threats A Neoclassical RealistTheory of Underbalancing,” International Security 29.2 (2004) 159-201, Muse

Despite the historical frequency of underbalancing, little has been written on the subject. Indeed, Geoffrey Blainey's memorable observation that for "every thousand pages published on the causes of wars there is less than one page directly on the causes of peace" could have been made with equal veracity about overreactions to threats as opposed to underreactions to them.92 Library **shelves are filled with books on the causes and dangers of exaggerating threats, ranging from studies of domestic politics to bureaucratic politics, to political psychology, to organization theory. By comparison, there have been few studies at any level of analysis or from any theoretical perspective that directly explain why states have with some, if not equal, regularity underestimated dangers to their survival. There may be some cognitive or normative bias at work here. Consider, for instance, that there is a commonly used word, paranoia, for the unwarranted fear that people are, in some way, "out to get you" or are planning to do oneharm. I suspect that just as many people are afflicted with the opposite psychosis: the delusion that everyone loves you when, in fact, they do not even like you. Yet, we do not have a familiar word for this phenomenon. Indeed, I am unaware of any word that describes this pathology (hubris and overconfidence come close, but they plainly define something other than what I have described). That noted, international relations theory does have a frequently used phrase for the pathology of states' underestimation of threats to their survival, the so-called Munich analogy.** The term is used, however, in a disparaging way by theorists to ridicule those who employ it. The central claim is that the naïveté associated with Munich and the outbreak of World War II has become an overused and inappropriate analogy because few leaders are as evil and unappeasable as Adolf Hitler. Thus, the analogy either mistakenly causes leaders [End Page 198] to adopt hawkish and overly competitive policies or is deliberately used by leaders to justify such policies and mislead the public. A more compelling explanation for the paucity of studies on underreactions to threats, however, is the tendency of theories to reflect contemporary issues as well as the desire of theorists and journals to provide society with policy- relevant theories that may help resolve or manage urgent security problems. Thus, born in the atomic age with its new balance of terror and an ongoing Cold War, the field of **security studies has naturally produced theories of and prescriptions for national security that have had little to say about—and are, in fact, heavily biased against warnings of—the dangers of underreacting to or underestimating threats. After all, the nuclear revolution was not about overkill but, as Thomas Schelling pointed out, speed of kill and mutual kill.93 Given the apocalyptic consequences of miscalculation, accidents, or inadvertent nuclear war, small wonder that theorists were more concerned about overreacting to threats than underresponding to them**. At a time when all of humankind could be wiped out in less than twenty-five minutes, theorists may be excused for stressing the benefits of caution under conditions of uncertainty and erring on the side of inferring from ambiguous actions overly benign assessments of the opponent's intentions. The overwhelming fear was that a crisis "might unleash forces of an essentially military nature that overwhelm the political process and bring on a war thatnobody wants. Many important conclusions about the risk of nuclear war, and thus about the political meaning of nuclear forces, rest on this fundamental idea."94 Now that the Cold War is over, we can begin to redress these biases in the literature. In that spirit, I have offered a domestic politics model to explain why threatened states often fail to adjust in a prudent and coherent way to dangerous changes in their strategic environment. The model fits nicely with recent realist studies on imperial under- and overstretch. Specifically, it is consistent with Fareed Zakaria's analysis of U.S. foreign policy from 1865 to 1889, when, he claims, the United States had the national power and opportunity to expand but failed to do so because it lacked sufficient state power (i.e., the state was weak relative to society).95 Zakaria claims that the United States did [End Page 199] not take advantage of opportunities in its environment to expand because it lacked the institutional state strength to harness resources from society that were needed to do so. I am making a similar argument with respect to balancing rather than expansion: incoherent, fragmented states are unwilling and unable to balance against potentially dangerous threats because elites view the domestic risks as too high, and they are unable to mobilize the required resources from a divided society. The arguments presented here also suggest that elite fragmentation and disagreement within a competitive political process, which Jack Snyder cites as an explanation for overexpansionist policies, are more likely to produce underbalancing than overbalancing behavior among threatened incoherent states.96 This is because a balancing strategy carries certain political costs and risks with few, if any, compensating short-term political gains, and because the strategic environment is always somewhat uncertain. Consequently, logrolling among fragmented elites within threatened states is more likely to generate overly cautious responses to threats than overreactions to them. This dynamic captures the underreaction of democratic states to the rise of Nazi Germany during the interwar period.97 In addition to elite fragmentation, I have suggested some basic domestic-level variables that regularly intervene to thwart balance of power predictions.

## 2NC

### T: Limits 2NC

#### big

Mukul **Sharma**, "Bagram, the Other Guantanamo," THE HINDU, 1--6--**10**, http://beta.thehindu.com/opinion/op-ed/article76282.ece, accessed 8-15-13.

As at Guantanamo, in the absence of judicial oversight the detentions in Bagram have been marked by torture and other kinds of ill-treatment of detenus. Agents of the Federal Bureau of Investigation (FBI) deployed in Afghanistan between late-2001 and the end of 2004 reported personally having observed military interrogators in Bagram and elsewhere employing stripping , sleep deprivation, threats of death or pain, threats against detenus’ family members, prolonged use of shackles, stress positions, hooding and blindfolding other than for transportation, use of loud music, use of strobe lights or darkness, extended isolation, forced cell extractions, use of and threats of use of dogs to induce fear, forcible shaving of hair for the purpose of humiliating detenus, holding detenus in an unregistered manner, sending them to other countries for “more aggressive” interrogation and threatening to take such action.

### ER: A2 “Object Fiat”

#### No link: Object of the resolution is “authority” not “war powers”--restricting authority requires reducing the permission to act, not the ability to act.

Taylor, 1996 (Ellen, 21 Del. J. Corp. L. 870 (1996), Hein Online)

The term authority is commonly thought of in the context of the law of agency, and the Restatement (Second) of Agency defines both power and authority.'89 Power refers to an agent's ability or capacity to produce a change in a legal relation (whether or not the principal approves of the change), and authority refers to the power given (permission granted) to the agent by the principal to affect the legal relations of the principal; the distinction is between what the agent can do and what the agent may do.

