# 1AC

### Advantage

#### The Korematsu decision was made solely on the basis of racial discrimination--- modern courts have not revisited it

Green 2011 (Craig Green, Professor of Law at Temple University Beasley School of Law, Northwestern University Law Review, "ENDING THE KOREMATSU ERA: AN EARLY VIEW FROM THE WAR ON TERROR CASES," 2011, Vol. 105, No. 3, p.p. 993-995, http://www.law.northwestern.edu/lawreview/v105/n3/983/LR105n3Green.pdf)

1. Korematsu’s Doctrinal History.—Despite Korematsu’s notoriety, some of its history is known only by experts.30 My first project is to show that the Justices who decided Korematsu perceived that case differently than many modern observers do. In the 1940s, although race was important for some members of the Court, claims of military necessity overwhelmed the majority’s hesitation, and even the dissenting Justices were less commit- ted to modern equal protection than is commonly recognized.31 This specif- ic contextual evidence about Korematsu is an important starting point for reinterpreting the Korematsu era as a whole.¶ After the devastation of Pearl Harbor in December 1941, fears spread about other attacks that might be supported by spies and saboteurs within the United States.32 President Roosevelt responded in February 1942 by au- thorizing the creation of military areas “from which any or all persons may be excluded” and in which “the right of any person to enter, remain in, or leave shall be subject to whatever restrictions [designated officials] may impose.”33 To implement this order, Lieutenant General DeWitt split the entire Pacific Coast into military areas.34 Congress then criminalized viola- tions of any military-area regulations with a maximum punishment of $5000 and one year in prison.35¶ Beginning on March 27, 1942, DeWitt ordered a “curfew” for alien Germans and Italians, and for all persons of Japanese ancestry throughout much of Arizona, California, Washington, and Oregon.36 This was no ordi- nary curfew to keep people off the streets. DeWitt’s order was closer to house arrest, for it required regulated persons to be home from 8:00 p.m. to 6:00 a.m. and to be in their workplace, within five miles of home, or travel- ing between work and home at all other times.37¶ Not six months after Pearl Harbor, DeWitt began ordering persons of Japanese ancestry to “evacuate” military zones, though that word was a eu- phemism as well.38 Every family of Japanese ancestry had to report to Civil Control Stations or Assembly Centers, and appearance at such facilities was typically followed by indefinite confinement at Relocation Centers in Ida- ho, Utah, Arkansas, Wyoming, Arizona, Colorado, and remote parts of Cal- ifornia.39 For the large population of Japanese-Americans on the Pacific Coast, DeWitt’s orders must have seemed more like racially targeted impri- sonment than evacuation.¶ The Supreme Court issued two decisions evaluating these governmen- tal policies. In 1943, Hirabayashi upheld a defendant’s conviction for vi- olating DeWitt’s curfew, and Korematsu in 1944 upheld a defendant’s conviction for violating DeWitt’s reporting requirement.40 Both cases in- volved exactly the same claims of military necessity and exactly the same legal authorities.41 Indeed, the government’s brief in Korematsu explicitly incorporated by reference much of the factual evidence that had been pre- sented the year before in Hirabayashi.42¶ The President’s core claim in both cases was that a racially homogen- ous wartime enemy was supported by a set of aliens and citizens in the United States who could not be individually identified.43 To meet such dire asserted threats, the military claimed it was necessary to subject a racially determined mass of potential suspects to curfews, reporting, and evacua- tion. The Court upheld such executive decisions, which Congress had approved ex ante, by a unanimous vote in Hirabayashi and by a six-vote majority in Korematsu.44¶ To modern observers, Hirabayashi and Korematsu seem astonishingly misguided. Both involved explicit racial discrimination, and the govern- ment had no credible argument that such discrimination was needed to se- cure the homeland.45 Twenty-first-century doctrine and legal culture typically require very strong justifications to support racial classifications.46 Because the policies in Hirabayashi and Korematsu lacked such support, their racial discrimination would be unconstitutional today, and some mod- ern analysts have not looked much further into the Court’s analysis.47

#### Justifies future internment and racist wartime policies--- post-9/11 cases haven’t changed the precedent

Harris 2011 (David A. Harris, Professor of Law, University of Pittsburgh School of Law, Winter 2011, "On the Contemporary Meaning of Korematsu: 'Liberty Lies in the Hearts of Men and Women,'" Missouri Law Review, Volume 76, Number 1, law.missouri.edu/lawreview/files/2012/11/Harris.pdf)

E. Could Korematsu Happen Again?¶ 1. The Possibility Is Real¶ In his dissent, Justice Jackson framed his objection to the Court’s decision in Korematsu as a dire warning that the principle enshrined in the case would constitute a “loaded weapon” ready for use whenever the government can point to an urgent need.”108 Many thoughtful commentators now dis- count the danger Justice Jackson saw,109 but their views do not withstand analysis. The question of Korematsu’s resurrection, and even the possibility of another internment, no longer constitutes idle speculation. The post-9/11 climate has transformed the significance of Korematsu from a decision that might, in the past, have seemed a mere academic exercise into a standing precedent with potentially profound consequences. An incident in 2002 illu- strates this point.¶ On July 19, 2002, the U.S. Commission on Civil Rights held a hearing near Detroit to hear Arab American and Muslim leaders’ complaints concern- ing discriminatory treatment after the attacks of September 11, 2001.110 Southeast Michigan, especially the Detroit suburb of Dearborn, contains one of the largest Arab American populations in the nation.111 Holding the hear- ing there allowed the Commission to collect evidence, facts, and impressions from the largest and widest array of people and organizations affected by any post-9/11 backlash. The meeting was one of the first attended by Commis- sioner Peter Kirsanow, an appointee of President Bush, who had taken his seat only two months before.112¶ The Commissioners and the audience heard testimony from many wit- nesses concerning civil rights violations against Arab Americans.113 As the hearing neared its end, a member of the audience raised the subject of the Japanese internment: would Commissioner Kirsanow give his assurance that the government would not repeat the internment with Arab Americans?114 Mr. Kirsanow, who prefaced his answer by saying he believed in the protec- tion of civil rights even in wartime, spoke directly to the possibility of history repeating itself in the post-9/11 world. “I believe no matter how many laws we have, how many agencies we have, how many police officers we have monitoring civil rights, that if there’s another terrorist attack and it’s from a certain ethnic community or certain ethnicities that the terrorists are from, you can forget civil rights in this country,” Kirsanow said.115 “I think we will have a return to Korematsu.”116 According to published accounts, Kirsanow continued this line of thought after the meeting in comments to a journalist in which he said that “not too many people will be crying in their beer if there are more detentions, more stops, more profiling. There will be a groundswell of public opinion to banish civil rights.”117¶ Kirsanow’s comments touched off a firestorm of criticism. Critics ac- cused him of suggesting tolerance for, and consideration of, the idea of in- terning Arabs in the fight against terrorism.118 He responded by stating that his enemies had distorted his comments and that he was “unalterably op- posed” to the idea of internment camps.119 He had been trying, he said, to convey that such approaches should be condemned and that waging war on terrorism and upholding civil liberties “are not mutually exclusive.”120¶ Kirsanow could have chosen his words more judiciously. For a public official to raise the possibility that some Americans would not just accept, but welcome, internment camps for Arabs, in a meeting at which Arab Americans had gathered to voice their objections to mistreatment, seems the height of obliviousness.121 Giving Kirsanow every benefit of the doubt, he might have been trying to say that he feared that another attack might build support for interning Arab Americans, an outcome he did not want to see. Whichever way one chooses to view Kirsanow’s words, the unfortunate truth is that the question of whether internment could occur again is no longer just an aca- demic curiosity. Rather, Kirsanow’s comments reveal a genuinely frighten- ing and dark fact. In the aftermath of another serious attack by extremists based in Arab or Muslim countries or, worse yet, an attack that originates with Arab or Muslim extremists who live in the U.S., some will argue that the internment of Arabs and Muslims is a necessary measure that national securi- ty demands.¶ I believe this possibility is real enough that, in a seminar called Criminal Justice and Homeland Security, I have given my students a hypothetical prob- lem to brief and argue.122 The problem assumes a large-scale truck bombing targeting a federal courthouse, killing hundreds and wounding thousands. Investigation revealed that two U.S.-based al Qaeda sleeper cells, consisting of both foreign-born and native-born Muslims, carried out the attack. In the aftermath, the President ordered “all persons of Arab descent” and all Mus- lims to report to security centers, where they will stay under military guard until cleared to leave. The question presented by the hypothetical problem concerns the President’s order: would he or she have the constitutional au- thority to order internment of Arab Americans and Muslims under these facts? Half of the class acts as lawyers for the government and argues for internment; the other half, representing a potential internee, argues against it.¶ Could something like this actually happen? Merely expressing the fer- vent hope that this will not occur does not answer the question. In the event of another attack under the circumstances described, a presidential response like the one outlined in the problem is not beyond the realm of possibility. The problem forces students to come to grips with this uncomfortable – and, for most, unimaginable – reality. Two points in their responses merit discus- sion. First, when students dig into the law – Korematsu from 1944, the 1984 district court opinion granting the writ of coram nobis, and other cases and materials – they readily come to the conclusion that Korematsu’s core prin- ciple remains very much alive. Second, the students’ briefs reveal that they grasp that the facts in the problem, parallel in so many ways to what occurred on September 11, 2001, could persuade a court to defer to the executive.¶ None of my students have said they would want an internment to take place in the event of another major attack. But when cast in the role of a law- yer for the government, they can formulate legally and factually persuasive arguments for it. I do not believe my students are unusual. If they can under- stand and make these arguments on behalf of a hypothetical president, so could lawyers from the U.S. Department of Justice. In The Emergency Con- stitution, Professor Bruce Ackerman says that, while Korematsu may consti- tute “very, very bad law,” this does not answer the question of whether this chapter of our history might, under some circumstances, repeat itself.123 “[W]hat will we say after another terrorist attack? More precisely, what will the Supreme Court say if Arab Americans are herded into concentration camps? Are we certain any longer that the wartime precedent of Korematsu will not be extended to the ‘war on terrorism’?”124 2. Would a Mature Equal Protection Doctrine Prevent a Repeat of¶ Korematsu?¶ Some will object to this analysis on the grounds that the Supreme Court’s Equal Protection cases decided after Korematsu have added an extra layer of protection against government burdens allocated by race. The years after Korematsu, especially the 1960s and 1970s, became the era of the full flowering of the Equal Protection Clause.125 In the equal protection cases of this era, the Court fully fleshed out the strict scrutiny standard. Courts have interpreted strict scrutiny of government racial classifications to mean that racial classifications can only survive if they serve a compelling governmen- tal need and are narrowly tailored to serve that purpose.126 This usually set a standard that the government could not meet. Gerald Gunther, one of the leading constitutional scholars of the twentieth century, famously captured the essence of strict scrutiny by describing it as “‘strict’ in theory and fatal in fact.”127 Given these developments, some say an attempt by the government to create an internment in the event of another terrorist attack simply could not survive judicial scrutiny. The late Chief Justice Rehnquist made this very argument in his book All the Laws but One,128 noting that the Supreme Court could not validate an internment now as it did in the 1940s, because Equal Protection law is stronger and more well developed.129 Thus, the modern Equal Protection Clause is itself a bulwark against the internment of Ameri- can citizens ever happening again.¶ This is a powerful argument, but it overlooks the actual language of the Korematsu opinion. Justice Black began his opinion by addressing when, if ever, the Equal Protection Clause might allow the government to treat Ameri- cans in a racially discriminatory fashion.130 He may not have used the phras- es “compelling state interest” and “narrowly tailored,” but surely those prin- ciples appear in a very real sense.¶ It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately sus- pect. That is not to say that all such restrictions are unconstitution- al. It is to say that courts must subject them to the most rigid scru- tiny. Pressing public necessity may sometimes justify the exis- tence of such restrictions; racial antagonism never can.131¶ Only by stressing word choice over meaning and phraseology over prin-¶ ciple can one find much difference between “compelling state interest” and “pressing public necessity.”¶ Justice Black then emphasized that national security clearly qualifies as among those dire public necessities that may justify upholding a government racial classification.132 Justice Frankfurter’s concurring opinion, stressing the importance of judicial deference to the judgment of the military and the ex- ecutive,133 underscored the point. At least one current member of the Su- preme Court has not forgotten this. It was just six years ago that Justice Thomas went out of his way to note that national security could, in fact, justi- fy explicit racial discrimination by the government.134 His comment drew no disagreement from other members of the Court.¶ Modern lawyers tend to think of the Court’s decisions prohibiting gov- ernment racial discrimination over the past fifty years as sacred, echoing Gunther’s “‘strict’ in theory and fatal in fact” idea.135 But at least in the arena of national security, this is not so. The Fifth and Fourteenth Amendments may say that all shall enjoy the equal protection of the law, but the glaring example of Korematsu demonstrates this is not always true. Some circums- tances may allow for even the worst kinds of discrimination.¶ Judge Posner said that, in Korematsu, the Court reached the correct re- sult with a terrible opinion.136 The Court could have found that deference to the military in the middle of a world war justifies racial discrimination.137 The inescapable fact that Korematsu remains good law means that Posner’s view cannot be dismissed out of hand. In matters of national security, the reach of equal protection law is a question of how much Americans value equality as compared to national security in a given factual context. Put another way, vis-à-vis national security, the Equal Protection Clause contains no real anchor that will always make equality the superior value. Instead, it becomes a question of what courts care about the most.¶ A plausible objection to this thesis is that today’s Supreme Court would¶ not validate a Korematsu-like internment again, even in the event of another attack. The Supreme Court has faced four cases in which the executive branch asserted unprecedented powers to detain people in the pursuit of post- 9/11 terrorism: Rasul v. Bush,138 Hamdi v. Rumsfeld,139 Hamdan v. Rums- feld,140 and Boumediene v. Bush.141 In each of these cases, the government argued that the executive’s power under the Constitution allowed the Presi- dent to take extraordinary actions against “enemy combatants” in U.S. custo- dy in order to secure the nation. Critics would surely point out that the Supreme Court rebuffed the government in all four cases, often in sweeping language that, at the very least, suggests hostility to the government’s asser- tions of the power to incarcerate persons in the name of national security.¶ In Rasul, the Court denied the government’s claim that the U.S. Naval Base at Guantanamo Bay amounted to a zone free from any judicial over- sight.142 On the contrary, the Court said federal courts had jurisdiction to test the claim of presidential power over individuals incarcerated there.143 In Hamdi, Justice O’Connor, writing for a plurality, said that Guantanamo de- tainees have the right to due process,144 finding that “a state of war is not a blank check for the President.”145 In Hamdan, the Court dismissed the idea that enemy combatants enjoyed no protections under the Geneva Convention when tried in military commissions.146 In Boumediene, the Court preserved the availability of habeas corpus for those incarcerated at Guantanamo.147 Thus, critics might argue that these cases show that, whatever the legal status of Korematsu in the abstract, a majority of today’s Supreme Court would not accept a Korematsu-style internment in the event of an attack.¶ Despite these criticisms, Americans cannot depend on these cases to tell them what a court would do if faced with another attack and a plan for internment. None of the Guantanamo cases relied upon, or even expressed any relation to, the law of equal protection; doctrinally, they rested on the Presi- dent’s executive and wartime powers. And perhaps more important than what these cases struck down is what they did allow. The best example is Hamdi, in which Justice O’Connor famously refused to grant the executive virtually unlimited constitutional power in wartime.148 Hamdi actually allows the executive to hold American citizens indefinitely, without charges or trial, as enemy combatants.149 While some minimal degree of process is due,150 the bottom line is that the Court conceded this power to the President with very little in the way of checks or balances. Similarly, in Hamdan, the Court ruled that only Common Article Three of the Geneva Conventions, the most basic set of protections available, applied to enemy combatants at Guantanamo.151 Hamdan also found that it would be procedurally adequate for military com- missions, if modified, to try these prisoners.152¶ If there is a relationship between the enemy combatants cases and what the Court might do if faced with a Korematsu decision again, it is that the Court in these cases largely – even if not entirely – deferred to the power of the executive. One can see the enemy combatant cases as a counterweight to Korematsu only by blinding oneself to the fact that the enemy combatant cases allowed indefinite detention of American citizens in the name of national security, with only minimal due process available. Thus, rather than signaling that the Court would stand in the way of another internment, a plausible reading of these cases indicates that the Court has, at the very least, left the door open for it.

