# 1NC

### T-Prohibition

#### Restrictions are prohibitions on action --- the aff is oversight

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation.

Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as;

A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb.

In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment.

Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### Restrictions on authority are distinct from conditions

William Conner 78, former federal judge for the United States District Court for the Southern District of New York United States District Court, S. D. New York, CORPORACION VENEZOLANA de FOMENTO v. VINTERO SALES, http://www.leagle.com/decision/19781560452FSupp1108\_11379

Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. Properly interpreted, the "conditions" that had been imposed by plaintiff's Board of Directors and by the Venezuelan Cabinet were not "restrictions" or "limitations" upon the authority of plaintiff's agents but rather conditions precedent to the granting of authority. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

#### Vote neg---

#### Neg ground---only prohibitions on particular actions guarantee links to every core argument like flexibility and deference

#### Precision---only our interpretation defines “restrictions on authority”---that’s key to adequate preparation and policy analysis

#### Limits---there are an infinite number of small hoops they could require the president to jump through---overstretches our research burden

### GSPEC

**Courts affs have to specify the grounds**

**Dragich 95** - Martha J. Dragich, Associate Professor of Law at Missouri-Columbia, 2-1995 44 Am. U.L. Rev. 757

Opinions also permit readers to view the law in historical context. Insofar as opinions identify the precedents on which the court relied, they allow readers to form an understanding of the law's maturity. 164 In addition, the highly specialized citators on which legal research depends allow readers to gauge the continuing vitality of a decision [\*784] based on the frequency and approval with which it is cited. 165 Often, the determination whether or not a particular opinion is lawmaking cannot be made until years later, when further developments in the law demonstrate what the authoring judge could not forecast. 166 Moreover, the lasting authority of a decision depends largely on the quality of its reasoning, which can be evaluated only by reading the opinion. At a minimum, the tasks of researching and applying the law require that the law be findable and knowable, that the precedential value of prior decisions be ascertainable with some degree of reliability, and that prior decisions provide guidance for future cases. These conditions, in turn, can be satisfied only by the publication of judicial opinions **stating** the facts of the case, the issues considered, **the court's reasoning**, and the result.

**Vote neg – all ground and education revolve around judicial reasoning.**

### Politics DA

#### Obama will hold off a vote on Iran sanctions now---PC’s key---failure destroys regional and global U.S. power and cred

Flynt Leverett 1-20, professor at Pennsylvania State University’s School of International Affairs and is a Visiting Scholar at Peking University’s School of International Studies, and Hillary Mann Leverett, Senior Professorial Lecturer at the American University in Washington, DC and a Visiting Scholar at Peking University in Beijing, 1/20/14, “Iran, Syria and the Tragicomedy of U.S. Foreign Policy,” http://goingtotehran.com/iran-syria-and-the-tragicomedy-of-u-s-foreign-policy

Regarding President Obama’s ongoing struggle with the Senate over Iran policy, Hillary cautions against premature claims of “victory” for the Obama administration’s efforts to avert new sanctions legislation while the Joint Plan of Action is being implemented. She points out that “the foes of the Iran nuclear deal, of any kind of peace and conflict resolution in the Middle East writ large, are still very strong and formidable. For example, the annual AIPAC policy conference—a gathering here in Washington of over 10,000 people from all over the country, where they come to lobby congressmen and senators, especially on the Iran issue—that will be taking place in very early March. There’s still a lot that can be pushed and played here.”

To be sure, President Obama and Secretary of State John Kerry “have put a lot of political capital on the line.” No other administration has so openly staked out its opposition to a piece of legislation or policy initiative favored by AIPAC and backed by a bipartisan majority on Capitol Hill since the 1980s, when the Reagan administration successfully defended its decision to sell AWACs planes to Saudi Arabia. But, Hillary notes, if the pro-Israel lobby is able to secure a vote on the new sanctions bill, and to sustain the promised veto of said bill by President Obama, “that would be such a dramatic blow to President Obama, and not just on his foreign policy agenda, but it would be devastating to his domestic agenda.” So Obama “has a tremendous amount to lose, and by no means is the fight anywhere near over.”

Of course, to say that Obama has put a lot of political capital on the line over the sanctions issue begs the question of whether he is really prepared to spend the far larger amounts of capital that will be required to close a final nuclear deal with Tehran. As Hillary points out, if Obama were “really trying to lead this country on a much more constructive, positive trajectory after failed wars and invasions in Iraq and Afghanistan and Libya—Libya entirely on President Obama’s watch—[he] would be doing a lot more, rather than just giving these lukewarm talks, basically trying to continue to kiss up to major pro-Israel constituencies, and then trying to bring in some of political favors” on Capitol Hill.

Compare Obama’s handling of Iran and other Middle East challenges to President Nixon’s orchestration of the American opening to China—including Nixon’s willingness to “break the crockery” of the pro-Taiwan lobby—and the inadequacy of Obama’s approach become glaringly apparent. And that, Hillary underscores, is why we wrote our book, Going to Tehran—because “we think it’s absolutely essential for President Obama to do what Nixon did and go to Tehran, as Nixon went to China,” for “the Middle East is the make-or-break point for the United States, not just in our foreign affairs but in our global economic power and what we’re able to do here at home. If we can’t get what we’re doing in the Middle East on a much better, more positive trajectory, not only will we see the loss of our power, credibility, and prestige in the Middle East, but we will see it globally.”

#### It’s a war powers issue that Obama will win now---failure commits us to Israeli strikes

Merry 1/1Robert W., political editor of the National Interest, is the author of books on American history and foreign policy “Obama may buck the Israel lobby on Iran” Washington Times, http://www.washingtontimes.com/news/2013/dec/31/merry-obama-may-buck-the-israel-lobby-on-iran/

With the veto threat, Mr. Obama has announced that he is prepared to buck the Israel lobby — and may even welcome the opportunity. It isn’t fair to suggest that everyone who thinks Mr. Obama’s overtures to Iran are ill-conceived or counterproductive is simply following the Israeli lobby’s talking points, but Israel’s supporters in this country are a major reason for the viability of the sanctions legislation the president is threatening to veto.¶ It is nearly impossible to avoid the conclusion that the Senate legislation is designed to sabotage Mr. Obama’s delicate negotiations with Iran (with the involvement also of the five permanent members of the U.N. Security Council and Germany) over Iran’s nuclear program. The aim is to get Iran to forswear any acquisition of nuclear weapons in exchange for the reduction or elimination of current sanctions. Iran insists it has a right to enrich uranium at very small amounts, for peaceful purposes, and Mr. Obama seems willing to accept that Iranian position in the interest of a comprehensive agreement.¶ However, the Senate measure, sponsored by Sens. Robert Menendez, New Jersey Democrat; Charles E. Schumer, New York Democrat; and Mark Kirk, Illinois Republican, would impose potent new sanctions if the final agreement accords Iran the right of peaceful enrichment. That probably would destroy Mr. Obama’s ability to reach an agreement. Iranian President Hasan Rouhani already is under pressure from his country’s hard-liners to abandon his own willingness to seek a deal. The Menendez-Schumer-Kirk measure would undercut him and put the hard-liners back in control.¶ Further, the legislation contains language that would commit the United States to military action on behalf of Israel if Israel initiates action against Iran. This language is cleverly worded, suggesting U.S. action should be triggered only if Israel acted in its “legitimate self-defense” and acknowledging “the law of the United States and the constitutional responsibility of Congress to authorize the use of military force,” but the language is stunning in its brazenness and represents, in the view of Andrew Sullivan, the prominent blogger, “**an appalling new low in the Israeli government’s grip on the U.S. Congress**.”¶ While noting the language would seem to be nonbinding, Mr. Sullivan adds that “it’s basically endorsing the principle of handing over American foreign policy on a matter as grave as war and peace to a foreign government, acting against international law, thousands of miles away.”¶ That brings us back to Mr. Obama’s veto threat. The American people have made clear through polls and abundant expression (especially during Mr. Obama’s flirtation earlier this year with military action against Bashar Assad’s Syrian regime) that they are sick and weary of American military adventures in the Middle East. They don’t think the Iraq and Afghanistan wars have been worth the price, and they don’t want their country to engage in any other such wars.¶ That’s what the brewing confrontation between Mr. Obama and the Israel lobby comes down to — war and peace. Mr. Obama’s delicate negotiations with Iran, whatever their outcome, are designed to avert another U.S. war in the Middle East. The Menendez-Schumer-Kirk initiative is designed to kill that effort and cedes to Israel America’s war-making decision in matters involving Iran, which further increases the prospects for war. It’s not even an argument about whether the United States should come to Israel’s aid if our ally is under attack, but whether the decision to do so and when that might be necessary should be made in Jerusalem or Washington.

#### Obama fights the plan --- losers lose --- that drains political capital

Loomis 7 – Department of Government at Georgetown

(3/2/2007, Dr. Andrew J. Loomis is a Visiting Fellow at the Center for a New American Security, “Leveraging legitimacy in the crafting of U.S. foreign policy,” pg 35-36, <http://citation.allacademic.com//meta/p_mla_apa_research_citation/1/7/9/4/8/pages179487/p179487-36.php>)

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

#### Causes Israel strikes

Jon Perr 12/24/13**,** B.A. in Political Science from Rutgers University; technology marketing consultant based in Portland, Oregon, has long been active in Democratic politics and public policy as an organizer and advisor in California and Massachusetts. His past roles include field staffer for Gary Hart for President (1984), organizer of Silicon Valley tech executives backing President Clinton's call for national education standards (1997), recruiter of tech executives for Al Gore's and John Kerry's presidential campaigns, and co-coordinator of MassTech for Robert Reich (2002).(Jon, “Senate sanctions bill could let Israel take U.S. to war against Iran” Daily Kos, [http://www.dailykos.com/story/2013/12/24/1265184/-Senate-sanctions-bill-could-let-Israel-take-U-S-to-war-against-Iran#](http://www.dailykos.com/story/2013/12/24/1265184/-Senate-sanctions-bill-could-let-Israel-take-U-S-to-war-against-Iran)

As 2013 draws to close, the negotiations over the Iranian nuclear program have entered a delicate stage. But in 2014, the tensions will escalate dramatically as a bipartisan group of Senators brings a new Iran sanctions bill to the floor for a vote. As many others have warned, that promise of new measures against Tehran will almost certainly blow up the interim deal reached by the Obama administration and its UN/EU partners in Geneva. But Congress' highly unusual intervention into the President's domain of foreign policy doesn't just make the prospect of an American conflict with Iran more likely. As it turns out, the Nuclear Weapon Free Iran Act essentially empowers Israel to decide whether the United States will go to war against Tehran.¶ On their own, the tough new sanctions imposed automatically if a final deal isn't completed in six months pose a daunting enough challenge for President Obama and Secretary of State Kerry. But it is the legislation's commitment to support an Israeli preventive strike against Iranian nuclear facilities that almost ensures the U.S. and Iran will come to blows. As Section 2b, part 5 of the draft mandates:¶ If the Government of Israel is compelled to take military action in legitimate self-defense against Iran's nuclear weapon program, the United States Government should stand with Israel and provide, in accordance with the law of the United States and the constitutional responsibility of Congress to authorize the use of military force, diplomatic, military, and economic support to the Government of Israel in its defense of its territory, people, and existence.¶ Now, the legislation being pushed by Senators Mark Kirk (R-IL), Chuck Schumer (D-NY) and Robert Menendez (D-NJ) does not automatically give the President an authorization to use force should Israel attack the Iranians. (The draft language above explicitly states that the U.S. government must act "in accordance with the law of the United States and the constitutional responsibility of Congress to authorize the use of military force.") But there should be little doubt that an AUMF would be forthcoming from Congressmen on both sides of the aisle. As Lindsey Graham, who with Menendez co-sponsored a similar, non-binding "stand with Israel" resolution in March told a Christians United for Israel (CUFI) conference in July:¶ "If nothing changes in Iran, come September, October, I will present a resolution that will authorize the use of military force to prevent Iran from developing a nuclear bomb."¶ Graham would have plenty of company from the hardest of hard liners in his party. In August 2012, Romney national security adviser and pardoned Iran-Contra architect Elliott Abrams called for a war authorization in the pages of the Weekly Standard. And just two weeks ago, Norman Podhoretz used his Wall Street Journal op-ed to urge the Obama administration to "strike Iran now" to avoid "the nuclear war sure to come."¶ But at the end of the day, the lack of an explicit AUMF in the Nuclear Weapon Free Iran Act doesn't mean its supporters aren't giving Prime Minister Benjamin Netanyahu de facto carte blanche to hit Iranian nuclear facilities. The ensuing Iranian retaliation against to Israeli and American interests would almost certainly trigger the commitment of U.S. forces anyway.¶ Even if the Israelis alone launched a strike against Iran's atomic sites, Tehran will almost certainly hit back against U.S. targets in the Straits of Hormuz, in the region, possibly in Europe and even potentially in the American homeland. Israel would face certain retaliation from Hezbollah rockets launched from Lebanon and Hamas missiles raining down from Gaza.¶ That's why former Bush Defense Secretary Bob Gates and CIA head Michael Hayden raising the alarms about the "disastrous" impact of the supposedly surgical strikes against the Ayatollah's nuclear infrastructure. As the New York Times reported in March 2012, "A classified war simulation held this month to assess the repercussions of an Israeli attack on Iran forecasts that the strike would lead to a wider regional war, which could draw in the United States and leave hundreds of Americans dead, according to American officials." And that September, a bipartisan group of U.S. foreign policy leaders including Brent Scowcroft, retired Admiral William Fallon, former Republican Senator (now Obama Pentagon chief) Chuck Hagel, retired General Anthony Zinni and former Ambassador Thomas Pickering concluded that American attacks with the objective of "ensuring that Iran never acquires a nuclear bomb" would "need to conduct a significantly expanded air and sea war over a prolonged period of time, likely several years." (Accomplishing regime change, the authors noted, would mean an occupation of Iran requiring a "commitment of resources and personnel greater than what the U.S. has expended over the past 10 years in the Iraq and Afghanistan wars combined.") The anticipated blowback?¶ Serious costs to U.S. interests would also be felt over the longer term, we believe, with problematic consequences for global and regional stability, including economic stability. A dynamic of escalation, action, and counteraction could produce serious unintended consequences that would significantly increase all of these costs and lead, potentially, to all-out regional war.