#### This is a core legal distinction

Rob Jenkins.—associate professor of English at Georgia Perim¶ 27-year veteran of higher education, as both a faculty member and an administrator April 3, 2012, 12:22 pm¶ How Much Do You Work? <http://chronicle.com/blogs/onhiring/author/rjenkins/page/5>. Gender edited

Anytime the President of the United States sends American servicemen and women into harm’s way, politicians and pundits are sure to argue over whether or not [s]he has the authority to do so. I’m not qualified to participate in that kind of constitutional debate. But I can offer the following observation: whether or not the President has the authority to deploy troops in a given situation, [s]he certainly has the power to do so. That’s because authority and power are not the same thing, even though many leaders fail to grasp the distinction. In particular, an alarming number of academic administrators these days don’t seem to understand the difference between exercising duly constituted authority and merely wielding power. Authority is essentially the capacity to carry out one’s duties and responsibilities. Faculty members have the authority to assign final grades, because doing so is one of their responsibilities. Likewise, department chairs have authority to evaluate faculty members, deans have authority to assign faculty lines, presidents have authority to determine budgets, and so on. For authority to be valid, it must be ceded, which is to say derived from something larger than itself. The officers of a college, for instance, typically derive their authority from elected or appointed boards. At an institution that truly embraces the principles of shared governance, other stakeholders are also ceded authority in certain areas by the properly constituted bylaws and policies of the institution–for example, the faculty’s authority over curricular issues. Even a college president does not have the authority, outside of the policies by which all are bound, to tell faculty members how to teach, how to conduct research, or what to write. However, this does not mean that presidents and other administrators do not sometimes take such authority upon themselves. They can do so, even if illegitimately, because of the enormous power they wield. Power is something quite different from authority. It tends to be seized rather than ceded. It is essentially the ability to force others to conform to one’s wishes, whether they want to or not, because of what might happen to them if they don’t. People with power can make other people’s lives miserable, prevent them from getting promotions and raises, perhaps cost them their jobs–even when such actions are not strictly within their properly ceded authority.

### ER: A2 “Theory—ER Bad”

#### Counterplan is legitimate –

#### 2. Inter-branch politics are crucial in the context of war powers – it's the reason restrictions exist – makes the counterplan educational and necessary ground

Jenkins 10 (David – Assistant Professor of Law, University of Copenhagen, “Judicial Review Under a British War Powers Act”, Vanderbilt Journal of Transnational Law, May, 43 Vand. J. Transnat'l L. 611, lexis)

In this pragmatic way, the Constitution attempts to balance the efficiency of centralized, executive military command with heightened democratic accountability through legislative debate, scrutiny, and approval. n28 Therefore, despite the Constitution's formal division of war powers between the executive and the legislature, disputes over these powers in the U.S. are usually resolved politically rather than judicially. n29 This constitutional arrangement implicitly acknowledges that both political branches possess certain institutional qualities suited to war-making. n30 These include the dispatch, decisiveness, and discretion of the executive with the open deliberation of the legislature and localized political accountability of its members, which are virtues that the slow, case specific, and electorally isolated courts do not possess. n31 The open, politically contestable allocation of [\*618] war powers under the Constitution not only permits differing and perhaps conflicting interpretations of the legal demarcations of branch authority but also accommodates differing normative preferences for determining which values and which branches are best-suited for war-making. n32 Furthermore, this system adapts over time in response to inter-branch dynamics and shifting value judgments that are themselves politically contingent. Thus, the American war powers model is an intrinsically political - not legal - process for adjusting and managing the different institutional capabilities of the legislative and executive branches to substantiate and reconcile accountability and efficiency concerns. A deeper understanding of why this might be so, despite the judiciary's power to invalidate even primary legislation, can inform further discussions in the United Kingdom about the desirability and advisability of putting the Crown's ancient war prerogative on a statutory footing.

#### 3. Process key to education

Schuck 99 (Peter H., Professor, Yale Law School, and Visiting Professor, New York Law School, Spring (“Delegation and Democracy” – Cardozo Law Review) http://www.constitution.org/ad\_state/schuck.htm)

God and the devil are in the details of policymaking, as they are in most other important things—and the details are to be found at the agency level. This would remain true, moreover, even if the nondelegation doctrine were revived and statutes were written with somewhat greater specificity, for many of the most significant impacts on members of the public would still be indeterminate until the agency grappled with and defined them. Finally, the agency is often the site in which public participation is most effective. This is not only because the details of the regulatory impacts are hammered out there. It is also because the agency is where the public can best educate the government about the true nature of the problem that Congress has tried to address. Only the interested parties, reacting to specific agency proposals for rules or other actions, possess (or have the incentives to ac-quire) the information necessary to identify, explicate, quantify, and evaluate the real-world consequences of these and alternative proposals. Even when Congress can identify the first-order effects of the laws that it enacts, these direct impacts seldom exhaust the laws’ policy consequences. Indeed, first-order effects of policies usually are less significant than the aggregate of more remote effects that ripple through a complex, interrelated, opaque society. When policies fail, it is usually not because the congressional purpose was misunderstood. More commonly, they fail because Congress did not fully appreciate how the details of policy implementation would confound its purpose. Often, however, this knowledge can only be gained through active public participation in the policymaking process at the agency level where these implementation issues are most clearly focused and the stakes in their correct resolution are highest.

#### 4. Neg flex – we need to test from all angles – agent ground is vital to fairness, particularly on this topic – most neg lit is about how restrictions are put in place, not whether they should be there

Fisher 3 (Louis – Senior Specialist in Separation of Powers, Congressional Research Service, The Library of Congress. Ph.D., New School for Social Research, “A Constitutional Structure for Foreign Affairs”, 2003, 19 Ga. St. U.L. Rev. 1059, lexis)

It is conventional, and I suppose convenient, to divide scholars on the war power and foreign affairs into "pro-congressionalists" and "propresidentialists." Their writings may seem to demonstrate a sympathy for one branch over another. However, scholarship is shallow if it merely latches itself onto one branch of government while shooting holes in the other. Analysis of the war power and foreign affairs demands a higher standard: recognizing institutional weaknesses along with institutional strengths, appreciating that the democratic process requires deliberation and collective action, and promoting policies that can endure rather than attempting short-term, unilateral solutions that fail. Moreover, the important point is not which branch has the political power to prevail. If that were the standard, we would always side with autocratic and even totalitarian regimes, or perhaps, in the current United States, an elected monarch. More fundamental to the discussion are the principles and procedures that support and sustain constitutional government.