#### The nature of war powers requires reversal BEFORE new waves of internment are imminent

Green 2011 (Craig Green, Professor of Law, Temple University Beasley School of Law, Northwestern University Law Review, "ENDING THE KOREMATSU ERA: AN EARLY VIEW FROM THE WAR ON TERROR CASES," 2011, Vol. 105, No. 3, p.p. 993-995, http://www.law.northwestern.edu/lawreview/v105/n3/983/LR105n3Green.pdf)

IV. EPILOGUE : WHAT THE KOREMATSU ERA MEANS NOW¶ Iconic war powers precedents offer special interpretive challenges because such cases arise only infrequently from clustered factual circumstances that differ greatly from any other group of cases. The result is an uncommon risk that each generation of lawyers may forget or misread the wisdoms and follies of the past. This is what happened before 9/11. Lawyers, judges, scholars, and commentators had not adequately appreciated the Court’s unfortunate history surrounding World War II. As old issues resurfaced concerning detention and military commissions, executive lawyer and federal courts of appeals used Korematsu -era precedents (though not Korematsu itself) as “positive” precedents instead of “negative” ones. This was a mistake, as the modern Court has repeatedly held. This Article seeks to bolster safeguards against presidential abuse and, at long last, to limit the Korematsu era’s influence. But like everything else, such scholarship operates in a world of contingent circumstances where pens and ideas are only sometimes mightier than swords and the politics of war. 316¶ If my thesis is correct that the modern GWOT cases have undermined the Korematsu era’s institutional assumptions, the episodic nature of war powers cases creates pressure to solidify that interpretation quickly. Elections have delivered a President with an arguably different view of presidential power. 317 And several new Justices now occupy the high bench— with the especially notable departures of Justice Stevens, who personally witnessed the Korematsu era as a young man, 318 and Justice Souter, whose Hamdi concurrence showed exceptional insight in analyzing past examples of war powers. Our current cluster of wartime decisions might soon draw to a close, and if that happens, issues of executive detention and military commissions may once again drift out of focus.¶ All too soon, it may be hard to remember the political pressures heaped on the Court in 2004, when it said “no” for the first time to a popular, self- declared wartime President. As memories fade, the modern Court’s remarkable steps in rejecting Korematsu-era deference might be similarly forgotten or misconstrued. Rasul might become a case “just” about federal habeas statutes, Hamdi “just” a set of divided opinions about enemy combatants, Hamdan “just” an interpretation of the UCMJ, and Boumediene “just” a constitutional decision about Guantánamo Bay. For anyone who wishes to celebrate the Korematsu era’s end, the time to determine the recent war powers cases’ meaning is now. Otherwise, the Court’s subtle language and narrow holdings may allow future executive lawyers to deflect recent precedents and revive Korematsu-era principles that the 9/11 era has firmly and quietly laid to rest.

#### The Korematsu decision itself is a grave social injustice that should be reversed by the courts

Irons 2013 (Peter Irons, Professor of Political Science, Emeritus, University of California, San Diego; founder and Director, Emeritus, Earl Warren Bill of Rights Project, UCSD. B.A., Antioch College; M.A. and Ph.D., Boston University; J.D., Harvard Law School. Member of the Bar, Supreme Court of the United States, “UNFINISHED BUSINESS: THE CASE FOR SUPREME COURT REPUDIATION OF THE JAPANESE AMERICAN INTERNMENT CASES,” http://lawprofessors.typepad.com/files/case-for-repudiation-1.pdf)

VIII. THE CAUTIONARY WORDS OF JUDGES PATEL AND¶ SCHROEDER¶ The Supreme Court, in deciding whether the well-documented and judicially upheld¶ record of the gitech government’s knowing and intentional misleading of the Court merits a¶ public repudiation of the wartime internment cases, should consider the cautionary words¶ of Judges Patel and Schroeder in their detailed and persuasive opinions in these cases. As¶ Judge Patel put it:¶ Fortunately, there are few instances in our judicial history when courts have been¶ called upon to undo such profound and publicly acknowledged injustice. Such¶ extraordinary instances require extraordinary relief, and the court is not without¶ power to redress its own errors. 584 F.Supp. at 1410.¶ Korematsu remains on the pages of our legal and political history. As a legal¶ precedent it is now recognized as having very limited application. As historical¶ precedent it stands as a constant caution that in times of war or declared military¶ necessity our institutions must be vigilant in protecting constitutional guarantees.¶ It stands as a caution that in times of distress the shield of military necessity and¶ national security must not be used to protect governmental actions from close¶ scrutiny and accountability. It stands as a caution that in times of international¶ hostility and antagonisms our institutions, legislative, executive, and judicial,¶ must be prepared to exercise their authority to protect all citizens from the petty¶ fears and prejudices that are so easily aroused. Id. at 1420.¶ And, as Judge Schroeder wrote: “A United States citizen who is convicted of a crime on¶ account of race is lastingly aggrieved.” 828 F.2d 591, 607. That statement applies with¶ equal force, not only to Gordon Hirabayashi, but to Fred Korematsu and Minoru Yasui as¶ well. [23] CONCLUSION¶ Over the past seven decades, many distinguished scholars and judges have implored the¶ Court to repudiate the internment decisions. It seems appropriate to note the first and¶ perhaps most distinguished of these voices: just months after the Korematsu decision in¶ December 1944, Eugene V. Rostow, the justly esteemed professor and dean at Yale Law¶ School, published an article in the Yale Law Journal entitled “The Japanese American¶ Cases – A Disaster.” [24] In his article, which eviscerated the Court’s opinions in these¶ cases as based on unsupported racial stereotypes (and without the benefit of the evidence¶ of governmental misconduct discussed above), Professor Rostow wrote that those opinions, “[b]y their acceptance of ethnic differences as a criterion for discrimination . . .¶ are a breach, potentially a major breach, in the principle of equality. Unless repudiated,¶ they may encourage devastating and unforeseen social and political conflicts.” He¶ continued: “In the political process of American life, these decisions were a negative and¶ reactionary act. The Court avoided the risks of overruling the Government on an issue of¶ war policy. But it weakened society’s control over military authority—one of those¶ polarizing forces on which the organization of our society depends. And it solemnly¶ accepted and gave the prestige of its support to dangerous racial myths about a minority¶ group, in arguments which can be applied easily to any other minority in our society.”¶ (emphasis added) Id. at 492.¶ “[T]hat the Supreme Court has upheld imprisonment on such a basis constitutes an¶ expansion of military discretion beyond the limit of tolerance in democratic society. It¶ ignores the rights of citizenship, and the safeguards of trial practice which have been the¶ historical attributes of liberty. . . . What are we to think of our own part in a program¶ which violates every democratic social value, yet has been approved by the Congress, the¶ President and the Supreme Court?” Id. at 533.¶ Professor Rostow urged in 1945 that “the basic issues should be presented to the Supreme¶ Court again, in an effort to obtain a reversal of these war-time cases. In the history of the¶ Supreme Court there have been important occasions when the Court itself corrected a¶ decision occasioned by the excitement of a tense and patriotic moment. After the Civil¶ War, Ex parte Vallandigham was followed by Ex parte Milligan. The Gobitis case has¶ recently been overruled by West Virginia v. Barnette. Similar public expiation in the¶ case of the interment of Japanese Americans from the West Coast would be good for the¶ Court, and for the country.” Id. Failing to heed Professor Rostow’s words in 1945 and in¶ the years since then, the Court should now feel an obligation to provide the “expiation”¶ for which he prophetically called.

#### Racial discrimination makes war and violence inevitable---it presents enemies as biologically inferior to justify their extermination

Mendieta 2002 (Eduardo Mendieta, PhD and Associate professor of Stonybrook School of Philosophy, April 25th, 2002, "'To make live and to let die' - Foucault on Racism,'" Meeting of the Foucault Circle, APA Central Division Meeting, Chicago, April 25th, 2002, www.stonybrook.edu/commcms/philosophy/people/faculty\_pages/docs/foucault.pdf)

This is where racism intervenes, not from without, exogenously, but from within, constitutively. For the emergence of biopower as the form of a new form of political rationality, entails the inscription within the very logic of the modern state the logic of racism. For racism grants, and here I am quoting: “the conditions for the acceptability of putting to death in a society of normalization. Where there is a society of normalization, where is a power that is, in all of its surface and in first instance, and first line, a bio-power, racism is indispensable as a condition to be able to put to death someone, in order to be able to put to death others. The homicidal [meurtrière] function of the state, to the degree that the state functions on the modality of bio-power, can only be assured by racism “(Foucault 1997, 227). To use the formulations from his 1982 lecture “The Political Technology of Individuals” – which incidentally, echo his 1979 Tanner Lectures – the power of the state after the 18th century, a power which is enacted through the police, and is enacted over the population, is a power over living beings, and as such it is a biopolitics. And, to quote more directly, “since the population is nothing more than what the state takes care of for its own sake, of course, the state is entitled to slaughter it, if necessary. So the reverse of biopolitcs is thanatopolitics.” (Foucault 2000, 416). Racism, is the thanatopolitical technology, one same political rationality; the management of life, the life of a population, the tending to the continuum of life of a people.¶ And with the inscription of racism within the state of biopower, the long history of war that Foucault has been telling in these dazzling lectures has made a new turn: the war of peoples, a war against invaders, imperials colonizers, which turned into a war of races, to then turn into a war of classes has now turned into the war of a race, a biological unit, against its polluters and threats. Racism is the means by which bourgeois political power, biopower, rekindles the fires of war within civil society. Racism normalizes and medicalizes war. Racism makes war the permanent condition of society, while at the same time masking its weapons of death and torture. As I wrote somewhere else, racism banalizes genocide by making quotidian the lynching of suspect threats to the health of the social body. Racism makes the killing of the other, of others, an everyday occurrence by internalizing and normalizing the war of society against its enemies. To protect society entails we be ready to kill its threats, its foes, and if we understand society as a unity of life, as a continuum of the living, then these threats and foes are biological in nature.

#### Reject each instance of racism

Memmi 2000 (Albert Memmi, Professor Emeritus of Sociology at University of Paris, Naiteire, Racism, Translated by Steve Martinot, p. 163-165)

The struggle against racism will be long, difficult, without intermission, without remission, probably never achieved. Yet, for this very reason, it is a struggle to be undertaken without surcease and without concessions. One cannot be indulgent toward racism; one must not even let the monster in the house, especially not in a mask. To give it merely a foothold means to augment the bestial part in us and in other people, which is to diminish what is human. To accept the racist universe to the slightest degree is to endorse fear, injustice, and violence. It is to accept the persistence of the dark history in which we still largely live. it is to agree that the outsider will always be a possible victim (and which man is not himself an outsider relative to someone else?. Racism illustrates, in sum, the inevitable negativity of the condition of the dominated that is, it illuminates in a certain sense the entire human condition. The anti-racist struggle, difficult though it is, and always in question, is nevertheless one of the prologues to the ultimate passage from animosity to humanity. In that sense, we cannot fail to rise to the racist challenge. However, it remains true that one’s moral conduit only emerges from a choice: one has to want it. It is a choice among other choices, and always debatable in its foundations and its consequences. Let us say, broadly speaking, that the choice to conduct oneself morally is the condition for the establishment of a human order, for which racism is the very negation. This is almost a redundancy. One cannot found a moral order, let alone a legislative order, on racism, because racism signifies the exclusion of the other, and his or her subjection to violence and domination. From an ethical point of view, if one can deploy a little religious language, racism is ‘the truly capital sin. It is not an accident that almost all of humanity’s spiritual traditions counsels respect for the weak, for orphans, widows, or strangers. It is not just a question of theoretical morality and disinterested commandments. Such unanimity in the safeguarding of the other suggests the real utility of such sentiments. All things considered, we have an interest in banishing injustice, because injustice engenders violence and death. Of course, this is debatable. There are those who think that if one is strong enough, the assault on and oppression of others is permissible. Bur no one is ever sure of remaining the strongest. One day, perhaps, the roles will be reversed. All unjust society contains within itself the seeds of its own death. It is probably smarter to treat others with respect so that they treat you with respect. “Recall.” says the Bible, “that you were once a stranger in Egypt,” which means both that you ought to respect the stranger because you were a stranger yourself and that you risk becoming one again someday. It is an ethical and a practical appeal—indeed, it is a contract, however implicit it might be. In short, the refusal of racism is the condition for all theoretical and practical morality because, in the end, the ethical choice commands the political choice, a just society must be a society accepted by all. If this contractual principle is not accepted, then only conflict, violence, and destruction will be our lot. If it is accepted, we can hope someday to live in peace. True, it is a wager, but the stakes are irresistible.

#### Correcting past racist policies is a prerequisite to avoiding otherwise inevitable future racist policies

Griffen 1999 (Wendell L. Griffen, Judge for the Arkansas Court of Appeals, "RACE, LAW, AND CULTURE: A CALL TO NEW THINKING, LEADERSHIP, AND ACTION," University of Arkansas at Little Rock Law Review, 21 U. Ark. Little Rock L. Rev. 901, 1999, Lexis Nexis)

We have yet to admit the racism that resulted in Chinese exclusion laws in the West and acknowledge the fact that similar treatment was not applied to immigrants from Europe. Somehow our obsession with power and notion of manifest destiny made us oblivious to the blatant racism practiced against the Mexican people of Texas, New Mexico, Colorado, and Arizona during the last century that resulted in the loss of millions of acres of land that had been owned for generations. We forcibly removed American citizens of Japanese ancestry from their homes, communities, work, and businesses during World War II and interned them like prisoners of war solely because of their ancestry. The United States Supreme Court sanctioned that blatant act of institutional racism in Korematsu v. United States, n3 just as it had sanctioned the institutional racism of slavery in Dred Scott v. Sanford, n4 and racial segregation in Plessy v. Ferguson. n5 Had the same reasoning been applied to American citizens of Italian and German ancestry, Joe DiMaggio and Dwight D. Eisenhower would have been interned. There was never a serious discussion about a threat to national security posed by having a person of German ancestry commanding Allied forces against the Third Reich, let alone being elected president within a decade of that war.¶ Unless and until we admit that racism produced these and countless other stubborn, stupid, and sick results we will not create a different society in the 21st Century. American law, history, economics, religion, social life, and culture have been so permeated by racism and racist thought for such a long time that nothing short of new thinking about that racism and its effects on our national life bodes real chance for producing racial equity in the new century.¶ Until American thinking about racism and racial justice is defined from the perspective of the historical victims of racism and racial injustice rather than from the perspective of the historical beneficiaries, we are doomed to [\*905] continue the sorry legacy of racism. We must shift our thinking about racism and racial justice from focusing on the benefits and comforts that have been enjoyed and may be reduced by racism's historical white beneficiaries to focusing on the costs, burdens, and consequences that have been suffered and will be endured by racism's historical non-white victims. We should admit that the new thinking is not likely to come from the same mindset that has produced so much of what we deem legitimate about American law and culture.¶ The prevailing thought in American law and culture regarding racism and racial injustice follows the ages-old presumption of white superiority over non-white people and what one social ethicist termed a belief in "the rightness of whiteness." n6 Thus, the very mindset that produced the theft of Native American land, enslavement of Africans, discrimination against people of Asian ancestry, and belittling of the Hispanic culture (including the Spanish language) has driven and continues to dominate American thinking about religion, government, law, economics, education, and societal life in general.

### 1AC Plan

#### Plan: The United States federal judiciary should restrict the use of the Korematsu decision as a basis for war authorization of Presidential indefinite detention during conflict because of overreliance on military necessity.

### 1AC Solvency

#### The court has an obligation to right the wrong of Korematsu

Irons 2013 (Peter Irons, Professor of Political Science, Emeritus, University of California, San Diego; founder and Director, Emeritus, Earl Warren Bill of Rights Project, UCSD. B.A., Antioch College; M.A. and Ph.D., Boston University; J.D., Harvard Law School. Member of the Bar, Supreme Court of the United States, “UNFINISHED BUSINESS: THE CASE FOR SUPREME COURT REPUDIATION OF THE JAPANESE AMERICAN INTERNMENT CASES,” http://lawprofessors.typepad.com/files/case-for-repudiation-1.pdf)

INTRODUCTION¶ June 21, 2013, will mark the seventieth anniversary of the United States Supreme Court¶ decisions in the cases of Hirabayashi v. United States and Yasui v. United States. [3] In¶ these cases, the Court unanimously upheld the criminal convictions of two courageous¶ young Japanese Americans, Gordon Hirabayashi and Minoru Yasui, for disobeying¶ military curfew orders that preceded and were followed by the forced removal from the¶ West Coast and subsequent imprisonment of some 110,000 Americans of Japanese¶ ancestry, two-thirds of them native-born citizens. Eighteen months later, on December 18, 1944, the Court upheld—over three powerful and prophetic dissents--the conviction of a third courageous young Japanese American, Fred Korematsu, for violating a military order to report for internment in a “relocation center” that was in reality a concentration¶ camp. [4] Anniversaries often remind us of significant events that should be remembered, some to¶ inspire us with accounts of heroic deeds and acts, others to chasten us with lessons from¶ ignoble or even horrific events. The recent one hundred and fiftieth anniversary of¶ President Abraham Lincoln’s issuance of the Emancipation Proclamation is an example¶ of the first; the anniversary of the Supreme Court’s decisions in the Hirabayashi and¶ Yasui cases stands as a reminder of the second. The Supreme Court, in the Japanese¶ American internment cases, turned a blind eye to the “grave injustice” imposed on this¶ entire ethnic and racial minority, whose members were guilty of nothing more, as Fred¶ Korematsu later told a federal judge who vacated his conviction, than “looking like the¶ enemy.”¶ This essay presents the case for the Supreme Court to follow President Lincoln’s example¶ by formally repudiating its decisions in the Japanese American internment cases, issuing¶ a public statement acknowledging that these decisions were based upon numerous and¶ knowing acts of governmental misconduct before the Court, and were thus wrongly¶ decided. These acts of misconduct, documented and discussed herein, were committed¶ by several high-ranking military and civilian officials (including the Solicitor General of¶ the United States) before and during the pendency of the internment cases before the¶ Supreme Court. Consequently, the Court was forced to rely in making its decisions on¶ records and arguments that were fabricated and fraudulent. Sadly, the Court’s¶ unquestioning acceptance of these tainted records, and its upholding of the criminal¶ convictions of Gordon Hirabayashi, Minoru Yasui, and Fred Korematsu, has left a stain on the Court’s integrity that requires the long overdue correction of public repudiation and apology, as both the legislative and executive branches of the federal government— to their credit—have now done.¶ Although this essay is directed to a general, and hopefully wide readership, it is primarily¶ aimed at an audience of nine: the current justices of the Supreme Court, who have the¶ inherent power to erase this stain on its record and to restore the Court’s integrity.¶ Admittedly, a public repudiation of the Japanese American internment cases would be¶ unprecedented, considering that the cases are technically moot, since the Solicitor¶ General of the United States at the time, Charles Fried, did not ask the Court to review¶ the decisions of the federal judges who vacated the convictions, pursuant to writs of error¶ coram nobis [5] that were filed in all three cases in 1983 and decided in opinions issued¶ in 1984, 1986, and 1987. The government’s decision to forego appeals to the Supreme¶ Court left the victorious coram nobis petitioners in a classic Catch-22 situation: hoping to¶ persuade the Supreme Court to finally and unequivocally reverse and repudiate the¶ decisions in their cases, they were unable—as prevailing parties in the lower courts—to¶ bring appeals to the Court.¶ The evidence of the government’s misconduct in these cases is clear and compelling, and¶ rests on the government’s own records. It reveals that high government officials,¶ including the Solicitor General, knowingly presented the Supreme Court with false and¶ fabricated records, both in briefs and oral arguments, that misled the Court and resulted in¶ decisions that deprived the petitioners in these cases of their rights to fair hearings of¶ their challenges to military orders that were based, not on legitimate fears that they—and¶ all Japanese Americans—posed a danger of espionage and sabotage on the West Coast,¶ but rather reflected the racism of the general who promulgated the orders. As a result of¶ the government’s misconduct in these cases, the integrity of the Supreme Court was¶ compromised. With a full record of the government’s misconduct in these cases now¶ before it, the Supreme Court has both the inherent power and duty to correct its tainted¶ records through a public repudiation of the wartime decisions.