#### Israeli strikes cause global great power war

Rafael Reuveny 10, PhD, Professor in the School of Public and Environmental Affairs at Indiana University, "Unilateral Strike on Iran could trigger world Depression", Op-ed distributed through McClatchy Newspaper Co, <http://www.indiana.edu/~spea/news/speaking_out/reuveny_on_unilateral_strike_Iran.shtml>

A unilateral Israeli strike on Iran’s nuclear facilities would likely have dire consequences, including a regional war, global economic collapse and a major power clash. For an Israeli campaign to succeed, it must be quick and decisive. This requires an attack that would be so overwhelming that Iran would not dare to respond in full force. Such an outcome is extremely unlikely since the locations of some of Iran’s nuclear facilities are not fully known and known facilities are buried deep underground. All of these widely spread facilities are shielded by elaborate air defense systems constructed not only by the Iranians, but also the Chinese and, likely, the Russians as well. By now, Iran has also built redundant command and control systems and nuclear facilities, developed early-warning systems, acquired ballistic and cruise missiles and upgraded and enlarged its armed forces. Because Iran is well-prepared, a single, conventional Israeli strike — or even numerous strikes — could not destroy all of its capabilities, giving Iran time to respond. A regional war Unlike Iraq, whose nuclear program Israel destroyed in 1981**,** Iran has a second-strike capability comprised of a coalition of Iranian, Syrian, Lebanese, Hezbollah, Hamas, and, perhaps, Turkish forces. Internal pressure might compel Jordan, Egypt, and the Palestinian Authority to join the assault, turning a bad situation into a regional war. During the 1973 Arab-Israeli War, at the apex of its power, Israel was saved from defeat by President Nixon’s shipment of weapons and planes. Today, Israel’s numerical inferiority is greater, and it faces more determined and better-equipped opponents. Despite Israel’s touted defense systems, Iranian coalition missiles, armed forces, and terrorist attacks would likely wreak havoc on its enemy, leading to a prolonged tit-for-tat. In the absence of massive U.S. assistance, Israel’s military resources may quickly dwindle, forcing it to use its alleged nuclear weapons, as it had reportedly almost done in 1973. An Israeli nuclear attack would likely destroy most of Iran’s capabilities, but a crippled Iran and its coalition could still attack neighboring oil facilities, unleash global terrorism, plant mines in the Persian Gulf and impair maritime trade in the Mediterranean, Red Sea and Indian Ocean. Middle Eastern oil shipments would likely slow to a trickle as production declines due to the war and insurance companies decide to drop their risky Middle Eastern clients. Iran and Venezuela would likely stop selling oil to the United States and Europe. The world economy would head into a tailspin; international acrimony would rise; and Iraqi and Afghani citizens might fully turn on the United States, immediately requiring the deployment of more American troops. Russia, China, Venezuela, and maybe Brazil and Turkey — all of which essentially support Iran — could be tempted to form an alliance and openly challenge the U.S. hegemony. Replaying Nixon’s nightmare Russia and China might rearm their injured Iranian protege overnight, just as Nixon rearmed Israel, and threaten to intervene, just as the U.S.S.R. threatened to join Egypt and Syria in 1973. President Obama’s response would likely put U.S. forces on nuclear alert, replaying Nixon’s nightmarish scenario. Iran may well feel duty-bound to respond to a unilateral attack by its Israeli archenemy, but it knows that it could not take on the United States head-to-head. In contrast, if the United States leads the attack, Iran’s response would likely be muted. If Iran chooses to absorb an American-led strike, its allies would likely protest and send weapons, but would probably not risk using force.

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

### Salaries DA

#### Judges will get pay raises now, but Congress still has the ability to wreck salaries – key to judicial independence

Lyle Denniston, SCOTUSblog badass, covered the court for 54 years, National Constitution Center’s Adviser on Constitutional Literacy, 10-8-2012, “Major gain for judges’ independence,” Constitution Daily, http://blog.constitutioncenter.org/2012/10/major-gain-for-judges%E2%80%99-independence/

That has been, from the beginning, one of the ways the Founders guaranteed the independence of the federal judiciary (another was a promise of life tenure “during good behavior”). But for the past 34 years, federal judges have been pursuing a series of lawsuits, claiming that Congress has frequently acted in ways that – in real-dollar terms – reduced their pay, in violation of the Compensation Clause. The theory was that, if a federal judges’ pay remains constant, it will be eroded over time by the effects of inflation in money’s value. Last Friday, that legal struggle finally resulted in a historic constitutional victory for the judges – a victory that is likely to be tested in the Supreme Court before it could take final effect. The U.S. Court of Appeals for the Federal Circuit – a specialized court that decides claims for money from the federal government – ruled by a 10-2 vote that Congress has several times violated a promise made in 1989 to give federal judges an annual cost-of-living increase in their pay level. The decision does not mean that Congress has lost the power to set federal judges’ salary levels, or that it has a constitutional duty to give them a period, inflation-countering raise. But it does mean that Congress cannot promise a raise, and then break that promise, and that the lawmakers cannot take steps that reduce the value of a sitting judge’s salary scale. The judges’ fight has been a long-running labor for them and their lawyers, and the issue raises such fundamental constitutional questions that it has gone to the Supreme Court, in one form or another, three times. It almost certainly will return there again, because the Justice Department does not believe the judges have a valid claim that the Compensation Clause has been violated, and the Department has the authority to seek Supreme Court review. The Federal Circuit Court’s ruling in the judges’ favor (in the case of Beer v. U.S.) is a strong statement of support for judicial independence, and for the role that a secure salary plays in helping to protect that independence. In the Declaration of Independence, the court recalled, America’s revolutionary generation protested that the King of England had made judges depend upon his grace for their tenure and for their pay. Alexander Hamilton wrote in The Federalist Papers: “Next to permanence in office, nothing can contribute more to the independence of the judges than a fixed provision for their support.”

#### Congress will backlash against the plan and cut judicial pay

Philip A. Talmadge, Justice, Washington State Supreme Court, Winter 1999, Seattle University Law Review, 22 Seattle Univ. L. R. 695, p. 701-704

The doctrine of judicial restraint has been encrusted in recent years with considerable ideological cant of both the left and the right. 17 The ideological discussion highlights particular political issues of the day. Many conservatives decry judicial activism with respect to the courts' role in racial desegregation in America or [\*702] reproductive rights issues. 18 Liberals complain today of judicial activism in property and economic issues. 19 But this doctrine need not be the captive of the left or the right. The doctrine itself has become "political" largely because it is not susceptible to rigorous and predictable definition. That the courts are not entirely trusted by the partisan branches of government to announce constitutional principles is illustrated by recent Washington legislation. In 1997, a bill was introduced in the Washington State House of Representatives with thirty-three sponsors. The bill challenged the doctrine of judicial review: "The doctrine of judicial review that the courts have the sole and final say in interpreting the Constitution on behalf of all three branches of government has been subject to serious analysis and criticism by scholars, jurists, and others for almost two hundred years." 20 The legislation's apparent intent was to undercut the finality and authority of judicial review of constitutional questions by permitting the legislature to disagree with a judicial interpretation of the Washington Constitution and to submit the issue to the voters in a statewide referendum. 21 [\*703] The sense that the courts are too powerful sometimes conflicts with direction to judges from the partisan branches to state their views more publicly. In 1997, twenty-two sponsors introduced in the Washington State House of Representatives a measure urging the Supreme Court to amend Canon 7 of the Code of Judicial Conduct to afford judges and judicial candidates the right to "speak freely and without fear of governmental retaliation, on issues that are not then before the court." 22 The United States Congress has also raised serious questions about judicial performance through a different methodology. The United States Senate's recent glacial pace in confirming nominees to judicial vacancies increases judicial workloads and instills trepidation in the minds of the nominees. 23 In recent legislation, 24 Congress [\*704] sought to restrain "judicial activism" by denying judges cost-of-living salary adjustments and limiting federal court jurisdiction. Various versions of the legislation would deny federal courts the power to release federal prisoners because of bad prison conditions and establish special procedures to hear challenges to state initiative measures. In summary, these issues illustrate the need for the courts continually to revisit and review the core constitutional functions of the judiciary. 25 Within the constitutional sphere, however, the courts should be active and the other branches of government constrained not to act unconstitutionally. The judiciary cannot "restrain" itself from declaring the enactments of legislative bodies violative of constitutional norms. The courts must vigorously protect individuals, particularly minorities, from majoritarian tyranny. But this protective role does not allow the courts to "constitutionalize" every controversy. Judicial self-restraint lends support to the legitimacy of judicial independence. In our system of separation of powers, achievement of the necessary balance between a judiciary vigorous within its constitutional sphere and independent of the partisan branches of government, and a judiciary restrained in its inclination to right every wrong, is no easy task. That necessary balance is, however, the essence of ordered liberty in the American constitutional system. Likewise, the other branches of government must regard the authority and independence of the judiciary by respecting judicial review, properly funding the courts, and avoiding the imposition of nonjudicial duties or ever-escalating caseloads. The fulfillment of separation of powers is found in the principles of restraint employed in the federal and state court systems.

#### Adequate funding for the judiciary is key to the rule of law – it’s watched internationally

Testimony of Associate Justice Anthony M. Kennedy before the United States Senate Committee on the Judiciary Judicial Security and Independence February 14, 2007 http://judiciary.senate.gov/testimony.cfm?id=2526&wit\_id=6070

The provision of judicial resources by Congress over the years is admirable in most respects. Your expeditious consideration of the pending court-security bill is just one example of your understanding of our needs. Our facilities have been, and are, the envy of the judiciaries of the several States and, indeed, of judges throughout the world. Our staff, our libraries, our electronic data systems, and our courthouses are excellent. These resources have been the special concern of Congress. Your interest, your oversight, and your understanding of our needs set a standard for our own States and for nations around the world. Just one example is the Federal Judicial Center. When visitors come to Washington, we recommend they observe it to learn how a successful judicial-education center functions. Those visitors are awed by what they see. As you know, the Center produces an elaborate series of programs for judicial education, under a small budget emphasizing turn-key projects. Around the world, the allocation of scarce resources to judiciaries is, to be candid, a tough sell. There are urgent demands for funds for defense; for roads and schools; for hospitals, doctors, and health care; and for basic utilities and necessities such as clean water. Even rich countries like our own find it hard to marshal the necessary resources for all these endeavors. What, then, is the reception an elected representative receives when he or she tells constituents the legislature has increased funding for judicial resources? The report, to be frank, is not likely to generate much excitement. Perhaps this is an educational failure on our part, for there is a proper response to this predictable public reaction. It is this: An efficient, highly qualified judiciary is part of the infrastructure necessary in any society that seeks to safeguard its freedom. A judiciary committed to excellence secures the Rule of Law; and the Rule of Law is a building block no less important to the advance of freedom and prosperity than infrastructure systems such as roads and utilities. Without a functioning, highly qualified, efficient judiciary, no nation can hope to guarantee its prosperity and secure the liberties of its people. The Committee knows that judges throughout the United States are increasingly concerned about the persisting low salary levels Congress authorizes for judicial service. Members of the federal judiciary consider the problem so acute that it has become a threat to judicial independence. This subject is a most delicate one and, indeed, is difficult for me to address. It is, however, an urgent matter requiring frank and open exchange of views. Please permit me to make some remarks on the subject.

#### That causes nuclear war [gender paraphrased].

Charles S. Rhyne, Founder and Senior Partner of Rhyne & Rhyne law firm. “Law Day Speech for Voice of America.” May 1, 1958. American Bar Association. http://www.abanet.org/publiced/lawday/rhyne58.html

In these days of soul-searching and re-evaluation and inventorying of basic concepts and principles brought on by the expansion of man’s vision to the new frontiers and horizons of outer space, we want the people of the world to know that we in America have an unshakable belief in the most essential ingredient of our way of life—the rule of law. The law we honor is the basis and foundation of our nation’s freedom and the freedom for the individual which exists here. And to Americans our freedom is more important than our very lives. The rule of law has been the bulwark of our democracy. It has afforded protection to the weak, the oppressed, the minorities, the unpopular; it has made it possible to achieve responsiveness of the government to the will of people. It stands as the very antithesis of Communism and dictatorship. When we talk about “justice” under our rule of law, the absence of such justice behind the Iron Curtain is apparent to all. When we talk about “freedom” for the individual, Hungary is recalled to the minds of all men. And when we talk about peace under law—peace without the bloodbath of war—we are appealing to the foremost desire of all peoples everywhere. The tremendous yearning of all peoples for peace can only be answered by the use of law to replace weapons in resolving international disputes. We in our country sincerely believe that [hu]mankind’s best hope for preventing the tragic consequences of nuclear-satellite-missile warfare is to persuade the nations of the entire world to submit all disputes to tribunals of justice for all adjudication under the rule of law. We lawyers of America would like to join lawyers from every nation in the world in fashioning an international code of law so appealing that sentiment will compel its general acceptance. Man’s relation to man is the most neglected field of study, exploration and development in the world community. It is also the most critical. The most important basic fact of our generation is that the rapid advance of knowledge in science and technology has forced increased international relationships in a shrunken and indivisible world. Men must either live together in peace or in modern war we will surely die together. History teachers that the rule of law has enabled [hu]mankind to live together peacefully within nations and it is clear that this same rule of law offers our best hope as a mechanism to achieve and maintain peace between nations. The lawyer is the technician in man’s relationship to man. There exists a worldwide challenge to our profession to develop law to replace weapons before the dreadful holocaust of nuclear war overtake our people.

### WOT DA

#### Indefinite detention reforms result in catastrophic terrorism---releases terrorists and kills intel gathering

Jack Goldsmith 09, Henry L. Shattuck Professor at Harvard Law School, 2/4/09, “Long-Term Terrorist Detention and Our National Security Court,” http://www.brookings.edu/~/media/research/files/papers/2009/2/09%20detention%20goldsmith/0209\_detention\_goldsmith.pdf

These three concerns challenge the detention paradigm. They do nothing to eliminate the need for detention to prevent detainees returning to the battlefield. But many believe that we can meet this need by giving trials to everyone we want to detain and then incarcerating them under a theory of conviction rather than of military detention. I disagree. For many reasons, it is too risky for the U.S. government to deny itself the traditional military detention power altogether, and to commit itself instead to try or release every suspected terrorist. ¶ For one thing, military detention will be necessary in Iraq and Afghanistan for the foreseeable future. For another, we likely cannot secure convictions of all of the dangerous terrorists at Guantánamo, much less all future dangerous terrorists, who legitimately qualify for non-criminal military detention. The evidentiary and procedural standards of trials, civilian and military alike, are much higher than the analogous standards for detention. With some terrorists too menacing to set free, the standards will prove difficult to satisfy. Key evidence in a given case may come from overseas and verifying it, understanding its provenance, or establishing its chain of custody in the manners required by criminal trials may be difficult. This problem is exacerbated when evidence was gathered on a battlefield or during an armed skirmish. The problem only grows when the evidence is old. And perhaps most importantly, the use of such evidence in a criminal process may compromise intelligence sources and methods, requiring the disclosure of the identities of confidential sources or the nature of intelligence-gathering techniques, such as a sophisticated electronic interception capability. ¶ Opponents of non-criminal detention observe that despite these considerations, the government has successfully prosecuted some Al Qaeda terrorists—in particular, Zacharias Moussaoui and Jose Padilla. This is true, but it does not follow that prosecutions are achievable in every case in which disabling a terrorist suspect represents a surpassing government interest. Moreover, the Moussaoui and Padilla prosecutions highlight an under-appreciated cost of trials, at least in civilian courts. The Moussaoui and Padilla trials were messy affairs that stretched, and some observers believe broke, our ordinary criminal trial conceptions of conspiracy law and the rights of the accused, among other things. The Moussaoui trial, for example, watered down the important constitutional right of the defendant to confront witnesses against him in court, and the Padilla trial rested on an unprecedentedly broad conception of conspiracy.15 An important but under-appreciated cost of using trials in all cases is that these prosecutions will invariably bend the law in ways unfavorable to civil liberties and due process, and these changes, in turn, will invariably spill over into non-terrorist prosecutions and thus skew the larger criminal justice process.16¶ A final problem with using any trial system, civilian or military, as the sole lawful basis for terrorist detention is that the trials can result in short sentences (as the first military commission trial did) or even acquittal of a dangerous terrorist.17 In criminal trials, guilty defendants often go free because of legal technicalities, government inability to introduce probative evidence, and other factors beyond the defendant's innocence. These factors are all exacerbated in terrorist trials by the difficulties of getting information from the place of capture, by classified information restrictions, and by stale or tainted evidence. One way to get around this problem is to assert the authority, as the Bush administration did, to use non-criminal detention for persons acquitted or given sentences too short to neutralize the danger they pose. But such an authority would undermine the whole purpose of trials and would render them a sham. As a result, putting a suspect on trial can make it hard to detain terrorists the government deems dangerous. For example, the government would have had little trouble defending the indefinite detention of Salim Hamdan, Osama Bin Laden's driver, under a military detention rationale. Having put him on trial before a military commission, however, it was stuck with the light sentence that Hamdan is completing at home in Yemen.¶ As a result of these considerations, insistence on the exclusive use of criminal trials and the elimination of non-criminal detention would significantly raise the chances of releasing dangerous terrorists who would return to kill Americans or others. Since noncriminal military detention is clearly a legally available option—at least if it is expressly authorized by Congress and contains adequate procedural guarantees—this risk should be unacceptable. In past military conflicts, the release of an enemy soldier posed risks. But they were not dramatic risks, for there was only so much damage a lone actor or small group of individuals could do.18 Today, however, that lone actor can cause far more destruction and mayhem because technological advances are creating ever-smaller and ever-deadlier weapons. It would be astounding if the American system, before the advent of modern terrorism, struck the balance between security and liberty in a manner that precisely reflected the new threats posed by asymmetric warfare. We face threats from individuals today that are of a different magnitude than threats by individuals in the past; having government authorities that reflect that change makes sense.