### ER Solv: Announcement

#### All 2ac solvency deficits are solved by Obama publicly renouncing his legal authority - the distinction is key

Posner, 9/3 (eric,Eric Professor of Law at Chicago Law School. An editor of The Journal of Legal Studies, he has also published numerous articles and books on issues in international law, Slate Magazine, 9/3/13, http://www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/09/obama\_going\_to\_congress\_on\_syria\_he\_s\_actually\_strengthening\_the\_war\_powers.html)

President Obama’s surprise announcement that he will ask Congress for approval of a military attack on Syria is being hailed as a vindication of the rule of law and a revival of the central role of Congress in war-making, even by critics. But all of this is wrong. Far from breaking new legal ground, President Obama has reaffirmed the primacy of the executive in matters of war and peace. The war powers of the presidency remain as mighty as ever.¶ It would have been different if the president had announced that only Congress can authorize the use of military force, as dictated by the Constitution, which gives Congress alone the power to declare war. That would have been worthy of notice, a reversal of the ascendance of executive power over Congress. But the president said no such thing. He said: “I believe I have the authority to carry out this military action without specific congressional authorization.” Secretary of State John Kerry confirmed that the president “has the right to do that”—launch a military strike—“no matter what Congress does.”¶ Thus, the president believes that the law gives him the option to seek a congressional yes or to act on his own. He does not believe that he is bound to do the first. He has merely stated the law as countless other presidents and their lawyers have described it before him.

### ER Solv: A2 “Rollback—Top”

#### The neg gets durable fiat—it’s reciprocal with the aff

#### And executive orders have the force of law:

Oxford Dictionary of English 2010

(Oxford Reference, Georgetown Library)

executive order

▶ noun US (Law) a rule or order issued by the President to an executive branch of the government and having the force of law.

#### Executive orders are permanent

Duncan, Associate Professor of Law at Florida A&M, Winter 2010

(John C., “A Critical Consideration of Executive Orders,” 35 Vt. L. Rev. 333, Lexis)

The trajectory of the evolution of the executive power in the United States, as seen through the prism of the growing edifice of executive orders have become increasingly formal and permanent. The evolution of executive power in the United States has shifted executive orders from mere legislative interpretation to ancillary legislation. **Executive orders continue to influence subsequent presidents**. The elaboration of executive order promulgation, as an autopoietic process was necessary to the very existence of presidential power. That is, the mechanisms for formalizing executive orders have always existed in the executive power in a government whose legitimacy lives in written pronouncements treated as delicate, sacred, and worth protecting at all cost. **Part of this formalization is** a consequence of **the reverence for precedent**. Thus, **prior presidents influence future presidents**, less because future presidents wish to mimic their predecessors, but more **because future presidents act within an edifice their predecessors have already erected**. Thus, the growth and elaboration of an ever more robust structure of executive orders resembles an autopoietic process. n561

#### Creates a stable legal framework that constrains future presidents

Brecher, JD University of Michigan, December 2012

(Aaron, Cyberattacks and the Covert Action Statute, 111 Mich. L. Rev. 423, Lexis)

The executive might also issue the proposed order, even though it would limit her freedom in some ways, because of the possible benefits of **constraining future administrations** or preempting legislative intervention. n149 For example, in this context, an administration may choose to follow the finding and reporting requirements in order to convince Congress that legislative intervention is unnecessary for proper oversight. This is acceptable if the covert action regime is in fact adequate on its own. Moreover, if greater statutory control over cyberattacks is needed, the information shared with Congress may give Congress the tools and knowledge of the issue necessary to craft related legislation. n150 Additionally, while executive orders are hardly binding, **the inertia following adoption of an order may help constrain future administrations**, which may be more or less trustworthy than the current one. **Creating a presumption through an executive order** also **establishes a stable legal framework** for cyberattacks that allows law to follow policy in this new field, and permits decisionmakers to learn more about the nature of cyberoperations before passing detailed statutes that may result in unintended consequences.

### ER Solv: A2 “Signalling”

CP sends the most powerful signal

Zbigniew Brzezinski, national security advisor under U.S. President Jimmy Carter, 12/3/12, Obama's Moment, [www.foreignpolicy.com/articles/2012/12/03/obamas\_moment](http://www.foreignpolicy.com/articles/2012/12/03/obamas_moment) gender edited

In foreign affairs, the central challenge now facing President Barack Obama is how to regain some of the ground lost in recent years in shaping U.S. national security policy. Historically and politically, in America's system of separation of powers, it is the president who has the greatest leeway for decisive action in foreign affairs. He is viewed by the country as responsible for Americans' safety in an increasingly turbulent world. He is seen as the ultimate definer of the goals that the United States should pursue through its diplomacy, economic leverage, and, if need be, military compulsion. And the world at large sees him -- for better or for worse -- as the authentic voice of America.

To be sure, he is not a dictator. Congress has a voice. So does the public. And so do vested interests and foreign-policy lobbies. The congressional role in declaring war is especially important not when the United States is the victim of an attack, but when the United States is planning to wage war abroad. Because America is a democracy, public support for presidential foreign-policy decisions is essential. But no one in the government or outside it can match the president's authoritative voice when [s]he speaks and then decisively acts for America.

This is true even in the face of determined opposition. Even when some lobbies succeed in gaining congressional support for their particular foreign clients in defiance of the president, for instance, many congressional signatories still quietly convey to the White House their readiness to support the president if he stands firm for "the national interest." And a president who is willing to do so publicly, while skillfully cultivating friends and allies on Capitol Hill, can then establish such intimidating credibility that it is politically unwise to confront him. This is exactly what Obama needs to do now.

#### Threat of publicity and backlash ensures internal compliance – solves signaling advantages

Radsan and Murphy 11 (Afsheen – Professor of Law, William Mitchell College of Law, former assistant general counsel at the Central Intelligence Agency, “MEASURE TWICE, SHOOT ONCE: HIGHER CARE FOR CIA-TARGETED KILLING”, 2011, 11 U. Ill. L. Rev. 1201, lexis)

Notwithstanding the agency's reputation for playing fast and loose with the law, CIA officials have strong reasons to ensure compliance with IHL. One reason is that someday the CIA's targeted killings by drone, like other embarrassing "family jewels," will become public. n156 A stronger reason is that CIA officials must be acutely aware that, for many members of the United States and international public, targeted killings come close to prohibited acts of assassination. To stay on the safe side on controversial programs, CIA officials seek both political and legal cover. n157 From past lessons on other covert actions, CIA officials have learned to obtain presidential authorization in writing, to brief the oversight committees, and to obtain legal opinions. It is safe to bet that President Obama has blessed the CIA drone strikes; that the oversight committees have not been kept completely in the dark; that the CIA has developed internal procedures on targeted killing it hopes will withstand scrutiny; and that the agency has presented these procedures to the Justice Department's Office of Legal Counsel for approval. n158

Solves perception of unilateralism

Kaye, professor of law at UC-Irvine, Sept/Oct 2013

(David, “Stealth Multilateralism,” *Foreign Affairs*, Vol 92 Iss 5, Academic Search Premier)

The Obama administration has made use of nonbinding commitments to advance international nuclear policy, too. The Nuclear Security Summit that Obama convened in Washington in 2010, along with a follow-up meeting in Seoul in 2012, brought together dozens of world leaders who, instead of seeking to conclude a binding agreement, agreed to a communique, a work plan, and voluntary pledges. In a bilateral setting, Obama has also called for "negotiated cuts" in the United States' and Russia's nuclear arsenals, but given the Senate's likely resistance, the administration has not committed to a legally binding treaty, the traditional form for such agreements.

