# 2nr

### Impact Overview

#### Haha – don’t have to win bioterror attack now – conceded Legai 11 – AQ gearing up for cyber attack now – means risk extremely high

#### Conceeded hacking airplanes that have bioweapons

#### COnceeded OCOs k2 solve

#### It will cause extinction- outweighs nuclear war – answers their defense

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

The risks from anthropogenic hazards appear at present larger than those from natural ones. Although great progress has been made in reducing the number of nuclear weapons in the world, humanity is still threatened by the possibility of a global thermonuclear war and a resulting nuclear winter. We may face even greater risks from emerging technologies. Advances in synthetic biology might make it possible to engineer pathogens capable of extinction-level pandemics. The knowledge, equipment, and materials needed to engineer pathogens are more accessible than those needed to build nuclear weapons. And unlike other weapons, pathogens are self-replicating, allowing a small arsenal to become exponentially destructive. Pathogens have been implicated in the extinctions of many wild species. Although most pandemics "fade out" by reducing the density of susceptible populations, pathogens with wide host ranges in multiple species can reach even isolated individuals. The intentional or unintentional release of engineered pathogens with high transmissibility, latency, and lethality might be capable of causing human extinction. While such an event seems unlikely today, the likelihood may increase as biotechnologies continue to improve at a rate rivaling Moore's Law.

#### **Bioweapon use spreads globally and causes extinction – outweighs nuclear weapons**

John D. Steinbruner, Brookings senior fellow and chair in international security, vice chair of the committee on international security and arms control of the National Academy of Sciences, Winter 1997, Foreign Policy, “Biological weapons: a plague upon all houses,” n109 p85(12), infotrac

Although human pathogens are often lumped with nuclear explosives and lethal chemicals as potential weapons of mass destruction, there is an obvious, fundamentally important difference: Pathogens are alive, weapons are not. **Nuclear** and chemical **weapons do not reproduce** themselves **and** do not independently **engage in adaptive behavior; pathogens do** both of these things. That deceptively simple observation has immense implications. The use of **a manufactured weapon** is a singular event. Most of the damage occurs immediately. The **aftereffects**, whatever they may be, **decay rapidly over time** and distance **in a** reasonably **predictable manner.** Even before a nuclear warhead is detonated, for instance, it is possible to estimate the extent of the subsequent damage and the likely level of radioactive fallout. Such predictability is an essential component for tactical military planning. The use of **a pathogen**, by contrast, is an extended process whose scope and timing **cannot be** precisely **controlled.** For most potential biological agents, the predominant drawback is that they would not act swiftly or decisively enough to be an effective weapon. But for a few **pathogens** - ones **most likely to have a decisive effect and therefore** the ones **most likely to be contemplated for deliberately hostile use** - the risk runs in the other direction. A lethal pathogen **that could efficiently spread from one victim to another would be capable of initiating an intensifying cascade of disease that might ultimately threaten the entire world population. The 1918 influenza epidemic demonstrated the potential for a global contagion of this sort** but not necessarily its outer limit.

### Link Debate

#### Solves Terrorism – lack of US counterterrorism in cyber prevented us messing with AQAPs cyber efforts on websites – create physical vulnerabilityies – need to combat techno savvy terrorists – can hijack an aircraft with bioweapons -

#### Brennan 12 - provided that those who are charged with **¶** exposing and attacking these networks are given the latitude to act effectively

#### Brennan 12 – conclusive evidence – terrorists using internet to plan attacks – spped matters to stop – use for recruiting and finance

Not same as other domains – brookings - what the ¶ President of the United States would insist upon, actually, is that he had ¶ the options and the freedom of movement to decide what kind of response ¶ we would employ. And that's why I say I don't want to have necessarily a ¶ narrow conversation about what constitutes war and cyber, because the ¶ response could actually be in one of the traditional, one of the other ¶ traditional domains.

#### Congressional limits kill OCOs - Congressional oversight destroys the ability to carry out offensive cyber operations

Brennan 2012 [Lieutenant Colonel John W. Brennan 15 March 2012 US Army War College “United States Counter Terrorism Cyber Law and Policy, Enabling or Disabling?” http://nsfp.web.unc.edu/files/2012/09/Brennan\_UNITED-STATES-COUNTER-TERRORISM-CYBER-LAW-AND-POLICY.pdf]

As a matter of current U. S. policy, the decision to label a computer network ¶ operation (CNO) as a traditional military activity (TMA), thereby falling under the purview ¶ of Title 10 of the United States Code (USC), or as a covert action under Title 50 of the ¶ USC, has spurred a great deal of discussion at the highest levels of the U. S. ¶ Government.¶ 47¶ Although cyber warfare is only one aspect of the overall current Title ¶ 10/50 debate that is raging within Congress and the various departments within the ¶ executive branch, one cannot legitimately discuss the policies that govern the approvals ¶ to conduct CNOs without touching upon this current source of friction.¶ 48¶ Much of the¶ policy concerning the details of computer network operations is classified, but is gaining ¶ in importance such that many policy experts are speaking about it, some albeit from ¶ under the cloak of anonymity.¶ 49¶ As Andru E. Wall suggests, the confusion over Title 10 ¶ and Title 50 authorities appears to have, “…more to do with congressional oversight ¶ and its attendant internecine power struggles than with operational or statutory ¶ authorities,” despite the fact that by design, Title 10 and 50 authorities are mutually ¶ supporting and were not intended to be competing.¶ 50¶ Retired Admiral Dennis C. Blair ¶ (former ODNI) proclaimed that, “This infuriating business about who’s in charge and ¶ who gets to call the shots is just making us look muscle-bound.” ADM Blair went on to ¶ bemoan the “over-legalistic” approach to CT cyber--despite the fact that current cyber ¶ laws are woefully inadequate to address the, …”complexity of the global information ¶ network.”¶ 51¶ (Wall 2011101)

# 2NC

### Condo

#### We should get 3 conditional advocacies

#### A) They destroy cost benefit analysis ---Limiting the neg to 2 advocacies artificially insulates the aff from defending against multiple competitive options when constructing policies.

#### B) Key to tactical choices---forces the 2ac to recognize and respond to strategic interactions---critical skill for practical advocacy defense because of the inevitability of strategic opponents---solves time and strat skew

#### C) Advocacy construction---makes the aff consider all opportunity-costs to a proposal-- inability to simultaneously defend against a variety of proposals props up bad affs that should lose in the free market of ideas

#### D) Err neg---2ar persuasion, aff picks the focus of the debate, the topic is huge, and the 2nr has to answer theory and substance while the 2ar can pick

#### E) Don’t vote on theory---causes substance crowd-out and incentivizes cheap-shot theory args based on marginal differentials---just because debate could be better doesn’t mean we should lose.