#### Nuclear terrorism is feasible --- high risk of theft and attacks escalate

Vladimir Z. Dvorkin 12 Major General (retired), doctor of technical sciences, professor, and senior fellow at the Center for International Security of the Institute of World Economy and International Relations of the Russian Academy of Sciences. The Center participates in the working group of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, 9/21/12, "What Can Destroy Strategic Stability: Nuclear Terrorism is a Real Threat," belfercenter.ksg.harvard.edu/publication/22333/what\_can\_destroy\_strategic\_stability.html

Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons. The use of “dirty bombs” will not cause many immediate casualties, but it will result into long-term radioactive contamination, contributing to the spread of panic and socio-economic destabilization.¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that well-trained terrorists may be able to penetrate nuclear facilities.¶ Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time.¶ Of all the scenarios, it is building an improvised nuclear device by terrorists that poses the maximum risk. **There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** Information on the design of such devices, as well as implosion-type devices, is available in the public domain. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that such materials can be bought on the black market. Theft of weapons-grade uranium is also possible. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).¶ A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is comparable to the yield of the bomb dropped on Hiroshima. The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures.¶ If a nuclear terrorist act occurs, nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act. We can imagine what would happen if they do so, given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause **violent protests in the Muslim world**. **Series of armed clashing terrorist attacks may follow**. The prediction that Samuel Huntington has made in his book “The Clash of Civilizations and the Remaking of World Order” may come true. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. This is especially dangerous for Russia because these fault lines run across its territory. To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

#### Extinction---equivalent to full-scale nuclear war

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

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

#### Detention reforms kill credible info-security---kills allied coop

Anna-Katherine McGill 12, School of Graduate and Continuing Studies in Diplomacy, Norwich University, David Gray, Campbell University, Summer 2012, “Challenges to International Counterterrorism Intelligence Sharing,” <http://globalsecuritystudies.com/McGill%20Intel%20Share.pdf>

It is clear that diplomacy will continue to be a key component in US counterterrorism coalition building. Intelligence sharing, as a by-product of these efforts, will likely improve for as long as trust is maintained or improved and compromises are made in the greater interest of combating the shared threat of terrorism. However, the US is also likely to face continuing foreseeable challenges from the ever expanding breadth of its international allies, its increasing dependence on its counterterrorism coalitions, and unpredictable setbacks to international trust like WikiLeaks. There are ways, however, to allay the impact of these challenges if not overcome them all together. ¶ With regards to traditional allies the United States must continue to negotiate a close working relationship with its NATO, EU, and 5 EYES partners. Great strides have been made but future disagreements on policy, tactics, and strategy for the war on terrorism are inevitable. The best way to prepare for such future issues is to continue to foster a positive collaborative relationship with these nations so that mutual trust will prevent arguments from threatening the survival of the alliance. This means that the US must carefully manage its international position. It cannot exploit legal loopholes like exporting suspects to other nations for questionable interrogations; it cannot bully its friends nor act unilaterally against their wishes; and it must hold itself to high moral standards befitting a liberal democracy.¶ For new and non-traditional allies, Reveron states that “the long-term challenge for policymakers will be to convert these short-term tactical relationships into meaningful alliances while protecting against counterintelligence threats” (467). Traditional alliances have to start somewhere and over time these new relationships can turn in to tried and tested cooperation. In order to further develop these relationships the US should attempt to iron out policy differences in other arenas rather than turn a blind eye to them and continue providing technical and material support to their development of effective intelligence programs. The US should not however hold CT cooperation supreme over other critical issues such as nuclear and conventional arms proliferation and human rights violations. Nations like Iran and Syria may be helpful in the short term and for limited purposes but this does not negate their less desirable practices.¶ Finally, the US will also need to look inward to prevent more classified information leaks. The US needs to be more critical in the issuance of security clearances, employ digital monitoring of who is downloading information and in what amount to prevent mass dumps, and give greater importance to curtailing the “insider threat” of US citizens leaking information overall. Improving intelligence security will help to mitigate the blowback from WikiLeaks and will go a long way to advancing US credibility and trust building.

#### Intelligence sharing is key to NATO effectiveness—solves war

Martin J. Ara 11, Lieutenant, United States Navy M.S., London School of Economics, AND Thomas Brand Lieutenant, Colonel, German Army B.S., University of the German Federal Armed Forces Munich, , AND Brage Andreas Larssen, Major, Norwegian Army B.S., Norwegian Military Academy, Oslo, December 2011, “HELP A BROTHER OUT: A CASE STUDY IN MULTINATIONAL INTELLIGENCE SHARING, NATO SOF,” <http://www.dtic.mil/dtic/tr/fulltext/u2/a556078.pdf>

\*Note: SOF = Special Operation Forces

NATO’s essential purpose is to safeguard the freedom and security of all its members via political and military means in accordance with the North Atlantic Treaty and the principles of the United Nations Charter.3 “There is a common perspective among a variety of defense and security establishments around the world that the nature of the current and future security environment we face presents complex and irregular challenges that are not readily apparent and are difficult to anticipate.”4 SOF is being singled out and recognized as a key component of the North Atlantic Treaty Organization (NATO) alliance in the fight against contemporary and future threats, because SOF is “ideally suited to [the] ambiguous and dynamic irregular environment” facing NATO.5¶ SOF has traditionally been considered a national asset. NATO had no history of utilizing SOF in the Alliance when NATO nations first assumed responsibility for the conflicts in the Balkans. However the lessons learned during those conflicts were not applied due to a lack of a central NATO SOF entity until the NATO Riga summit of 2006. On December 22, 2006, Admiral William McRaven was appointed Director of the NATO SOF Coordination Center (NSCC) and ordered to start the transformation process. Three years later, on March 1, 2010, the NATO SOF Headquarters (NSHQ) was formally established as a three-star headquarters within the Alliance in Mons, Belgium.6¶ According to its mission statement, the purpose of NSHQ is twofold. First, it must optimize the employment of SOF by the Alliance. NSHQ further describes this as “the intention to make the employment of SOF as perfect, efficient, and effective as possible, so as to deliver to the Alliance a highly agile Special Operations capability across the range of military operations.”7 Second, it must provide a command capability when so directed by Supreme Allied Commander Europe (SACEUR). NSHQ further describes this as “the ability to deploy a robust C4I capability and enablers for the support and employment of SOF in NATO operations.”8 To be able to carry out successful special operations in support of the current and future operating environments, the Alliance needs adequate interoperability, command and control, and intelligence structures. ¶ Even amongst the closest allies, challenges in intelligence sharing remain. During the early years of Operation Iraqi Freedom, British operators were denied access to intelligence fused by the U.S. that the British had gathered themselves. The issue became so contentious that it had to be raised by British and Australian Prime Ministers with the U.S. President to be resolved.9 Having realized that intelligence sharing is always a compromise between the need to share and the need to protect (even with the best-designed organizations, much less a large, multinational, bureaucratic organization), the NSHQ has developed an innovative approach to solving its intelligence deficiencies. It has created its own organic intelligence collection, analysis, and exploitation capability. It has also acquired its own equipment and created a robust NATO SOF training facility and training program to supplement intelligence flow to NATO SOF forces.!¶ B. BACKGROUND ¶ Special operations often test the limits of both equipment and personnel. This extremity introduces a significant degree of uncertainty or “fog of war.” Success in special operations dictates that the uncertainty associated with the enemy, weather, and terrain must be minimized through access to best available intelligence.10 Most special operations conducted nationally benefit from access to the best national intelligence available. However, because of classification issues, special operations by international coalitions often lack access to the best available intelligence. This absence increases the likelihood of operational failure and further risks the personal safety of the operators. ¶ NATO (and many of the individual member states) foresees a future threat environment shaped by unconventional threats such as transnational crime, terrorist attacks, and the proliferation of weapons of mass destruction.11 There are so many similarities in threats projected by the NATO member states and by official NATO strategy it is easy to conclude that a common enemy exists: transnational problems require transnational solutions. The complexities in the international order and the “significant challenges to the intelligence system [that] arise in targeting groups such as al-Qaeda due to their networked and volatile structure”12 make multinational intelligence sharing requisite. There is much to gain from multinational cooperation. The expected continued decline in military budgets and limited SOF human resources make burden-sharing and proper division of labor even more appropriate. ¶ C. PURPOSE AND SCOPE ¶ Intelligence is a decisive factor, sometimes the decisive factor, in special operations. As such, the NSHQ’s ultimate success will rely on its ability to solve some of the perennial problems related to intelligence sharing within coalitions. The newly established NSHQ in Mons, Belgium serves as an excellent testing ground to analyze SOF intelligence sharing issues within a coalition. NSHQ is attempting to streamline and optimize the intelligence available to NATO SOF units.

#### NATO prevents global nuclear war

Zbigniew Brzezinski 9, former U.S. National Security Advisor, the Robert E. Osgood Professor of American Foreign Policy at Johns Hopkins University's School of Advanced International Studies, September/October 2009, “An Agenda for NATO,” Foreign Affairs

And yet, it is fair to ask: Is NATO living up to its extraordinary potential? NATO today is without a doubt the most powerful military and political alliance in the world. Its 28 members come from the globe’s two most productive, technologically advanced, socially modern, economically prosperous, and politically democratic regions. Its member states’ 900 million people account for only 13 percent of the world’s population but 45 percent of global GDP.

NATO’s potential is not primarily military. Although NATO is a collective-security alliance, its actual military power comes predominantly from the United States, and that reality is not likely to change anytime soon. NATO’s real power derives from the fact that it combines the United States’ military capabilities and economic power with Europe’s collective political and economic weight (and occasionally some limited European military forces). Together, that combination makes NATO globally significant. It must therefore remain sensitive to the importance of safeguarding the geopolitical bond between the United States and Europe as it addresses new tasks.

The basic challenge that NATO now confronts is that there are historically unprecedented risks to global security. Today’s world is threatened neither by the militant fanaticism of a territorially rapacious nationalist state nor by the coercive aspiration of a globally pretentious ideology embraced by an expansive imperial power. The paradox of our time is that the world, increasingly connected and economically interdependent for the first time in its entire history, is experiencing intensifying popular unrest made all the more menacing by the growing accessibility of weapons of mass destruction - not just to states but also, potentially, to extremist religious and political movements. Yet there is no effective global security mechanism for coping with the growing threat of violent political chaos stemming from humanity’s recent political awakening.

The three great political contests of the twentieth century (the two world wars and the Cold War) accelerated the political awakening of mankind, which was initially unleashed in Europe by the French Revolution. Within a century of that revolution, spontaneous populist political activism had spread from Europe to East Asia. On their return home after World Wars I and II, the South Asians and the North Africans who had been conscripted by the British and French imperial armies propagated a new awareness of anticolonial nationalist and religious political identity among hitherto passive and pliant populations. The spread of literacy during the twentieth century and the wide-ranging impact of radio, television, and the Internet accelerated and intensified this mass global political awakening.

In its early stages, such new political awareness tends to be expressed as a fanatical embrace of the most extreme ethnic or fundamentalist religious passions, with beliefs and resentments universalized in Manichaean categories. Unfortunately, in significant parts of the developing world, bitter memories of European colonialism and of more recent U.S. intrusion have given such newly aroused passions a distinctively anti-Western cast. Today, the most acute example of this phenomenon is found in an area that stretches from Egypt to India. This area, inhabited by more than 500 million politically and religiously aroused peoples, is where NATO is becoming more deeply embroiled.

Additionally complicating is the fact that the dramatic rise of China and India and the quick recovery of Japan within the last 50 years have signaled that the global center of political and economic gravity is shifting away from the North Atlantic toward Asia and the Pacific. And of the currently leading global powers—the United States, the EU, China, Japan, Russia, and India—at least two, or perhaps even three, are revisionist in their orientation. Whether they are “rising peacefully” (a self-confident China), truculently (an imperially nostalgic Russia) or boastfully (an assertive India, despite its internal multiethnic and religious vulnerabilities), they all desire a change in the global pecking order. The future conduct of and relationship among these three still relatively cautious revisionist powers will further intensify the strategic uncertainty.

Visible on the horizon but not as powerful are the emerging regional rebels, with some of them defiantly reaching for nuclear weapons. North Korea has openly flouted the international community by producing (apparently successfully) its own nuclear weapons - and also by profiting from their dissemination. At some point, its unpredictability could precipitate the first use of nuclear weapons in anger since 1945. Iran, in contrast, has proclaimed that its nuclear program is entirely for peaceful purposes but so far has been unwilling to consider consensual arrangements with the international community that would provide credible assurances regarding these intentions. In nuclear-armed Pakistan, an extremist anti-Western religious movement is threatening the country’s political stability.

### OLC/DOJ CP

#### Text: The President of the United States should issue an Executive Order committing the executive branch to Solicitor General Representation and advance consultation with the Office of Legal Counsel over decisions involving habeus corpus.

#### The Office of Legal Counsel should issue a formal, public opinion recommending that the Executive Branch self-apply burdens of proof and presumptions regarding evidence in habeus corpus hearings that favor individuals in military detention. The Executive Branch should refuse to prosecute individuals if it does not have enough evidence to meet this burden.

#### The President of the United States should comply with the Office of Legal Counsel’s opinion.

#### OLC opinions solve the whole aff without linking to any of our DA’s

Trevor Morrison 11, Professor of Law at Columbia Law School, “LIBYA, ‘HOSTILITIES,’ THE OFFICE OF LEGAL COUNSEL, AND THE PROCESS OF EXECUTIVE BRANCH LEGAL INTERPRETATION,” Harvard Law Review Forum Vol.124:42, http://www.harvardlawreview.org/media/pdf/vol124\_forum\_morrison.pdf

Deeply rooted traditions treat the Justice Department’s Office of Legal Counsel (OLC) as the most important source of legal advice wit h- in the executive branch. A number of important norms guide the provision and handling of that advice. OLC bases its answers on its best view of the law, not merely its sense of what is plausible or arguable. 6 To ensure that it takes adequate account of competing perspectives within the executive branch, it typically requests and fully considers the views of other affected agencies before answering the questions put to it. Critically, once OLC arrives at an answer, it is treated as binding within the executive branch unless overruled by the Attorney General or the President. That power to overrule, moreover, is wielded extremely rarely — virtually never. As a result of these and related norms, and in spite of episodes like the notorious “torture memos,” OLC has earned a well-deserved reputation for providing credible, authoritative, thorough and objective legal analysis. The White House is one of the main beneficiaries of that reputation. When OLC concludes that a government action is lawful, its conclusion carries a legitimacy that other executive offices cannot so readily provide. That legitimacy is a function of OLC’s deep traditions and unique place within the executive branch. Other executive offices — be they agency general counsels or the White House Counsel’s Office — do not have decades-long traditions of providing legal advice based on their best view of the law after fully considering the competing positions; they have not generated bodies of authoritative precedents to inform and constrain their work; and they do not issue legal opinions that, whether or not they favor the President , are treated as presumptively binding within the executive branch. (Nor should those other offices mimic OLC; that is not their job.) Because the value of a favorable legal opinion from OLC is tied inextricably to these aspects of its work, each successive presidential administration has a strong incentive to respect and preserve them.