#### The plan is necessary to ensure other race based policies are repudiated

Wu 2002 (Frank H. Wu, Professor of Law, Howard University, September 2002, "Profiling in the Wake of September 11," Justice Magazine, http://www.americanbar.org/publications/criminal\_justice\_magazine\_home/crimjust\_cjmag\_17\_2\_japanese.html)

The condemnation of the internment may lead to the condoning of milder measures in the classical fallacy of false alternatives. Anything short of an internment is compared to the internment, as if to say it could be worse and so there is no cause for complaint. To be fair, racial profiling can be carried out in a much milder form than internment camps. To be precise, the current secret detentions are best likened to the apprehension of hundreds of Japanese Americans, German Americans, and Italian Americans and the curfews and other measures that preceded the internment itself.¶ In that context, the conclusion that the internment was wrong is not enough. The reasons it was wrong must be articulated again. As lawyers well know, the rationale may be as important as the result by itself in comprehending the meaning of legal authority. What is constitutional is not necessarily advisable. Technically, for all the contempt directed at the Supreme Court’s internment cases, it is worth noting that the decisions have never been repudiated and actually have been followed consistently. Indeed, Chief Justice William H. Rehnquist penned a book a few years ago intimating that if a similar matter were to come before the Court again he would not expect it do otherwise. (William H. Rehnquist, All the Laws But One: Civil Liberties in Wartime (Knopf 1998).)

#### The aff creates a lens through which we can recognize and address future instances of racism like those experienced by Muslim and Arab Americans today

Volpp 2010 (Leti Volpp, Robert D. and Leslie Kay Raven Professor of Law in Access to Justice at the University of California – Berkley School of Law receiving her J.D. from Colombia University in 1993, 2010, “Excesses of Culture: On Asian American Citizenship and Identity, Asian American Law Journal,” Volume 17, Issue 1, pgs. 63-82, accessed via HeinOnline)

IV. PRESENT DAY¶ Let me conclude by turning to our present circumstances, by examining, post-September 11, how some of these ideas about culture, identity and citizenship have shifted, and how some have not, and make¶ something of an ethical argument.¶ In her book ImmigrantActs, Lisa Lowe suggests that Asian Americans¶ have a particular collective memory-that of being constituted as aliens- that allows us to be critical of the notion of citizenship and the fault lines in the liberal democracy it upholds." Asian Americans share a collective memory of imputed foreignness, of being marked as the enemy within.72 The late nineteenth-century policing of Chinese immigrants led to the creation of a new administrative bureaucracy.73 As Gabriel J. Chin has argued, we can link the rise of the administrative state to the policing of Asian exclusion.74 Lisa Lowe, in turn, suggests this regulation has, in recent years, been "refocused particularly on 'alien' and 'illegal' Mexican and Latino workers." As such, Asian American culture can be "the site of remembering, in which the recognition of Asian immigrant history in the¶ 7 present predicament of Mexican and Latino immigrants is possible." 1¶ I would suggest that we see this kind of collective memory exemplified in Fred Korematsu's brief challenging the imprisonment of hundreds of prisoners on Guantanamo in the Supreme Court's deliberations¶ of Rasul v. Bush, which addressed whether or not the prisoners had the¶ 76¶ More than sixty years ago, as a young man, Fred Korematsu challenged the constitutionality of President Franklin Roosevelt's 1942 Executive Order that authorized the internment of all persons of Japanese ancestry on the West Coast of the United States. He was convicted and sent to prison. In Korematsu v. United States, this Court upheld his conviction, explaining that because the United States was at war, the government could constitutionally intern Mr. Korematsu, without a hearing, and without any adjudicative determination that he had done anything wrong.¶ More than half a century later, Fred Korematsu was awarded the Presidential Medal of Freedom, the nation's highest civilian honor, for his courage and persistence in opposing injustice. In accepting this award, Mr. Korematsu reminded the nation that "We should be vigilant to make sure this will never happen again." He has committed himself to ensuring that Americans do not forget the lessons of their own history.¶ Because Mr. Korematsu has a distinctive, indeed unique,¶ perspective on the issues presented by this case, he submits this brief to assist the court in its deliberation. The historical experience of subordination of a community can create a lens, a way to see, which I would argue lends itself to an ethical argument: that it behooves us, as Asian Americans, to be particularly sensitive to the communities today subjected to the unjust treatment that has characterized treatment of our own community. I think this is precisely what Fred Korematsu did.¶ This is a very particular argument about politics. This does not say that our political activity should focus on Asian American bodies. This says that we should think about what we know from our past experience-and what we have learned from this experience-to think critically about who is being treated in this way now, and that the bodies that this is happening to now, whether Asian American or not, should be a focus of our concern.¶ If we think about this on the terrain of culture, I think it is unarguable that the people today subject to the most violent expulsion from membership are Muslims. Post-September 11-and the wars in Afghanistan and Iraq-the West has been ever more defined as progressive, democratic, civilized and feminist, in stark contrast to Islam and to Muslims.

### 1AC Impact Framing

#### Overreliance on utility principles to justify detention power distorts decision-making and obliterates restraints on the conduct of war

Wilson 2005 (Richard Ashby Wilson, the Gladstein Distinguished Chair of Human Rights and Director of the Human Rights Institute at the University of Connecticut, Human Rights in the War on Terror, p. 19-21)

Michael Ignatieff’s ‘lesser evil’ ethics and overreliance on a consequentialist ethics place him much closer to the anti-rights philosophical tradition of utilitarianism than the liberal tradition of human rights. Philosophically and politically, utilitarian consequentialism is about as far from an ethics of human rights as one can travel, and this is borne out in the DOJ memo’s dramatic bolstering of executive power and the sweeping away of the rights of prisoners of war. Jonathan Raban might have a point in suggesting that Ignatieff has become the ‘in-house philosopher’ of the ‘terror warriors’ (2005: 22). Lesser evil reasoning makes a virtue out of lowering accepted standards and surrendering safeguards on individual liberties. In the hands of government officials, it enables unrestrained presidential authority and a disregard for long-standing restraints on the conduct of war. Anyone remotely familiar with the history of twentieth-century Latin America will also be accustomed to ‘lesser evil’ excuses for human rights abuses, given their pervasiveness in the National Security Doctrine of numerous military dictatorships. Ignatieff is aware that a lesser evil ethics can take us down a slippery slope: ‘If a war on terror may require lesser evils, what will keep them from slowly becoming the greater evil? The only answer is democracy itself . . . The system of checks and balances and the division of powers assume the possibility of venality or incapacity in one institution or the other’ (2004: 10-11). This argument now seems rather credulous. Evidence gathered from Abu Ghraib, Guantanamo Bay and U.S. prisons in Afghanistan suggests that torture, the keeping of ‘ghost detainees’ and other violations of the Geneva Conventions were endemic within the system of military custody. By the time government officials weakly diverted blame to by denouncing a few low-ranking ‘bad apples’ in the 272nd Military Police Company, the damage had already been done, to the prisoners and to America’s standing in Iraq and the world. Even if the connection between a lesser evil ethics and a disregard for prisoners’ human rights is coincidental rather than intrinsic, lesser evil advocates have been wildly overconfident about the probity of government and the ability of democratic institutions to monitor closely the boundary between coercion and torture. The evidence points to the contrary view; that the executive branch, at the very least, fostered a legal setting in which prisoner abuse could flourish and excluded any congressional oversight. The monitoring procedures that were in place did not prevent such abuse from becoming widespread and symptomatic. The ‘lesser evil’ moral calculus that simplifies difficult decision making in an ‘age of terrorism’ is a little more complicated for others, and the DOJ memo should have at least demonstrated an awareness that the standard necessity defence case has been challenged comprehensively in jurisprudence and moral philosophy. In the 1970s, the late philosopher Bernard Williams carried out a critique of utilitarianism’s philosophy of the law so devastating that he concluded ‘the simple-mindedness of utilitarianism disqualifies it totally…the day cannot be far off in which we hear no more of it’ (1973: 150). Alas, this was the only part of Williams’ critique that was wide of the mark, since utilitarianism will probably always appeal to those longing for greater executive power. Williams examines a scenario analogous to the necessity defence cases found in the DOJ memo. He considers the case of a man, Jim, who is dropped into a South American village where he is the guest of honor. There, a soldier, Pedro, presents him with the dilemma of intentionally killing one man and saving another nineteen souls, whom Pedro was about to execute. Williams finds the utilitarian answer, that obviously Jim should kill one man to save nineteen, inadequate on a number of grounds. Generally stated, Williams’ position is that utilitarianism ignores individual integrity in its quest for the general good and it neglects the point that each of us are morally responsible for what we do, not what others do. Jim is responsible for his own actions and his not killing one man is not causal to Pedro’s subsequent killing of twenty. To advise Jim to torture or kill the one to save the many is to treat Jim as an impersonal and empty channel for effects in the world, or in Williams’ words, as a janitor of a system of values whose role is not to think or feel, but just to mop up the moral mess. The utilitarian perspective portrays an anxiety about the long-term psychological effects on the agent, say, a person’s feelings or remorse for an act of murder, as self-indulgent. It ignores the life projects to which Jim is committed, and his obligations to friends and family to act in a certain way It treats these commitments as irrational and of no consequence in its moral calculus of the greater good. In this critique, utilitarianism, of the kind that has characterized the legal counsel to President Bush in the ‘war on terror’, ignores individual moral agency and strips human life of what makes it worthwhile. Seeing persons as ends in themselves and not as means to other ends corresponds with a Kantian defence of human rights and liberal democracy more generally. In the struggle against Islamist terrorists, we are well advised to temper our desire for good consequences (which can seldom be predicted in advance) with an equal concern with intentions and integrity of motives. Consequences matter and integrity and good intentions are not in themselves sufficient. Yet developing an approach that is not overreliant on consequentialism and which foregrounds human agency, motivations and intentions could provide enduring grounds for defending human rights in the present climate. It could better equip us with the fundamental ethical principles to go about recombining human rights and security, and work through more carefully which suspensions of ordinary domestic laws and international rule of law are defensible, and which are not.

#### Reject extended link chains and minimax risk calculus

Berube 2000 (David Berube, professor of speech comm at University of South Carolina, Debunking Minimax Reasoning: The Limits of Extended Causal Chains in Contest Debating,” CAD, 53-73, http://www.cedadebate.org/cad/index.php/CAD/article/view/248/232)

The lifeblood of contemporary contest debating may be the extended argument. An¶ extended argument is any argument requiring two or more distinct causal or¶ correlational steps between initial data and ending claim. We find k associated with¶ advantages to comparative advantage cases, with counterplan advantages, with¶ disadvantages, permutation and impact turnarounds, some kritik implications, and even¶ probabilistic topicality arguments In practice, these often are not only extended arguments¶ they are causal arguments using mini-max reasoning. Mini-max reasoning is defined as an¶ extended argument in which an infinitesimally probable event of high consequence is¶ assumed to present a highly consequential risk. Such arguments, also known as low-¶ probability high-consequence arguments, are commonly associated with “risk analysis.”¶ The opening statement from Schell represents a quintessential mini-max argument. Schell¶ asked his readers to ignore probability assessment and focus exclusively on the impact of his¶ claim. While Schell gave very specific reasons why probability is less important than¶ impact in resolving this claim, his arguments are not impervious to rebuttal.¶ What was a knotty piece of evidence in the 1980s kick-started a practice in contest¶ debating which currently is evident in the ubiquitous political capital disadvantage code-¶ named “Clinton.” Here is an example of the Clinton disadvantage. In theory, plan action¶ causes some tradeoff (real or imaginary) that either increases or decreases the President’s¶ ability to execute a particular agenda. Debaters have argued the following: Clinton (soon¶ to be Gore or Bush) needs to focus on foreign affairs. A recent agreement between Barak¶ and Assad needs presidential stewardship. The affirmative plan shifts presidential focus to¶ Nigeria that trades off with focus on the Middle East. As a result, the deal for the return of¶ the Golan Heights to Syria fails. Violence and conflict ensues as Hezbollah terrorists launch¶ guerilla attacks into northern Israel from Lebanon. Israel strikes hack. Hezbollah incursions¶ increase, Chemical terrorism ensues and Israel attacks Hezbollah strongholds in southern¶ Lebanon with tactical nuclear weapons. Iran launches chemical weapons against Tel Aviv.¶ Iraq allies with Iran. The United States is drawn in- Superpower miscalculation results in¶ all-out nuclear war culminating in a nuclear winter and the end of all life on the planet. This¶ low-probability high-consequence event argument is an extended argument using mini-max¶ reasoning.¶ The appeal of mini-max risk arguments has heightened with the onset of on-tine text¶ retrieval services and the World Wide Web, both of which allow debaters to search for¶ particular words or word strings with relative ease. Extended arguments are fabricated by¶ linking evidence in which a word or word string serves as the common denominator, much¶ in the fashion of the soritics (stacked syllogism): AcaB, BaC, CaD, therefore ActD. Prior to¶ computerized search engines, a contest debater’s search for segments that could be woven¶ together into an extended argument was incredibly Lime consuming.¶ The dead ends checked the authenticity of the extended claims by debunking especially¶ fanciful hypotheses. Text retrieval services may have changed that. While text ettieval¶ services include some refereed published materials, they also incorporate transcripts and¶ wire releases that are less vigilantly checked for accuracy. The World Wide Web allows¶ virtually anyone to set up a site and post anything at that site regardless of its veracity.¶ Sophisticated super search engines, such as Savvy SearchC help contest debaters track down¶ particular words and phrases. Searches on text retrieval services such as Lexis-Nexis¶ Universes and Congressional Universes locate words and word strings within n words of¶ each other. Search results are collated and loomed into an extended argument. Often,¶ evidence collected in this manner is linked together to reach a conclusion of nearly infinite¶ impact, such as the ever-present specter of global thermonuclear war.¶ Furthermore, too much evidence from online text retrieval services is unqualified or¶ under-qualified. Since anyone can post a web page and since transcripts and releases are¶ seldom checked as factual, pseudo-experts abound and are at the core of the most egregious¶ claims in extended arguments using mini-max reasoning.¶ In nearly every episode of fear mongering . . . people with fancy titles appeared. .¶ . . [F]or some species of scares. . . secondary scholars arc standard fixtures. . . .¶ Statements of alarm by newscasters and glorification of wannabe experts are two¶ telltales tricks of the fear mongers trade. . . : the use of poignant anecdotes in place of scientific evidence, the christening of isolated incidents as trends,¶ dep,ctions of entire categories of people as innately dangerous. . . (Glassner 206,¶ 208)¶ hence, any warrant by authority of this ilk further complicates probability estimates in¶ extended arguments using mini•max reasoning. Often the link and internal link story is the¶ machination of the debater making the claim rather than the sources cited in the linkage.¶ The links in the chain may be claims with different, if not inconsistent, warrants. As a¶ result, contextual considerations can be mostLy moot.¶ Not Only the information but also the way it is collated is suspect. All these engines use¶ Boolean connectors (and, or, and not) and Boolean connectors are dubious by nature,¶ Boolean logic uses terms only to show relationships — of inclusion or exclusion¶ among the terms. It shows whether or not one drawer fits into another and ignores¶ the question whether there is anything in the drawers. . . . The Boolean search¶ shows the characteristic way thai we put questions to the world of information.¶ When we pose a question to the Boolean world, we use keywords, buzzwords, and¶ thought bits to scan the vast store of knowledge. Keeping an abstract, cybernetic¶ distance from the source of knowledge, we set up tiny funnels. . . . But even if we¶ build our tunnels carefully, we still remain essentially tunnel dwellers. . . .¶ Thinking itself happens only when we suspend the inner musings of the mind long¶ enough to favor a momentary precision, and even then thinking belongs to musing¶ as a subset of our creative mind. . . . The Boolean reader, on the contrary, knows¶ in advance where the exits are, the on-ramps, and the well-marked rest stops. . . .¶ The pathways of thought, not to mention the logic of thoughts, disappear under a¶ Boolean arrangement of freeways.” (Heim 18, 22-25)¶ Helm worries that the Boolean search may encourage readers to link together nearly empty¶ drawers of information, stifling imaginative, creative thinking and substituting empty ideas¶ for good reasons. The problems worsen when researchers select word strings without¶ reading its full context, a nearly universal practice among contest debaters. Using these¶ computerized research services, debaters are easily able to build extended mini-max¶ arguments ending in Armageddon,¶ Outsiders to contest debating have remarked simply that too many policy debate¶ arguments end in all-out nuclear war: consequently, they categorize the activity as foolish.¶ How many times have educators had contest debaters in a classroom discussion who strung out an extended mini-max argument to the jeers and guffaws of their classmates? They¶ cannot all be wrong. Frighteningly enough, most of us agree. We should not ignore Charles¶ Richct’s adage: “The stupid man ¡s not the one who does not understand something — but¶ the man who understands it well enough yet acts as if he didn’t” (Tabori 6).¶ Regrettably. mini-max arguments are not the exclusive domain of contest debating.¶ “Policies driven by the consideration of low risk probabilities will, on the whole, lead to low¶ investment strategies to prevent a hazard from being realized or to mitigate the hazard’s¶ consequences. By comparison, policies driven by the consideration of high consequences,¶ despite low probabilities, will lead to high levels of public investment” (Nehnevajsa 521).¶ Regardless of their persuasiveness, Bashor and others have discovered that mini-max claims¶ are not useful in resolving complex issues. For example, in his assessment of low-¶ probability, potentially high-consequence events such as terrorist use of weapons of mass¶ destruction, Bashor found simple estimates of potential losses added little to contingency¶ planning. While adding little to policy analysis, extended arguments using mini-max¶ reasoning remain powerful determinants of resource allocation. As such, they need to he¶ debunked.¶ Experts agree. For example, Slovic advocates a better understanding of all risk analysis¶ since it drives much of our public policy. “Whoever controls the definition of risk controls¶ the rational solution to the problem at hand. ¡f risk is defined one way, then one option will¶ rise to the top as the most cost-effective or the safest or the best. If it is defined another¶ way, perhaps incorporating qualitative characteristics or other contextual factors, one will¶ likely get a different ordering of action solutions. Defining risk is thus an exercise in¶ power” (699). When probability assessments are eliminated from risk calculi, as is the case¶ in mini-max risk arguments, it is a political act, and all political acts need to be scrutinized¶ with a critical lens.