#### Dispositionality doesn’t solve---the neg can add uncompetitive planks to force permutation. It also doesn’t solve any of our standards.

### A2 Object Fiat Bad

#### Prez CP’s test resolution words – authority, restriction, statutory AND judicial

#### The primary question is where the authority should LIE, not HOW it is used – their model prioritizes the secondary question of how to USE authority over the primary question of WHO should decide

#### Our ev says SR is the best policy – artificially excluding by theory stacks the deck AFF

#### XO counterplans are also object fiat – precedent makes our CP predictable means they can’t solve abuse

#### The SQ is self restraint – the CP at worse clarifies an ambiguous SQ

#### The CP ambiguous proportionate to strategic aff vagueness – Instead of holding NEG to a higher standard, the better remedy would be to interpret CP as prez authority which meets their argument.

#### Limiting the aff to legal advantages better tests a legal topic – making those outweigh is their job to justify a legal topic

#### Reject the arg, not the team

### CP

### Imapct Calc

#### Our impact is more probable- state on state war is largely obsolete

Hooker 12 [Colonel Richard D. Hooker, Jr., commands the XVIII Airborne Corps Combat ¶ Support Brigade (“Dragon Brigade”) now deployed to Iraq. He commanded an infantry battalion in the 82d Airborne Division and has served as Special Assistant to the ¶ Chairman of the Joint Chiefs, with the Office of the Chief of Staff of the Army, as Aide ¶ de Camp to the Secretary of the Army, and with the National Security Council. Colonel ¶ Hooker holds an M.S. in national security studies from the National Defense University ¶ and M.A. and Ph.D. degrees from the University of Virginia in international relations Winter 2011-12 “Beyond Vom Kriege: The Character and Conduct of Modern War” Strategic Studies Institute http://strategicstudiesinstitute.army.mil/pubs/parameters/Articles/2011winter/Hooker2.pdf]

Modern war, at least as practiced in the West, trades on American and ¶ European technology and wealth, not on manpower and ideology. Western militaries are typically small, professional organizations officered by the middle ¶ class and filled by working-class volunteers. Their wars are universally “out ¶ of area”—that is, not fought in direct defense of national borders—placing a ¶ premium on short, sharp campaigns won with relatively few casualties. Although ¶ land forces remain indispensable, whenever possible Western militaries fight ¶ at a distance using standoff precision weapons, whose accuracy and lethality make it difficult or impossible for less-sophisticated adversaries to fight ¶ conventionally with any chance of success. Increasingly, the West’s advantage ¶ in rapid data transmission on the battlefield is changing how American and ¶ European militaries wage war, as control and use of information assumes decisive importance. ¶ The qualitative gap between the armed forces of the West and their ¶ likely opponents is not likely to narrow for the foreseeable future. In this sense ¶ the West’s absolute military advantage, arguably in force since the Battle of ¶ Lepanto in 1571, is likely to persist for generations. Although challengers may ¶ pursue niche technologies like anti-ship weapons, theater ballistic or cruise ¶ missiles, or computer attack systems, their inability to match the capital expenditures and technological sophistication of the United States and its NATO ¶ allies will make military parity highly doubtful, even when they act in coalitions. Nor will nuclear weapons change this calculus. While the small nuclear ¶ arsenals of potential adversary states may yield some deterrent benefits, their ¶ offensive use as weapons of war (as distinct from their use in terrorism) is ¶ doubtful given the vastly more capable nuclear forces belonging to the United ¶ States, Britain, and France. ¶ This gap in economic and technological capacity suggests other ¶ approaches for weaker adversaries. Here there is real danger. A quick look at ¶ the protracted insurgencies of the past one hundred years is not encouraging. In ¶ China, Vietnam, and Algeria, the West or its surrogates struggled for decades ¶ and lost. Russia is experiencing the same agony in Chechnya. Even Western ¶ “successes” in Nicaragua, El Salvador, Malaysia, and Aden proved painful and ¶ debilitating.¶ 14¶ The ability of Western democracies to sustain major military ¶ ventures over time, particularly in the face of casualties suffered for less than ¶ truly vital stakes, represents a real vulnerability. The sheer cost of maintaining ¶ large fighting forces in action at great distances from the homeland is a liability ¶ that can be exploited by opponents able to tie down Western forces in extended ¶ conflicts. ¶ The costs of waging long, drawn-out conflicts will be counted in more ¶ than dollars and lives. By a curious logic, the loss of many Americans in a single ¶ event or short campaign is less harmful to our political and military institutions ¶ than the steady drain of casualties over time. By necessity, the military adapts ¶ to the narrower exigencies of the moment, focusing on the immediate fight, ¶ at some cost to the future investment, professional growth, and broader warfighting competencies which can be vital in other potential conflicts of greater ¶ import. A subsidiary effect is loss of confidence in the military as an institution ¶ when it is engaged in protracted operations involving mounting losses without ¶ apparent progress. It is too soon to tell if ongoing military operations in Iraq ¶ and Afghanistan will yield timely and fruitful results. But if they do not, the ¶ long-term effect on the health of the American military could and probably will ¶ be damaging. ¶ The experience of the Vietnam conflict, while not an exact fit, suggests ¶ that very long and enervating campaigns, fought for less than truly vital objectives, delay necessary modernization, absorb military resources earmarked for ¶ other, more dangerous contingencies, drive long-service professionals out of ¶ the force, and make it harder to recruit qualified personnel. These direct effects ¶ may then be mirrored more indirectly in declining popular support, more ¶ strident domestic political conflict, damage to alliances and mutual security ¶ arrangements, and economic dislocation. These factors will fall more heavily ¶ on ground forces, since air and naval forces typically spend less time deployed ¶ in the combat theater between rotations, suffer fewer losses, and retain career ¶ personnel in higher numbers. ¶ Viewed as a case study in the application of Clausewitzian thought, ¶ current military operations offer a vivid contrast to the wars fought in ¶ Afghanistan in 2001-02 and in Iraq in the spring of 2003. There, coalition ¶ military power could be directed against organized military forces operating ¶ under the control of regularly constituted political entities. Political objectives ¶ could be readily translated into military tasks directed against functioning ¶ state structures (“destroy the Taliban and deny al Qaeda refuge in Afghanistan; ¶ destroy the Iraqi military and topple Saddam’s regime”). ¶ In the aftermath, the focus shifted to nation-building, a more amorphous and ambiguous undertaking with fuzzier military tasks. In Iraq, for ¶ example, there is no central locus of decisionmaking power against which ¶ military force can be applied. Large-scale combat operations are rare, and military force, while a key supporting effort, is focused on stabilizing conditions ¶ so that the main effort of political reconciliation and economic reconstruction ¶ can proceed. Resistance appears to be local and fragmented, directed by a loose ¶ collection of Sunni Baathist remnants, Shia religious zealots, foreign jihadists, ¶ and, increasingly, local tribal fighters seeking revenge for the incidental deaths ¶ of family and tribal members. Access to military supplies and to new recruits is ¶ enabled both by neighboring powers like Iran and Syria and by local religious ¶ and cultural sentiment. ¶ In many ways the military problem in Iraq is harder today than it was ¶ during major combat operations. Only rarely can we expect to know in advance ¶ our enemy’s intentions, location, and methods. In this sense, seizing and maintaining the initiative, at least tactically, is a difficult challenge. ¶ Clausewitz was well aware of this environment, which he called ¶ “people’s war.” We can be confident that he would be uncomfor table with openended and hard-to-define strategic objectives. However much we may scoff ¶ at classical notions of strategy, with their “unsophisticated” and “unnuanced” ¶ focus on destroying enemy armies, seizing enemy capitals, installing more ¶ pliable regimes, and cowing hostile populations, ignoring them has led to poor ¶ historical results. A close reading of Vom Kriege shows that Clausewitz did ¶ not neglect the nature of the problem so much as he cautioned against ventures ¶ which could not be thoroughly rationalized. Put another way, he recognized ¶ there are limits to the power of any state and that those limits must be carefully ¶ calculated before, and not after, the decision to go to war. ¶ In Iraq, it may well be that American and coalition forces will destroy ¶ a critical mass of insurgents sufficient to collapse large-scale organized resistance, an outcome devoutly to be wished for. But if so, we are in a race against ¶ time. For the American Army and Marine Corps, and for our British and other ¶ coalition partners, the current level of commitment probably does not represent ¶ a sustainable steady state unless the forces available are considerably increased. ¶ If the security situation does not improve to permit major reductions in troop ¶ strength, eventually the strain will tell. At that point, the voting publics of ¶ the coalition partners and their governments may face difficult choices about ¶ whether and how to proceed.¶ 15¶ These choices will be tempered by the knowledge that the homeland ¶ itself has now become a battleground. Open societies with heterogeneous populations make Western states particularly vulnerable to terrorist attack, always ¶ an option open to hostile states or the terrorist groups they harbor. And however ¶ professional, the armies of the West are not driven by religious or ideological zeal. That too can be a weapon—as the Americans and French learned in ¶ Indochina and as we see today in the Middle East. ¶ The foregoing suggests that in future wars the United States and its ¶ Western allies will attempt to fight short, sharp campaigns with superior technology and overwhelming firepower delivered at standoff ranges, hoping to ¶ achieve a decisive military result quickly with few casualties. In contrast to the ¶ industrial or attrition-based strategies of the past, in future wars we will seek ¶ to destroy discrete targets leading to the collapse of key centers of gravity and ¶ overall system failure, rather than annihilating an opponent’s military forces in ¶ the field. Our likely opponents have two options: to inflict high losses early in ¶ a conflict (most probably with weapons of mass destruction, perhaps delivered ¶ unconventionally) in an attempt to turn public opinion against the war; or to ¶ avoid direct military confrontation and draw the conflict out over time, perhaps ¶ in conjunction with terrorist attacks delivered against the homeland, to drain ¶ away American and European resolve. ¶ In either case our enemies will not attempt to mirror our strengths and ¶ capabilities. Our airplanes and warships will not fight like systems, as in the ¶ past, but instead will serve as weapon platforms, either manned or unmanned, ¶ to deliver precision strikes against land targets. Those targets will increasingly ¶ be found under ground or in large urban areas, intermixed with civilian populations and cultural sites that hinder the use of standoff weapons.