#### Executive pre-commitment to DOJ advice avoids their solvency deficits

* Internal restrictions are comparatively more effective
* Pre-commitment solves groupthink/bias --- causes OLC lawyers to play devil’s advocate

Pillard 5 – JD from Harvard, Faculty Director of Supreme Court Institute at Georgetown University Law Center, former Deputy Assistant Attorney General in the DOJ (February, Cornelia T., Michigan Law Review, 103.4, “The Unfulfilled Promise of the Constitution in Executive Hands”, 103 Mich. L. Rev. 676-758, http://scholarship.law.georgetown.edu/facpub/189/)

V. ENABLING EXECUTIVE CONSTITUTIONALISM¶ The courts indisputably do not and cannot fully assure our enjoyment of our constitutional rights, and it is equally clear that the federal executive has an independent constitutional duty to fulfill the Constitution's promise. Executive constitutionalism seems ripe with promise. Yet, it is striking how limited and court-centered the executive's normative and institutional approaches to constitutional questions remain.¶ One conceivable way to avoid the pitfalls of court-centric executive lawyering on one hand and constitutional decisions warped by political expedience on the other would be to make the Solicitor General and Office of Legal Counsel - or perhaps the entire Department of Justice - as structurally independent as an independent counsel or independent agency.207 Making the SG and OLC independent in order to insulate them from politics presumably would alleviate the "majoritarian difficulty" resulting from their service to elected clients. Promoting fuller independence in that sense does not, however, appear to be clearly normatively attractive, constitutionally permissible, nor particularly feasible. In all the criticism of our current constitutionalism, there is little call for an SG or OLC that would act, in effect, as a fully insulated and jurisprudentially autonomous constitutional court within the executive branch, operating with even less transparency and accountability than the Supreme Court. Moreover, as a practical matter it would be complex and problematic to increase the independence of the SG and OLC. The federal government faces Article II obstacles to formally insulating executive lawyers from politics and institutional pressures, and the president and his administration likely would be less amenable to guidance from such unaccountable lawyers.208¶ The challenge, rather, is to draw forth from the executive a constitutional consciousness and practice that helps the government actively to seek to fulfill the commitments of the Constitution and its Bill of Rights, interpreted by the executive as guiding principles for government. Adjustments to executive branch constitutional process and culture should be favored if they encourage the executive to use its experience and capacities to fulfill its distinctive role in effectuating constitutional guarantees. There is transformative potential in measures that break ingrained executive branch habits of looking to the Constitution only as it is mediated through the courts, and of reflexively seeking, where there is no clear doctrinal answer, to minimize constitutional constraint. It is difficult fully to imagine what kinds of changes would best prompt executive lawyers and officials to pick up constitutional analysis where the courts leave off, and to rely on the Constitution as an affirmative, guiding mandate for government action; what follows are not worked-out proposals, but are meant to be merely suggestive.¶ A. Correcting the Bias Against Constitutional Constraint¶ As we have seen, the SG's and OLC's default interpretive approach to individual rights and other forms of constitutional constraints on government is to follow what clear judicial precedents there are and, where precedents are not squarely to the contrary, to favor interpretations that minimize constitutional rights or other constitutional obligations on federal actors. Those court-centered and narrowly self-serving executive traditions produce a systematic skew against individual rights.¶ 1. Encourage Express Presidential Articulation of Commitment to Constitutional Rights¶ To the extent that a president articulates his own rights-protective constitutional vision with any specificity, he ameliorates the tension his constitutional lawyers otherwise face between advancing individual rights and serving their boss's presumed interest in maximum governing flexibility. Case or controversy requirements and restrictions against courts issuing advisory opinions do not, of course, apply to the executive's internal constitutional decisionmaking, and presidents can better serve individual rights to the extent that they expressly stake out their constitutional commitments in general and in advance of any concrete controversy."° When the president takes a stand for advancing abortion rights, property rights, disability rights, "charitable choice," a right to bear arms, or full remediation of race and sex discrimination, he signals to his lawyers that they should, in those areas, set aside their default bias in favor of preserving executive prerogative, even if it requires extra executive effort or restraint to do so.¶ If presented in a concrete setting with a choice between interpreting and applying the Constitution in fully rights-protective ways or sparing themselves the effort where Supreme Court precedent can be read not to require it, government officials typically default to the latter course without considering whether they might thereby be giving short shrift to a constitutional duty. A president's stated commitment to protection of particular rights, however, flips the default position with respect to those rights, acting as a spur to executive-branch lawyers and other personnel to work to give effect to constitutional rights even where, for a range of institutional reasons, the courts would not. A president is thus uniquely situated to facilitate full executive-branch constitutional compliance by precommitting himself to a rights-protective constitutional vision, and thereby making clear that respect for constitutional rights is part of the executive's interest, not counter to it.

## Presumed Imminence Adv

### Defense

#### Informal, internal checks are sufficient to address their impacts

Kennedy 12, JD from USC, MA in Middle Eastern Regional Studies from Harvard [Copyright (c) 2012 Gould School of Law Southern California Interdisciplinary Law Journal Spring, 2012 Southern California Interdisciplinary Law Journal 21 S. Cal. Interdis. L.J. 633 LENGTH: 23138 words NOTE: THE HIJACKING OF FOREIGN POLICY DECISION MAKING: GROUPTHINK AND PRESIDENTIAL POWER IN THE POST-9/11 WORLD NAME: Brandon Kennedy\* BIO: \* Class of 2012, University of Southern California Gould School of Law; M.A. Regional Studies: Middle East 2009, Harvard Graduate School of Arts and Sciences; B.A. Government 2009, Harvard University.]

Neither the president nor the decision-making group members implement "hybrid" checks; the checks do, however, originate in the executive branch and directly affect the president and the group members. Hybrid checks relate to the bureaucratic machine and typically address the structural faults within the executive branch that can affect the core decision-making group. Although the president and his or her advisers constitute the insiders of the decision-making group, they ultimately belong [\*676] to a larger organization - the executive branch - and thereby become part of the bureaucratic machine. 1. Inter-Agency Process The "inter-agency process" check involves getting approval for, or opinions about, a proposed decision from **other agencies**. n252 The inter-agency process is particularly common for national security and foreign policy decisions. n253 "Occasionally, it will operate at a higher level in principals' committees involving Cabinet-level or sub-Cabinet people and their deputies," thus directly checking the decision-making group members. n254 2. Intra-Agency Process Another similar check is the "intra-agency process," in which the circulation of proposed decisions **within the agency** empowers dissidents and harnesses a diversity of thinking. n255 If nothing else, the process catches errors, or at least increases the odds of avoiding them, given the number of people who must review or approve a document or decision within the agency. n256 3. Agency or Lawyer Culture The culture of a particular agency - the institutional self-awareness of its professionalism - provides another check. n257 "Lawyer culture" - which places high value on competencyand adherence to rules and laws - resides at the core of agency culture; n258 its "nay-saying" objectivity "is especially important in the small inner circle of presidential decision making to counter the tendency towards groupthink and a vulnerability to sycophancy." n259 [\*677] 4. Public Humiliation A final check in this category is the "public humiliation" check. n260 This check only comes into play when the previous three have failed, and involves the threat to ""go public' by leaking embarrassing information or publicly resigning."

#### No groupthink---executives are fragmented and pluralistic---Courts link just as much

Posner 7 – \*Kirkland and Ellis Professor of Law at the University of Chicago Law School AND \*\*professor at Harvard Law School (Eric and Adrian, Terror in the Balance: Security, Liberty, and the Courts p. 46-47)

The idea that Congress will, on net, weed out bad policies rests on an institutional comparison. The president is elected by a national constituency on a winner-take-all basis (barring the remote chance that the Electoral College will matter), whereas Congress is a summation of local constituencies and thus affords more voice to political and racial minorities. At the level of political psychology, decisionmaking within the executive is prone to group polarization and other forms of groupthink or irrational panic,51 whereas the internal diversity of legislative deliberation checks these forces. At the level of political structure, Congress contains internal veto gates and chokepoints—consider the committee system and the fi libuster rule—that provide minorities an opportunity to block harmful policies, whereas executive decisionmaking is relatively centralized and unitary. The contrast is drawn too sharply, because in practice **the executive is a they, not an it**. Presidential oversight is incapable of fully unifying executive branch policies, which means that **disagreement flourishes within the executive as well, dampening panic and groupthink** and providing minorities with political redoubts.52 Where a national majority is internally divided, the structure of presidential politics creates chokepoints that can give racial or ideological minorities disproportionate influence, just as the legislative process does. Consider the influence of Arab Americans in Michigan, often a swing state in presidential elections. It is not obvious, then, that statutory authorization **makes any difference at all**. One possibility is that a large national majority dominates both Congress and the presidency and enacts panicky policies, oppresses minorities, or increases security in ways that have ratchet effects that are costly to reverse. If this is the case, a requirement of statutory authorization does not help. Another possibility is that there are internal institutional checks, within both the executive branch and Congress, on the adoption of panicky or oppressive policies and that democratic minorities have real infl uence in both arenas. If this is the case, then a requirement of authorization is not necessary and does no good. Authorization only makes a difference in the unlikely case where the executive is thoroughly panicky, or oppressively majoritarian, while Congress resists the stampede toward bad policies and safeguards the interests of oppressed minorities. Even if that condition obtains, however, the argument for authorization goes wrong by failing to consider both sides of the normative ledger. As for majoritarian oppression, the multiplicity of veto gates within Congress may allow minorities to block harmful discrimination, but it also allows minorities to block policies and laws which, although targeted, are nonetheless good. As for panic and irrationality, if Congress is more deliberative, one result will be to prevent groupthink and slow down stampedes toward bad policies, but another result will be to delay necessary emergency measures and **slow down stampedes toward good policies**. Proponents of the authorization requirement sometimes assume that quick action, even panicky action, **always** produces bad policies. But there is no necessary connection between these two things; expedited action is sometimes good, and panicky crowds can stampede either in the wrong direction or in the right direction. Slowing down the adoption of new policies through congressional oversight retards the adoption not only of bad policies, but also of good policies that need to be adopted quickly if they are to be effective.

### Offense

#### Ending deference decks effective executive responses to prolif, terror, and the rise of hostile powers---link threshold is low

Robert Blomquist 10, Professor of Law, Valparaiso University School of Law, THE JURISPRUDENCE OF AMERICAN NATIONAL SECURITY PRESIPRUDENCE, 44 Val. U.L. Rev. 881

Supreme Court Justices--along with legal advocates--need to conceptualize and prioritize big theoretical matters of institutional design and form and function in the American national security tripartite constitutional system. By way of an excellent introduction to these vital issues of legal theory, the Justices should pull down from the library shelf of the sumptuous Supreme Court Library in Washington, D.C. (or more likely have a clerk do this chore) the old chestnut, The Legal Process: Basic Problems in the Making and Application of Law by the late Harvard University law professors Henry M. Hart and Albert M. Sacks. n7 Among the rich insights on institutional design coupled with form and function in the American legal system that are germane to the Court's interpretation of national security law-making and decision-making by the President are several pertinent points. First, "Hart and Sacks' intellectual starting point was the interconnectedness of human beings, and the usefulness of law in helping us coexist peacefully together." n8 By implication, therefore, the Court should be mindful of the unique [\*883] constitutional role played by the POTUS in preserving peace and should prevent imprudent judicial actions that would undermine American national security. Second, Hart and Sacks, continuing their broad insights of social theory, noted that legal communities establish "institutionalized[] procedures for the settlement of questions of group concern" n9 and regularize "different procedures and personnel of different qualifications . . . appropriate for deciding different kinds of questions" n10 because "every modern society differentiates among social questions, accepting one mode of decision for one kind and other modes for others-e.g., courts for 'judicial' decisions and legislatures for 'legislative' decisions" n11 and, extending their conceptualization, an executive for "executive" decisions. n12 Third, Professors Hart and Sacks made seminal theoretical distinctions between rules, standards, principles, and policies. n13 While all four are part of "legal arrangements [\*884] in an organized society," n14 and all four of these arrangements are potentially relevant in judicial review of presidential national security decisions, principles and policies n15 are of special concern because of the sprawling, inchoate, and rapidly changing nature of national security threats and the imperative of hyper-energy in the Executive branch in responding to these threats. n16

The Justices should also consult Professor Robert S. Summers's masterful elaboration and amplification of the Hart and Sacks project on enhancing a flourishing legal system: the 2006 opus, Form and Function in a Legal System: A General Study. n17 The most important points that [\*885] Summers makes that are relevant to judicial review of American national security presiprudence are three key considerations. First, a "conception of the overall form of the whole of a functional [legal] unit is needed to serve the founding purpose of defining, specifying, and organizing the makeup of such a unit so that it can be brought into being and can fulfill its own distinctive role" n18 in synergy with other legal units to serve overarching sovereign purposes for a polity. The American constitutional system of national security law and policy should be appreciated for its genius in making the POTUS the national security sentinel with vast, but not unlimited, powers to protect the Nation from hostile, potentially catastrophic, threats. Second, "a conception of the overall form of the whole is needed for the purpose of organizing the internal unity of relations between various formal features of a functional [legal] unit and between each formal feature and the complementary components of the whole unit." n19 Thus, Supreme Court Justices should have a thick understanding of the form of national security decision-making conceived by the Founders to center in the POTUS; the ways the POTUS and Congress historically organized the processing of national security through institutions like the National Security Council and the House and Senate intelligence committees; and the ways the POTUS has structured national security process through such specific legal forms as Presidential Directives, National Security Decision Directives, National Security Presidential Decision Directives, Presidential Decision Directives, and National Security Policy Directives in classified, secret documents along with typically public Executive Orders. n20 Third, according to Summers, "a conception of the overall form of the whole functional [legal] unit is needed to organize further the mode of operation and the instrumental capacity of the [legal] unit." n21 So, the Supreme Court should be aware that tinkering with national security decisions of the POTUS--unless clearly necessary to counterbalance an indubitable violation of the text of the Constitution--may lead to unforeseen negative second-order consequences in the ability of the POTUS (with or without the help of Congress) to preserve, protect, and defend the Nation. n22

[\*886] B. Geopolitical Strategic Considerations Bearing on Judicial Interpretation

Before the United States Supreme Court Justices form an opinion on the legality of national security decisions by the POTUS, they should immerse themselves in judicially-noticeable facts concerning what national security expert, Bruce Berkowitz, in the subtitle of his recent book, calls the "challengers, competitors, and threats to America's future." n23 Not that the Justices need to become experts in national security affairs, n24 but every Supreme Court Justice should be aware of the following five basic national security facts and conceptions before sitting in judgment on presiprudential national security determinations.