Indeed, nonbinding arrangements may now be the executive branch's preferred way of doing business. Consider the movement to regulate private military contractors. The United States is both the largest provider and the largest consumer of their services, and in the wake of alleged abuses by U.S. contractors in Afghanistan and Iraq, the UN began developing an agreement to regulate the field, a process that both the Bush and the Obama administrations (and the EU, also home to many such contractors) refused to support. But both participated in nonbinding efforts that have inoculated the United States against charges of unilateralism without the hassle of a treaty. In 2006, the Bush administration backed efforts organized by Switzerland that resulted in the International Code of Conduct for Private Security Service Providers, through which over 650 companies (including over 60 U.S. ones) have agreed to adhere to a long list of best practices.

Yet there are still times when the White House prefers a binding agreement, such as when it has to get another country to make legal changes. Even in these cases, however, recent administrations have often opted for something outside the usual treaty process, such as "sole executive agreements," which become effective on the president's signature and are limited to areas that fall under the president's constitutional authority. This method is typically bilateral, but the Obama administration used it to join the Anti-Counterfeiting Trade Agreement in 2011, generating some opposition in Congress. To pass free-trade compacts, such as the North American Free Trade Agreement, presidents have relied on "congressional-executive agreements," which, instead of requiring the consent of two-thirds of the Senate, can pass with a simple majority in both houses of Congress. These agreements are usually limited to trade deals, since the Senate, reluctant to allow the erosion of its power to approve treaties, would no doubt strongly resist any efforts to expand their use.

Self-restraint creates a credible signal

Eric Posner, Professor of Law, The University of Chicago Law School, and Adrian Vermeule, Professor of Law, Harvard Law School, 2007, The Credible Executive, 74 U. Chi. L. Rev. 865

Our aim in this Article is to identify this dilemma of credibility that afflicts the well-motivated executive and to propose mechanisms for ameliorating it. We focus on emergencies and national security but cast the analysis within a broader framework. Our basic claim is that the credibility dilemma can be addressed by executive signaling. Without any new constitutional amendments, statutes, or legislative action, law and executive practice already contain resources to allow a well-motivated executive to send a credible signal of his motivations, committing to use increased discretion in public-spirited ways. By tying policies to institutional mechanisms that impose heavier costs on ill-motivated actors than on well-motivated ones, the well-motivated executive can credibly signal his good intentions and thus persuade voters that his policies are those that voters would want if fully informed. We focus particularly on mechanisms of executive self-binding that send a signal of credibility by committing presidents to actions or policies that only a well-motivated president would adopt.

### ER Compet: A2 “Perm do Both”

**Doesn’t solve prez powers - congressional silence is key**

Bellia 2

[Patricia, Professor of Law @ Notre Dame, “Executive Power in Youngstown’s Shadows” Constitutional Commentary, , 19 Const. Commentary 87, Spring, Lexis]

To see the problems in giving dispositive weight to inferences from congressional action (or inaction), we need only examine the similarities between courts' approach to executive power questions and courts' approach to federal-state preemption questions. If a state law conflicts with a specific federal enactment, n287 or if Congress displaces the state law by occupying the field, n288 a court cannot give the state law effect. Similarly, if executive action conflicts with a specific congressional policy (reflected in a statute or, as Youngstown suggests, legislative history), or if Congress passes related measures not authorizing the presidential conduct, courts cannot give the executive action effect. n289 When Congress is silent, however, the state law will stand; when Congress is silent, the executive action will stand. This analysis makes much sense with respect to state governments with reserved powers, but it makes little sense with respect to an Executive Branch lacking such powers. **The combination of** congressional silence **and judicial inaction** has the **practical** effect of creating power. Courts' reluctance to face questions about the scope of the President's constitutional powers - express and implied - creates three other problems. First, **the implied** presidential power given **effect** by virtue ofcongressional silence **and judicial inaction** can solidify into a broader claim**. When the Executive exercises an "initiating"** or "concurrent" **power, it will tie that power to a textual provision or to a claim about the structure of the Constitution.** Congress's silence **as a practical matter** tends to validate theexecutive rationale, and the Executive **Branch** maythen claim a power not only to exercise the **disputed** authority in the face of congressional silence, but also **to exercise the disputed authority** inthe face of congressional opposition. In other words, a power that the Executive Branch claims is "implied" in the Constitution may soon become an "implied" and "plenary" one. Questions about presidential power to terminate treaties provide a  [\*151]  ready example. The Executive's claim that the President has the power to terminate a treaty - the power in controversy in Goldwater v. Carter, where Congress was silent - now takes a stronger form: that congressional efforts to curb the power are themselves unconstitutional. n290

### Flex: Coercion Works 2NC

#### credibility of threats is key

Matthew Waxman 8/25/13, Professor of Law @ Columbia and Adjunct Senior Fellow for Law and Foreign Policy @ CFR, “The Constitutional Power to Threaten War,” Forthcoming in Yale Law Journal, vol. 123, August 25, 2013, SSRN