#### No nuclear war – deterrence

Tepperman 9—Deputy Editor at Newsweek. Frmr Deputy Managing Editor, Foreign Affairs. LLM, i-law, NYU. MA, jurisprudence, Oxford. (Jonathan, Why Obama Should Learn to Love the Bomb, <http://jonathantepperman.com/Welcome_files/nukes_Final.pdf>)

The argument that nuclear weapons can be agents of peace as well as destruction rests on two deceptively simple observations. First, nuclear weapons have not been used since 1945. Second, there’s never been a nuclear, or even a nonnuclear, war between two states that possess them. Just stop for a second and think about that: it’s hard to overstate how remarkable it is, especially given the singular viciousness of the 20th century. As Kenneth Waltz, the leading “nuclear optimist” and a professor emeritus of political science at UC Berkeley puts it, “We now have 64 years of experience since Hiroshima. It’s striking and against all historical precedent that for that substantial period, there has not been any war among nuclear states.” To understand why—and why the next 64 years are likely to play out the same way—you need to start by recognizing that all states are rational on some basic level. Their leaders may be stupid, petty, venal, even evil, but they tend to do things only when they’re pretty sure they can get away with them. Take war: a country will start a fight only when it’s almost certain it can get what it wants at an acceptable price. Not even Hitler or Saddam waged wars they didn’t think they could win. The problem historically has been that leaders often make the wrong gamble and underestimate the other side—and millions of innocents pay the price. Nuclear weapons change all that by making the costs of war obvious, inevitable, and unacceptable. Suddenly, when both sides have the ability to turn the other to ashes with the push of a button— and everybody knows it—the basic math shifts. Even the craziest tin-pot dictator is forced to accept that war with a nuclear state is unwinnable and thus not worth the effort. As Waltz puts it, “Why fight if you can’t win and might lose everything?” Why indeed? The iron logic of deterrence and mutually assured destruction is so compelling, it’s led to what’s known as the nuclear peace: the virtually unprecedented stretch since the end of World War II in which all the world’s major powers have avoided coming to blows. They did fight proxy wars, ranging from Korea to Vietnam to Angola to Latin America. But these never matched the furious destruction of full-on, great-power war (World War II alone was responsible for some 50 million to 70 million deaths). And since the end of the Cold War, such bloodshed has declined precipitously. Meanwhile, the nuclear powers have scrupulously avoided direct combat, and there’s very good reason to think they always will. There have been some near misses, but a close look at these cases is fundamentally reassuring—because in each instance, very different leaders all came to the same safe conclusion. Take the mother of all nuclear standoffs: the Cuban missile crisis. For 13 days in October 1962, the United States and the Soviet Union each threatened the other with destruction. But both countries soon stepped back from the brink when they recognized that a war would have meant curtains for everyone. As important as the fact that they did is the reason why: Soviet leader Nikita Khrushchev’s aide Fyodor Burlatsky said later on, “It is impossible to win a nuclear war, and both sides realized that, maybe for the first time.” The record since then shows the same pattern repeating: nuclear armed enemies slide toward war, then pull back, always for the same reasons. The best recent example is India and Pakistan, which fought three bloody wars after independence before acquiring their own nukes in 1998. Getting their hands on weapons of mass destruction didn’t do anything to lessen their animosity. But it did dramatically mellow their behavior. Since acquiring atomic weapons, the two sides have never fought another war, despite severe provocations (like Pakistani-based terrorist attacks on India in 2001 and 2008). They have skirmished once. But during that flare-up, in Kashmir in 1999, both countries were careful to keep the fighting limited and to avoid threatening the other’s vital interests. Sumit Ganguly, an Indiana University professor and coauthor of the forthcoming India, Pakistan, and the Bomb, has found that on both sides, officials’ thinking was strikingly similar to that of the Russians and Americans in 1962. The prospect of war brought Delhi and Islamabad face to face with a nuclear holocaust, and leaders in each country did what they had to do to avoid it.