#### Conjunctive fallacy--- Specificity makes their disad less likely

Yudkowsky 2006 (Eliezer Yudkowsky, Research Fellow at the Singularity Institute for Artificial Intelligence “Cognitive biases potentially affecting judgment of global risks” Forthcoming in Global Catastrophic Risks, eds. Nick Bostrom and Milan CirkovicDraft of August 31, 2006. Eliezer Yudkowsky(yudkowsky@singinst.org)

The conjunction fallacy similarly applies to futurological forecasts. Two independent sets of professional analysts at the Second International Congress on Forecasting were asked to rate, respectively, the probability of "A complete suspension of diplomatic relations between the USA and the Soviet Union, sometime in 1983" or "A Russian invasion of Poland, and a complete suspension of diplomatic relations between the USA and the Soviet Union, sometime in 1983". The second set of analysts responded with significantly higher probabilities. (Tversky and Kahneman 1983.) In Johnson et. al. (1993), MBA students at Wharton were scheduled to travel to Bangkok as part of their degree program. Several groups of students were asked how much they were willing to pay for terrorism insurance. One group of subjects was asked how much they were willing to pay for terrorism insurance covering the flight from Thailand to the US. A second group of subjects was asked how much they were willing to pay for terrorism insurance covering the round-trip flight. A third group was asked how much they were willing to pay for terrorism insurance that covered the complete trip to Thailand. These three groups responded with average willingness to pay of $17.19, $13.90, and $7.44 respectively. According to probability theory, adding additional detail onto a story must render the story less probable. It is less probable that Linda is a feminist bank teller than that she is a bank teller, since all feminist bank tellers are necessarily bank tellers. Yet human psychology seems to follow the rule that adding an additional detail can make the story more plausible. People might pay more for international diplomacy intended to prevent nanotechnological warfare by China, than for an engineering project to defend against nanotechnological attack from any source. The second threat scenario is less vivid and alarming, but the defense is more useful because it is more vague. More valuable still would be strategies which make humanity harder to extinguish without being specific to nanotechnologic threats - such as colonizing space, or see Yudkowsky (this volume) on AI. Security expert Bruce Schneier observed (both before and after the 2005 hurricane in New Orleans) that the U.S. government was guarding specific domestic targets against "movie-plot scenarios" of terrorism, at the cost of taking away resources from emergency-response capabilities that could respond to any disaster. (Schneier 2005.)

#### Questions of what people do in response to the plan are outside the realm of your ethical consideration

Gewirth 1981 (Alan Gewirth, professor of philosophy at U Chicago, The Philosophical Quarterly, Vol. 31, No. 122, pg. 12-13, JSTOR)

None of the above distinctions, then, serves its intended purpose of defending the absolutist against the consequentialist. They do not show that the son's refusal to torture his mother to death does not violate the other persons' rights to life and that he is not morally responsible for their deaths. Nevertheless, the distinctions can be supplemented in a way that does serve to establish these conclusions. The required supplement is provided by the principle of the intervening action. According to this principle, when there is a causal connection between some person A's performing some action (or inaction) X and some other person C's incurring a certain harm Z, A's moral responsibility for Z is removed if, between X and Z, there intervenes some other action Y of some person B who knows the relevant circumstances of his action and who intends to produce Z or who produces Z through recklessness. The reason for this removal is that B's intervening action Y is the more direct or proximate cause of Z and, unlike A's action (or inaction), Y is the sufficient condition of Z as it actually occurs An example of this principle may help to show its connection with the absolutist thesis. Martin Luther King Jr. was repeatedly told that because he led demonstrations in support of civil rights, he was morally responsible for the disorders, riots, and deaths that ensued and that were shaking the American Republic to its foundations.l2 By the principle of the intervening action, however, it was King's opponents who were responsible because their intervention operated as the sufficient conditions of the riots and injuries. King might also have replied that the Republic would not be worth saving if the price that had to be paid was the violation of the civil rights of black Americans. As for the rights of the other Americans to peace and order, the reply would be that these rights cannot justifiably be secured at the price of the rights of blacks. It follows from the principle of the intervening action that it is not the son but rather the terrorists who are morally as well as causally responsible for the many deaths that do or may ensue on his refusal to torture his mother to death. The important point is not that he lets these persons die rather than kills them, or that he does not harm them but only fails to help them, or that he intends their deaths only obliquely but not directly. The point is rather that it is only through the intervening lethal actions of the terrorists that his refusal eventuates in the many deaths. Since the moral responsibility is not the son's, it does not affect his moral duty not to torture his mother to death, so that her correlative right remains absolute. This point also serves to answer some related questions about the rights of the many in relation to the mother's right. Since the son's refusal to torture his mother to death is justified, it may seem that the many deaths to which that refusal will lead are also justified, so that the rights to life of these many innocent persons are not absolute. But since they are innocent, why aren't their rights to life as absolute as the mother's? If, on the other hand, their deaths are unjustified, as seems obvious, then isn't the son's refusal to torture his mother to death also unjustified, since it leads to those deaths? But from this it would follow that the mother's right not to be tortured to death by her son is not absolute, for if the son's not infringing her right is unjustified, then his infringing it would presumably be justified. The solution to this difficulty is that it is a fallacy to infer, from the two premises (1) the son's refusal to kill his mother is justified and (2) many innocent persons die as a result of that refusal, to the conclusion (3) their deaths are justified. For, by the principle of the intervening action, the son's refusal is not causally or morally responsible for the deaths; rather, it is the terrorists who are responsible. Hence, the justification referred to in (1) does not carry through to (2). Since the terrorists' action in ordering the killings is unjustified, the resulting deaths are unjustified. Hence, the rights to life of the many innocent victims remain absolute even if they are killed as a result of the son's justified refusal, and it is not he who violates their rights. He may be said to intend the many deaths obliquely, in that they are a foreseen but unwanted side-effect of his refusal. But he is not responsible for that side-effect because of the terrorists' intervening action. It would be unjustified to violate the mother's right to life in order to protect the rights to life of the many other residents of the city. For rights cannot be justifiably protected by violating another right which, according to the criterion of degrees of necessity for action, is at least equally important. Hence, the many other residents do not have a right that the mother's right to life be violated for their sakes. To be sure, the mother also does not have a right that their equally important rights be violated in order to protect hers. But here too it must be emphasized that in protecting his mother's right the son does not violate the rights of the others; for by the principle of the intervening action, it is not he who is causally or morally responsible for their deaths. Hence too he is not treating them as mere means to his or his mother's ends.

#### Complexity makes predicting the outbreak of war impossible--- meddling is foolhardy

Taleb 2007 (Nassim Nicholas Taleb, literary essayist, part empiricist, part no-nonsense mathematical trader, he is currently taking a break by serving as the Dean's Professor in the Sciences of Uncer­ tainty at the University of Massachusetts at Amherst, 2007, “The Black Swan,” pdf)

Experts and "Empty Suits"¶ The inability to predict outliers implies the inability to predict the course of history, given the share of these events in the dynamics of events.¶ But we act as though we are able to predict historical events, or, even worse, as if we are able to change the course of history. We produce thirty- year projections of social security deficits and oil prices without realizing that we cannot even predict these for next summer—our cumulative pre­ diction errors for political and economic events are so monstrous that every time I look at the empirical record I have to pinch myself to verify that I am not dreaming. What is surprising is not the magnitude of our forecast errors, but our absence of awareness of it. This is all the more worrisome when we engage in deadly conflicts: wars are fundamentally unpredictable (and we do not know it). Owing to this misunderstanding of the causal chains between policy and actions, we can easily trigger Black Swans thanks to aggressive ignorance—like a child playing with a chemistry kit.¶ Our inability to predict in environments subjected to the Black Swan, coupled with a general lack of the awareness of this state of affairs, means that certain professionals, while believing they are experts, are in fact not. Based on their empirical record, they do not know more about their subject matter than the general population, but they are much better at narrating—or, worse, at smoking you with complicated mathematical models. They are also more likely to wear a tie.¶ Black Swans being unpredictable, we need to adjust to their existence rather than naively try to predict them). There are so many things we can do if we focus on antiknowledge, or what we do not know. Among many other benefits, you can set yourself up to collect serendipitous Black Swans (of the positive kind) by maximizing your exposure to them. Indeed, in some domains—such as scientific discovery and venture capital investments— there is a disproportionate payoff from the unknown, since you typically have little to lose and plenty to gain from a rare event. We will see that, contrary to social-science wisdom, almost no discovery, no technologies of note, came from design and planning—they were just Black Swans. The strategy for the discoverers and entrepreneurs is to rely less on top-down planning and focus on maximum tinkering and recognizing opportunities when they present themselves. So I disagree with the followers of Marx and those of Adam Smith: the reason free markets work is because they allow people to be lucky, thanks to aggressive trial and error, not by giv­ ing rewards or "incentives" for skill. The strategy is, then, to tinker as much as possible and try to collect as many Black Swan opportunities as you can.

#### No more great power wars- realism was wrong

Bluth 2004 (Christoph Bluth, School of Politics and International Studies, University of Leeds POLIS Working Paper No. 12 February 2004 “Norms and International Relations: The anachronistic nature of neo-realist approaches” http://www.polis.leeds.ac.uk/assets/files/research/working-papers/wp12bluth.pdf)

However, the interpretation of the nature of the Cold War by neorealists is open to question. 6 In particular the timing and manner in which the Cold War ended is a problem for the neorealist approach. A different interpretation of the nature of the Cold War and the reasons for its end leads to a completely different characterisation of the system of states in Europe after the Cold War. The potential for inter-state conflict predicted by John Mearsheimer is nowhere apparent in Europe except on the territory of states which have now fallen apart, such as certain parts of the former Soviet Union and the former Republic of Yugoslavia. 7 These conflicts can be interpreted either as civil conflicts or post-colonial conflicts. What we are witnessing in Europe are the consequences the collapse of the Soviet Union and the Yugoslav state, which created stability on their territories by the constant threat of force has resulted in instability and conflict. 8 More importantly, the post-Cold War conflicts that involved significant outbreaks of violence were not inter-state conflicts (such as predicted by Mearsheimer), but rather intra-state conflicts. Generally speaking post-Cold War European states do not seem to be naturally prone to military conflict. Quite the opposite appears to be the case: the principal objective of virtually all Central and Eastern European states is to join various Western multilateral organisations such as NATO and the European Union and thereby accept international norms with regard to the use and the threat of the use of force and other consequent constraints on their foreign and domestic policies. Whereas for neo-realists the principal consequence for the international system of the end of the Cold War is the collapse of the bipolar structure of power and the reemergence of a regional multipolarity (accompanied by the emergence of the United States as the only state with global power projection capabilities), other perspectives provide a sense of a deeper change. These range from Samuel Huntingdon’s Clash of Civilisations, which sees the bipolar global power struggle replaced by new patterns of conflict and cooperation emerging along cultural lines, 9 to Francis Fukuyama’s belief in the final triumph of Western liberalism and the end of history. 10 It is not necessary to accept the whole of Fukuyama’s framework or the triumphalism of some of his adherents to conclude that a major paradigm shift has occurred with regard to the role of military force in the international system and that we are indeed in a new era in which war between the major powers has become unlikely, or, as some would say, obsolete. 11 There are several developments through the 20 th century that point in this direction. 12 The first is that the cost of war has dramatically increased to the point of rendering war unprofitable. The last major systemic conflict between major powers was a cold war precisely for that reason. The destructive power of nuclear weapons was such that their large-scale use would threaten the very existence of the societies that would engage in such a conflict. But the destructive power of conventional forces is now such that an all-out conflict between major powers would result in unacceptable losses on both sides. This is illustrated by the fact that during the 1980s the Soviet leadership concluded that any war in Europe would be literally impossible because attacks on nuclear power stations would render Europe uninhabitable. 13 The vulnerability of high-technology societies and their high standard of living has resulted an unwillingness to support the costs of war, both in terms of casualties and damage to the society itself. The second factor is that the currency of power in the security space occupied by the Western powers and to some extent also Russia and China has changed. 14 The collapse of an empire controlled by a nuclear superpower with the military capacity to destroy every country on earth is a powerful symbol of this trend. During the 1970s and 1980s it was already observable that economic capacity and commercial competitiveness were becoming more important. These trends accelerated as the Cold War ended, both in the West, and also now in the East where the survival of the post-Communist states was not endangered by external military threat but internal societal and economic collapse. 15 Another aspect of this is what is a phenomenon referred to as globalisation. 16 There is now a high degree of global economic interdependence. Financial collapse in one country can affect the wealth of people, companies and societies on the other side of the globe. The abandonment of the centrally planned command economy by the former Communist countries is of major significance for international security. Russia and China are no longer attempting to develop autonomous, socialist economies.

Instead both countries have committed themselves to develop market economies, as a consequence of which their wellbeing depends on the well-being of other major powers, especially the United States and the European Union.. Wealth is no longer dependent on the possession of land or natural resources, but on the intellectual capital and social organisation to produce high quality, high technology products. Such wealth cannot be efficiently acquired by war or conquest.

#### Subordinating rights to extinction claims locks in the tyranny of survival

Callahan 1973 (Daniel Callahan, Co-founder and former director of The Hastings Institute, PhD in philosophy from Harvard University, “The Tyranny of Survival” 1973, p 91-93)

The value of survival could not be so readily abused were it not for its evocative power. But abused it has been. In the name of survival, all manner of social and political evils have been committed against the rights of individuals, including the right to life. The purported threat of Communist domination has for over two decades fueled the drive of militarists for ever-larger defense budgets, no matter what the cost to other social needs. During World War II, native Japanese-Americans were herded, without due process of law, to detention camps. This policy was later upheld by the Supreme Court in Korematsu v. United States (1944) in the general context that a threat to national security can justify acts otherwise blatantly unjustifiable. The survival of the Aryan race was one of the official legitimations of Nazism. Under the banner of survival, the government of South Africa imposes a ruthless apartheid, heedless of the most elementary human rights. The Vietnamese war has seen one of the greatest of the many absurdities tolerated in the name of survival: the destruction of villages in order to save them. But it is not only in a political setting that survival has been evoked as a final and unarguable value. The main rationale B. F. Skinner offers in Beyond Freedom and Dignity for the controlled and conditioned society is the need for survival. For Jacques Monod, in Chance and Necessity, survival requires that we overthrow almost every known religious, ethical and political system. In genetics, the survival of the gene pool has been put forward as sufficient grounds for a forceful prohibition of bearers of offensive genetic traits from marrying and bearing children. Some have even suggested that we do the cause of survival no good by our misguided medical efforts to find means by which those suffering from such common genetically based diseases as diabetes can live a normal life, and thus procreate even more diabetics. In the field of population and environment, one can do no better than to cite Paul Ehrlich, whose works have shown a high dedication to survival, and in its holy name a willingness to contemplate governmentally enforced abortions and a denial of food to surviving populations of nations which have not enacted population-control policies. For all these reasons it is possible to counterpoise over against the need for survival a "tyranny of survival." There seems to be no imaginable evil which some group is not willing to inflict on another for sake of survival, no rights, liberties or dignities which it is not ready to suppress. It is easy, of course, to recognize the danger when survival is falsely and manipulatively invoked. Dictators never talk about their aggressions, but only about the need to defend the fatherland to save it from destruction at the hands of its enemies. But my point goes deeper than that. It is directed even at a legitimate concern for survival, when that concern is allowed to reach an intensity which would ignore, suppress or destroy other fundamental human rights and values. The potential tyranny survival as value is that it is capable, if not treated sanely, of wiping out all other values. Survival can become an obsession and a disease, provoking a destructive singlemindedness that will stop at nothing. We come here to the fundamental moral dilemma. If, both biologically and psychologically, the need for survival is basic to man, and if survival is the precondition for any and all human achievements, and if no other rights make much sense without the premise of a right to life—then how will it be possible to honor and act upon the need for survival without, in the process, destroying everything in human beings which makes them worthy of survival. To put it more strongly, if the price of survival is human degradation, then there is no moral reason why an effort should be made to ensure that survival. It would be the Pyrrhic victory to end all Pyrrhic victories. Yet it would be the defeat of all defeats if, because human beings could not properly manage their need to survive, they succeeded in not doing so.