Part II draws on several strands of political science literature to illuminate the¶ relationship between war powers law and threats of force. As a descriptive matter, the¶ swelling scope of the president’s practice in wielding threatened force largely tracks the¶ standard historical narrative of war powers shifting from Congress to the President.¶ Indeed, adding threats of force to that story might suggest that this shift in powers of war¶ and peace has been even *more* dramatic than usually supposed, at least in terms of how¶ formal congressional checks are exercised.¶ Part II also shows, however, that congressional checks and influence – even if not¶ formal legislative powers – operate more robustly and in different ways to shape strategic¶ decision-making than usually supposed in legal debates about war powers, and that these¶ checks and influence can enhance the potency of threatened force. This Article thus fits¶ into a broader scholarly debate now raging about the extent to which the modern¶ President is meaningfully constrained by law, and in what ways.20 Recent political¶ science scholarship suggests that Congress already exerts constraining influences on¶ presidential decisions to threaten force, even without resorting to binding legislative¶ actions.21 Moreover, when U.S. security strategy relies heavily on threats of force,¶ credibility of signals is paramount. Whereas it often used to be assumed that institutional¶ checks on executive discretion undermined democracies’ ability to threaten war credibly,¶ some recent political science scholarship also offers reasons to expect that congressional¶ political constraints can actually *bolster* the credibility of U.S. threats.22¶ As a prescriptive matter, Part II also shows that examination of threatened force¶ and the credibility requirements for its effectiveness calls into question many orthodoxies¶ of the policy advantages and risks attendant to various allocations of legal war powers,¶ including the existing one and proposed reforms.23 Most functional arguments about war¶ powers focus on fighting wars or hostile engagements, but that is not all – or even¶ predominantly – what the United States does with its military power. Much of the time it¶ seeks to avert such clashes while achieving its foreign policy objectives: to bargain,¶ coerce, deter.24 The President’s flexibility to use force in turn affects decision-making¶ about threatening it, with major implications for securing peace or dragging the United¶ States into conflicts. Moreover, constitutional war power allocations affect potential¶ conflicts not only because they may constrain U.S. actions but because they may send¶ signals and shape other states’ (including adversaries’) expectations of U.S. actions.25¶ That is, most analysis of war-powers law is inward-looking, focused on audiences¶ internal to the U.S. government and polity, but thinking about threatened force prompts¶ us to look outward, at how war-powers law affects external perceptions among¶ adversaries and allies. Here, extant political science and strategic studies offer few clear¶ conclusions, but they point the way toward more sophisticated and realistic policy¶ assessment of legal doctrine and proposed reform.¶ More generally, as explained in Part III, analysis of threatened force and war¶ powers exposes an under-appreciated relationship between constitutional doctrine and¶ grand strategy. Instead of proposing a functionally optimal allocation of legal powers, as¶ legal scholars are often tempted to do, this Article in the end denies the tenability of any¶ such claim. Having identified new spaces of war and peace powers that legal scholars¶ need to take account of in understanding how those powers are really exercised, this¶ Article also highlights the extent to which any normative account of the proper¶ distribution of authority over this area depends on many matters that cannot be predicted¶ in advance or expected to remain constant.26 Instead of proposing a policy-optimal¶ solution, this Article concludes that the allocation of constitutional war powers is – and¶ should be –geopolitically and strategically contingent; the actual and effective balance¶ between presidential and congressional powers over war and peace in practice necessarily¶ depends on fundamental assumptions and shifting policy choices about how best to¶ secure U.S. interests against potential threats.27

### detentinon lnk

#### Broad executive authority winning the war now ---- Restricting detention would signal weakness

Majidyar, 13 -- American Enterprise Institute senior research associate [Ahmad, “We Need Military Authorization Until Al-Qaida Is No Longer a Threat,” June 17th, http://www.usnews.com/debate-club/should-the-authorization-for-use-of-military-force-be-repealed/we-need-military-authorization-until-al-qaida-is-no-longer-a-threat]

Nearly 12 years since 9/11, the United States remains in a state of armed conflict and the 2001 Authorization for Use of Military Force continues to provide the principal legal framework for military and detentionoperations against al-Qaida, the Taliban and associated forces. The law has given both the Bush and Obama administrations the authority to "use all necessary and appropriate force against those nations, organizations, or persons" responsible for the September 11 attacks, in order to prevent any future terror plots against America. As a result, al-Qaida and the Taliban were removed from power in Afghanistan; Osama bin Laden and many of his top lieutenants were killed in Pakistan; and there have been no terror attacks of the 9/11 magnitude on American soil. Despite these gains, however, al-Qaida remains a viable threat. Over the past years, the terror group has metastasized and spread across the Middle East, forming al-Qaida in the Arabian Peninsula and al-Qaida in the Islamic Maghreb. Al-Qaida-affiliated groups have also exploited regional instability in the aftermath of the Arab Spring to gain a foothold in Syria, Libya and Egypt's Sinai. Moreover, some regional radical groups have become co-belligerents with al-Qaida in the fight against the West, including Somalia-based Al-Shabaab and Nigeria's Boko Haram. It is therefore premature and dangerous to repeal or significantly restrict the AUMF at this point, since it would undercut the effectiveness of U.S. counterterrorism efforts to deal with al-Qaida-related emerging threats worldwide. Suggestions to incorporate temporal and geographical limitations into the AUMF are also ill-advised. Confining the law to a specific number of countries or terrorist groups would give the enemy more freedom of action and allow it to create new fronts and sanctuaries in areas immune from U.S. counterterrorism operations. In his counterterrorism policy speech three weeks ago, President Obama promised to continue a "series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America." In the absence of the AUMF, such actions would become untenable and devoid of a legal basis. At present, the AUMF provides the administration with adequate authorities to pursue the war. Until al-Qaida and associated forces are degraded to a level where they pose no substantial national security threat to the United States, the law should not be repealed or replaced.

### solvency

### Betsy: Ext2—Stripping—Link

#### Detention rulings especially invite a backlash

Janet Cooper Alexander, Professor, Law, Stanford University, “Jurisdiction-Stripping in a Time of Terror,” CALIFORNIA LAW REVIEW v. 95, Fall 2007, LN.