#### Zero risk of escalation even if a couple bombs are dropped

Quinlan 2009 (Michael Quinlan, former top official in the British Ministry of Defence, 2009, “Thinking About Nuclear Weapons: Principles, Problems, Prospects,”pg 63-64)

There are good reasons for fearing escalation. These include the confusion of war; its stresses, anger, hatred, and the desire for revenge; reluctance to accept the humiliation of backing down; the desire to get further blows in first. Given all this, the risks of escalation are grave in any conflict between advanced powers, and Western leaders during the cold war were rightly wont to emphasize them in the interests of deterrence. But this is not to say that they are virtually certain, or even necessarily odds-on; still less that they are so for all the assorted circumstances in which the situation might arise, in a nuclear world to which past experience is only a limited guide. It is entirely possible, for example, that the initial use of nuclear weapons, breaching a barrier that has held since 1945, might so horrify both sides in a conflict that they recognized an overwhelming common interest in composing their differences. The human pressures in that direction would be very great.¶ Even if initial nuclear use did not quickly end the fighting, the supposition of inexorable momentum in a developing exchange, with each side rushing to overreaction amid confusion and uncertainty, is implausible. It fails to consider what the situation of the decision- makers would really be. Neither side could want escalation. Both would be appalled at what was going on. Both would be desperately looking for signs that the other was ready to call a halt. Both, given the capacity for evasion or concealment which modern delivery platforms and vehicles can possess, could have in reserve significant forces invulnerable enough not to entail use-or-lose pressures. (It may be more open to question, as noted earlier, whether newer nuclear- weapon possessors can be immediately in that position; but it is within reach of any substantial state with advanced technological capabilities, and attaining it is certain to be a high priority in the development of forces.) As a result, neither side can have any predisposition to suppose, in an ambiguous situation of fearful risk, that the right course when in doubt is to go on copiously launching weapons. And none of this analysis rests on any presumption of highly subtle or pre-concerted rationality. The rationality required is plain.¶ The argument is reinforced if we consider the possible reasoning of an aggressor at a more dispassionate level. Any substantial nuclear armoury can inflict destruction outweighing any possible prize that aggression could hope to seize. A state attacking the possessor of such an armoury must therefore be doing so (once given that it cannot count upon destroying the armoury pre-emptively) on a judgement that the possessor would be found lacking in the will to use it. If the attacked possessor used nuclear weapons, whether first or in response to the aggressor’s own first use, this judgement would begin to look dangerously precarious. There must be at least a substantial possibility of the aggressor leaders’ concluding that their initial judgement had been mistaken—that the risks were after all greater than whatever prize they had been seeking, and that for their own country’s survival they must call off the aggression. Deterrence planning such as that of NATO was directed in the first place to preventing the initial misjudgement and in the second, if it were nevertheless made, to compelling such a reappraisal. The former aim had to have primacy, because it could not be taken for granted that the latter was certain to work. But there was no ground for assuming in advance, for all possible scenarios, that the chance of its working must be negligible. An aggressor state would itself be at huge risk if nuclear war developed, as its leaders would know.

#### It will cause extinction- outweighs nuclear war – answers their defense

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

The risks from anthropogenic hazards appear at present larger than those from natural ones. Although great progress has been made in reducing the number of nuclear weapons in the world, humanity is still threatened by the possibility of a global thermonuclear war and a resulting nuclear winter. We may face even greater risks from emerging technologies. Advances in synthetic biology might make it possible to engineer pathogens capable of extinction-level pandemics. The knowledge, equipment, and materials needed to engineer pathogens are more accessible than those needed to build nuclear weapons. And unlike other weapons, pathogens are self-replicating, allowing a small arsenal to become exponentially destructive. Pathogens have been implicated in the extinctions of many wild species. Although most pandemics "fade out" by reducing the density of susceptible populations, pathogens with wide host ranges in multiple species can reach even isolated individuals. The intentional or unintentional release of engineered pathogens with high transmissibility, latency, and lethality might be capable of causing human extinction. While such an event seems unlikely today, the likelihood may increase as biotechnologies continue to improve at a rate rivaling Moore's Law.

#### **Al Qaeda is gearing up for Cyber-attacks – they have the capability**

Leghari ’11 [Faryal Leghari is Assistant Editor (Opinion) of Khaleej Times, “Hit C for cyberterrorism”, Jan 29, 2011, <http://www.yobserver.com/opinions/10020698.html>]