(1) "National security policy . . . is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice." n25 While "[y]esterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers" n26, the twenty-first century reality is that "[t]hreats are also more likely to be intertwined--proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers." n27

(2) "Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat--the Soviet Union--was brittle, most of the potential adversaries and challengers America now faces are resilient." n28

(3) "The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events." n29 Importantly, "[w]hen you hold [\*887] the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not." n30

(4) While "keeping the strategic advantage may not have the idealistic ring of making the world safe for democracy and does not sound as decisively macho as maintaining American hegemony," n31 maintaining the American "strategic advantage is critical, because it is essential for just about everything else America hopes to achieve--promoting freedom, protecting the homeland, defending its values, preserving peace, and so on." n32

(5) The United States requires national security "agility." n33 It not only needs "to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources." n34

[\*888] As further serious preparation for engaging in the jurisprudence of American national security presiprudence in hotly contested cases and controversies that may end up on their docket, our Supreme Court Justices should understand that, as Walter Russell Mead pointed out in an important essay a few years ago, n35 the average American can be understood as a Jacksonian pragmatist on national security issues. n36 "Americans are determined to keep the world at a distance, while not isolating ourselves from it completely. If we need to take action abroad, we want to do it on our terms." n37 Thus, recent social science survey data paints "a picture of a country whose practical people take a practical approach to knowledge about national security. Americans do not bother with the details most of the time because, for most Americans, the details do not matter most the time." n38 Indeed, since the American people "do know the outlines of the big picture and what we need to worry about [in national security affairs] so we know when we need to pay greater attention and what is at stake. This is the kind of knowledge suited to a Jacksonian." n39

Turning to how the Supreme Court should view and interpret American presidential measures to oversee national security law and policy, our Justices should consider a number of important points. First, given the robust text, tradition, intellectual history, and evolution of the institution of the POTUS as the American national security sentinel, n40 and the unprecedented dangers to the United States national security after 9/11, n41 national security presiprudence should be accorded wide latitude by the Court in the adjustment (and tradeoffs) of trading liberty and security. n42 Second, Justices should be aware that different presidents [\*889] institute changes in national security presiprudence given their unique perspective and knowledge of threats to the Nation. n43 Third, Justices should be restrained in second-guessing the POTUS and his subordinate national security experts concerning both the existence and duration of national security emergencies and necessary measures to rectify them. "During emergencies, the institutional advantages of the executive are enhanced", n44 moreover, "[b]ecause of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times." n45 Fourth, Supreme Court Justices, of course, should not give the POTUS a blank check--even during times of claimed national emergency; but, how much deference to be accorded by the Court is "always a hard question" and should be a function of "the scale and type of the emergency." n46 Fifth, the Court should be extraordinarily deferential to the POTUS and his executive subordinates regarding questions of executive determinations of the international laws of war and military tactics. As cogently explained by Professors Eric Posner and Adrian Vermeule, n47 "the United States should comply with the laws of war in its battle against Al Qaeda"--and I would argue, other lawless terrorist groups like the Taliban--"only to the extent these laws are beneficial to the United States, taking into account the likely response of [\*890] other states and of al Qaeda and other terrorist organizations," n48 as determined by the POTUS and his national security executive subordinates.

#### The impact is nuclear and biological war

Zheyao Li 9, J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University, 2006. This paper is the culmination of work begun in the "Constitutional Interpretation in the Legislative and Executive Branches" seminar, led by Judge Brett Kavanaugh, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare,” 7 Geo. J.L. & Pub. Pol'y 373 2009 WAR POWERS IN THE FOURTH GENERATION OF WARFARE

A. The Emergence of Non-State Actors

Even as the quantity of nation-states in the world has increased dramatically since the end of World War II, the institution of the nation-state has been in decline over the past few decades. Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons.122 The proliferation of nuclear weapons, and their immense capacity for absolute destruction, has ensured that conventional wars remain limited in scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945.123 At the same time, concurrent with the decline of the nation-state in the second half of the twentieth century, non-state actors have increasingly been willing and able to use force to advance their causes. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, non-state actors do not necessarily fight as a mere means of advancing any coherent policy. Rather, they see their fight as a life-and-death struggle, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends.124 It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modem trend toward a new phase of warfighting, the authors argued that: In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). 125 It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new. theory of war powers. As evidenced by Part M, supra, the constitutional allocation of war powers, and the Framers' commitment of the war power to two co-equal branches, was not designed to cope with the current international system, one that is characterized by the persistent machinations of international terrorist organizations, the rise of multilateral alliances, the emergence of rogue states, and the potentially wide proliferation of easily deployable weapons of mass destruction, nuclear and otherwise. B. The Framers' World vs. Today's World The Framers crafted the Constitution, and the people ratified it, in a time when everyone understood that the state controlled both the raising of armies and their use. Today, however, the threat of terrorism is bringing an end to the era of the nation-state's legal monopoly on violence, and the kind of war that existed before-based on a clear division between government, armed forces, and the people-is on the decline. 126 As states are caught between their decreasing ability to fight each other due to the existence of nuclear weapons and the increasing threat from non-state actors, it is clear that the Westphalian system of nation-states that informed the Framers' allocation of war powers is no longer the order of the day. 127 As seen in Part III, supra, the rise of the modem nation-state occurred as a result of its military effectiveness and ability to defend its citizens. If nation-states such as the United States are unable to adapt to the changing circumstances of fourth-generational warfare-that is, if they are unable to adequately defend against low-intensity conflict conducted by non-state actors-"then clearly [the modem state] does not have a future in front of it.' 128 The challenge in formulating a new theory of war powers for fourthgenerational warfare that remains legally justifiable lies in the difficulty of adapting to changed circumstances while remaining faithful to the constitutional text and the original meaning. 29 To that end, it is crucial to remember that the Framers crafted the Constitution in the context of the Westphalian system of nation-states. The three centuries following the Peace of Westphalia of 1648 witnessed an international system characterized by wars, which, "through the efforts of governments, assumed a more regular, interconnected character."' 130 That period saw the rise of an independent military class and the stabilization of military institutions. Consequently, "warfare became more regular, better organized, and more attuned to the purpose of war-that is, to its political objective."' 1 3' That era is now over. Today, the stability of the long-existing Westphalian international order has been greatly eroded in recent years with the advent of international terrorist organizations, which care nothing for the traditional norms of the laws of war. This new global environment exposes the limitations inherent in the interpretational methods of originalism and textualism and necessitates the adoption of a new method of constitutional interpretation. While one must always be aware of the text of the Constitution and the original understanding of that text, that very awareness identifies the extent to which fourth-generational warfare epitomizes a phenomenon unforeseen by the Framers, a problem the constitutional resolution of which must rely on the good judgment of the present generation. 13 Now, to adapt the constitutional warmarking scheme to the new international order characterized by fourth-generational warfare, one must understand the threat it is being adapted to confront. C. The Jihadist Threat The erosion of the Westphalian and Clausewitzian model of warfare and the blurring of the distinction between the means of warfare and the ends of policy, which is one characteristic of fourth-generational warfare, apply to al-Qaeda and other adherents of jihadist ideology who view the United States as an enemy. An excellent analysis of jihadist ideology and its implications for the rest of the world are presented by Professor Mary Habeck. 133 Professor Habeck identifies the centrality of the Qur'an, specifically a particular reading of the Qur'an and hadith (traditions about the life of Muhammad), to the jihadist terrorists. 134 The jihadis believe that the scope of the Qur'an is universal, and "that their interpretation of Islam is also intended for the entire world, which must be brought to recognize this fact peacefully if possible and through violence if not."' 135 Along these lines, the jihadis view the United States and her allies as among the greatest enemies of Islam: they believe "that every element of modern Western liberalism is flawed, wrong, and evil" because the basis of liberalism is secularism. 136 The jihadis emphasize the superiority of Islam to all other religions, and they believe that "God does not want differing belief systems to coexist."' 37 For this reason, jihadist groups such as al-Qaeda "recognize that the West will not submit without a fight and believe in fact that the Christians, Jews, and liberals have united against Islam in a war that will end in the complete destruction of the unbelievers.' 138 Thus, the adherents of this jihadist ideology, be it al-Qaeda or other groups, will continue to target the United States until she is destroyed. Their ideology demands it. 139 To effectively combat terrorist groups such as al-Qaeda, it is necessary to understand not only how they think, but also how they operate. Al-Qaeda is a transnational organization capable of simultaneously managing multiple operations all over the world."14 It is both centralized and decentralized: al-Qaeda is centralized in the sense that Osama bin Laden is the unquestioned leader, but it is decentralized in that its operations are carried out locally, by distinct cells."4 AI-Qaeda benefits immensely from this arrangement because it can exercise direct control over high-probability operations, while maintaining a distance from low-probability attacks, only taking the credit for those that succeed. The local terrorist cells benefit by gaining access to al-Qaeda's "worldwide network of assets, people, and expertise."' 42 Post-September 11 events have highlighted al-Qaeda's resilience. Even as the United States and her allies fought back, inflicting heavy casualties on al-Qaeda in Afghanistan and destroying dozens of cells worldwide, "al-Qaeda's networked nature allowed it to absorb the damage and remain a threat." 14 3 This is a far cry from earlier generations of warfare, where the decimation of the enemy's military forces would generally bring an end to the conflict. D. The Need for Rapid Reaction and Expanded Presidential War Power By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, today's United States is an international power targeted by individuals and groups that will not rest until seeing her demise. The Global War on Terrorism is not truly a war within the Framers' eighteenth-century conception of the term, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, this "war" is a struggle for survival and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, necessitates an evolution of America's traditional constitutional warmaking scheme. As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should consider the implications of the OODA Loop: Observe, Orient, Decide, and Act. 44 In the era of fourth-generational warfare, quick reactions, proceeding through the OODA Loop rapidly, and disrupting the enemy's OODA loop are the keys to victory. "In order to win," Colonel Boyd suggested, "we should operate at a faster tempo or rhythm than our adversaries." 145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police."1 46 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision- making. In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute. In America's current situation, however, in the midst of the conflict with al-Qaeda and other international terrorist organizations, the existing process of constitutional decision-making in warfare may prove a fatal hindrance to achieving the initiative necessary for victory. As a slow-acting, deliberative body, Congress does not have the ability to adequately deal with fast-emerging situations in fourth-generational warfare. Thus, in order to combat transnational threats such as al-Qaeda, the executive branch must have the ability to operate by taking offensive military action even without congressional authorization, because only the executive branch is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourthgenerational opponents.

### Consequences---Moral Absolutism Bad---1NC

#### Moral absolutism undermines political effectiveness and causes political paralysis

Jeffrey C. Isaac, James H. Rudy Professor of Political Science and Director of the Center for the Study of Democracy and Public Life at Indiana University, Spring 2002, Dissent, Vol. 49, No. 2

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

## Impact Calculus

### Decision-Calculus

### Offense

#### Turn – EXISTENTIAL RISKS

#### A. Extinction threats like nuclear war require a distinct psychological approach – we have to objectively weigh the risk of catastrophes for the benefit of everyone because our traditional trial-and-error approach to risks won’t cut it in this context

Nick Bostrom, PhD and Professor at Oxford University, March, 2002

Journal of Evolution and Technology, vol. 9 <http://www.nickbostrom.com/existential/risks.html>

I shall use the following definition of existential risks: Existential risk – One where an adverse outcome would either annihilate Earth-originating intelligent life or permanently and drastically curtail its potential. An existential risk is one where humankind as a whole is imperiled. Existential disasters have major adverse consequences for the course of human civilization for all time to come. 2        The unique challenge of existential risks Risks in this sixth category are a recent phenomenon. This is part of the reason why it is useful to distinguish them from other risks. We have not evolved mechanisms, either biologically or culturally, for managing such risks. Our intuitions and coping strategies have been shaped by our long experience with risks such as dangerous animals, hostile individuals or tribes, poisonous foods, automobile accidents, Chernobyl, Bhopal, volcano eruptions, earthquakes, draughts, World War I, World War II, epidemics of influenza, smallpox, black plague, and AIDS. These types of disasters have occurred many times and our cultural attitudes towards risk have been shaped by trial-and-error in managing such hazards. But tragic as such events are to the people immediately affected, in the big picture of things – from the perspective of humankind as a whole – even the worst of these catastrophes are mere ripples on the surface of the great sea of life. They haven’t significantly affected the total amount of human suffering or happiness or determined the long-term fate of our species. With the exception of a species-destroying comet or asteroid impact (an extremely rare occurrence), there were probably no significant existential risks in human history until the mid-twentieth century, and certainly none that it was within our power to do something about. The first manmade existential risk was the inaugural detonation of an atomic bomb. At the time, there was some concern that the explosion might start a runaway chain-reaction by “igniting” the atmosphere. Although we now know that such an outcome was physically impossible, it qualifies as an existential risk that was present at the time. For there to be a risk, given the knowledge and understanding available, it suffices that there is some subjective probability of an adverse outcome, even if it later turns out that objectively there was no chance of something bad happening. If we don’t know whether something is objectively risky or not, then it is risky in the subjective sense. The subjective sense is of course what we must base our decisions on.[[2]](http://www.nickbostrom.com/existential/risks.html" \l "_ftn2#_ftn2" \o ") At any given time we must use our best current subjective estimate of what the objective risk factors are.[[3]](http://www.nickbostrom.com/existential/risks.html" \l "_ftn3#_ftn3" \o ") A much greater existential risk emerged with the build-up of nuclear arsenals in the US and the USSR. An all-out nuclear war was a possibility with both a substantial probability and with consequences that might have been persistent enough to qualify as global and terminal. There was a real worry among those best acquainted with the information available at the time that a nuclear Armageddon would occur and that it might annihilate our species or permanently destroy human civilization.[[4]](http://www.nickbostrom.com/existential/risks.html" \l "_ftn4#_ftn4" \o ")  Russia and the US retain large nuclear arsenals that could be used in a future confrontation, either accidentally or deliberately. There is also a risk that other states may one day build up large nuclear arsenals. Note however that a smaller nuclear exchange, between India and Pakistan for instance, is not an existential risk, since it would not destroy or thwart humankind’s potential permanently. Such a war might however be a local terminal risk for the cities most likely to be targeted. Unfortunately, we shall see that nuclear Armageddon and comet or asteroid strikes are mere preludes to the existential risks that we will encounter in the 21st century. The special nature of the challenges posed by existential risks is illustrated by the following points: Our approach to existential risks cannot be one of trial-and-error. There is no opportunity to learn from errors. The reactive approach – see what happens, limit damages, and learn from experience – is unworkable. Rather, we must take a proactive approach. This requires foresight to anticipate new types of threats and a willingness to take decisive preventive action and to bear the costs (moral and economic) of such actions. We cannot necessarily rely on the institutions, moral norms**, social attitudes** or national security policies that developed from our experience with managing other sorts of risks. Existential risks are a different kind of beast. We might find it hard to take them as seriously as we should simply because we have never yet witnessed such disasters.[[5]](http://www.nickbostrom.com/existential/risks.html" \l "_ftn5#_ftn5" \o ") Our collective fear-response is likely ill calibrated to the magnitude of threat. Reductions in existential risks are global public goods [13] and may therefore be undersupplied by the market [14]. Existential risks are a menace for everybody and may require acting on the international plane. Respect for national sovereignty is not a legitimate excuse for failing to take countermeasures against a major existential risk. If we take into account the welfare of future generations, the harm done by existential risks is multiplied by another factor, the size of which depends on whether and how much we discount future benefits [15,16]. In view of its undeniable importance, it is surprising how little systematic work has been done in this area. Part of the explanation may be that many of the gravest risks stem (as we shall see) from anticipated future technologies that we have only recently begun to understand. Another part of the explanation may be the unavoidably interdisciplinary and speculative nature of the subject. And in part the neglect may **also** be attributable to an aversion against thinking seriously about a depressing topic. The point, however, is not to wallow in gloom and doom but simply to take a sober look at what could go wrong so we can create responsible strategies for improving our chances of survival. In order to do that, we need to know where to focus our efforts.