# 2AC

### T- Restrict

#### We meet--- we prohibit unilateral launch authorization--- prez has 0 power to do so after the plan

#### Conter interp: Restriction means a limit and includes conditions on action

CAA 8,COURT OF APPEALS OF ARIZONA, DIVISION ONE, DEPARTMENT A, STATE OF ARIZONA, Appellee, v. JEREMY RAY WAGNER, Appellant., 2008 Ariz. App. Unpub. LEXIS 613

P10 The term "restriction" is not defined by the Legislature for the purposes of the DUI statutes. See generally A.R.S. § 28-1301 (2004) (providing the "[d]efinitions" section of the DUI statutes). In the absence of a statutory definition of a term, we look to ordinary dictionary definitions and do not construe the word as being a term of art. Lee v. State, 215 Ariz. 540, 544, ¶ 15, 161 P.3d 583, 587 (App. 2007) ("When a statutory term is not explicitly defined, we assume, unless otherwise stated, that the Legislature intended to accord the word its natural and obvious meaning, which may be discerned from its dictionary definition.").

P11 The dictionary definition of "restriction" is "[a] limitation or qualification." Black's Law Dictionary 1341 (8th ed. 1999). In fact, "limited" and "restricted" are considered synonyms. See Webster's II New Collegiate Dictionary 946 (2001). Under these commonly accepted definitions, Wagner's driving privileges were "restrict[ed]" when they were "limited" by the ignition interlock requirement. Wagner was not only [\*7] statutorily required to install an ignition interlock device on all of the vehicles he operated, A.R.S. § 28-1461(A)(1)(b), but he was also prohibited from driving any vehicle that was not equipped with such a device, regardless whether he owned the vehicle or was under the influence of intoxicants, A.R.S. § 28-1464(H). These limitations constituted a restriction on Wagner's privilege to drive, for he was unable to drive in circumstances which were otherwise available to the general driving population. Thus, the rules of statutory construction dictate that the term "restriction" includes the ignition interlock device limitation.

#### Prefer it---

#### They overlimit--- the topic is about who has the power not whether that power exists or not--- complete prohibition forces extra-topical plan planks that bind Congress and the Courts

### T-In

#### We meet---plan is across the board since we can’t use Korematsu for indefinite detention

#### “In” means within not throughout

Encarta 2007 – Encarta World English Dictionary, 7 (“In (1)”, 2007, <http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861620513>)

in [ [in](http://encarta.msn.com/encnet/features/dictionary/Pronounce.aspx?search=in) ] CORE MEANING: a grammatical word indicating that something or somebody is within or inside something.

1. preposition indicates place: indicates that something happens or is situated somewhere

He spent a whole year in Russia.

2. preposition indicates state: indicates a state or condition that something or somebody is experiencing¶ The banking industry is in a state of flux.¶ 3. preposition after: after a period of time that will pass before something happens¶ She should be well enough to leave in a week or two.¶ 4. preposition during: indicates that something happens during a period of time¶ He crossed the desert in 39 days.¶ 5. preposition indicates how something is expressed: indicates the means of communication used to express something¶ I managed to write the whole speech in French.¶ 6. preposition indicates subject area: indicates a subject or field of activity¶ She graduated with a degree in biology.¶ 7. preposition as consequence of: while doing something or as a consequence of something¶ In reaching for a glass he knocked over the ashtray.¶ 8. preposition covered by: indicates that something is wrapped or covered by something¶ The floor was covered in balloons and toys.¶ 9. preposition indicates how somebody is dressed: indicates that somebody is dressed in a particular way¶ She was dressed in a beautiful suit.¶ 10. preposition pregnant with: pregnant with offspring¶ The cows were in calf.¶ 11. adjective fashionable: fashionable or popular¶ always knew which clubs were in¶ 12. adjective holding power or office: indicates that a party or group has achieved or will achieve power or authority¶ voted in overwhelmingly

#### Subsets inevitable--- Due to different mechanisms, etc.

### Callahan

#### Subordinating rights to extinction claims locks in the tyranny of survival

Callahan 1973 (Daniel Callahan, Co-founder and former director of The Hastings Institute, PhD in philosophy from Harvard University, “The Tyranny of Survival” 1973, p 91-93)

The value of survival could not be so readily abused were it not for its evocative power. But abused it has been. In the name of survival, all manner of social and political evils have been committed against the rights of individuals, including the right to life. The purported threat of Communist domination has for over two decades fueled the drive of militarists for ever-larger defense budgets, no matter what the cost to other social needs. During World War II, native Japanese-Americans were herded, without due process of law, to detention camps. This policy was later upheld by the Supreme Court in Korematsu v. United States (1944) in the general context that a threat to national security can justify acts otherwise blatantly unjustifiable. The survival of the Aryan race was one of the official legitimations of Nazism. Under the banner of survival, the government of South Africa imposes a ruthless apartheid, heedless of the most elementary human rights. The Vietnamese war has seen one of the greatest of the many absurdities tolerated in the name of survival: the destruction of villages in order to save them. But it is not only in a political setting that survival has been evoked as a final and unarguable value. The main rationale B. F. Skinner offers in Beyond Freedom and Dignity for the controlled and conditioned society is the need for survival. For Jacques Monod, in Chance and Necessity, survival requires that we overthrow almost every known religious, ethical and political system. In genetics, the survival of the gene pool has been put forward as sufficient grounds for a forceful prohibition of bearers of offensive genetic traits from marrying and bearing children. Some have even suggested that we do the cause of survival no good by our misguided medical efforts to find means by which those suffering from such common genetically based diseases as diabetes can live a normal life, and thus procreate even more diabetics. In the field of population and environment, one can do no better than to cite Paul Ehrlich, whose works have shown a high dedication to survival, and in its holy name a willingness to contemplate governmentally enforced abortions and a denial of food to surviving populations of nations which have not enacted population-control policies. For all these reasons it is possible to counterpoise over against the need for survival a "tyranny of survival." There seems to be no imaginable evil which some group is not willing to inflict on another for sake of survival, no rights, liberties or dignities which it is not ready to suppress. It is easy, of course, to recognize the danger when survival is falsely and manipulatively invoked. Dictators never talk about their aggressions, but only about the need to defend the fatherland to save it from destruction at the hands of its enemies. But my point goes deeper than that. It is directed even at a legitimate concern for survival, when that concern is allowed to reach an intensity which would ignore, suppress or destroy other fundamental human rights and values. The potential tyranny survival as value is that it is capable, if not treated sanely, of wiping out all other values. Survival can become an obsession and a disease, provoking a destructive singlemindedness that will stop at nothing. We come here to the fundamental moral dilemma. If, both biologically and psychologically, the need for survival is basic to man, and if survival is the precondition for any and all human achievements, and if no other rights make much sense without the premise of a right to life—then how will it be possible to honor and act upon the need for survival without, in the process, destroying everything in human beings which makes them worthy of survival. To put it more strongly, if the price of survival is human degradation, then there is no moral reason why an effort should be made to ensure that survival. It would be the Pyrrhic victory to end all Pyrrhic victories. Yet it would be the defeat of all defeats if, because human beings could not properly manage their need to survive, they succeeded in not doing so.

### 2AC Executive CP

#### Perm do both

#### Exec fiat is a voter---avoids SOP controversy by fiating away Obama’s behavior in the squo---no comparative lit means the neg wins every debate

Hansen 2012 (Victor Hansen, Professor of Law, New England Law, New England Law Review, Vol. 46, pp. 27-36, 2011, “Predator Drone Attacks”, February 22, 2012, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2009313>)

Any checks on the President’s use of drone attacks must come domestically. In the domestic arena the two options are either the courts or Congress. As discussed above, the courts are institutionally unsuited and incapable of providing appropriate oversight. Congress is the branch with the constitutional authority, historical precedent, and institutional capacity to exercise meaningful and effective oversight of the President’s actions.

#### Self-restraint fails--- future presidents and crisis psychology

Healy 2009 (Gene Healy, The Cult of the Presidency: America’s Dangerous Devotion to Executive Power, 2009 p. 308-309)

Laudable as it is, though, presidential self-restraint is far from a robust or lasting solution to the imperial presidency. Executive orders can be overturned, and personnel can be changed – by future presidents, or by this president should political conditions change. The threat of terrorism is no longer as vivid in the public mind as it was a few years ago but all that could change quite rapidly. If a bomb goes off in a subway or terrorist carries out a shooting spree at a shopping mall, it will be very difficult for any president – particularly one with political opponents eager to paint him as “soft on terror” to resist pushing his authority beyond constitutional limits. Lasting restraint needs to come from external sources: the courts, the Congress, and the general public. The Supreme Court has lately shown greater willingness to check presidential power in foreign affairs. However, there’s little evidence that the public has moderated its demands for bold presidential action to solve all manner of problems. And Congress remains as pliable as ever.

#### President uses the Office of Legal Council to circumvent the CP--- courts key

Bejesky 2013 (Robert Bejesky, M.A. Political Science at Michigan, M.A. Applied Economics at Michigan, LL.M. International Law at Georgetown, “Dubitable Security Threats and Low Intensity Interventions as the Achilles' Heel of War Powers,” Mississippi College Law Review, lexis)

In tracing the involvement of the Supreme Court during the shift of war powers over the past half-century, the judiciary's role has been quite docile even though it plays a critical role as the official interpreter of the Constitution and can be a decision-maker to resolve disputes between the political branches. U.S. courts have affirmed the consensus view of congressional dominance in war powers and have never migrated from it. Moreover, in accepting certiorari and deciding cases, courts have affirmed that the Framers intended the judiciary to have a meaningful role in adjudicating separation of powers altercations involving foreign and military affairs. 450 The Court regularly accepted certiorari of war powers questions for nearly 190 years, but it became hesitant to examine the scope of the Commander-in-Chief authority 451 on political question, standing, ripeness, and mootness grounds after dozens of cases challenged presidential power over the Vietnam War. 452¶ The Court denied certiorari to draftees who challenged the constitutionality of the Vietnam War and the Gulf of Tonkin Resolution. 453 Perhaps most disconcerting about the Court's failure to address the claims is [\*63] that Congress repealed the Gulf of Tonkin Resolution after the war, 454 which would seem to merit challenges if one construes that there was a lack of authority when government officials drafted citizens, deployed troops to Vietnam, and waged war with an eventual revoke of authority. Commentators have vociferously argued that the Court should have addressed Vietnam War questions. 455 In a statement to Congress as the Vietnam War was ending, Senator Fulbright remarked: "Insofar as the consent of this body is said to derive from the Gulf of Tonkin Resolution, it can only be said that the resolution, like any other contract based on misrepresentation, in my opinion is null and void." 456 Justice Douglas maintained that "the question of an unconstitutional war is neither academic nor 'political.' " 457¶ The new precedent favoring abstention on cases involving use of force has continued. In the 1980s, members of Congress challenged President Reagan's limited use of the military in undeclared conflicts, but courts dismissed the cases as political questions. 458 In 1990, fifty-four members of Congress filed a case against President Bush for troop buildups in the Persian Gulf prior to the 1991 Gulf War, but the court dismissed the case as unripe. 459 The court assuredly did not reject authority to hear the case but noted that the judiciary should be used to decide the case or controversy on the constitutional provision "if the Congress decides that United States forces should not be employed in foreign hostilities, and if the Executive does not of its own volition abandon participation in such hostilities." 460 Congress enacted the Authorization for Use of Military Force Against Iraq Resolution months later. 461 Petitioners challenged President Clinton's airstrikes in Kosovo, but the court refused to hear the case. 462 Based on the ripeness doctrine, the federal court dismissed a suit brought by military families and members of Congress against George Bush in 2003 to enjoin military force against Iraq. 463¶ [\*64] It is possible for the judiciary to assist in "setting precedent right" and to ensure that Congress discharges constitutional responsibilities by either accepting or rejecting a proposed military action. 464 However, if there is no impasse and the court system does not address an issue or disputes are settled by political branch negotiation, the Court precedent that affirms the original understanding of constitutional war powers may be neglected when there are novel factual scenarios involving military action. With ambiguity, the Attorney General's Office of Legal Council ("OLC") and White House council could liberally construe precedent and potentially amplify the president's authority vis-a-vis Congress. 465 If the Executive abides by the legal advice and implements a controversially assertive action, Congress does not annul the action or fails to punish, reprimand, or officially denounce a presidential transgression, and the judiciary cashiers the issue, the situation may impart apparent precedent countenancing presidential expansionism even if Congress is in accord with the action. Without congressional assent, a future presidential action may be illegitimate or unconstitutional when premised on faulty precedent, and proponents of expanding presidential power may simply ignore faulty premises. These have been the dynamics of the judiciary's role in the separation of powers question over the past forty years, and this circumstance was abundantly clear during the Bush Administration.¶ Objective understandings of war powers were lost when hand-selected legal advisers provided sweeping, unreserved, and blatantly biased opinions. The Bush Administration "relied upon lawyers to pen justifications for controversial government activities" that derogated the law. 466 For example, just two weeks after 9/11, OLC advisor John Yoo furnished a legal memo contending that the President possessed "'independent and plenary' authority to 'use military force abroad.'" 467 Former OLC attorney Bruce Fein explains:¶ ¶ OLC's customary role was to provide neutral legal advice to other agencies or Congress on constitutional issues ... It seems OLC is now acting as retained counsel to agencies to present [the] best defense of their actions from the perspective of an advocate, not as an impartial lawyer. 468

--

#### Conditionality is a voting issue--- skews the 2AC, most important speech for aff offense--- can’t read best offense, kills strategic thinking and best policy option

--

#### Links to politics\*

Goldsmith 2010 (Jack Goldsmith, Henry L. Shattuck Professor at Harvard Law School, where he teaches and writes about national security law, presidential power, cybersecurity, international law, internet law, foreign relations law, and conflict of laws, former Assistant Attorney General, Office of Legal Counsel from 2003–2004, and Special Counsel to the Department of Defense from 2002–2003, member of the Hoover Institution Task Force on National Security and Law, November 16, 2010, “The Virtues and Vices of Presidential Restraint,” Lawfare Blog, http://www.lawfareblog.com/2010/11/the-virtues-and-vices-of-presidential-restraint/)

I think there is something to this. In part in reaction to the excesses of the Bush years and in part because of genuine ideological and intellectual commitment, Obama and his team came to office indisposed towards a robust conception of presidential power. This attitude extends, of course, to the Obama administration’s approach to counterterrorism. Even as it has embraced much of the Bush counterterrorism program, it has done so with open regret, and has emphasized its self-restraint. One sees this, for example, in the administration’s refusal to work with Congress on new detention authorities for fear that Congress might give it more power than it wants; in its apologetic assertion of a perfectly appropriate state secret claim in al-Aulaqi case; in its shyness about relying on or discussing Article II powers for targeting terrorist threats; in its arguments for narrower military powers than courts are inclined to give it; in its acquiescence, despite helpful Article II authorities to the contrary, in Congress’s unprecedented restrictions on the President’s power to transfer enemy prisoners; and more.¶ There are benefits and costs to this approach. On the benefit side, the President has developed a deserved reputation for restraint and commitment to the rule of law. This is good in itself, and serves him well symbolically at home and abroad. It also gives him the credibility and trust to carry forth with little controversy many of the counterterrorism tactics that under the less self-restrained Bush administration were deeply controversial. Such credibility and trust, among other things, inform the extent to which courts defer to and approve wartime presidential actions. I have no doubt that trust of the administration is one reason why the D.C. Circuit declined to extend habeas corpus review to Bagram, for example.¶ But there are downsides as well. One downside is a slow diminution of unasserted presidential authority, and a related emboldening of Congress to regulate traditional presidential prerogatives. Another downside is that the administration’s reputation for restraint has become tied to public worries about whether it is tough enough on terrorism. These worries underly the bipartisan push-back on certain counterterrorism decisions – such as trying terrorists in civilian courts – that under Bush brought little controversy. A final downside is the political risk this approach entails if and when there is a successful attack on the homeland. For if there is another attack, and if in the crystal-clear perspective of hindsight it can be traced to a refusal to exercise presidential powers that were reasonably available, the political consequences will be devastating.

### 2AC Amendment CP--- Court Capital NB

#### Perm do both--- shields the link to the net benefit

#### Amendment CPs are a voting issue--- not real world: fiats multiple cooperative actions by multiple actors, not a real world policy option or opportunity cost--- bad model of decisionmaking--- trades off with substantive topic education

Baker 2010

[Director of the Con Law Center at Drake, 10 Widener J. Pub. L. 1]

There is a reason that there have been only 27 amendments over more than 200 years: Constitutional amendments must have the sustained and one-sided support of great majorities in the Congress and across the states. Very few issues ever garner such importance and support.