The defining word for the new age is ‘smart’. And it orbits the earth at a million bytes a minute. Whether it’s smart or not is merely a question of perspective. Smart for one may be intellectually deficient for another. What it does however is pitch a generation still in the middle stages of cyber evolution against one that is growing too fast too soon. Confusing? Not if you stand back from a vantage point and reflect on what is happening out there in cyber space. If you are not frozen in a perennial state of anxiety about being left behind, you are already sidelined. This may still be simplistic for those worrying about their social site updates and their be-on-the-top of the happening mode of the moment, but what about the immense challenge the whole technological gambit poses for the security arena? According to security analysts and intelligence specialists, cyberterrorism is a bigger challenge than supposed. The propensity of Al Qaeda and other terror groups to harness these means into a potentially lethal offensive capability has handed them a crucial advantage, one they have used with **considerable success**. Not only are terrorist groups culpable, but major world powers such as China and Russia too have been accused of launching cyber attacks against other states. Take for example the attacks on Estonia in 2007 or the one on Georgia in 2008 that brought the respective governments almost to a standstill. These were alleged to be perpetrated by Russia which later denied charges. Moreover, a cyber attack on the US federal agencies believed to be launched by North Korea in 2009 bring us to the strange new world of ‘virtual or cyber’ war. In today’s world, the heavy dependence on technology and computers, any attack — even the one’s launched by non-state cyber criminals/hackers — can spell disaster, causing massive financial losses for organisations/corporate sector and civilians. One can only imagine the extent of damage an attack on state apparatus would inflict, let alone the security repercussions. For traditional terrorist groups using cyber space, there are numerous advantages. The proliferation of extremist websites standing in as recruitment boards and to spread propaganda makes cyber space a nurturing arena. Despite safeguards and the banning of several sites deemed threatening, the practice continues prolifically. The **easy accessibility** and **relatively cheap sources needed** to fund these activities make it especially attractive. With the growth of social networking sites, the most popular being Facebook and Twitter, the threat factor has actually rocketed. The Internet has put many disgruntled or easily influenced persons in direct or indirect contact with extremist elements. Take for example the Christmas Day Nigerian bomber Umer Farouk Abdulmuttalab who through initial cyber contact with the Yemeni cleric Anwar al Awlaki decided carry out a bombing onboard a Northwest plane to Detroit in 2009. The more discerning groups are continuously engaged in finding alternate routes to set platforms and coordinate attacks. The same portals are also used for standard communication. Often these groups engage hackers to facilitate their cyber operations, just like organised crime syndicates are used to coordinate and facilitate criminal/terror operations on ground. Drug trafficking, piracy, kidnappings, human trafficking are all areas that have seen a successful nexus being formed between terrorists and transnational organised crime syndicates. Moreover, hackers are used to provide intelligence information of government and security officials as vital support in planning physical targeted operations. Many security analysts and officials feel that cyberterrorism has not received due attention. Then there are also those who feel it is not a viable threat at present but may emerge in a more developed stage in future. However, it is still perceived that it may only be used in a subordinate support capacity. Interestingly, the opinion of top security officials differs. An international summit on cyber security by the East-West Institute in Dallas, Texas in 2010 brought together experts from a number of countries most of whom held cyberterrorism as a credible threat. They believed that the respective states including United States needed to revamp preventive measures against attacks in cyber space, implications of which were predicted to be monumental. According to a Guardian report dated May 5, 2010, Harry Raduege, former director at the Pentagon in charge of computer network warned that ‘cyber attacks were growing in intensity and sophistication.’ Similarly, the French director-general of information security agency, Patrick Pailloux voiced his fears about attacks on ‘the electricity system, transport, water supplies, financial sector  and hospitals.’ This brings us to also look at areas beyond the traditional military arena. The critical areas of power, water, health and financial institutions are **all vulnerable** to cyber attacks. Unfortunately, there is a lack of understanding of threat perception as well as basic attention and safeguard measures to secure these vital areas from such attacks. Regrettably, these are relegated inadvertently to a blur in the future. A report by the East West Institute notes the economic losses for China resulting from hacking and viruses amount to nearly a billion dollars annually. On the positive side is a growing realisation of the actual potential of cyberterrorism and its nexus with international organised crime. The Second Worldwide Cybersecurity Summit is being held in London in June this year to follow up on the Dallas summit and determine measures designed to safeguard cybersecurity. It is hoped that regular discussions between top security experts help arrive at a strategy that encompasses measures that will make the world a safer place to live in. As we step in the futuristic age, cyber attacks have begun to become a reality and not something one would enjoy as an integral part of the bigger picture. While a global cybersecurity treaty may still take years to come through, it is time to shape our defenses accordingly.

#### Cyberspace is key to fight terrorism- they are planning all ranges of attacks and use it for recruiting and finance- speed of response is key

Brennan 2012 [Lieutenant Colonel John W. Brennan 15 March 2012 US Army War College “United States Counter Terrorism Cyber Law and Policy, Enabling or Disabling?” http://nsfp.web.unc.edu/files/2012/09/Brennan\_UNITED-STATES-COUNTER-TERRORISM-CYBER-LAW-AND-POLICY.pdf]

There is conclusive and irrefutable evidence that terrorist organizations such as ¶ al-Qa’ida in Iraq (AQI) not only recruit, propagandize, coordinate attacks, and finance ¶ their activities, but these terror organizations are actively seeking the means to initiate ¶ casualty-producing kinetic events using the worldwide web as well.¶ 5¶ Groups such as the ¶ Muslim Hackers Club have developed their own software and tutorials in order to ¶ sabotage not only U. S. computer networks, but to also seek to cause the physical ¶ destruction of key American infrastructure.¶ 6¶ ADM Michael Mullen, then Chairman of the¶ Joint Chiefs of Staff described cyber terrorism as one of two existential threats to U. S. ¶ national security, the other being the Russian nuclear threat.¶ 7¶ Additionally, the ¶ intelligence community (IC) writ large considers cyber attacks as the most prominent, ¶ long-term threat to the country.¶ 8¶ Deputy Secretary of Defense William J. Lynn III ¶ similarly suggests that terrorists are seeking to effectively weaponize cyberspace in ¶ order to achieve kinetic effects against key U. S. infrastructure.¶ 9 Speed matters in stopping potentially calamitous events, and it is of seminal¶ importance as al-Qa’ida and its ilk continue to develop more efficient and effective ¶ methods of attack.¶ 10¶ Current trends indicate that terrorist organizations such as Lashkar ¶ e-Tayyibah (LeT) and al-Qa’ida in Iraq (AQI) are investing heavily in the education of ¶ select members in the fields of computer and electrical engineering.¶ 11¶ Ayman al ¶ Zawahiri counseled deceased AQI leader Abu Musab al Zarqawi that half of the battle 2-4¶ for Islam should be waged on the internet and he constantly stressed to Zarqawi the ¶ importance of digital information operations.¶ 12

### Case

#### Congressional oversight destroys the ability to carry out offensive cyber operations

Brennan 2012 [Lieutenant Colonel John W. Brennan 15 March 2012 US Army War College “United States Counter Terrorism Cyber Law and Policy, Enabling or Disabling?” http://nsfp.web.unc.edu/files/2012/09/Brennan\_UNITED-STATES-COUNTER-TERRORISM-CYBER-LAW-AND-POLICY.pdf]

As a matter of current U. S. policy, the decision to label a computer network ¶ operation (CNO) as a traditional military activity (TMA), thereby falling under the purview ¶ of Title 10 of the United States Code (USC), or as a covert action under Title 50 of the ¶ USC, has spurred a great deal of discussion at the highest levels of the U. S. ¶ Government.¶ 47¶ Although cyber warfare is only one aspect of the overall current Title ¶ 10/50 debate that is raging within Congress and the various departments within the ¶ executive branch, one cannot legitimately discuss the policies that govern the approvals ¶ to conduct CNOs without touching upon this current source of friction.¶ 48¶ Much of the¶ policy concerning the details of computer network operations is classified, but is gaining ¶ in importance such that many policy experts are speaking about it, some albeit from ¶ under the cloak of anonymity.¶ 49¶ As Andru E. Wall suggests, the confusion over Title 10 ¶ and Title 50 authorities appears to have, “…more to do with congressional oversight ¶ and its attendant internecine power struggles than with operational or statutory ¶ authorities,” despite the fact that by design, Title 10 and 50 authorities are mutually ¶ supporting and were not intended to be competing.¶ 50¶ Retired Admiral Dennis C. Blair ¶ (former ODNI) proclaimed that, “This infuriating business about who’s in charge and ¶ who gets to call the shots is just making us look muscle-bound.” ADM Blair went on to ¶ bemoan the “over-legalistic” approach to CT cyber--despite the fact that current cyber ¶ laws are woefully inadequate to address the, …”complexity of the global information ¶ network.”¶ 51¶ (Wall 2011101)