#### B. This is an exception to our usual cognitive biases – you should prefer our evidence over their generic evidence about risks because extinction is a unique context

Eliezer Yudkowsky, Research Fellow at the Singularity Institute for Artificial Intelligence, 8-31-2006 "Cognitive biases potentially affecting judgment of global risks" http://singinst.org/upload/cognitive-biases.pdf

Thinking about existential risks falls prey to all the same fallacies that prey upon thinking-ingeneral. But the stakes are much, much higher. A common result in heuristics and biases is that offering money or other incentives does not eliminate the bias. (Kachelmeier and Shehata (1992) offered subjects living in the People's Republic of China the equivalent of three months' salary.) The subjects in these experiments don't make mistakes on purpose; they make mistakes because they don't know how to do better. Even if you told them the survival of humankind was at stake, they still would not thereby know how to do better. (It might increase their need for closure, causing them to do worse.) It is a terribly frightening thing, but people do not become any smarter, just because the survival of humankind is at stake. In addition to standard biases, I have personally observed what look like harmful modes of thinking specific to existential risks. The Spanish flu of 1918 killed 25-50 million people. World War II killed 60 million people. 108 is the order of the largest catastrophes in humanity's written history. Substantially larger numbers, such as 500 million deaths, and especially qualitatively different scenarios such as the extinction of the entire human species, seem to trigger a different mode of thinking enter into a "separate magisterium". People who would never dream of hurting a child hear of an existential risk, and say, "Well, maybe the human species doesn't really deserve to survive." There is a saying in heuristics and biases that people do not evaluate events, but descriptions of events what is called non-extensional reasoning. The extension of humanity's extinction includes the death of yourself, of your friends, of your family, of your loved ones, of your city, of your country, of your political fellows. Yet people who would take great offense at a proposal to wipe the country of Britain from the map, to kill every member of the Democratic Party in the U.S., to turn the city of Paris to glass who would feel still greater horror on hearing the doctor say that their child had cancer these people will discuss the extinction of humanity with perfect calm. "Extinction of humanity", as words on paper, appears in fictional novels, or is discussed in philosophy books it belongs to a different context than the Spanish flu. We evaluate descriptions of events, not extensions of events. The cliché phrase end of the world invokes the magisterium of myth and dream, of prophecy and apocalypse, of novels and movies. The challenge of existential risks to rationality is that, the catastrophes being so huge, people snap into a different mode of thinking. Human deaths are suddenly no longer bad, and detailed predictions suddenly no longer require any expertise, and whether the story is told with a happy ending or a sad ending is a matter of personal taste in stories.

### Impact D

#### Prefer our impacts – multiple studies confirm that people are more likely to underestimate the risk of extinction scenarios because they’ve never happened – we actually have a cognitive bias in favor of systemic impacts

Eliezer Yudkowsky, Research Fellow at the Singularity Institute for Artificial Intelligence, 8-31-2006 "Cognitive biases potentially affecting judgment of global risks" http://singinst.org/upload/cognitive-biases.pdf

Biases implicit in the availability heuristic affect estimates of risk. A pioneering study by Lichtenstein et. al. (1978) examined absolute and relative probability judgments of risk. People know in general terms which risks cause large numbers of deaths and which cause few deaths. However, asked to quantify risks more precisely, people severely overestimate the frequency of rare causes of death, and severely underestimate the frequency of common causes of death. Other repeated errors were also apparent: Accidents were judged to cause as many deaths as disease. (Diseases cause about 16 times as many deaths as accidents.) Homicide was incorrectly judged a more frequent cause of death than diabetes, or stomach cancer. A followup study by Combs and Slovic (1979) tallied reporting of deaths in two newspapers, and found that errors in probability judgments correlated strongly (.85 and .89) with selective reporting in newspapers. People refuse to buy flood insurance even when it is heavily subsidized and priced far below an actuarially fair value. Kates (1962) suggests underreaction to threats of flooding may arise from "the inability of individuals to conceptualize floods that have never occurred... Men on flood plains appear to be very much prisoners of their experience... Recently experienced floods appear to set an upward bound to the size of loss with which managers believe they ought to be concerned." Burton et. al. (1978) report that when dams and levees are built, they reduce the frequency of floods, and thus apparently create a false sense of security, leading to reduced precautions. While building dams decreases the frequency of floods, damage per flood is so much greater afterward that the average yearly damage increases. It seems that people do not extrapolate from experienced small hazards to a possibility of large risks; rather, the past experience of small hazards sets a perceived upper bound on risks. A society well-protected against minor hazards will take no action against major risks (building on flood plains once the regular minor floods are eliminated). A society subject to regular minor hazards will treat those minor hazards as an upper bound on the size of the risks (guarding against regular minor floods but not occasional major floods). Risks of human extinction may tend to be underestimated since, obviously, humanity has never yet encountered an extinction event.

#### No impact to their cognitive bias arguments – even if they win that the risk of our impacts is low, overwhelming magnitude justifies preferring our specific extinction scenarios – excluding them from debate makes them harder to solve

Nick Bostrom, PhD and Professor at Oxford University, March, 2002

[Journal of Evolution and Technology, vol 9] <http://www.nickbostrom.com/existential/risks.html>

In combination, these indirect arguments add important constraints to those we can glean from the direct consideration of various technological risks, although there is not room here to elaborate on the details. But the balance of evidence is such that it would appear unreasonable not to assign a substantial probability to the hypothesis that an existential disaster will do us in. My subjective opinion is that setting this probability lower than 25% would be misguided, and the best estimate may be considerably higher. But even if the probability were much smaller (say, ~1%) the subject matter would still merit very serious attention because of how much is at stake. In general, the greatest existential risks on the time-scale of a couple of centuries or less appear to be those that derive from the activities of advanced technological civilizations. We see this by looking at the various existential risks we have listed. In each of the four categories, the top risks are engendered by our activities. The only significant existential risks for which this isn’t true are “simulation gets shut down” (although on some versions of this hypothesis the shutdown would be prompted by our activities [27]); the catch-all hypotheses (which include both types of scenarios); asteroid or comet impact (which is a very low probability risk); and getting killed by an extraterrestrial civilization (which would be highly unlikely in the near future).[[19]](http://www.nickbostrom.com/existential/risks.html" \l "_ftn19#_ftn19" \o ") It may not be surprising that existential risks created by modern civilization get the lion’s share of the probability. After all, we are now doing some things that have never been done on Earth before, and we are developing capacities to do many more such things. If non-anthropogenic factors have failed to annihilate the human species for hundreds of thousands of years, it could seem unlikely that such factors will strike us down in the next century or two. By contrast, we have no reason whatever not to think that the products of advanced civilization will be our bane. We shouldn’t be too quick to dismiss the existential risks that aren’t human-generated as insignificant, however. It’s true that our species has survived for a long time in spite of whatever such risks are present. But there may be an observation selection effect in play here. The question to ask is, on the theory that natural disasters sterilize Earth-like planets with a high frequency, what should we expect to observe? Clearly not that we are living on a sterilized planet. But maybe that we should be more primitive humans than we are? In order to answer this question, we need a solution to the problem of the reference class in observer selection theory [76]. Yet that is a part of the methodology that doesn’t yet exist. So at the moment we can state that the most serious existential risks are generated by advanced human civilization, but we base this assertion on direct considerations. Whether there is additional support for it based on indirect considerations is an open question. We should not blame civilization or technology for imposing big existential risks. Because of the way we have defined existential risks, a failure to develop technological civilization would imply that we had fallen victims of an existential disaster (namely a crunch, “technological arrest”). Without technology, our chances of avoiding existential risks would therefore be nil. With technology, we have some chance, although the greatest risks now turn out to be those generated by technology itself. 9        Implications for policy and ethics Existential risks have a cluster of features that make it useful to identify them as a special category**:** the extreme magnitude of the harm that would come from an existential disaster; the futility of the trial-and-error approach; the lack of evolved biological and cultural coping methods; the fact that existential risk dilution is a global public good; the shared stakeholdership of all future generations; the international nature of many of the required countermeasures; the necessarily highly speculative and multidisciplinary nature of the topic; the subtle and diverse methodological problems involved in assessing the probability of existential risks; and the comparative neglect of the whole area. From our survey of the most important existential risks and their key attributes, we can extract tentative recommendations for ethics and policy: 9.1  Raise the profile of existential risks We need more research into existential risks – detailed studies of particular aspects of specific risks as well as more general investigations of associated ethical, methodological, security and policy issues. Public awareness should also be built up so that constructive political debate about possible countermeasures becomes possible. Now, it’s a commonplace that researchers always conclude that more research needs to be done in their field. But in this instance it is really true. There is more scholarly work on the life-habits of the dung fly than on existential risks.

# 2NC

## T

### 2NC---Standards

#### Their ev only defines "restrictions," not "restrictions on authority" - that kills predictability

J.A.D. Haneman 59, justice of the Superior Court of New Jersey, Appellate Division. “Russell S. Bertrand et al. v. Donald T. Jones et al.,” 58 NJ Super. 273; 156 A.2d 161; 1959 N.J. Super, Lexis

HN4 In ascertaining the meaning of the word "restrictions" as here employed, it must be considered in context with the entire clause in which it appears. It is to be noted that the exception concerns restrictions "which have been complied with." Plainly, this connotes a representation of compliance by the vendor with any restrictions upon the permitted uses of the subject property. The conclusion that "restrictions" refer solely to a limitation of the manner in which the vendor may [\*\*\*14] use his own lands is strengthened by the further provision found in said clause that the conveyance is "subject to the effect, [\*\*167] if any, of municipal zoning laws." Municipal zoning laws affect the use of property.¶ HN5 A familiar maxim to aid in the construction of contracts is noscitur a sociis. Simply stated, this means that a word is known from its associates. Words of general and specific import take color from each other when associated together, and thus the word of general significance is modified by its associates of restricted sense. 3 Corbin on Contracts, § 552, p. 110; cf. Ford Motor Co. v. New Jersey Department of Labor and Industry, 5 N.J. 494 (1950). The [\*284] word "restrictions," therefore, should be construed as being used in the same limited fashion as "zoning."

## CP

### 2NC Theory---Short

#### The counterplan is a logical policy choice grounded in topic lit

Sinnar 13 assistant professor of law at Stanford Law School, May 2013

(Shirin, “Protecting Rights from Within? Inspectors General and National Security Oversight,” 65 Stan. L. Rev. 1027, Lexis)

More than a decade after September 11, 2001, the debate over which institutions of government are best suited to resolve competing liberty and national security concerns continues unabated. While the Bush Administration's unilateralism in detaining suspected terrorists and authorizing secret surveillance initially raised separation of powers concerns, the Obama Administration's aggressive use of drone strikes to target suspected terrorists, with little oversight, demonstrates how salient these questions remain. Congress frequently lacks the [\*1029] information or incentive to oversee executive national security actions that implicate individual rights. Meanwhile, courts often decline to review counterterrorism practices challenged as violations of constitutional rights out of concern for state secrets or institutional competence. n1 These limitations on traditional external checks on the executive - Congress and the courts - have led to increased academic interest in potential checks within the executive branch. Many legal scholars have argued that executive branch institutions supply, or ought to supply, an alternative constraint on executive national security power. Some argue that these institutions have comparative advantages over courts or Congress in addressing rights concerns; others characterize them as a second-best option necessitated by congressional enfeeblement and judicial abdication.

### AT White House Won't Listen

#### The President has institutional incentives to listen to the OLC---incentives to maintain the OLC's credibility are bigger than the incentive to specific interests that the plan affects

Trevor Morrison 11, Professor of Law at Columbia Law School, “LIBYA, ‘HOSTILITIES,’ THE OFFICE OF LEGAL COUNSEL, AND THE PROCESS OF EXECUTIVE BRANCH LEGAL INTERPRETATION,” Harvard Law Review Forum Vol.124:42, http://www.harvardlawreview.org/media/pdf/vol124\_forum\_morrison.pdf

These questions parallel the kinds of questions that are inevitable when the President overrules OLC. Indeed, the institutional incentives against too readily overruling OLC are basically the same as the incentives against ousting OLC altogether. In either case, the White House will face difficult questions from the press and will be exposed to political attack by its adversaries in Congress. 25

These questions and criticisms underscore how wrong it is to suppose that OLC can be ousted from its role “without anybody considering it improper.” 26 Indeed, the notion that a President determined to pursue a particular policy can simply cast about for a favorable legal opinion and then rely on it with impunity ignores the reality of government today. As long as the President’s decision is publicly disclosed, questions about the substance and process of the decision will be asked. Answers that depict a highly anomalous process will raise further questions. That may be the ultimate check here: the prospect of public criticism and political reprisal encourages the White House to maintain OLC’s traditional role even when doing so cuts against its immediate policy preferences. And that is as it should be.

### Perm Do CP

#### Restrictions on authority require external action

Anne Melley 13, National Legal Research Group, Inc. J.D., AUTHORITY OF AGENT , 3 Am Jur 2d Agency § 84

If the act of an agent is one which requires authority in writing, those dealing with the agent are charged with notice of that fact and of any limitation or restriction on the authority of the agent contained in such written authority; a contract beyond the scope of such authority, as thus limited or restricted, is not binding on the principal. n1 On the other hand, when a person deals with an attorney in fact who has written authority with limitations, such party is entitled to rely on the limitations expressed in the written document and is under no duty to make further inquiry as to the scope of the agent's power. n2

#### Statutory restrictions require that the restriction itself be codified in statute

Joshua Kershner 10, Articles Editor, Cardozo Law Review. J.D. Candidate (June 2011), Benjamin N. Cardozo School of Law, “Political Party Restrictions and the Appointments Clause: The Federal Election Commission's Appointments Process Is Constitutional” Cardozo Law Review de novo 2010 Cardozo L. Rev. De Novo 615

n17 The phrase "statutory restrictions" is used hereinafter to mean statutory language that restricts the President's powers of nomination and appointment to those individuals meeting specific criteria. Examples include gender, state of residence, and most importantly political party. n18 Since 1980, more than one hundred Presidential signing statements have specifically mentioned the Appointments Clause. See The Public Papers of the Presidents, AM. PRESIDENCY PROJECT, http://www.presidency.ucsb.edu/ws (search for "Appointments Clause"). n19 These signing statements typically invoke the authority of the Appointments Clause to argue that statutory restrictions on appointment or removal of Officers of the United States are merely advisory. For numerous examples, see id. See also infra note 175. n20 The phrase "hyper-partisan atmosphere" has been frequently used by the news media and commentators to describe the political gridlock in Washington during the first years of the Obama administration. See, e.g., Eric Moskowitz, Hundreds Brave Cold to Hear From Scott Brown, THE BOSTON GLOBE, Jan. 29, 2010, http://www.boston.com/news/local/breaking\_news/2010/01/scores\_wait\_for.html (reporting on then Senator-Elect Scott Brown explaining that "he felt the hyper-partisan atmosphere in Washington was already changing as a result of his election" ten days earlier); Editorial, Bayh Bailout No Cause to Mourn Moderation, ORANGE COUNTY REG., Feb. 17, 2010, at H, available at http://www.ocregister.com/opinion/bayh-234673-sen-one.html (describing Senator Bayh's verbal attacks on the operation of the Senate after announcing his decision not to run for reelection as "using the occasion to decry the hyperpartisan atmosphere in Washington"). n21 As political battles over delays in approving Presidential nominations continue to be the norm, it is progressively more likely that Presidents will seek to bypass the Senate in the nomination process. This could include recess appointments bypassing both the "advice and consent" of the Senate, as well as any statutory restrictions. See, e.g., Scott Wilson, Obama Considers Recess Appointments, WASH. POST, Feb. 9, 2010 ("President Obama is considering recess appointments to fill some or all of the nominations held up in the Senate. President Bush used a recess appointment to make John Bolton the U.S. ambassador to the United Nations bypassing Democrats."). n22 Statutory restrictions date back to the first Congress and continue today. See infra notes 116, 118, 122. n23 See discussion infra Part I.D and note 128. n24 The phrase "political party restrictions" is used hereinafter to mean statutory restrictions on the President's powers of nomination and appointment by political party.