#### Decks court legitimacy

Sullivan 1996 (Kathy Sullivan, professor of law at Stanford, “CONSTITUTIONAL CONSTANCY: WHY CONGRESS SHOULD CURE ITSELF OF AMENDMENT FEVER,” lexis)

How have we managed to survive over two hundred years of social and technological change with only twenty-seven constitutional amendments? The answer is that we have granted broad interpretive latitude to the Supreme Court. Narrow construction would necessitate more frequent resort to formal constitutional amendments. Broad construction eliminates the need. Thus, the Court has determined that eighteenth century restrictions on searches of our "papers and effects" apply to our twentieth century telephone calls, and that the command of equal protection forbids racially segregated schools even though such segregation was known to the Fourteenth Amendment's framers. Neither of these decisions - Katz v. United States and Brown v. Board of Education - required a constitutional amendment. Nor did the Court's "switch in time that saved nine" during the New Deal. In the early twentieth century, the Court struck down much federal economic legislation as exceeding Congress's power and invading the province of the states. Under President Roosevelt's threat to expand and pack the Court, the Court desisted, and started to defer to all legislation bearing some plausible relationship to interstate commerce. Some scholars have called the Court's decision to defer to national economic legislation revolutionary enough to count as an informal constitutional amendment, but most view it as within the broad contours of reasonable interpretive practice. Increasing the frequency of constitutional amendment would undermine the respect and legitimacy the Court now enjoys in this interpretive role. This danger is especially acute in the case of proposed constitutional amendments that would literally overturn Supreme Court decisions, such as amendments that would declare a fetus a person with a right to life, permit punishment of flag-burning, or authorize school prayer. Such amendments suggest that if you don't like a Court decision, you mobilize to overturn it. Justice Jackson once quipped that the Court's word is not final because it is infallible, but is infallible because it is final. That finality, though, has many salutary social benefits. For example, it allows us to treat abortion clinic bombers as terrorists rather than protesters. If every controversial Supreme Court decision resulted in plebiscitary overruling in the form of a constitutional amend- [\*703] ment, surely the finality of its word would be undermined, and with it the social benefits of peaceful conflict resolution. The fact that we have amended the Constitution only four times in order to overrule the Supreme Court is worth remembering.

#### Only courts solve--- amendments are ineffective and slow

Strauss 2001 (David A. Strauss, law professor at U Chicago, “Do Constitutional Amendments Matter?,” CHICAGO PUBLIC LAW AND LEGAL THEORY WORKING PAPER NO., 05http://www.law.uchicago.edu/files/files/05.%20Strauss.Amendments1.pdf)

One final implication is the most practical of all. If amendments are in fact a sidelight, then it will usually be a mistake for people concerned about an issue to try to address it by amending the Constitution. Their resources are generally better spent on legislation, litigation, or private-sector activities. It is true that the effort to obtain a constitutional amendment may serve very effectively as a rallying point for political activity. A constitutional amendment may be an especially powerful symbol, and it may be worthwhile for a group to seek an amendment for just that reason. But in this respect constitutional amendments are comparable to congressional resolutions, presidential proclamations, or declarations of national holidays. If they bring about change, they do so because of their symbolic value, not because of their operative legal effect. The claim that constitutional amendments under Article V are not a principal means of constitutional change is a claim about the relationship between supermajoritarian amendments and fundamental, constitutional change. It should not be confused with the very different claim that judicial decisions cannot make significant changes without help from Congress or the President; n25 and it certainly should not be confused with a global skepticism about the efficacy of political activity generally. The point is that changes of constitutional magnitude - changes in the small-"c" constitution - are not brought about by discrete, supermajoritarian political acts like Article V amendments. It may also be true that such fundamental change is always the product of an evolutionary process and cannot be brought about by any discrete political act - by a single statute, judicial decision, or executive action, or (at the state level) by a constitutional amendment, whether adopted by majoritarian referendum or by some other means. What is true of Article V amendments may be equally true of these other acts: either they will ratify (while possibly contributing to) changes that have already taken place, or they will be ineffective until society catches up with the aspirations of the statute or decision. Alternatively, it may be that majoritarian acts (or judicial decisions), precisely because they do not require that the ground be prepared so thoroughly, can force the pace of change in a way that supermajoritarian acts cannot. A coalition sufficient to enact legislation might be assembled - or a judicial decision rendered - at a point when a society for the most part has not changed, but the legislation, once enacted (or the decision, once made), might be an important factor in bringing about more comprehensive change. The difference between majoritarian legislation and a supermajoritarian constitutional amendment is that the latter is far more likely to occur only after the change has, for all practical purposes, already taken place. Whatever one thinks of these broader speculations, however, they certainly do not entail a general skepticism about whether political activity matters at all. On the contrary, legislation and judicial decisions - as well as activity in the private realm that may not even be explicitly political - can accumulate to bring about fundamental and lasting changes that are then, sometimes, ratified in a textual amendment. Sustained political and nonpolitical activity of that kind is precisely what does bring about changes of constitutional magnitude. My claim is that such changes seldom come about, in a mature democracy, as the result of a formal amendment adopted by a supermajority.

#### Conditionality is a voting issue--- skews the 2AC, most important speech for aff offense--- can’t read best offense, kills strategic thinking and best policy option

#### CP links to politics--- People will think it’s necessary bc the court isn’t doing it’s job, wrecks capital--- ONLY perm solves\*\*\*

Sullivan 1999 (Kathleen M. Sullivan, professor at the Stanford Law School and name partner at Quinn Emanuel Urquhart & Sullivan, “WHAT’S WRONG WITH CONSTITUTIONAL AMENDMENTS?,” http://constitutionproject.org/manage/file/32.pdf)

A third danger lurking in constitutional amendments is that of mutiny against the authority of the Supreme Court. We have lasted¶ two centuries with only twenty-seven amendments because the¶ Supreme Court has been given enough interpretive latitude to adapt¶ the basic charter to changing times. Our high court enjoys a respect and legitimacy uncommon elsewhere in the world. That legitimacy issalutary, for it enables the Court to settle or at least defuse society’s most ideologically charged disputes. Contemporary constitutional revisionists, however, suggest that¶ if you dislike a Supreme Court decision, mobilize to overturn it. If the¶ Court holds that free speech rights protect flag burners, just write a¶ flag-burning exception into the First Amendment. If the Court limits¶ student prayer in public schools, rewrite the establishment clause to¶ replace neutrality toward religion with equal rights for religious access instead. Such amendment proposals no doubt reflect the revisionists’¶ frustration that court packing turns out to be harder than it seems—¶ Presidents Reagan and Bush, as it turned out, appointed more moderate than conservative justices. But undermining the authority of the¶ institution itself is an unwise response to such disappointments. In any event, it is illusory to think that an amendment will somehow eliminate judicial discretion. Most constitutional amendment¶ proposals are, like the original document, written in general and¶ open-ended terms. Thus, they necessarily defer hard questions to ultimate resolution by the courts. Does the balanced budget amendment¶ give the president impoundment power? Congress settled this matter¶ by statute with President Nixon, but the amendment would reopen¶ the question. Does splattering mustard on your Fourth of July flag¶ napkin amount to flag desecration? A committee of senators got¶ nowhere trying to write language that would guarantee against such¶ an absurd result. Would unisex bathrooms have been mandated if¶ the Equal Rights Amendment had ever passed? Advocates on both¶ sides debated the issue fiercely, but only the Supreme Court would¶ ever have decided for sure.

#### Constitutional amendment costs tons of Obama capital

Kachimba 2011 (Larry Kachimba, writer for Op Ed News, August 25, 2011, “Five reasons why a constitutional amendment is the wrong way to get money out of politics,” http://www.opednews.com/articles/Five-reasons-why-a-constit-by-Larry-Kachimba-110825-578.html)

3. Attempting a constitutional amendment is wasteful of scarce political capital because it would be many times more difficult and time-consuming than would enactment of a comprehensive law.¶ The constitutional amendment proposal diverts political capital to an impossible task.¶ A constitutional amendment process is far more difficult and time consuming than getting a single comprehensive law through Congress. In order to battle corporations and oligarchs to get an amendment passed it would be necessary to first get 2/3d's of the members of each house of Congress to vote against Congress' usual paymasters, and then also elect a majority of legislators in 38 states who would resist the growing temptations of political money. Money can be expected to battle any such amendment designed to take away its power at every stage of this process.

### Word PIC

#### Word PICs are a voting issue:

#### (a) Unbalanced literature produces criticism, but the defense of words does not rise above presumption arguments—debate’s offense/defense framing means the NEG would always win on “any risk.”

#### (b) Steals the AFF—the desirability of the plan does not answer the CP, which also moots topic education and depth.

#### (c) No offense—the discourse of policy implementation is relevant to debates that focus on the function of the plan.

#### Perm: do the counterplan -- it still proves the plan is a good idea.

#### Perm: do both -- the plan is an artifact; a reference point for criticism.

#### Plan text not the bill text -- either the mandates would be interpreted the same—with identical bill texts—or the CP would get lost in translation—doesn’t solve the AFF.

#### Vote “no” -- the 1NC also linked to the word critique, which means part of the packaging of a NEG decision would include the residual link.

#### Doesn’t solve the AFF: vague language would allow counter-political forces to reinterpret the plan to preserve the status quo.

#### Censoring language merely shifts that meaning to another term that creates new forms of harassment and aggressivity magnifying the impacts

Slavoj **Zizek 1999** “The Ticklish Subject” p. 253-4

Take politically correct probing into hate speech and sexual harassment: the trap into which this effort falls is not only that it makes us aware of (and thus generates) new forms and layers of humiliation and harassment (we learn that ‘fat’, ‘stupid’, ‘shortsighted’… are to be replaced by weight-challenged, etc; the catch is, rather, that this censoring activity itself, by a kind of devilish dialectical reversal, starts to participate in what is purports to censor and fight – it is not immediately evident how, in designating somebody as ‘mentally cahllenged’ instead of ‘stupid’, an ironic distance can always creep in and give rise to an excess of humiliating aggressivity – one adds insult to injury, as it were, by the supplementary polite patronizing dimension (it is well known that aggressvity coated politeness can be much more painful than directly abusive words, since violence is heightened by the additional contrast between the aggressive content and the polite surface form…). In short, what Foucault’s account of the discourses that discipline and regulate sexuality leaves out of consideration is the process by means of which the power mechanism itself becomes eroticized, that is, contaminated by what it endeavours to repress. It is not enough to claim that the ascetic Christian subject who, in order ot fight temptation, enumerates and categorizes the various forms of temptation, actually proliferates the object he tries to combat; the point is, rather, to conceive of how the ascetic who flagellates in order to resist temptation finds sexual pleasure in this very act of inflicting wounds on himself

### 2AC Obama DA

#### The politics DA isn’t a reason to vote negative--- It’s unethical to hold the aff hostage to the worst reactions of others--- that’s Gewirth--- not a relevant opportunity cost bc an ethical actor could do both--- The Berube evidence impact turns their “politics education good” args--- doesn’t teach us about current events, just how to string nonsensical search terms together--- also terminal defense to the DA, which is the Yudkowski evidence

#### The DA makes politics a spectacle--- distorts decision-making and cedes to elite control

Freie 2012 (John F. Freie, professor of political science at Le Moyne College, May 24, 2012, “Postmodern Politics in America,” SYMPOSIUM: POSTMODERNISM TODAY, Society, 49:323–327)

Spectacles While spectacles are nothing new to politics their use in the postmodern age is particularly important. They are carefully and elaborately staged, high on symbolism, and they link citizens on the basis of emotion. They are more than just a collection of images; they create social relation- ships between people which is mediated by symbolic images. The spectacles are often disconnected from reality and instead are designed to create their own reality. Some have suggested that spectacles—some more elaborate than others—have come to characterize the political scene. It is not difficult to find examples.¶ One recent example occurred when President Obama attempted to break an impasse on his health care reform legislation. Taking advantage of the large audience watching the pre-game show leading up to the Super Bowl Obama challenged congressional leaders of both parties to participate in an extended summit to examine all the best ideas about health care reform and move the process toward a consensus. After extended negotiations about things such as the size and design of the tables and the placement of the chairs, the summit took place at Blair House with the president masterfully moderating the discussion.¶ Although no breakthroughs were arrived at (none were anticipated) the staged spectacle created the impression that Obama was open to hearing all sides but that the Republicans were uncooperative. This was what Obama had hoped for since it then provided political cover for wavering con- gressional Democrats to support the controversial reform proposal and tell their constituents that they were willing to compromise but that the Republicans were unreasonable. The viewing public (some of whom actually watched the seven and one-half hour long pseudo-event) was able to watch what they believed was an example of how legislation was created. This, of course, was far from reality, but the effect was to reinforce the image of bipartisanship and openness Obama had promised to pursue during his campaign. As the health care summit pseudo-event illustrates, spectacles are used by politicians to hide—often in plain sight—their real intentions.¶ Hyperreality The above example touches on a fundamental aspect of postmodernism—the nature of reality. Postmod- ernism denies the existence of any fixed reality. Instead, meaning and significance are based on the context in which things appear and are interpreted. Since postmodern politics consists of surface images, pseudo-events, and spectacles disconnected from reality, it is difficult to determine what the real meaning of any action or event actually is. Referents in the real world no longer exist and thus can no longer be used to assess political behavior.¶ This altered perspective about reality is known in the postmodern world as hyperreality—the idea that the modern distinction between reality and representation can no longer be made. In modernity representation could be judged on how accurately it reflected reality. In postmodernity that is¶ no longer the case. Representation now, in effect, becomes the new reality. Therefore, political conflicts now exist not over substantive issues, but over whose interpretation of any particular event can be most convincingly presented. To be convincing means not to present a reasoned argument, but to repeat the same statement numerous times (i.e. talking points) so that it becomes reality, or to make an appeal at a subconscious psychological level that eventually becomes accepted as fact. Knowing that there is a multiplicity of possible realities, politics then consists of winning the battle over defining what reality is. As one advisor (commonly thought to be Karl Rove) to president George W. Bush said to reporter Ron Suskind, “when we act, we create our own reality. And while you’re studying that reality—judiciously, as you will—we’ll act again, creating other new realities.” In postmodern politics reality is malleable.¶ Fragmentation The postmodern world is a fragmented world. In politics this plays itself out in terms of what has become known as “identity politics.” People identify not as humans, nor even Americans, but as members of a particular race, ethnicity, religion, gender, or sexual orientation. Def- initions of the self are now derived on the basis of social representations. Thus, one is no longer merely an American, but rather an African-American, European-American, Asian-American, and the like. Those representations form the basis for niche groups that can be mobilized to exert political influence. Mobilization occurs on the basis of per- ceived identity rather than the modern motivation of self- interest, usually defined economically.¶ Modern politics made only two distinctions of the citizenry—elites and masses. To reach most people politicians made use of the mass media and employed mass media strategies (adopted from mass marketing experts). However, our postmodern culture has produced not just a fragmentation of the citizenry but also a fragmentation of the mass media itself. In recent years there has been an explosion of alternative media sources. Driven by the new digital technologies people now obtain information and news from a wide variety of digital sources: from blogs, websites, YouTube, Twitter, Face- book, text messages from friends, as well as from the tradi- tional information sources (e.g., CBS, NBC, ABC, New York Times).¶ These new technologies have allowed members of narrow identity interests to find each other and form niche groups. Niche groups are composed of small numbers of people who communicate with each other on the basis of a perceived identity interest. They often lack any kind of hierarchical organization and instead are loosely organized into horizontal communication networks. While niche groups have important implications for how politicians can mobilize supporters, more significantly, it highlights the erosion of political con- sensus in America. What’s more, members of niche groups, because they tend to be organized on the basis of identity rather than economic interests, are less open to compromise than members of traditional interest groups. To compromise one’s position becomes an attack on one’s sense of self, something most people are not willing to tolerate.¶ Elections In a modern democracy elections are supposed to be a rational way of selecting political leaders. Although messy and often confusing elections and the political cam- paigns that precede them historically have been agreed upon as the best way of selecting leaders in a democracy. Scholars of elections have gone further to identify the functions elections perform in resolving conflict—if even only for a short time—and “resetting” political alignments. Political campaigns channel and intensify conflict between parties and clarify differences while elections represent collective decisions on the part of the electorate. Once the election is over the newly elected officials should reduce the level of partisan conflict and pragmatically work together to solve problems. But in the postmodern political environment elections no longer function in this fashion.¶ A basic assumption of postmodernism is that nothing is certain, nothing is settled. One of the political consequences of this is that elections no longer settle political disputes as they once did. We have now moved into an era of the permanent campaign. Although short-term partisan considerations have probably always been an element included in the calculations of politicians, in the postmodern political world it has become a preeminent factor. Immediately following an election poli- ticians begin planning for the next election cycle—cultivating financial backers, hiring staff, plotting strategies, and carefully positioning themselves for partisan advantage.¶ The permanent campaign contributes further to the frag- mentation of American politics. With short-term partisan interest being of major concern even the most well- intentioned politicians find it difficult to achieve bipartisan agreements. Consequently, partisanship has both increased and intensified as politicians seem more willing to do what is most advantageous for their party and their reelection chances than what is best for the country.¶ Civic engagement Although postmodernism is often viewed in a negative light some have argued that it could provide the basis for an alternative to a stagnant form of politics. Political theorist Henry Kariel, for example, has argued that postmodernism can be used to challenge liberal structures and to open them up to new possibilities for political action. Postmodernism views boundaries as artificial constructs that can be altered and redrawn to be more inclusive. With this in mind we can examine the form of postmodern politics that has emerged for signs of alternative forms of engagement.¶ Indeed, there are some indications that traditional bound- aries that have defined how and when citizens become¶ involved in politics have been challenged. Through the use of digital technologies average citizens have discovered new forms of participation neither sanctioned nor controlled by political elites. Amateur activists are spontaneously writing blogs, creating clever videos, tweeting hundreds of strangers, etc.—all activities that have opened spaces of appearance unique to postmodern politics. Still, these new forms of civic engagement are highly individualistic and personal and seldom lead to collective action. It remains to be seen whether these new forms of civic engagement will prove satisfying for those who participate and can lead to movements that can change the dominant form of politics.¶ Consequences for Democracy¶ Has the form of postmodern politics that has evolved in the United States moved us in a democratic direction? Is the decision-making process more transparent? Is there an enhanced emphasis on meaningful civic participation and democratic discourse? Can politicians be held accountable?¶ With its emphasis on the creation of hyperreal, emotionally- laden images and the staging of spectacles and pseudo-events the primary characteristic of postmodern politics is its emphasis on elite manipulation. In almost every constituent-politician relationship the citizen is assigned the role of audience member who is encouraged to passively observe the performances of the political actors. When citizen involvement is sought it is controlled and manipulated through the use of symbols that tap deeper psychological feelings. While citizens may feel more personally involved in politics it is because their feelings have been manipulated by political consultants who have spent considerable time and resources developing precisely those skills. The sense of engagement is counterfeit.¶ While one might make the case that the postmodern era has made it possible for citizens to access a vast amount of information through the use of the Internet, the quality of that information is questionable. Twitter, for example, allows pol- iticians to communicate with thousands of people instanta- neously. But the quality of the communications is superficial first, because “tweets” are limited to 140 characters, but sec- ond because the information communicated does not deal with substantive concerns. Even on websites and blogs where one might expect more detailed information to appear users are attracted to superficial images and clever quips than serious, in-depth analyses, discussion, and debate of issues.¶ As noted above, the form of postmodern politics that has evolved in America has produced fragmentation and intense partisanship. Governance has become problematic because of the difficulty of forging bipartisan agreements let alone creating consensus. How then are decisions made?