# 1NR

## Courts

### 2nc Solvency

#### Recent data proves – Court will have the last word

Adam Litpak (Writer for the New York Times) August 20, 2012 “In Congress’s Paralysis, a Mightier Supreme Court” http://www.nytimes.com/2012/08/21/us/politics/supreme-court-gains-power-from-paralysis-of-congress.html

 The Supreme Court does not always have the last word. Sure, its interpretation of the Constitution is the one that counts, and only a constitutional amendment can change things after the justices have acted in a constitutional case. But much of the court’s work involves the interpretation of laws enacted by Congress. In those cases, the court is, in theory at least, engaged in a dialogue with lawmakers. Lately, though, that conversation has become pretty one-sided, thanks to the legislative paralysis brought on by Congressional polarization. The upshot is that the Supreme Court is becoming even more powerful. Here is the way things are supposed to work. In cases concerning the interpretation of ambiguous federal statutes, the justices give their best sense of what the words of the law mean and how they apply in the case before them. If Congress disagrees, all it needs to do is say so in a new law. The most prominent recent example of this dynamic was Ledbetter v. Goodyear Tire and Rubber Company, the 2007 ruling that said Title VII of the Civil Rights Act of 1964 imposed strict time limits for bringing workplace discrimination suits. In her dissent, Justice Ruth Bader Ginsburg reminded lawmakers that on earlier occasions they had overridden what she called “a cramped interpretation of Title VII.” “Once again,” she wrote, “the ball is in Congress’s court.” Congress responded with the Lilly Ledbetter Fair Pay Act of 2009, which overrode the 2007 decision. This sort of back and forth works only if Congress is not paralyzed. An overlooked consequence of the current polarization and gridlock in Congress, a new study found, has been a huge transfer of power to the Supreme Court. It now almost always has the last word, even in decisions that theoretically invite a Congressional response. “Congress is overriding the Supreme Court much less frequently in the last decade,” Richard L. Hasen, the author of the study, said in an interview. “I didn’t expect to see such a dramatic decline. The number of overrides has fallen to almost none.” The few recent overrides of major decisions, including the one responding to the Ledbetter case, were by partisan majorities. “In the past, when Congress overturned a Supreme Court decision, it was usually on a nonpartisan basis,” said Professor Hasen, who teaches at the University of California, Irvine. In each two-year Congressional term from 1975 to 1990, he found, Congress overrode an average of 12 Supreme Court decisions. The corresponding number fell to 4.8 in the decade ending in 2000 and to just 2.7 in the last dozen years. “Congressional overruling of Supreme Court cases,” Professor Hasen wrote, “slowed down dramatically since 1991 and essentially halted in January 2009.” Tracking legislative overrides is not an exact science, as some fixes may be technical and trivial. And there may be other reasons for the decline, including drops in legislative activity generally and in the Supreme Court’s docket. But scholars who follow the issue say that Professor Hasen has discovered something important. “Particularly since the 2000 elections, there has been a big falloff in overrides,” said William N. Eskridge Jr., a law professor at Yale and the author of a seminal 1991 study on which Professor Hasen built his own. “It gives the Supreme Court significantly more power and Congress significantly less power.” Richard H. Pildes, a law professor at New York University, said the findings were further proof that “the hyperpolarization of Congress is the single most important fact about American governance today.” It is, he said, a phenomenon that has “been building steadily over the last 30 years and is almost certainly likely to be enduring for the foreseeable future.” “The assumption,” he added, “has long been that when the court interprets a federal statute, Congress can always come back in and fix the statute if it disagrees with the court. Now, however, the court’s decisions are likely to be the last word, not the first word, on what a statute means.”

#### Here’s predictive evidence—the counterplan will solve.

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

### 2nc SOP

#### Other WOT decisions prove courts are moving away from deference

Fisher 2005 (Louis Fisher, senior specialist in separation of Powers with the Congressional Research Service, September 2005, “Judicial Review of the War Power,” Presidential Studies Quarterly, Vol 35, No 3, http://www.constitutionproject.org/pdf/422.pdf)

The shock of 9/11 initially produced a compliant judiciary, willing to defer to ¶ executive initiatives and judgments. The executive branch continued to flex its muscles, ¶ insisting that it had the constitutional authority to detain hundreds of individuals in ¶ Guantanamo Bay and hold them indefinitely until the government decided it was time ¶ for their release. President Bush, on November 13, 2001, issued a military order author­¶ izing the creation of military tribunals to try noncitizens who had given assistance to al ¶ Qaeda. He claimed that he had authority to designate U.S. citizens "enemy combatants" ¶ and hold them for years without giving them access to an attorney, charging them with ¶ a crime, or bringing them before a court for trial. ¶ These sweeping assertions of presidential power finally led to the Supreme Court's ¶ decisions onJune 28, 2004. Writing for the plurality in Hamdi v. Rumsfeld, Justice Sandra ¶ Day O'Connor rejected the government's position that separation of powers principles ¶ "mandate a heavily circumscribed role for the courts." A state of war, she said, "is not a ¶ blank check for the President when it comes to the rights of the Nation's citizens."145 ¶ This judicial rhetoric was not matched by the issuance of clear standards from the Court, ¶ either in this case or Rasul v. Bush (Fisher 2005b, 210-49).

#### Judicial deference to military risks nuclear war

Kellman 1989 (Barry Kellman, Professor, DePaul University College of Law, Duke Law Journal, December, lexis)

 [\*1599] Standing at the vanguard of "national security" law, 13 these three decisions elevate the task of preparing for war to a level beyond legal [\*1600] accountability. They suggest that determinations of both the ends and the means of national security are inherently above the law and hence unreviewable regardless of the legal rights transgressed by these determinations. This conclusion signals a dangerous abdication of judicial responsibility. The very underpinnings of constitutional governance are threatened by those who contend that the rule of law weakens the execution of military policy. Their argument -- that because our adversaries are not restricted by our Constitution, we should become more like our adversaries to secure ourselves -- cannot be sustained if our tradition of adherence to the rule of law is to be maintained. To the contrary, the judiciary must be willing to demand adherence to legal principles by assessing responsibility for weapons decisions. This Article posits that judicial abdication in this field is not compelled and certainly is not desirable. The legal system can provide a useful check against dangerous military action, more so than these three opinions would suggest. The judiciary must rigorously scrutinize military decisions if our 18th century dream of a nation founded in musket smoke is to remain recognizable in a millennium ushered in under the mushroom cloud of thermonuclear holocaust. History shows that serious consequences ensue when the judiciary defers excessively to military authorities. Perhaps the most celebrated precedent for the deference to military discretion reflected in these recent decisions is the Supreme Court's 1944 decision in Korematsu v. United [\*1601] States. 14 Korematsu involved the conviction of an American citizen of Japanese descent for violating a wartime exclusion order against all persons of Japanese ancestry. That order, issued after Japan's attack on Pearl Harbor, declared that "the successful prosecution of the war requires every possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities." 15 Justice Hugo Black's opinion for the Court, upholding the exclusion order and Korematsu's conviction, stressed the hardships occasioned by war and held that "the power to protect must be commensurate with the threatened danger." 16