## Adv 1

### No Prisons

#### The prisoners are not bare life—there are rules that prevent true reduction

Halit Tagma 09, Professor of Political Science, Arizona State , “Homo Sacer vs. Homo Soccer Mom: Reading Agamben and Foucault in the War on Terror,” Alternatives: Global, Local, Political, Vol. 34, No. 4 (Oct.-Dec. 2009), pp. 407-435

Thus in some respects, prisoners of the "war on terror" might be understood as homo sacer. However, there are also particularities in the way the prisoners are handled that call for a critical re-evaluation of the (non) space of Guántanamo. If in the classical Foucauldian teminology sovereign power is about "taking or granting life," and biopower is about "letting live and making life," then what can be said about the power operating in Guántanamo that "forces to live" when prisoners are carefully controlled to prevent them from committing suicide. Indeed, the prisoners of Guántanamo are force fed and even given mandatory health checks so as to insure they are kept, barely, alive. Unlike the homo sacer who may be killed but not sacrificed, the prisoners in Guantánamo may not be killed or sacrificed. In fact, extensive efforts are spent to keep the prisoners at Guantánamo alive, such as the creation of operating rooms for major health emergencies as well as facilities for dentistry. The prisoners are given health treatment similar to that provided to the troops at the base.60 No doubt the display of such "health benefits" could be read as window dressing conducted by the camp administrators. However, it is important to note that there are indeed serious efforts to keep the prisoners (often barely, but nevertheless) alive. Furthermore, punishment and interro- gation are orchestrated so that the use of violence does not result in death. Extensive efforts are made to prevent the prisoners from com- mitting suicide. In other cases, hunger-striking inmates have met with brutal forced feeding.61 Thus, in a striking unclassified army document that outlines procedures in Guántanamo Bay, guards are ordered to "defend detainees as you would yourself against a hostile act or intent, death, or serious bodily harm."62 Therefore it is correct to say that what goes in Guantánamo Bay is neither "letting live" nor "taking life," but instead "making live," or even "forcing to live."¶ Agamben argues that camps are places where sovereign "power confronts nothing but pure life."63 Guantánamo Bay, declared as being beyond the reach of law, is, in fact, regulated by many petty regulations that are characteristic of disciplinary power. Reading the re- ports of the Joint Task Force and prisoner testimonies, one comes to the conclusion that there is a plethora of rules and procedures that govern the treatment of Guántanamo prisoners.64 Whereas Agamben's statement on "zones of indistinction" would lead us to think that any- thing goes in the camp, this is far from the reality of Guántanamo. Every minuscule element of the lives of Guántanamo prisoners been planned and is, for the most part, regulated by a written a code of conduct. Many foreseeable and probable occurrences that would be expected in a prison population have been forethought and written into a manual. Titled Standard Operating Procedures this 250-page manual outlines the rules, regulations, and procedures for treatment of prisoners in many probable circumstances.65 The manual outlines, for example, what to do if there is a petty riot, when and how to spray pepper spray on rioters, religious burials rituals for prisoners, and so on.66 This clearly hints that it is not just an exceptional sovereign power at work in Guántanamo, as exemplified in Rumsfeldian rhetorical salvos on "exceptional times requiring exceptional measures." In- stead, there are multiple technologies of power that are at work in the day-to-day administration of this space.67

### Deference

#### The Courts have willingly developed institutional checks that lock them into deference

Daniel Abebe & Eric A. Posner 11, Assistant Professor and Kirkland & Ellis Professor, University of Chicago Law School, The Flaws of Foreign Affairs Legalism, 51 Va. J. Int'l L. 507

Executive primacy means that courts give greater deference to executive interpretations of international law and foreign relations law than they do to executive interpretations of other areas of the law. This stance goes back to the founding generation, when proponents of executive primacy, such as Alexander Hamilton, argued that the executive needs freedom of action in foreign affairs because of the fluidity of relations among states and the ever-present danger of war. n3 Secrecy, speed, and decisiveness are at a premium, and these are characteristics of the executive, n4 not of the courts, which are slow and decentralized.

Courts have largely, though not always, accepted this argument. They have provided a substantial level of deference to executive determinations on a number of foreign affairs questions and on issues related to international law, including treaty interpretation n5 and treaty termination. n6 [\*510] Courts also consider the executive's views on the meaning of customary international law (CIL) n7 and generally defer to the executive on the application of head of state immunity. n8 Further, they have permitted the executive to evade the onerous supermajority requirements in the Article II treaty process by entering congressional-executive and executive agreements, n9 and they have developed avoidance doctrines - including the political question doctrine, the act of state doctrine, international comity rules, and state secrecy rules - to limit their own capacity to adjudicate foreign affairs cases. n10

#### Deference inevitable---it’s institutionally locked in, the judiciary wants it, \* and the aff doesn’t clarify multiple constitutional issues

Jonathan L. Entin 12, Associate Dean for Academic Affairs (School of Law), David L. Brennan Professor of Law, and Professor of Political Science, Case Western Reserve University. War Powers, Foreign Affairs, and the Courts: Some Institutional Considerations, 45 Case W. Res. J. Int'l L. 443

To be sure, the Supreme Court has decided some well-known national security cases. Among them are the Steel Seizure case, Youngstown Sheet & Tube Co. v. Sawyer; n2 the Pentagon Papers case, New York Times Co. v. United States; n3 the Iranian hostage case, Dames & Moore v. Regan; n4 and some notable First Amendment cases arising out of World War I, such as Schenck v. United States n5 and Abrams v. United States. n6 Then there are the Japanese internment decisions during World War II, notably Korematsu v. United States, n7 as well as Ex parte Quirin, n8 which upheld the use of military commissions to try German agents who landed in the United States as part of a sabotage mission. Most recently, the Supreme Court has addressed questions arising from the government's response to the attacks of September 11, 2001, in such cases as Hamdi v. Rumsfeld, n9 Hamdan v. Rumsfeld, n10 and Boumediene v. Bush. n11 These cases do matter, but they have not clearly resolved the constitutional and other legal issues that pervade the debate about presidential power and foreign affairs.

Beyond the limitations of the Supreme Court rulings, the judiciary probably will not contribute very much to the debate. Various procedural and jurisdictional obstacles make it difficult for courts to address the merits of disputes about war powers and foreign affairs. Even if those obstacles can be surmounted, those who decry what they view as presidential excess should note that the judiciary typically has taken a deferential role in reviewing challenges to executive action.

#### The plan can’t set a precedent---Roberts is a sly dog

William D. Araiza, Law Prof @ Brooklyn, Summer 2012, “PLAYING WELL WITH OTHERS-BUT STILL WINNING,” 46 Ga. L. Rev. 1059, ln

How can a judge undermine precedent while still following it? This Essay considers the methods by which Supreme Court Justices may weaken precedent without explicitly overruling cases by strategically adopting an approach to stare decisis that is less explicitly aggressive than their colleagues'. Adding to the literature of "stealth overruling," this Essay considers examples of such methods from Chief Justice Roberts's first five years on the Supreme Court. These examples indicate that Chief Justice Roberts knows how to engage in stealth overruling and, more broadly, how to use his colleagues' preferences to maintain a formal commitment to judicial humility while achieving jurisprudential change. As such, they reveal important insights about how Justices can operate strategically to achieve their preferences within both the opportunities and the confines inherent in a multi-judge court. After five years, many have accused the Roberts Court of aggressively attacking precedent. No less a figure than Justice O'Connor, whose retirement marked the effective start of that Court, has expressed concern about the Roberts Court's willingness to overrule prior decisions. n1 Then-Judge Roberts's famous confirmation hearing analogy of judging to umpiring n2 and his professed respect for stare decisis n3 make for a dramatic narrative in which a nominee piously describes a humble role for judges but then, once safely confirmed, sets out with a wrecking ball. The charge may have merit, but a short essay is not the vehicle to make that determination. Simply pointing to a few high-profile [\*1061] overrulings, as critics sometimes do, proves little. n4 Rather, an in-depth examination of the issue requires considering the situations where the overruling dog did not bark-that is, where the Court could have overruled a prior case but declined to do so. n5 Such an investigation also calls for both historical perspective and nuance. n6 Reaching interesting conclusions about the Roberts Court's treatment of stare decisis requires that we identify a baseline of how previous Courts have treated that principle. If impressionistic conclusions based on a few dramatic examples are enough to consider the charge proven, then the Rehnquist n7 and Warren n8 Courts are presumably guilty also. Moreover, not all overrulings are created equal. Determining the extent of the Roberts Court's alleged disregard of precedent also requires considering the importance of the precedents the Court has in fact rejected. Consider Justice White's dissent in INS v. Chadha. n9 White characterized the majority's rejection of the legislative veto as effectively striking down hundreds of statutes and eliminating a then-major feature of the modern administrative state. n10 Chadha was not a case where the Court overruled precedent. Justice White's complaint about the far-reaching nature of the Court's decision, however, reminds us that identifying judicial aggressiveness, whatever its form, requires [\*1062] more than simply adding up the number of cases where the Court has acted aggressively. n11 This Essay considers the Roberts Court and stare decisis from a different angle. It examines several methods by which Chief Justice Roberts arguably has used the multi-judge nature of the Supreme Court to his advantage in undermining precedent without explicitly calling for its overruling. n12 These examples do not prove that the Court as a whole, or the Chief Justice in particular, is bent on undoing the work of prior Courts. Instead, they illustrate the ways in which a Justice can work within the formal confines of precedent to achieve fundamentally different results, either in the short or long term. n13 The methods described below depend in part on the distinction between the result a court reaches in a case and the reasoning it employs. The nature of the Supreme Court as a multi-judge court makes this distinction possible: often times, the Court may agree on a result but split sharply on its reasoning. n14 This opens up room for a creative Justice to undermine precedent, even as the Justice expresses reasons that appear moderate-in particular, more moderate than those who are more inclined to overrule explicitly. In so doing, the Justice may create the conditions for the ultimate rejection of that precedent, even while publicly counseling restraint-indeed, even while voting to uphold that [\*1063] precedent. n15 In short, this Essay considers methods by which Justices can play well with others-both those that came before (via respect for stare decisis) and current colleagues (by strategically positioning themselves among them)-and still achieve their ultimate goal. n16 This Essay situates itself at the intersection of two ongoing debates about judicial behavior. The first examines the concept of stealth overruling-the practice of limiting or even eviscerating a precedent while ostensibly remaining faithful to it. n17 This phenomenon has become a major topic of scholarly discussion during the last five years, n18 as scholars have identified and analyzed examples of the Roberts Court engaging in such conduct-conduct generally thought to have resulted from the replacement of a sometimes centrist Justice O'Connor with a more reliably conservative Justice Alito. n19 The examples in this Essay illustrate instances where the Court or a plurality thereof arguably has engaged in such conduct. n20 The lessons one can draw from these examples will help shape an understanding of the stealth overruling phenomenon, and the extent to which the Roberts Court performs it. Second, this Essay engages the debate about the implications of the Supreme Court's character as a collegial body. Scholars long have acknowledged that critiques of the Court must account for its collegial nature rather than simply treating it as a purposive [\*1064] individual. n21 This Essay contributes to that debate by considering how Chief Justice Roberts may in certain cases strategically use his colleagues' calls for more explicit overruling of precedent as a tool in maintaining his and the Court's reputation as faithful to stare decisis while nevertheless pushing the law away from precedents.

## Adv 2

### Permute

#### Permute – objectivity – the best approach is to be aware of your cognitive bias and objectively evaluate the risk of our impacts based on specific arguments – their author concludes

Maia Szalavitz, 1/1/2008. Senior fellow at the media watchdog group STATS, and a journalist who covers health, science and public policy. “10 Ways We Get the Odds Wrong,” Psychology Today, http://www.psychologytoday.com/print/24035

The physiological consequences of overestimating the dangers in the world—and revving our anxiety into overdrive—are another reason risk perception matters. It's impossible to live a risk-free life: Everything we do increases some risks while lowering others. But if we understand our innate biases in the way we manage risks, we can adjust for them and genuinely stay safer—without freaking out over every leaf of lettuce.

### AT: Cog Bias

#### No impact to their cognitive bias arguments – even if they win that the risk of our impacts is low, overwhelming magnitude justifies preferring our specific extinction scenarios – excluding them from debate makes them harder to solve

Nick Bostrom, PhD and Professor at Oxford University, March, 2002

[Journal of Evolution and Technology, vol 9] <http://www.nickbostrom.com/existential/risks.html>

In combination, these indirect arguments add important constraints to those we can glean from the direct consideration of various technological risks, although there is not room here to elaborate on the details. But the balance of evidence is such that it would appear unreasonable not to assign a substantial probability to the hypothesis that an existential disaster will do us in. My subjective opinion is that setting this probability lower than 25% would be misguided, and the best estimate may be considerably higher. But even if the probability were much smaller (say, ~1%) the subject matter would still merit very serious attention because of how much is at stake. In general, the greatest existential risks on the time-scale of a couple of centuries or less appear to be those that derive from the activities of advanced technological civilizations. We see this by looking at the various existential risks we have listed. In each of the four categories, the top risks are engendered by our activities. The only significant existential risks for which this isn’t true are “simulation gets shut down” (although on some versions of this hypothesis the shutdown would be prompted by our activities [27]); the catch-all hypotheses (which include both types of scenarios); asteroid or comet impact (which is a very low probability risk); and getting killed by an extraterrestrial civilization (which would be highly unlikely in the near future).[[19]](http://www.nickbostrom.com/existential/risks.html#_ftn19#_ftn19) It may not be surprising that existential risks created by modern civilization get the lion’s share of the probability. After all, we are now doing some things that have never been done on Earth before, and we are developing capacities to do many more such things. If non-anthropogenic factors have failed to annihilate the human species for hundreds of thousands of years, it could seem unlikely that such factors will strike us down in the next century or two. By contrast, we have no reason whatever not to think that the products of advanced civilization will be our bane. We shouldn’t be too quick to dismiss the existential risks that aren’t human-generated as insignificant, however. It’s true that our species has survived for a long time in spite of whatever such risks are present. But there may be an observation selection effect in play here. The question to ask is, on the theory that natural disasters sterilize Earth-like planets with a high frequency, what should we expect to observe? Clearly not that we are living on a sterilized planet. But maybe that we should be more primitive humans than we are? In order to answer this question, we need a solution to the problem of the reference class in observer selection theory [76]. Yet that is a part of the methodology that doesn’t yet exist. So at the moment we can state that the most serious existential risks are generated by advanced human civilization, but we base this assertion on direct considerations. Whether there is additional support for it based on indirect considerations is an open question. We should not blame civilization or technology for imposing big existential risks. Because of the way we have defined existential risks, a failure to develop technological civilization would imply that we had fallen victims of an existential disaster (namely a crunch, “technological arrest”). Without technology, our chances of avoiding existential risks would therefore be nil. With technology, we have some chance, although the greatest risks now turn out to be those generated by technology itself. 9        Implications for policy and ethics Existential risks have a cluster of features that make it useful to identify them as a special category**:** the extreme magnitude of the harm that would come from an existential disaster; the futility of the trial-and-error approach; the lack of evolved biological and cultural coping methods; the fact that existential risk dilution is a global public good; the shared stakeholdership of all future generations; the international nature of many of the required countermeasures; the necessarily highly speculative and multidisciplinary nature of the topic; the subtle and diverse methodological problems involved in assessing the probability of existential risks; and the comparative neglect of the whole area. From our survey of the most important existential risks and their key attributes, we can extract tentative recommendations for ethics and policy: 9.1  Raise the profile of existential risks We need more research into existential risks – detailed studies of particular aspects of specific risks as well as more general investigations of associated ethical, methodological, security and policy issues. Public awareness should also be built up so that constructive political debate about possible countermeasures becomes possible. Now, it’s a commonplace that researchers always conclude that more research needs to be done in their field. But in this instance it is really true. There is more scholarly work on the life-habits of the dung fly than on existential risks.