#### High skilled immigration reform is also dead in 2013; not enough time or support.

Wilhelm, Nov 8 Yes, High-Skill Immigration Reform Is Still Dead This Calendar Year Posted Nov 8, 2013 by Alex Wilhelm (@alex) <http://techcrunch.com/2013/11/08/yes-high-skill-immigration-reform-is-still-dead-this-calendar-year/>

Breaking non-news out today: Immigration reform is dead in 2013, meaning that high-skill immigration reform is also kaput this year. We already mostly knew that, but the third-ranking Republican in the House confirmed the fact today. According to TalkingPointsMemo, “California Rep. Kevin McCarthy, the majority whip, said in a meeting with immigration proponents that there weren’t enough days left for the House to act and he was committed to addressing overhaul of the nation’s immigration system next year.” So, that’s that. Not in 2013? Who cares! It’s the end of the year anyways! Well, yes, but if you are in favor of immigration reform, and many in tech are quite keen on fixing our high-skill immigration system, losing this legislative session is pretty darn bad. In short, next year is an election year. That means the potential of primary challenges for sitting House members, which is a threat that can be used to force voting patterns. Currently, the far right is opposed to a path to citizenship, something that the Senate included in its immigration package. It will be a flashpoint in the debate, when we have it, between the parties and chambers of Congress. And that flashpoint heats up when primary challenges are held up as threats to enforce orthodoxy. Don’t trust me, though. What do I know? Instead, listen to Rep. Mario Diaz-Balart of Florida. He’s a Republican who, according to the Washington Post, has been involved in immigration negotiations. Here’s his take on getting immigration reform done next year: “I’m hopeful that we can get to it early next year. But I am keenly aware that next year, you start running into the election cycle. If we cannot get it done by early next year, then it’s clearly dead. It flatlines.” I am not convinced that that is possible.

#### NU: Healthcare.gov

This is UQ for the 1NC’s double turn because Rubin says a WEAK Obama has to capitulate to Republicans and put immigration on tracks – their Sanders card says Obama needs PC to avoid a track approach and keep it comprehensive

Kathleen Hennessey and Christi Parsons November 16, 2013

http://www.latimes.com/nation/la-na-obama-obamacare-20131116,0,5508393.story#axzz2kvx2AE4e White House optimistic Obama will bounce back from healthcare glitches

He's vented, attacked, apologized and adjusted. Now, President Obama has one move left in his attempt to salvage the rollout of his healthcare law: hope the website works soon. The White House, knowing a functional website is needed to calm its panicky allies, has now entered the wait-and-see period of its triage after the turmoil that has followed the Oct. 1 rollout. With the latest fix to the law unveiled, a bruising House vote behind them and experts working feverishly on the broken website, administration officials believe they may have weathered the worst. Although Obama's standing in polls and support within his party have dropped sharply, much like the downward trajectory of George W. Bush's second term, White House officials believe he can still recover. That optimistic assessment depends almost entirely on the administration's ability to reboot healthcare.gov, the once-hyped online insurance marketplace now undergoing extensive repair. At stake are the future of the president's signature domestic achievement, his political standing and reelection prospects for vulnerable Democrats in Congress. If the administration meets its goal of a mostly glitch-free site by the end of November, the last two months may be remembered as just another near-death experience for a healthcare overhaul that has had many. Even though many insurance executives and congressional Democrats are angry at Obama for his handling of the healthcare law, both groups have strong incentives to help the Affordable Care Act succeed.

#### Boehner will focus on Obamacare not immigration – which will take all the focus. Won’t be brought to the floor or negotiated in committee.

Bloomberg, 11-15 Obamacare’s Latest Victim: Immigration Reform By the Editors Nov 15, 2013 11:22 AM CT <http://www.bloomberg.com/news/2013-11-15/obamacare-s-latest-victim-immigration-reform.html>

Yet Boehner not only refuses to put the Senate bill on the House floor, where it would probably pass, but also is unwilling even to negotiate with senators in a conference committee. What explains his reluctance? Unfortunately, Boehner’s House responds to only one type of incentive: politics. And right now, the hapless rollout of Obamacare is giving House Republicans more than enough room to outrun their responsibilities to immigration. As it turns out, more than the fate of Obamacare may hinge on fixing HealthCare.gov. Immigration reform may depend on it, too.

#### PC is a myth and Obama is no good at it

Ornstein 2013 (Norm Ornstein, May 8, 2013, “The Myth of Presidential Leadership,” National Journal, http://www.nationaljournal.com/washington-inside-out/the-myth-of-presidential-leadership-20130508)

The theme of presidential leadership is a venerated one in America, the subject of many biographies and an enduring mythology about great figures rising to the occasion. The term “mythology” doesn’t mean that the stories are inaccurate; Lincoln, the wonderful Steven Spielberg movie, conveyed a real sense of that president’s remarkable character and drive, as well as his ability to shape important events. Every president is compared to the Lincoln leadership standard and to those set by other presidents, and the first 100 days of every term becomes a measure of how a president is doing.¶ I have been struck by this phenomenon a lot recently, because at nearly every speech I give, someone asks about President Obama’s failure to lead. Of course, that question has been driven largely by the media, perhaps most by Bob Woodward. When Woodward speaks, Washington listens, and he has pushed the idea that Obama has failed in his fundamental leadership task—not building relationships with key congressional leaders the way Bill Clinton did, and not “working his will” the way LBJ or Ronald Reagan did.¶ Now, after the failure to get the background-check bill through the Senate, other reporters and columnists have picked up on the same theme, and I have grown increasingly frustrated with how the mythology of leadership has been spread in recent weeks. I have yelled at the television set, “Didn’t any of you ever read Richard Neustadt’s classic Presidential Leadership? Haven’t any of you taken Politics 101 and read about the limits of presidential power in a separation-of-powers system?”¶ But the issue goes beyond that, to a willful ignorance of history. No one schmoozed more or better with legislators in both parties than Clinton. How many Republican votes did it get him on his signature initial priority, an economic plan? Zero in both houses. And it took eight months to get enough Democrats to limp over the finish line. How did things work out on his health care plan? How about his impeachment in the House?¶ No one knew Congress, or the buttons to push with every key lawmaker, better than LBJ. It worked like a charm in his famous 89th, Great Society Congress, largely because he had overwhelming majorities of his own party in both houses. But after the awful midterms in 1966, when those swollen majorities receded, LBJ’s mastery of Congress didn’t mean squat.¶ No one defined the agenda or negotiated more brilliantly than Reagan. Did he “work his will”? On almost every major issue, he had to make major compromises with Democrats, including five straight years with significant tax increases. But he was able to do it—as he was able to achieve a breakthrough on tax reform—because he had key Democrats willing to work with him and find those compromises.¶ For Obama, we knew from the get-go that he had no Republicans willing to work with him. As Robert Draper pointed out in his book Do Not Ask What Good We Do, key GOP leaders such as Eric Cantor and Paul Ryan determined on inauguration eve in January 2009 that they would work to keep Obama and his congressional Democratic allies from getting any Republican votes for any of his priorities or initiatives. Schmoozing was not going to change that.¶ Nor would arm-twisting. On the gun-control vote in the Senate, the press has focused on the four apostate Democrats who voted against the Manchin-Toomey plan, and the unwillingness of the White House to play hardball with Democrat Mark Begich of Alaska. But even if Obama had bludgeoned Begich and his three colleagues to vote for the plan, the Democrats would still have fallen short of the 60 votes that are now the routine hurdle in the Senate—because 41 of 45 Republicans voted no. And as Sen. Pat Toomey, R-Pa., has said, several did so just to deny Obama a victory.¶ Indeed, the theme of presidential arm-twisting again ignores history. Clinton once taught Sen. Richard Shelby of Alabama a lesson, cutting out jobs in Huntsville, Ala. That worked well enough that Shelby switched parties, joined the Republicans, and became a reliable vote against Clinton. George W. Bush and Karl Rove decided to teach Sen. Jim Jeffords a lesson, punishing dairy interests in Vermont. That worked even better—he switched to independent status and cost the Republicans their Senate majority. Myths are so much easier than reality.¶ All this is not to say that leadership is meaningless and the situation hopeless. Obama has failed to use the bully pulpit as effectively as he could, not to change votes but to help define the agenda, while his adversaries have often—on health care, the economy, stimulus, and other issues—defined it instead. Shaping the agenda can give your allies traction and legitimize your policy choices and put your opponents on defense. And any of us could quibble with some of the strategic choices and timing emanating from the White House. But it is past time to abandon selective history and wishful thinking, and realize the inherent limits of presidential power, and the very different tribal politics that Obama faces compared with his predecessors.

#### The agenda-setting process is too complex to predict

Larocca 2006 (Roger Larocca, 2006, “The Presidential Agenda: Sources of Executive Influence in Congress,” online)

The most influential model of congressional agenda setting has been the “garbage can” model that John Kingdon (1984) adapted from the bounded rationality models of organizations of Cohen, March, and Olsen (1972). Kingdon offered the garbage can model as an alternative to the bottom-up models of agenda setting, including rational choice approaches that suggested that agenda items rose to the congressional agenda after they had become salient in the general public. On the contrary, Kingdon finds that some issues, like deregulation, seemed to rise on the agenda without broad public support and with plenty of entrenched opposition. He proposes instead that agenda setting is a mix of three separate processes: problem recognition, solution development, and political opportunity, and―most importantly―that each of these processes operates independently of the others. In other words, government bureaucrats developing policy solutions do not always coordinate their agenda with congressional leaders trying to address policy problems. Moreover, there is also unpredictability in the way these actors come into contact with each other, though they can also be brought together by a policy entrepreneur, who has a unique ability to match solutions with problems. In spite of the actions of policy entrepreneurs, Kingdon argues the agenda-setting process can be disorganized and unpredictable even when all individual actors behave rationally.

#### Courts shield

Rosenberg 1991 (Gerald Rosenberg, assistant professor of political science at the University of Chicago, The Hollow Hope, p. 34)

Finally, court orders can simply provide a shield or cover for administrators fearful of political reactions. This is particularly helpful for elected officials who can implement required reforms and protest against them at the same time. This pattern is often seen in the school desegregation area. Writing in 1967, one author noted that “a court order is useful in that it leaves the official no choice and a perfect excuse” (Note 1967, 361). While the history of court ordered desegregation unfortunately shows that officials often had many choices other than implementing court orders, a review of school desegregation cases did find that “many school boards pursue from the outset a course designed to shift the entire political burden of desegregation on the courts” (Kalodner 1978, 3). This was also the case in the Alabama mental health litigation where “the mental health administrators wanted [Judge] Johnson to take all the political heat associated with specific orders while they enjoyed the benefits of his action” (Cooper 1988, 186). Thus Condition IV: Courts may effectively produce significant social reform by providing leverage, or a shield, cover, or excuse, for persons crucial to implementation who are willing to act.

### Disease Impact

#### Your impacts are media exaggeration.

Michael Lind (policy director of the New America Foundation's Economic Growth Program) February 2011 “So Long, Chicken Little;” published in Foreign Policy, March/April 2011; http://www.foreignpolicy.com/articles/2011/02/22/so\_long\_chicken\_little?page=0,8; Jay]

There's nothing like a good plague to get journalists and pundits in a frenzy. Although the threat of global pandemics is real, it's all too often exaggerated. In the last few years, the world has experienced two such pandemics, the avian flu (H5N1) and swine flu (H1N1). Both fell far short of the apocalyptic vision of a new Black Death cutting huge swaths of mortality with its remorseless scythe. Out of a global population of more than 6 billion people, 8,768 are estimated to have died from swine flu, 306 from avian flu. And yet it was not just the BBC ominously informing us that "the deadly swine flu … cannot be contained." Like warnings about the proliferation of nuclear weapons, the good done by mobilizing people to address the problem must be weighed against the danger of apocalypse fatigue on the part of a public subjected to endless Chicken Little scares.

#### Extinction impossible

Gregg Easterbrook (a senior fellow at The New Republic) July 2003 “We're All Gonna Die!” http://www.wired.com/wired/archive/11.07/doomsday.html?pg=1&topic=&topic\_set=

Germ warfare!Like chemical agents, biological weapons have never lived up to their billing in popular culture. Consider the 1995 medical thriller Outbreak, in which a highly contagious virus takes out entire towns. The reality is quite different. Weaponized smallpox escaped from a Soviet laboratory in Aralsk, Kazakhstan, in 1971; three people died, no epidemic followed. In 1979, weapons-grade anthrax got out of a Soviet facility in Sverdlovsk (now called Ekaterinburg); 68 died, no epidemic. The loss of life was tragic, but no greater than could have been caused by a single conventional bomb. In 1989, workers at a US government facility near Washington were accidentally exposed to Ebola virus. They walked around the community and hung out with family and friends for several days before the mistake was discovered. No one died. The fact is, evolution has spent millions of years conditioning mammals to resist germs. Consider the Black Plague. It was the worst known pathogen in history, loose in a Middle Ages society of poor public health, awful sanitation, and no antibiotics. Yet it didn't kill off humanity. Most people who were caught in the epidemic survived. Any superbug introduced into today's Western world would encounter top-notch public health, excellent sanitation, and an array of medicines specifically engineered to kill bioagents. Perhaps one day some aspiring Dr. Evil will invent a bug that bypasses the immune system. Because it is possible some novel superdisease could be invented, or that existing pathogens like smallpox could be genetically altered to make them more virulent (two-thirds of those who contract natural smallpox survive), biological agents are a legitimate concern. They may turn increasingly troublesome as time passes and knowledge of biotechnology becomes harder to control, allowing individuals or small groups to cook up nasty germs as readily as they can buy guns today. But no superplague has ever come close to wiping out humanity before, and it seems unlikely to happen in the future.

### ROL DA

#### Their impact is a fiction--- no crisis coming, their evidence is just a projection of hegemonic anxiety

Isola 2012 (Jenni Susanna Isola, MA University of Helsinki in Political Science, May 2012, “Critical discourse analysis of the United States foreign and security-political changes from President Bush to President Obama,” Master’s Thesis, https://helda.helsinki.fi/bitstream/handle/10138/34195/Jenni%20Isola%20Graduate%20Thesis.pdf?sequence=2)

10.1 On the question of the identity of the United States¶ Even though many of us living outside of the United States believe that the hegemonic ¶ period of that country is coming to an end sooner or later, that memo has not reached ¶ the shores of the US just yet. The Americans believe in their power and will hold on to ¶ it indefinitely. In Laclau's words ”power should not be conceived as an external relation ¶ taking place between two preconstituted identities, because it is power that constitutes ¶ the identities themselves” (Mouffe 2005, 141). This is based on one of Jacques Derrida's ¶ main ideas that any social objectivity is constituted through acts of power, and that there ¶ is no social objectivity that would be self-present to itself and not constructed as a ¶ difference (ibid. 141). The research conducted for this thesis shows that the people, and ¶ not least the leaders, of the US, believe strongly in the exceptional identity of the nation ¶ that differentiates it from other nations around the world. ¶ “The American empire will founder not on external enemies but on the moral overload ¶ associated with its mission, because this makes it impossible to maintain the required ¶ indifference to the external world” (Herfried Münkler 2007, 154). This can be ¶ connected to the beginning of the thesis and David Campbell's argument that the ¶ articulation of fear and different dangers that threaten the country is inherent in the ¶ identity formation of the nation of the US. “The idea of America endures. Our destiny ¶ remains our choice.” (Obama 2011.) Both Bush and Obama constantly refer to grave ¶ dangers challenging the nation, but as the sole superpower in the world, what does the country really have to fear? There is no single enemy or challenger capable of throwing the US down from the position of an Empire, and this confirms that the type of policy- making the presidents practice is merely a way of boosting the country's own identity and position. Were there no dangers in the world, the hegemon would not have any purpose to exist.