Although the question of congressional power to limit the jurisdiction of the federal courts is a centerpiece of the federal courts canon, there are few decided cases that grapple squarely with the constitutional issues involved in juris-diction-stripping. n1 For the past fifty years or so, jurisdiction-stripping bills have been introduced on a host of politically controversial issues n2 including racial discrimination, free speech and association, the rights of criminal defendants, state legislative apportionment, abortion, school prayer, gay marriage, n3 and environmental preservation. n4 In the end, however, Congress usually backs off; very few such bills have been enacted. n5 And while the Supreme Court has re-peatedly [\*1194] said that "substantial constitutional questions" would be raised if judicial review of constitutional claims were unavailable, n6 the Court has almost always managed to resolve challenges to jurisdiction-stripping statutes on non-constitutional grounds-most recently in June 2006. n7 Both Congress and the Court have avoided confrontation. n8 But now the Executive Branch seems determined to force the constitutional issue. After the Supreme Court rendered decisions requiring procedural safeguards for detainees in the war on terrorism, n9 and with more cases pending that raised additional claims, n10 the Administration elected to press its vision of exclusive and unfettered presidential power and its effort to make Guantanamo Bay a law-free zone where the Constitution does not operate. When the Supreme Court held in Rasul v. Bush that the Guantanamo detainees had a right to file habeas petitions challenging their detention and stated in a footnote that their petitions "unquestionably" described violations of the Constitution, n11 Congress passed the Detainee Treatment Act of 2005 (DTA) n12 withdrawing federal jurisdiction over habeas petitions by Guantanamo detainees. n13 Senators who opposed [\*1195] eliminating habeas jurisdiction noted that Hamdan v. Rumsfeld, a habeas petition challenging the constitutionality of military commission trials of detainees, was then pend-ing before the Supreme Court, n14 and explicitly likened the situation to that of Ex parte McCardle. n15 The Administration's handling of the detainees received another blow when the Court held in Hamdan that the DTA's jurisdiction-stripping provisions were inapplicable to pending cases and invalidated the military commissions because they violated the Uniform Code of Military Justice (UCMJ) and the Geneva Conventions. n16 Rather than complying with the decision, or seeking Congressional authorization of appropriate procedures as the Court strongly hinted, however, the Administration secured the passage of the Military Commissions Act of 2006 (MCA). n17 Although the MCA was presented as a compromise bill it in fact was a virtually

complete victory for the President, a congressional endorsement (albeit over strong opposition in the Senate) of his broad claims of presidential power in the war on terrorism. The statute expands the definition of enemy combatant far beyond the Supreme Court's narrow definition in Hamdi. Whereas Hamdi defined "enemy combatant" as one who was "part of or supporting forces hostile to the United States or coalition partners in Afghanistan and who engaged in [\*1196] an armed conflict against the United States there," n18 the MCA expands the definition to include those who have "purposefully and materially supported hostilities" against the United States or its allies. n19 Hamdi did not authorize detention of anyone who did not actually engage in armed conflict against U.S. or allied troops in Afghanistan. The MCA, however, permits the President to treat persons captured far from any battlefield, who have not participated in any violent activity, as enemy combatants. Indeed, the Government's lawyers have taken the position in court that a "little old lady in Switzerland who writes checks to what she thinks is a charity that helps orphans in Afghanistan but ... really is a front to finance al-Qaeda activities" can be classified as an enemy combatant. n20 The MCA also makes all noncitizens who are declared to be enemy combatants subject to trial by military commission rather than the courts, n21 including even lawful permanent residents located within the United States. The provisions denying habeas review apply to all proceedings "relating to" such military commission prosecutions. n22 Additionally, the MCA authorizes the use of military commission procedures that fall short of the requirements of the Geneva Conventions, contrary to the holding of Hamdan; purports to give the President the power to interpret the meaning and application of the Conventions; n23 attempts to legislatively define the commissions and the MCA's amendments to the War Crimes Act into compliance with the Conventions; n24 declares that the Conventions may not [\*1197] be judicially enforced by any individual, including citizens, n25 despite Hamdan's holding to the contrary; and prohibits the courts from using foreign sources of law in cases interpreting the War Crimes Act. n26 In addition to its express provisions, the MCA strengthens the President's assertion of legal authority in his actions toward the detainees by placing them into the highest category of deference under Youngstown, n27 when the President exercises his Article II powers with the express authorization of Congress exercising its Article I powers. The MCA attempts to insulate all of these innovations from constitutional scrutiny by eliminating the possibility of judicial review. While the DTA denied habeas only for noncitizens detained at Guantanamo by the Department of Defense, the MCA purports to deny habeas (and "any other action" seeking judicial review) for any alien, regardless of geographical location, who has been "determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination." n28 The MCA thus strips habeas protection from lawful resident aliens detained within the United States as well as detainees at Guantanamo and other locations outside the United States.

## 1NR

### A2 Low Risk

**The impact to extinction is infinite potential lives – Even a miniscule risk outweighs everything else**

**Bostrum 03** (Nick, Professor of philosophy at Oxford, Winner of the Eugene R. Gannon Award for the Continued Pursuit of Human Advancement, “Astronomical Waste: The Opportunity Cost of Delayed Technological Development” <http://www.nickbostrom.com/astronomical/waste.html>)

The effect on total value, then, seems greater for actions that accelerate technological development than for practically any other possible action. Advancing technology (or its enabling factors, such as economic productivity) even by such a tiny amount that it leads to **colonization of the local supercluster just one second earlier** than would otherwise have happened **amounts to bringing about more than 10^31 human lives** (or 10^14 human lives if we use the most conservative lower bound) that would not otherwise have existed. Few other philanthropic causes could hope to mach that level of utilitarian payoff. Utilitarians are not the only ones who should strongly oppose astronomical waste. There are many views about what has value that would concur with the assessment that the current rate of wastage constitutes an enormous loss of potential value. For example, we can take a thicker conception of human welfare than commonly supposed by utilitarians (whether of a hedonistic, experientialist, or desire-satisfactionist bent), such as a conception that locates value also in human flourishing, meaningful relationships, noble character, individual expression, aesthetic appreciation, and so forth. So long as the evaluation function is aggregative (does not count one person’s welfare for less just because there are many other persons in existence who also enjoy happy lives) and is not relativized to a particular point in time (no time-discounting), the conclusion will hold. These conditions can be relaxed further. Even if the welfare function is not perfectly aggregative (perhaps because one component of the good is diversity, the marginal rate of production of which might decline with increasing population size), it can still yield a similar bottom line provided only that at least some significant component of the good is sufficiently aggregative. Similarly, some degree of time-discounting future goods could be accommodated without changing the conclusion.[7] III. THE CHIEF GOAL FOR UTILITARIANS SHOULD BE TO REDUCE EXISTENTIAL RISK In light of the above discussion, **it may seem as if a utilitarian ought** to **focus** her efforts **on accelerating technological development**. The payoff from even a very slight success in this endeavor is so enormous that it dwarfs that of almost any other activity. We appear to have a utilitarian argument for the greatest possible urgency of technological development. **However, the true lesson is a different one. If** what **we are concerned with** is (something like) **maximizing the expected number of worthwhile lives** that we will create, then in addition to the opportunity cost of delayed colonization, **we have to take into account the risk of failure to colonize at all. We might fall victim to an existential risk**, one § Marked 19:53 § where an adverse outcome would either annihilate Earth-originating intelligent life or permanently and drastically curtail its potential.[8] **Because the lifespan of galaxies is measured in billions of years, whereas the time-scale of any delays** that we could realistically affect **would** rather **be measured in years or decades, the consideration of risk trumps the consideration of opportunity cost**. For example, **a single percentage point of reduction of existential risks would be worth** (from a utilitarian expected utility point-of-view) **a delay of over 10 million years**. Therefore, if our actions have even the slightest effect on the probability of eventual colonization, this will outweigh their effect on when colonization takes place. For standard utilitarians, **priority number one**, two, three and four **should** consequently **be to reduce existential risk**. The utilitarian imperative “Maximize expected aggregate utility!” can be simplified to the maxim “Minimize existential risk!”.