### **model**

#### **Supreme Court decisions are modeled globally**

Narasimhan 08 (Angela, PhD candidate in Political Science at Syracuse University, “Domestic Courts, Global Changes:International Influences on the Post-Cold War Supreme Court”The Institute for the Study of the Judiciary, Politics, and the Media Syracuse University) <http://jpm.syr.edu/wp-content/uploads/2012/04/15_a.pdf>

This summer, five of the nine current Supreme Court justices spent time overseas teaching law and attending international legal conferences. Although these same individuals continue to clash over the place of foreign law in their decision making – the travelers included both Justice Antonin Scalia, who vehemently opposes its consideration in Supreme Court decision making, and a vocal supporter, Justice Anthony Kennedy – their willingness to travel and interact with the global legal community was not seen as out of the ordinary. Perhaps this is because, as members of the most prominent national judiciary in the world, such interaction is considered a natural part of these justices’ job. Indeed, the greater context in which the Court operates has changed in recent decades. Since the end of the Cold War, the American legal system has gained visibility abroad through the United States’ involvement in constitution drafting and judicial reform. Although this involvement was originally a minor part of American foreign aid and concentrated primarily on the new democracies of Europe and the former Soviet Union, it has become a primary focus of U.S. democracy assistance across the globe in the past decade as attention has turned to the importance of securing the rule of law in transitional countries (Carothers 2005). As a result, the prominence of our national judicial system has grown and members of foreign and international courts have become more familiar with and likely to consider its decisions (Slaughter 1998). Scholars have also linked the universalization of and widespread international convergence on human rights’ protections in recent decades to the active exportation and influence of the U.S. Bill of Rights (Kelemen and Sibbitt 2004).

#### Applying CIL isn’t enough – only application in *direct opposition of federal policy* sets *binding precedent for judicial incorporation* – the permutation isn’t a showdown

Kundmueller ‘2[Michelle. The Journal of Legislation, 2002. ]

This Note has attempted to demonstrate some of the difficulties of applying customary international law in U.S. courts. At every level, there are unanswered questions. Many of these issues, like how "general" a practice or its acceptance must be in order to constitute customary international law, can only be given imprecise answers. Not only are these general problems inherent in all legal questions involving line-drawing **in the defining of customary international law**, but **there is a virtual war being waged over where that line should be drawn and by whom**. **This issue**, in turn**, raises questions of constitutional importance, the gravity of which it is almost impossible to overstate**. Practical concerns about the balance of powers, no less than theoretical misgivings over undermining our government's consentbased authority and legitimacy, demand our attention **as the possibility of directly incorporating customary international law,** perhaps even when **in direct contravention of federal statute, comes closer to becoming a reality.** **Current cases do not present any of these possibilities as realities. They do,** however, **contain the beginnings of what could become fundamental structural changes in customary--and** hence, **U**nited **S**tates--**law should the judicial system prove dominant** in determining customary international law. **Current cases show U.S. courts**, on a fairly modest level, defining, determining, and **applying customary international law. The cases** **have yet to produce a real showdown between domestic**, either constitutional or **congressional, and customary law.** To date, congressional and executive actions and statements have been taken as one type of evidence in determining the content of customary international law, but they have not served as dispositive or controlling in the face of overwhelming evidence that customary international law as a whole dictates a contrary outcome. **This**, of course, **is the real issue. What happens when the will of the people** or a dictate of the Constitution **conflicts directly with customary international law?** No doubt, our courts will do their best to interpret creatively so as to avoid such a conflict, but, **eventually, the conflict will come, and a decision will be made.** The conflict is inevitable due to the nature of modern customary international law. No longer delegated to issues traditionally understood as exterior, modern customary international law is beginning to define relationships between governments and their citizens and amongst

#### XU.S. model is key

Center for Justice and Accountability et al., Brief filed in Odah v. United Sates, 2003 U.S. Briefs 334

Many of the newly independent governments that have proliferated over the past five decades have adopted these ideals. They have emerged from a variety of less-than-free contexts, including the end of European colonial rule in the 1950's and 1960's, the end of the Cold War and the breakup of the former Soviet Union in the late 1980's and 1990's, the disintegration of Yugoslavia, and the continuing turmoil in parts of Africa, Latin America and southern Asia. Some countries have successfully transitioned to stable and democratic forms of government that protect individual freedoms and human rights by means of judicial review by a strong and independent judiciary. Others have suffered the rise of tyrannical and oppressive rulers who consolidated their hold on power in part by diminishing or abolishing the role of the judiciary. And still others hang in the balance, struggling against the onslaught of tyrants to establish stable, democratic governments. In their attempts to shed their tyrannical pasts and to ensure the protection of individual rights, emerging democracies have consistently looked to the United States and its Constitution in fashioning frameworks that safeguard the independence of their judiciaries. See Ran Hirschl, The Political Origins of Judicial Empowerment through Constitutionalization: Lessons from Four Constitutional Revolutions, 25 Law & Soc. Inquiry 91, 92 (2000) (stating that of the “[m]any countries . . . [that] have engaged in fundamental constitutional reform over the past three decades,” nearly all adopted “a bill of rights and establishe[d] some form of active judicial review”). Establishing judicial review by a strong and independent judiciary is a critical step in stabilizing and protecting these new democracies. See Christopher M. Larkins, Judicial Independence and Democratization: A Theoretical and Conceptual Analysis, 44 Am. J. Comp. L. 605, 605-06 (1996) (describing the judicial branch as having "a uniquely important role" in transitional countries, not only to "mediate conflicts between political actors but also [to] prevent the arbitrary exercise of government power; see also Daniel C. Prefontaine and Joanne Lee, The Rule of Law and the Independence of the Judiciary, International Centre for Criminal Law Reform and Criminal Justice Policy (1998) ("There is increasing acknowledgment that an independent judiciary is the key to upholding the rule of law in a free society . . . . Most countries in transition from dictatorships and/or statist economies recognize the need to create a more stable system of governance, based on the rule of law."), available at http://www.icclr.law.ubc.ca/Publications/Reports/RuleofLaw. pdf (last visited Jan. 8, 2004). Although the precise form of government differs among countries, “they ultimately constitute variations within, not from, the American model of constitutionalism . . . [a] specific set of fundamental rights and liberties has the status of supreme law, is entrenched against amendment or repeal . . . and is enforced by an independent court . . . .” Stephen Gardbaum, The New Commonwealth Model of Constitutionalism, 49 Am. J. Comp. L. 707, 718 (2001). This phenomenon became most notable worldwide after World War II when certain countries, such as Germany, Italy, and Japan, embraced independent judiciaries following their bitter experiences under totalitarian regimes. See id. at 714- 15; see also United States v. Then, 56 F.3d 464, 469 (2d Cir. 1995) (Calabresi, J., concurring) (“Since World War II, many countries have adopted forms of judicial review, which — though different from ours in many particulars — unmistakably draw their origin and inspiration from American constitutional theory and practice. See generally Mauro Cappelletti, The Judicial Process in Comparative Perspective (Oxford: Clarendon Press, 1989).”). It is a trend that continues to this day.