### Court Capital DA

#### This DA is incoherent--- lots of other controversial cases coming up--- make them provide a specific piece of spillover evidence

Slattery 9/17 (Elizabeth Slattery, September 17, 2013, “Preview of Next Supreme Court Term,” The Foundry, http://blog.heritage.org/2013/09/17/preview-of-next-supreme-court-term/)

Monday, October 7, marks the beginning of the Supreme Court’s next term. The last term included a number of high-profile cases involving voting rights, same-sex marriage, drug-sniffing dogs, and racial preferences in college admissions. So what is on deck for this next term?¶ There are a number of cases already lined up. Some of the potentially big cases are:¶ McCutcheon v. Federal Election Commission: Are aggregate limits on contributions to federal candidates, political action committees, and party committees constitutional?¶ McCullen v. Coakley: Can a state ban pro-life speech outside abortion clinics while allowing pro-abortion speech?¶ Town of Greece v. Galloway: Does a town violate the Establishment Clause by opening its board meetings with a prayer?¶ Schuette v. Coalition to Defend Affirmative Action: May states limit the use of racial preferences by amending their constitutions?¶ Bond v. United States: What is the scope of the Treaty Power? Can the President, the Senate, and a foreign country conspire to expand the powers of the federal government through treaties?¶ National Labor Relations Board v. Noel Canning: Who decides when Congress is in “recess” for the purpose of making presidential appointments: the President or the Senate?

#### Controversial decisions boost capital

Ginsburg, 2009 (Tom Ginsburg, professor of law, the University of Chicago Law School, 9 Chi. J. Int'l L. 499, Winter, lexis)

In a recent contribution, David Law argues that courts can, counterintuitively, enhance their power by making unpopular or risky decisions--so long as the decisions generate compliance. 56 The key is to think of the court as interested in developing a reputation for generating effective focal points, in the form of decisions that are complied with. As the court is [\*513] successful in issuing such decisions, people will adjust their expectations of others' responses to future decisions, generating a potential cascade of compliance. Furthermore, from the perspective of an audience member evaluating the probability of compliance in a future case, it is surely more impressive that the court has generated compliance in an unpopular case than in a popular one. A risky and unpopular decision actually shores up the court's long-term reputation for generating focal points. 57

#### Court capital is extremely resilient

Gibson 2012 (James L. Gibson, Sidney W. Souers Professor of Government, Department of Political Science, Professor of African and African American Studies, Director, Program on Citizenship and Democratic Values Weidenbaum Center on the Economy, Government, and Public Policy, Washington University in STL, February 27, 2012, Countermajoritarian Conference, University of Texas Law School, pdf)

Political scientists and legal scholars continue to be obsessed with the so-called countermajoritarian dilemma created by the United States Supreme Court’s lack of accountability, particularly when coupled with its immense policy-making powers. Especially when the Supreme Court makes decisions that seem to fly in the face of public preferences—as in Kelo v. New London1 and Citizens United v. Federal Election Commission2—concerns about the function of the institution within American democracy sharpen. Indeed, some seem to believe that by making policies opposed by the majority of the American people the Court undermines its fundamental legitimacy, its most valuable political capital.¶ The underlying assumption of these worries about the Supreme Court’s legitimacy is that dissatisfaction with the Court’s decisions leads to the withdrawal, or at least diminution, of support for the institution. So when the Court decides a high profile case like Citizens United in a widely unpopular direction, it is logical to assume that the Court’s legitimacy suffers. Again, the assumption is that legitimacy flows from pleasing decisions, but it is undermined by displeasing decisions.¶ At least some empirical evidence directly contradicts this assumption. In what is perhaps the most salient and politically significant decision of the last few decades, the Supreme Court’s decision in Bush v. Gore3 effectively awarded the presidency to George W. Bush. One might have expected that this decision would undermine the Court’s legitimacy, at least with Democrats and probably with African-Americans as well. Yet several empirical research projects have indicated that, if anything, the Court’s legitimacy was boosted by this decision, even among Democrats and African-Americans.4 Bush v. Gore had great potential to chip away at the Court’s legitimacy—it was a deeply divided 5-4 decision; divided by the justices’ partisanships as well; it extended the Court’s authority into an area of law in which the Court had generally deferred to the states; the decision was severely criticized by some, with many in the legal academy describing the decision as a “self-inflicted wound”;5 and, of course, it was a decision of immense political importance. If Bush v. Gore did not subtract from the Court’s institutional legitimacy, it is difficult to imagine less momentous decisions undermining judicial legitimacy.¶ Political scientists have been studying the legitimacy of the Supreme Court for decades¶ now, and several well-established empirical findings have emerged. The findings relevant to the countermajoritarian dilemma can be summarized in a series of nutshells:¶ ● The Supreme Court is the most legitimate political institution within the contemporary United States. Numerous studies have shown that the American mass public extends great legitimacy to the Court; typically, Congress is depicted as being dramatically less legitimate than the Supreme Court. Indeed, some have gone so far as to describe the Supreme Court as “bullet- proof,” and therefore able to get away with just about any ruling, no matter how unpopular. And indeed, the United States Supreme Court may be one of the most legitimate high courts in the world.¶ ● The degree of legitimacy of political institutions is extremely consequential. For better or for worse, the decisions of legitimate institutions tend to “stick”—to draw the acquiescence of citizens, even those citizens who disagree with the institution’s policy decisions. No political institution could succeed were it dependent upon always pleasing its constituents with its policy decisions. For courts—tasked with a countermajoritarian function in the American political system—displeasing the majority is a regular occurrence. The Supreme Court’s current level of legitimacy contributes mightily to making the Court truly the court of last resort on the policy issues it decides.¶ ● Some threats to the legitimacy of the Supreme Court do exist. Some members of Congress routinely introduce “court-curbing” legislation, often focusing on the Court’s soft underbelly, its dependence on Congress for its case jurisdiction. Yet such efforts typically draw the support of only the most radical members of Congress and legislation of this ilk is rarely even brought to the floor for debate. Generally, with the possible exception of the failure to raise the salaries of federal judges, few serious threats to the institutional integrity of the Supreme Court have surfaced. And there is no evidence that such proposals by gadflies have any degree of support among the American people.¶ ● This is not, of course, to say that the Court’s decisions are pleasing to all, or that they are always pleasing. Many of the rulings of the Court are unpopular with its constituents, as for instance in the Court’s ruling in Kelo on takings and its decision on campaign finance in Citizens United. The puzzle, however, is that dissatisfaction with the policy decisions has not morphed into threats to the legitimacy of the institution itself. One lesson from the research on institutional legitimacy is that policy dissatisfaction with the Court’s rulings does not necessarily or even ordinarily translate into threats to the legitimacy of the institution.¶ ● More generally, it appears that the Supreme Court does not suffer from the partisan and ideological polarization that characterizes so much of contemporary American politics. Democrats and Republicans love the Supreme Court at roughly equal levels, as do liberals and conservatives. Partisan and ideological differences do indeed characterize policy positions on many issues, but faith in and loyalty to the Supreme Court seems to be distributed across the ideological and partisan boards.¶ ● Moreover, despite a relatively turbulent period in American politics, support for the Supreme Court has been obdurate. Very small peaks and valleys can be found, although they are both quite shallow, and they are not necessarily as might be expected (e.g., the Court’s ruling in Bush v. Gore actually elevated popular support for the institution). Even strong ideological divisions on the Court seem not to have subtracted from the institution’s legitimacy. Some wonder whether anything the Court might do would imperil its basic support among the American people.

#### Court capital isn’t a thing

Schauer 2004 (Frederick Schauer, Frank Stanton Professor of the First Amendment, John F. Kennedy School of Government, Harvard University, July 2004, “Judicial Supremacy and the Modest Constitution,” 92 Calif. L. Rev. 1045, lexis)

Examples of the effects of judicial supremacy hardly occupy the entirety of constitutional law. As the proponents of popular constitutionalism properly claim, it is simply not plausible to argue that all of the Supreme Court's decisions are counter-majoritarian, nor that the Court is unaware of the potential repercussions if a high percentage of its decisions diverges too dramatically from the popular or legislative will. Nevertheless, there is no indication that the Court uses its vast repository of political capital only to accumulate more political capital, and in many areas judicial supremacy has made not just a short-term difference, but a long-term difference as well. Perhaps most obvious is school prayer. For over forty years the Court has persisted in its view that organized prayer in public schools is impermissible under the Establishment Clause 59 despite the fact that public opinion is little more receptive to that view now than it was in 1962. 60 So too with flag burning, where the Court's decisions from the late 1960s 61 to the present have remained dramatically divergent from public and legislative opinion. 62 Or consider child pornography, where the Court's decision in Ashcroft v. Free Speech Coalition 63 flew in the face of an overwhelming congressional majority approving the extension of existing child pornography laws to virtual child pornography. Similarly, in the regulation of "indecency," the Court has spent well over a decade repeatedly striking down acts of Congress that enjoyed overwhelming public and [\*1059] congressional support. 64 Most dramatic of all, however, is criminal procedure, where the Supreme Court's decision in Dickerson v. United States, 65 invalidating a congressional attempt to overrule Miranda v. Arizona, 66 underscores the persistent gap in concern for defendants' rights between Congress and the public, on the one hand, and the Supreme Court, on the other.

### Econ !

#### No impact

Robert Jervis 11, Professor in the Department of Political Science and School of International and Public Affairs at Columbia University, December 2011, “Force in Our Times,” Survival, Vol. 25, No. 4, p. 403-425

Even if war is still seen as evil, the security community could be dissolved if severe conflicts of interest were to arise. Could the more peaceful world generate new interests that would bring the members of the community into sharp disputes? 45 A zero-sum sense of status would be one example, perhaps linked to a steep rise in nationalism. More likely would be a worsening of the current economic difficulties, which could itself produce greater nationalism, undermine democracy and bring back old-fashioned beggar-my-neighbor economic policies. While these dangers are real, it is hard to believe that the conflicts could be great enough to lead the members of the community to contemplate fighting each other. It is not so much that economic interdependence has proceeded to the point where it could not be reversed – states that were more internally interdependent than anything seen internationally have fought bloody civil wars. Rather it is that even if the more extreme versions of free trade and economic liberalism become discredited, it is hard to see how without building on a preexisting high level of political conflict leaders and mass opinion would come to believe that their countries could prosper by impoverishing or even attacking others. Is it possible that problems will not only become severe, but that people will entertain the thought that they have to be solved by war? While a pessimist could note that this argument does not appear as outlandish as it did before the financial crisis, an optimist could reply (correctly, in my view) that the very fact that we have seen such a sharp economic down-turn without anyone suggesting that force of arms is the solution shows that even if bad times bring about greater economic conflict, it will not make war thinkable.

# 1AR

### Circumvention--- Mark This

#### No circumvention and the courts are effective—the executive will consent

Prakash and Ramsay 2012 (Saikrishna B. Prakash, David Lurton Massee, Jr. Professor of Law and Sullivan and Cromwell Professor of Law, University of Virginia School of Law. and Michael D. Ramsey, Professor of Law, University of San Diego School of Law; “The Goldilocks Executive”, Review of THE EXECUTIVE UNBOUND:AFTER THE MADISONIAN REPUBLIC. By Eric A. Posner & Adrian Vermeule, 90 Texas L. Rev. 973, http://www.texaslrev.com/wp-content/uploads/Prakash-Ramsey-90-TLR-973.pdf)

The Courts.—The courts constrain the Executive, both because courts are necessary to the Executive imposing punishments and because courts can enforce the Constitution and laws against the Executive. It is true, as Posner and Vermeule say, that courts often operate ex post and that they may defer to executive determinations, especially in sensitive areas such as national security. But these qualifications do not render the courts meaningless as a Madisonian constraint. First, to impose punishment, the Executive must bring a criminal case before a court. If the court, either via jury or by judge, finds for the defendant, the Executive does not suppose that it can nonetheless impose punishment (or even, except in the most extraordinary cases, continue detention). This is so even if the Executive is certain that the court is mistaken and that failure to punish will lead to bad results. As a result, the Executive’s ability to impose its policies upon unwilling actors is sharply limited by the need to secure the cooperation of a constitutionally independent branch, one that many suppose has a built-in dedication to the rule of law.84 And one can hardly say, in the ordinary course, that trials and convictions in court are a mere rubber stamp of Executive Branch conclusions. Second, courts issue injunctions that bar executive action. Although it is not clear whether the President can be enjoined,85 the rest of his branch surely can and thus can be forced to cease actions that judges conclude violate federal law or the Constitution.86 As a practical matter, while courts issue such injunctions infrequently, injunctions would be issued more often if an administration repeatedly ignored the law. Third, courts’ judgments sometimes force the Executive to take action, such as adhering to a court’s reading of a statute in areas related to benefits, administrative process, and even commission delivery. Though the claim in Marbury v. Madison87 that courts could issue writs of mandamus to executive officers was dicta,88 it was subsequently confirmed in Kendall v. United States ex rel. Stokes, 89 a case where a court ordered one executive officer to pay another.90 Finally, there is the extraordinary practice of the Executive enforcing essentially all judgments. The occasions in which the Executive has refused to enforce judgments are so few and far between that they are the stuff of legend. To this day, we do not know whether Andrew Jackson said, “John Marshall has made his decision, now let him enforce it.”91 Lincoln’s disobedience of Chief Justice Taney’s writ of habeas corpus is so familiar because it was so singular. Yet to focus on actual court cases and judgments is to miss the broader influence of the courts. Judicial review of executive action matters because the knowledge of such review affects what the Executive will do. Executives typically do not wish to be sued, meaning that they often will take measures designed to stave off such suits and avoid actions that raise the risk of litigation. The ever-present threat that someone will take a case to court and defeat the Executive acts as a powerful check on executive decision making. The Executive must take account of law, including law defined as what a court will likely order.

### ! K--- Environment

#### Alarmism is wrong and causes eco-authoritarianism and mass violence--- also causes political apathy which turns the DA

Buell 2003 **(**Frederick Buell, cultural critic on the environmental crisis and a Professor of English at Queens College and the author of five books, From Apocalypse To Way of Life, pages 185-186)

Looked at critically, then, crisis discourse thus suffers from a number of liabilities. First, it seems to have become a political liability almost as much as an asset. It calls up a fierce and effective opposition with its predictions; worse, its more specific predictions are all too vulnerable to refutation by events. It also exposes environmentalists to being called grim doomsters and antilife Puritan extremists. Further, concern with crisis has all too often tempted people to try to find a “total solution” to the problems involved— a phrase that, as an astute analyst of the limitations of crisis discourse, John Barry, puts it, is all too reminiscent of the Third Reich’s infamous “final solution.”55 A total crisis of society—environmental crisis at its gravest—threatens to translate despair into inhumanist authoritarianism; more often, however, it helps keep merely dysfunctional authority in place. It thus leads, Barry suggests, to the belief that only elite- and expert-led solutions are possible.56 At the same time it depoliticizes people, inducing them to accept their impotence as individuals; this is something that has made many people today feel, ironically and/or passively, that since it makes no difference at all what any individual does on his or her own, one might as well go along with it. Yet another pitfall for the full and sustained elaboration of environmental crisis is, though least discussed, perhaps the most deeply ironic. A problem with deep cultural and psychological as well as social effects, it is embodied in a startlingly simple proposition: the worse one feels environmental crisis is, the more one is tempted to turn one’s back on the environment. This means, preeminently, turning one’s back on “nature”—on traditions of nature feeling, traditions of knowledge about nature (ones that range from organic farming techniques to the different departments of ecological science), and traditions of nature-based activism. If nature is thoroughly wrecked these days, people need to delink from nature and live in postnature—a conclusion that, as the next chapter shows, many in U.S. society drew at the end of the millenium. Explorations of how deeply “nature” has been wounded and how intensely vulnerable to and dependent on human actions it is can thus lead, ironically, to further indifference to nature-based environmental issues, not greater concern with them. But what quickly becomes evident to any reflective consideration of the difficulties of crisis discourse is that all of these liabilities are in fact bound tightly up with one specific notion of environmental crisis—with 1960s- and 1970s-style environmental apocalypticism. Excessive concern about them does not recognize that crisis discourse as a whole has significantly changed since the 1970s. They remain inducements to look away from serious reflection on environmental crisis only if one does not explore how environmental crisis has turned of late from apocalypse to dwelling place. The apocalyptic mode had a number of prominent features: it was preoccupied with running out and running into walls; with scarcity and with the imminent rupture of limits; with actions that promised and temporally predicted imminent total meltdown; and with (often, though not always) the need for immediate “total solution.” Thus doomsterism was its reigning mode; eco-authoritarianism was a grave temptation; and as crisis was elaborated to show more and more severe deformations of nature, temptation increased to refute it, or give up, or even cut off ties to clearly terminal “nature.”

### GPW

#### Econ decline won’t break great power peace

Robert Jervis 11, Professor in the Department of Political Science and School of International and Public Affairs at Columbia University, December 2011, “Force in Our Times,” Survival, Vol. 25, No. 4, p. 403-425

Even if war is still seen as evil, the security community could be dissolved if severe conflicts of interest were to arise. Could the more peaceful world generate new interests that would bring the members of the community into sharp disputes? 45 A zero-sum sense of status would be one example, perhaps linked to a steep rise in nationalism. More likely would be a worsening of the current economic difficulties, which could itself produce greater nationalism, undermine democracy and bring back old-fashioned beggar-my-neighbor economic policies. While these dangers are real, it is hard to believe that the conflicts could be great enough to lead the members of the community to contemplate fighting each other. It is not so much that economic interdependence has proceeded to the point where it could not be reversed – states that were more internally interdependent than anything seen internationally have fought bloody civil wars. Rather it is that even if the more extreme versions of free trade and economic liberalism become discredited, it is hard to see how without building on a preexisting high level of political conflict leaders and mass opinion would come to believe that their countries could prosper by impoverishing or even attacking others. Is it possible that problems will not only become severe, but that people will entertain the thought that they have to be solved by war? While a pessimist could note that this argument does not appear as outlandish as it did before the financial crisis, an optimist could reply (correctly, in my view) that the very fact that we have seen such a sharp economic down-turn without anyone suggesting that force of arms is the solution shows that even if bad times bring about greater economic conflict, it will not make war thinkable.