### Extinction Outweighs: F/L

#### Extinction outweighs everything else—there is no recovering from it (includes climate change)

Anders **Sandberg** et al., James Martin Research Fellow, Future of Humanity Institute, Oxford University, "How Can We Reduce the Risk of Human Extinction?" BULLETIN OF THE ATOMIC SCIENTISTS, 9-9-**08**, http://www.thebulletin.org/web-edition/features/how-can-we-reduce-the-risk-of-human-extinction, accessed 5-2-10.

Such remote risks may seem academic in a world plagued by immediate problems, such as global poverty, HIV, and climate change. But as intimidating as these problems are, they do not threaten human existence. In discussing the risk of nuclear winter, Carl Sagan emphasized the astronomical toll of human extinction: A nuclear war imperils all of our descendants, for as long as there will be humans. Even if the population remains static, with an average lifetime of the order of 100 years, over a typical time period for the biological evolution of a successful species (roughly ten million years), we are talking about some 500 trillion people yet to come. By this criterion, the stakes are one million times greater for extinction than for the more modest nuclear wars that kill "only" hundreds of millions of people. There are many other possible measures of the potential loss--including culture and science, the evolutionary history of the planet, and the significance of the lives of all of our ancestors who contributed to the future of their descendants. Extinction is the undoing of the human enterprise. There is a discontinuity between risks that threaten 10 percent or even 99 percent of humanity and those that threaten 100 percent. For disasters killing less than all humanity, there is a good chance that the species could recover. If we value future human generations, then reducing extinction risks should dominate our considerations. Fortunately, most measures to reduce these risks also improve global security against a range of lesser catastrophes, and thus deserve support regardless of how much one worries about extinction.

### `Resilience: Ext #1—Predictions Work

#### Predictions are possible and necessary to avoid catastrophe

**Garrett 12** (Banning, In Search of Sand Piles and Butterflies, director of the Asia Program and Strategic Foresight Initiative at the Atlantic Council. http://www.acus.org/disruptive\_change/search-sand-piles-and-butterflies)