### A2 Perm Do Both

#### Links to politics – Only PRIOR court action solves

Garrett and Stutz, 2005 (Robert T. Garrett and Terrence Stutz, Dallas Morning News, “School finance now up to court Justices to decide if overhaul needed after bills fail in Legislature” lexis)

That could foreshadow the court's response to a chief argument by state attorneys – that the court should butt out and leave school finance to the Legislature. A court finding against the state would put the ball back in the hands of lawmakers, who have tended to put off dealing with problems in schools, prisons and mental health facilities until state or federal judges forced them to act. "It's the classic political response to problems they don't want to deal with," said Maurice Dyson, a school finance expert and assistant law professor at Southern Methodist University. "There is no better political cover than to have a court rule that something must be done, which allows politicians to say their hands are tied."

#### Mootness – the CP wont happen in a world of the perm

Lee, 1992 (Evan Tsen Lee, Associate Professor, University of California, Hastings College of the Law, Harvard Law Review, January, lexis)

ONE of the major impediments to the judicial protection of collective rights 1 is the group of doctrines falling under the rubric [\*606] of "justiciability" -- standing, ripeness, and mootness. 2 These are the gatekeeper doctrines; each regulates a different dimension of entrance to the federal courts. The law of standing considers whether the plaintiff is the proper person to assert the claim, the law of ripeness ensures that the plaintiff has not asserted the claim too early, 3 and the law of mootness seeks to prevent the plaintiff from asserting the claim too late. 4 By keeping certain public-minded plaintiffs and public-law claims out of federal court, these doctrines have shifted much of the battle for collective rights to the more steeply pitched fields of state courts or the political process. 5 In particular, defendants in public law litigation have had considerable success keeping such cases out of the federal courts by invoking the "case or controversy" requirement [\*607] of Article III. 6 Under current Supreme Court precedent, if a plaintiff cannot demonstrate that she possesses an ongoing "personal stake" in the outcome of the litigation, a federal court has no jurisdiction to adjudicate the claim on the merits. 7 No amount of judicial discretion can overcome this jurisdictional defect, because Article III demarcates the outer limit of federal court power. 8 As a result, many attempts to establish entitlements to important collective rights fail before courts can give them full consideration.

### A2 Agent CPs Bad

#### **Opportunity cost to the plan. Affirmation forecloses testing the plan—they could just shift goal posts to eliminate all counterplans.**

#### **Education—impact areas are debated every round. Implementation level analysis is the most beneficial—real world.**

Branson, 2007 (Josh Branson, “Reflections about debate and policymaking” May 31, edeabte)

Well, that’s not the way it worked at all, at least for me. No doubt in a collegiate debate judged by one of ya’ll I could have killed them all on the Pan K, probably even if we talked slow, but in the real world, I was kind of surprised to find that the knowledge generated by debate proved to be fairly damn cursory and artificial. I could rattle off a list of most of the arguments for/against most of the general nonproliferation doctrines, but a lot of the empirical and factual basis for these arguments was completely missing in my brain. I could make the basic claim for almost anything in the field, but the technical issues that underlines a lot of them (the names and locations of the Russian CW destruction plants, an understanding of how the fine points of the budget process works, how a capital market sanction would actually be implemented, where did we get our intelligence that revealed Chinese serial proliferators selling bombs to AQ Khan, how does a centrifuge cascade work and why exactly would multilateral sanctions undermine Iran’s ability to get uranium gas piping technology, the names of the key players in the various foreign governments that make nonproliferation policy etc) was all missing. Maybe this stuff sounds pretty boring, and some of it is, but this is the type of stuff that really determines whether or not policies are successful and whether or not they are effectively promulgated. But the details pretty much get left out in debates, replaced by a simplistic and power-worded DA that culminates in ‘nuclear winter.’ To my surprise, when setting out in the nonproliferation world, you don’t get to make grand pronouncements about the impact of funding Nunn-Lugar on US soft power or whether funding it would cause a budget deficit which would collapse the global economy and cause multiple scenarios for nuclear war. Instead, most of the work that is done is deciding which and what type of Russian facilities to allocate the money to, knowing the specific people within the Russian government we can trust, which types of nuclear disposition is safest and what types of transportation we should use when moving spent fuel back to storage, etc. When dealing with these discussions repeatedly, I found that debate had provided me a very sound abstract conceptual frame through which to analyze the general issues being raised, but little in a way of meaningfully engaging the policy process.

#### **Process education is more real world transferable—otherwise educational claims are worthless.**

#### **Process is timeless.**

#### **And, narrow debates are best—process precludes racing to the corners. Depth enhances critical thinking, research skills and education.**

#### **Education outweighs fairness. Hard debate key to critical thinking and better debate.**

#### **Debate is resilient—adjustments are research increases, which is limitless value.**

#### **Aff side bias. First, last, infinite prep and the plan.**

# SOP

#### **Congress acting unilaterally on cyber warfare fails link turns**

Dycus’10 Congress’s Role in Cyber Warfare¶ Stephen Dycus\* Professor, Vermont Law School <http://jnslp.com/wp-content/uploads/2010/08/11_Dycus.pdf> 2010

Congress obviously cannot act alone to develop a cyber warfare policy¶ for the United States. Its members and staff lack the technical expertise,¶ agility, and organization to wield this new, evolving weaponry. On the¶ other hand, Congress’s job in our constitutional system is to set national¶ policy for the executive branch to execute. Especially in the matter of¶ cyber warfare, where the diplomatic and strategic stakes are potentially as¶ high as they are in any kinetic conflict, Congress has a critical role to play.¶ It has perspective gained from long experience in foreign affairs and a host¶ of related issues, and it may be more responsive to the popular will. The¶ solution to this apparent conundrum may be found in a close collaboration¶ between the political branches in the planning and implementation of rules¶ for cyber warfare.58