“Disruptive change” that produces “strategic shocks” has become an increasing concern for policymakers, shaken by momentous events of the last couple of decades that were not on their radar screens – from the fall of the Berlin Wall and the 9/11 terrorist attacks to the 2008 financial crisis and the “Arab Spring.” These were all shocks to the international system, predictable perhaps in retrospect but predicted by very few experts or officials on the eve of their occurrence. This “failure” to predict specific strategic shocks does not mean we should abandon efforts to foresee disruptive change or look at all possible shocks as equally plausible. Most strategic shocks do not “come out of the blue.” We can understand and project long-term global trends and foresee at least some of their potential effects, including potential shocks and disruptive change. We can construct alternative futures scenarios to envision potential change, including strategic shocks. Based on trends and scenarios, we can take actions to avert possible undesirable outcomes or limit the damage should they occur. We can also identify potential opportunities or at least more desirable futures that we seek to seize through policy course corrections. We should distinguish “strategic shocks” that are developments that could happen at any time and yet may never occur. This would include such plausible possibilities as use of a nuclear device by terrorists or the emergence of an airborne human-to-human virus that could kill millions. Such possible but not inevitable developments would not necessarily be the result of worsening long-term trends. Like possible terrorist attacks, governments need to try to prepare for such possible catastrophes though they may never happen. But there are other potential disruptive changes, including those that create strategic shocks to the international system, that can result from identifiable trends that make them more likely in the future—for example, growing demand for food, water, energy and other resources with supplies failing to keep pace. We need to look for the “sand piles” that the trends are building and are subject to collapse at some point with an additional but indeterminable additional “grain of sand” and identify the potential for the sudden appearance of “butterflies” that might flap their wings and set off hurricanes. Mohamed Bouazizi, who immolated himself December 17, 2010 in Sidi Bouzid, Tunisia, was the butterfly who flapped his wings and (with the “force multiplier” of social media) set off a hurricane that is still blowing throughout the Middle East. Perhaps the metaphors are mixed, but the butterfly’s delicate flapping destabilized the sand piles (of rising food prices, unemployed students, corrupt government, etc.) that had been building in Tunisia, Egypt, and much of the region. The result was a sudden collapse and disruptive change that has created a strategic shock that is still producing tremors throughout the region. But the collapse was due to cumulative effects of identifiable and converging trends. When and what form change will take may be difficult if not impossible to foresee, but the likelihood of a tipping point being reached—that linear continuation of the present into the future is increasingly unlikely—can be foreseen. Foreseeing the direction of change and the likelihood of discontinuities, both sudden and protracted, is thus not beyond our capabilities. While efforts to understand and project long-term global trends cannot provide accurate predictions, for example, of the GDPs of China, India, and the United States in 2030, looking at economic and GDP growth trends, can provide insights into a wide range of possible outcomes. For example, it is a useful to assess the implications if the GDPs of these three countries each grew at currently projected average rates – even if one understands that there are many factors that can and likely will alter their trajectories. The projected growth trends of the three countries suggest that at some point in the next few decades, perhaps between 2015 and 2030, China’s GDP will surpass that of the United States. And by adding consideration of the economic impact of demographic trends (China’s aging and India’s youth bulge), there is a possibility that India will surpass both China and the US, perhaps by 2040 or 2050, to become the world’s largest economy. These potential shifts of economic power from the United States to China then to India would likely prove strategically disruptive on a global scale. Although slowly developing, such disruptive change would likely have an even greater strategic impact than the Arab Spring. The “rise” of China has already proved strategically disruptive, creating a potential China-United States regional rivalry in Asia two decades after Americans fretted about an emerging US conflict with a then-rising Japan challenging American economic supremacy. Despite uncertainty surrounding projections, foreseeing the possibility (some would say high likelihood) that China and then India will replace the United States as the largest global economy has near-term policy implications for the US and Europe. The potential long-term shift in economic clout and concomitant shift in political power and strategic position away from the US and the West and toward the East has implications for near-term policy choices. Policymakers could conclude, for example, that the West should make greater efforts to bring the emerging (or re-emerging) great powers into close consultation on the “rules of the game” and global governance as the West’s influence in shaping institutions and behavior is likely to significantly diminish over the next few decades. The alternative to finding such a near-term accommodation could be increasing mutual suspicions and hostility rather than trust and growing cooperation between rising and established powers—especially between China and the United States—leading to a fragmented, zero-sum world in which major global challenges like climate change and resource scarcities are not addressed and conflict over dwindling resources and markets intensifies and even bleeds into the military realm among the major actors. Neither of these scenarios may play out, of course. Other global trends suggest that sometime in the next several decades, the world could encounter a “hard ceiling” on resources availability and that climate change could throw the global economy into a tailspin, harming China and India even more than the United States. In this case, perhaps India and China would falter economically leading to internal instability and crises of governance, significantly reducing their rates of economic growth and their ability to project power and play a significant international role than might otherwise have been expected. But this scenario has other implications for policymakers, including dangers posed to Western interests from “failure” of China and/or India, which could produce huge strategic shocks to the global system, including a prolonged economic downturn in the West as well as the East. Thus, looking at relatively slowly developing trends can provide foresight for necessary course corrections now to avert catastrophic disruptive change or prepare to be more resilient if foreseeable but unavoidable shocks occur. Policymakers and the public will press for predictions and criticize government officials and intelligence agencies when momentous events “catch us by surprise.” But unfortunately, as both Yogi Berra and Neils Bohr are credited with saying, “prediction is very hard, especially about the future.” One can predict with great accuracy many natural events such as sunrise and the boiling point of water at sea level. We can rely on the infallible predictability of the laws of physics to build airplanes and automobiles and iPhones. And we can calculate with great precision the destruction footprint of a given nuclear weapon. Yet even physical systems like the weather as they become more complex, become increasingly difficult and even inherently impossible to predict with precision. With human behavior, specific predictions are not just hard, but impossible as uncertainty is inherent in the human universe. As futurist Paul Saffo wrote in the Harvard Business Review in 2007, “prediction is possible only in a world in which events are preordained and no amount of actions in the present can influence the future outcome.” One cannot know for certain what actions he or she will take in the future much less the actions of another person, a group of people or a nation state. This obvious point is made to dismiss any idea of trying to “predict” what will occur in the future with accuracy, especially the outcomes of the interplay of many complex factors, including the interaction of human and natural systems. More broadly, the human future is not predetermined but rather depends on human choices at every turning point, cumulatively leading to different alternative outcomes. This uncertainty about the future also means the future is amenable to human choice and leadership. Trends analyses—including foreseeing trends leading to disruptive change—are thus essential to provide individuals, organizations and political leaders with the strategic foresight to take steps mitigate the dangers ahead and seize the opportunities for shaping the human destiny. Peter Schwartz nearly a decade ago characterized the convergence of trends and disruptive change as “inevitable surprises.” He wrote in Inevitable Surprises that “in the coming decades we face many more inevitable surprises: major discontinuities in the economic, political and social spheres of our world, each one changing the ‘rules of the game’ as its played today. If anything, there will be more, no fewer, surprises in the future, and they will all be interconnected. Together, they will lead us into a world, ten to fifteen years hence, that is fundamentally different from the one we know today. Understanding these inevitable surprises in our future is critical for the decisions we have to make today …. We may not be able to prevent catastrophe (although sometimes we can), but we can certainly increase our ability to respond, and our ability to see opportunities that we would otherwise miss.

Resilience: Ext #5—Planning Good

**Probabilistic evaluation of hypothetical impacts is the only way to grapple with strategic uncertainty**

**Krepinevich 9** (Andrew F. Krepinevich, Jr. is a defense analyst, currently executive director of the Center for Strategic and Budgetary Assessments, 1/27/2009, “7 Deadly Scenarios: A Military Futurist Explores War in the 21st Century”)

While the Pentagon would dearly like to know the answers to these questions, it is simply not possible. Too many factors have a hand in shaping the future. Of course. Pentagon planners may blithely assume away all uncertainty and essentially bet that the future they fore-cast is the one that will emerge. In this case the U.S. military will be very well prepared—for the predicted future. But history shows that militaries are often wrong when they put too many eggs in one basket. In the summer of 1914, as World War I was breaking out, Europeans felt that the war would be brief and that the troops might be home "before the leaves fall." In reality the Allied and Central Powers engaged in over four years of horrific bloodletting. In World War II the French Army entered the conflict believing it would experience an advanced version of the trench warfare it had encountered in 1914-1918. Instead, France was defeated by the Germans in a lightning campaign lasting less than two months. Finally, in 2003 the Pentagon predicted that the Second Gulf War would play out [with](http://wir.li) a traditional blitzkrieg. Instead, it turned into an irregular war, a "long, hard slog."20 Militaries seem prone to assuming that the next war will be an "updated" version of the last war rather than something quite different. Consequently, they are often accused of preparing for the last war instead of the next. This is where rigorous, scenario-based planning comes into play. It is designed to take uncertainty explicitly into account by incorporating factors that may change the character of future conflict in significant and perhaps profound ways. By presenting a plausible set of paths into the future, scenarios can help senior Pentagon leaders avoid the "default" picture in which tomorrow looks very much like today. If the future were entirely uncertain, scenario-based planning would be a waste of time. But certain things are predictable or at least highly likely. Scenario planners call these things “predetermined elements.” While not quite “done deals,” they are sufficiently well known that their probability of occurring is quite high. For example, we have a very good idea of how many men of military age (eighteen to thirty-one) there will be in theUnited States in 2020, since all of those males have already been born, and, barring a catastrophic event, the actuarial data on them is quite refined. We know that China has already tested several types of weapons that can disable or destroy satellites. We know that dramatic advances in solid-state lasers have been made in recent years and that more advances are well within the realm of possibility. These "certainties" should be reflected in all scenarios, while key uncertainties should be reflected in how they play out across the different scenarios.21 If scenario-based planning is done well, and if its insights are acted upon promptly, the changes it stimulates in the military may help deter prospective threats, or dissuade enemies from creating threatening new capabilities in the first place.