# 1NR

## WOT

#### Reps don’t cause war---not a voting issue

Reiter 95 DAN REITER is a Professor of Political Science at Emory University and has been an Olin post-doctoral fellow in security studies at Harvard “Exploring the Powder Keg Myth” International Security v20 No2 Autumn 1995 pp 5-34 JSTOR

A criticism of assessing the frequency of preemptive wars by looking only at wars themselves is that this misses the non-events, that is, instances in which preemption would be predicted but did not occur. However, excluding non-events should bias the results in favor of finding that preemptive war is an important path to war, as the inclusion of non-events could only make it seem that the event was less frequent. Therefore, if preemptive wars seem infrequent within the set of wars alone, then this would have to be considered strong evidence in favor of the third, **most skeptical view of preemptive war**, because even when the sample is rigged to make preemptive wars seem frequent (by including only wars), they are still rare events. Below, a few cases in which preemption did not occur are discussed to illustrate factors that constrain preemption.¶ The rarity of preemptive wars offers preliminary support for the third, most skeptical view, that the preemption scenario does not tell us much about how war breaks out. Closer examination of the three cases of preemption, set forth below, casts doubt on the validity of the two preemption hypotheses discussed earlier: that hostile images of the enemy increase the chances of preemption, and that belief in the dominance of the offense increases the chances of preemption. In each case there are motives for war aside from fear of an imminent attack, indicating that such fears may not be sufficient to cause war. In addition, in these cases of war the two conditions hypothesized to stimulate preemption—hostile images of the adversary and belief in the military advantages of striking first—are present to a very high degree. This implies that these are insubstantial causal forces, as they are associated with the outbreak of war only when they are present to a very high degree. This reduces even further the significance of these forces as causes of war. To illustrate this point, consider an analogy: say there is a hypothesis that saccharin causes cancer. Discovering that rats who were fed a lot of saccharin and also received high levels of X-ray exposure, which we know causes cancer, had a higher risk for cancer does not, however, set off alarm bells about the risks of saccharin. Though there might be a relationship between saccharin consumption and cancer, this is not demonstrated by the results of such a test.

## Politics

### I/L

#### The bill shatters international enforcement and greenlights an Israeli strike

RichardKlass 12/31, retired USAF Colonel; Lt. General (USA Ret.) Robert Gard, the chairman of the Center for Arms Control and Non-Proliferation, contributed to this piece, Huffington Post, “The Road to Wars”, 2013, <http://www.huffingtonpost.com/richard-klass/the-road-to-wars_b_4524280.html>

Senator Robert Menendez (D-NJ), chairman of the Senate Foreign Relations Committee, has introduced legislation that sets the United States on the road to war with Iran and the road to an internal war within the Democratic Party. The bill (S.1881), which has many Democratic co-sponsors, increases the chances for war in two major ways. First, it undercuts ongoing negotiations to build on the first-step nuclear agreement with Iran by adding additional sanctions before the current six month negotiating period plays out. Iran has threatened to withdraw from these negotiations if a bad faith act, such as adding new sanctions, transpires. The U.S. would do the same if, for example, Iran's parliament passed legislation to open a new nuclear production facility. If the first-step deal collapses, there will be no problem in quickly instituting new sanctions. And there will certainly be calls for military action, no matter how short-term the results would be. But if the collapse is triggered by a U.S. unilateral action, the coalition now enforcing those sanctions could well collapse. This undermining of the president's negotiating authority and international cooperation is as unprecedented as it is dangerous. The second danger in this bill is that it encourages an Israeli attack on Iran. The bill states that "... if the Government of Israel is compelled to take military action in legitimate self-defense against Iran's nuclear weapon program, the United States Government should stand with Israel and provide ..., diplomatic, military, and economic support to the Government of Israel in its defense of its territory, people, and existence...." While the language is "should," not "must," and there are bows to the Constitution and congressional authority, this is a clear signal to Israel that it can count on U.S. support for a "unilateral" air strike. And Iran cannot be blamed if it takes it that way. No one should doubt who will determine if the Iranian program provides an existential threat to Israel. The Israeli government's position is that any enrichment in Iran is such a threat. Yet reaching any agreement with Iran will undoubtedly require some residual domestic enrichment capability. Military experts agree that Israel would need substantial U.S. help for any effective attack. This would include not only intelligence and aerial refueling, but also combat search and rescue for downed Israeli pilots, possible suppression of enemy air defenses and other direct combat missions. In short, war. This language, while not requiring that the U.S. support an Israeli attack, certainly will be taken that way in Israel and Iran. Also, it just might be enough to doom a diplomatic settlement and unleash the dogs of war.

#### New sanctions wreck the deal and cause Israeli strikes

**McGeough, 1/5/14 –** chief foreign correspondent for the Sydney Morning Herald (Paul, “US, Iranian hardliners work to give war a chance” Sydney Morning Herald, <http://www.smh.com.au/comment/us-iranian-hardliners-work-to-give-war-a-chance-20140104-30amw.html>)

They're the congressional hardliners, a bit like the fundamentalists in Iran, who would love to scupper the opening deal agreed in November by Iran and the so-called P5+1 countries, under which Tehran has agreed to a six-month freeze of its nuclear program in return for nominal relief from crippling sanctions. They have dressed up their intervention as a helping hand for the idiots at the negotiating table - the threat of more sanctions is just what is needed, the vandals reckon, to force Iran to cave in. The P5+1 are not to be brushed off lightly. The P5 bit are the permanent members of the United Nations Security Council - the US, Russia, China, France and Britain. The 1 is Germany. You'd think that, if these six could agree tentatively on steps towards fixing an intractable problem, it might be constructive for Congress' bellyachers to have wound down for their postprandial Christmas nap. Instead, in the week before Christmas, more than two dozen senators, from both parties, put up a bill demanding even harsher sanctions on Iran. They have ignored White House pleas and intelligence assessments that their bill, likely to be debated in the next week or so, undermines the chances of a final agreement with Iran. Apart from being against the spirit of the interim deal, under which there would be no new sanctions, the senators' bill also demands that, in any final agreement, Iran must dismantle its uranium enrichment program. But Iranians know their history and there's been nothing well meant in the blows they've been dealt by Washington - the CIA's overthrow of the democratically elected Mosaddegh government in 1953 and the reinstalling of the shah and his SAVAK secret police, American support for Iraq after it began the 1980s war with Iran and former president George W. Bush's inclusion of Iran in his ''axis of evil''. Iranians might be forgiven for thinking the latest sanctions bill in DC is a continuation of that malevolent history. They're not on their own - some thoughtful international commentators and analysts see it that way, too. But, even with all that history, the significantly changed mood in Tehran after Hassan Rouhani's election as president demands that the international community explore all steps short of war to resolve this crisis. Hence there's a conclusion being drawn in some quarters that the Senate push is calculated to make agreement impossible. And, because the senators are opposed to a nuclear Iran, the only conclusion to be drawn is that they want to force President Barack Obama's hand on the military option. There was no surprise then that this ''tit'' by the American senators was met with a ''tat'' from their Iranian counterparts - hardliners who oppose the interim deal and anything that looks like concessions by Iran to the international community. So they have drafted their own legislation to be debated in the Iranian parliament, calling for any new sanctions to be met by an escalation in Iran's uranium enrichment to a near bomb-grade level of 60 per cent. In both countries, we have influential rejectionists who rely on each other to make their worst prognostications believable. Neither side is interested in a diplomatic solution. Citing the respective attitudes to Israel, Bill Keller portrays this self-serving dynamic in his blog for The New York Times: ''To the Iranian hard core, Israel is a nuclear-armed interloper and America's conjoined infidel twin; to their American counterparts, Israel's values and interests are inextricable from our own and Benjamin Netanyahu is a more trustworthy defender of our security than Barack Obama.'' Keller draws a dismal, scary conclusion: ''A failure of negotiations would delight both of them - American hawks because Israel could get on with the business of bombing; Iranian hawks because there's nothing like an attack by the infidels to unify a fractious public behind an authoritarian regime.''

### Probability

#### No impact defense---pressure for escalation would be intense and short-term

Colin H. Kahl 12, Associate Professor in the Security Studies Program at Georgetown’s School of Foreign Service and Senior Fellow at the Center for a New American Security, January 17, 2012, “Not Time to Attack Iran,” online: http://www.foreignaffairs.com/articles/137031/colin-h-kahl/not-time-to-attack-iran?page=show#

To make matters worse, in the heat of battle, Iran would face powerful incentives to escalate. In the event of a conflict, both sides would come under significant pressure to stop the fighting due to the impact on international oil markets. Since this would limit the time the Iranians would have to reestablish deterrence, they might choose to launch a quick, all-out response, without care for redlines. Iranian fears that the United States could successfully disrupt its command-and-control infrastructure or preemptively destroy its ballistic missile arsenal could also tempt Iran to launch as many missiles as possible early in the war. And the decentralized nature of Iran's Islamic Revolutionary Guard Corps, especially its navy, raises the prospect of unauthorized responses that could rapidly expand the fighting in the crowded waters of the Persian Gulf.¶ Controlling escalation would be no easier on the U.S. side. In the face of reprisals by Iranian proxies, "token missile strikes against U.S. bases and ships," or "the harassment of commercial and U.S. naval vessels," Kroenig says that Washington should turn the other cheek and constrain its own response to Iranian counter-attacks. But this is much easier said than done. Just as Iran's likely expectation of a short war might encourage it to respond disproportionately early in the crisis, so the United States would also have incentives to move swiftly to destroy Iran's conventional forces and the infrastructure of the Revolutionary Guard Corps. And if the United States failed to do so, proxy attacks against U.S. civilian personnel in Lebanon or Iraq, the transfer of lethal rocket and portable air defense systems to Taliban fighters in Afghanistan, or missile strikes against U.S. facilities in the Gulf could cause significant U.S. casualties, creating irresistible political pressure in Washington to respond. Add to this the normal fog of war and the lack of reliable communications between the United States and Iran, and Washington would have a hard time determining whether Tehran's initial response to a strike was a one-off event or the prelude to a wider campaign. If it were the latter, a passive U.S. approach might motivate Iran to launch even more dangerous attacks -- and this is a risk Washington may choose not to take. The sum total of these dynamics would make staying within Kroenig's proscribed limits exceedingly difficult.¶

#### Israel will escalate to nuclear first-use---they perceive Iran as an existential threat

James M. Lindsay 10, Senior Vice President, Director of Studies, and Maurice R. Greenberg Chair at the Council on Foreign Relations, and Ray Takeyh, Senior Fellow at the Council on Foreign Relations, March/April 2010, “After Iran Gets the Bomb,” Foreign Affairs, Vol. 89, No. 2

Such a doomsday scenario could pan out. Whether it did would depend greatly on how the United States and others, starting with Israel, responded to Iran's nuclearization. Whether Israeli Prime Minister Benjamin Netanyahu forgoes a preventive strike against Iran's nuclear facilities or opts for launching an attack and it fails, the Israeli government will continue to regard the Iranian regime as an existential threat to Israel that must be countered by any means possible, including the use of nuclear weapons. Given Israel's unique history and Ahmadinejad's contemptible denials of the Holocaust, no Israeli prime minister can afford to think otherwise.

### AT: No Losers-Lose

#### Vote counts go our way, but the reasoning behind them is that Democrats are afraid to challenge Obama on national security and foreign policy---the plan signals a break in that thinking

Shmuel Rosner 1-23, editor, writer and researcher based in Tel Aviv; Senior Political Editor for the Jewish Journal, 1/23/14, “Why Israel Should Worry about the Failure to Pass another Iran Sanctions Bill,” http://www.jewishjournal.com/rosnersdomain/item/why\_israel\_should\_worry\_about\_the\_failure\_to\_pass\_another\_iran\_sanctions\_bi

There are two ways of looking at the current map of expectations and calculations regarding a new Iran sanctions bill: one is mathematical, the other one focuses on trends rather than numbers.¶ Looking at the numbers makes sense, as the vote is ultimately about numbers. Can the bill pass? Can it withstand a Presidential veto? These are the important questions. To answer them, using the approach taken by Greg Sargent and Ron Kampeas can be helpful. According to their counts “19 members of the Senate Democratic caucus opposed to a vote, versus 15 who might be assumed to support one, with 21 not accounted for”. This teaches us that “although 58 senators have co-sponsored the proposed legislation that would tighten the restrictions on doing business with the tyrannical Islamist regime”, as Jonathan Tobin writes, “the Obama administration seems to have acquired the upper hand in the battle”. There will not be enough votes to overcome a veto. And if the count keeps coming down as it has in recent days, there might not be enough votes to pass a bill in the Senate (the House is another story).¶ Looking only at the numbers is a mistake, though, as the more troubling picture arises when one looks at the trends behind those numbers.¶ Legislators seem very reluctant to challenge the Obama administration on matters of national security and foreign affairs. This can’t be good for an Israeli government that finds a much more sympathetic ear on the Hill than in the white House.

PC is working to hold Dems in line precisely because Obama’s framing opposition to sanctions around the idea that the Executive should be free from restrictions in foreign policy---the plan’s a loss on the vital argument preventing sanctions

VOA 1-23 – Voice of America News, 1/23/14, “Support Slipping for Iran Sanctions in US Senate,” http://www.voanews.com/content/support-slipping-for-iran-sanctions-in-senate/1836453.html

More Democratic senators are quietly signaling their opposition to a bill that spells out new sanctions against Iran if negotiations to limit the country’s nuclear program do not yield a final accord.

The bill retains bipartisan support in both houses of Congress, but passage is seen as increasingly unlikely in the Democratic-led Senate amid an intense lobbying effort by the Obama administration to hold off on sanctions while international negotiations proceed.

Senators Patty Murray and Elizabeth Warren are the latest Democrats to announce their opposition to the Iran sanctions bill currently before Congress.

In a letter to constituents in Washington state, Murray said “the administration should be given time to negotiate a strong verifiable comprehensive agreement” on Iran’s nuclear program. At the same time, she pledged to work “to swiftly enact sanctions” if the talks ultimately fail.

Similarly, a spokeswoman for Warren says the Massachusetts senator “does not support imposing additional sanctions through new legislation while diplomatic efforts to achieve a long-term agreement are ongoing.”

The sanctions bill has 16 Democratic co-sponsors, near-unanimous support among Republicans, and the backing of politically potent pro-Israeli U.S. lobbying groups. But 11 Senate committee chairs, including Murray, currently oppose the bill.

Among Democrats who signed on to the measure late last year, some have grown less vocal in their defense and promotion of the measure in recent weeks. Senate Majority Leader Harry Reid has neither explicitly promised a vote on the bill, nor ruled it out.

Congressional expert William Galston of the Brookings Institution says pressure from President Barack Obama appears to be swaying a growing number of Democratic lawmakers.

“The White House is determined to prevent this from happening," he said. "The administration believes in the marrow of its bones that the executive branch is the lead negotiator in the matter and that it deserves a chance to conduct its own foreign policy."

Iran says any new sanctions would violate last year’s interim nuclear accord and spell the end of negotiations.

The White House has promised a presidential veto of any sanctions Congress may pass before negotiations run their course.

### AT: Ethics

#### Ethical policymaking requires calculation of our impacts—refusing consequentialism allows atrocity in the name of ethical purity

Nikolas Gvosdev 5 (Nikolas, Exec Editor of The National Interest, The Value(s) of Realism, SAIS Review 25.1, Muse)

As the name implies, realists focus on promoting policies that are achievable and sustainable. In turn, the morality of a foreign policy action is judged by its results, not by the intentions of its framers. A foreign policymaker must weigh the consequences of any course of action and assess the resources at hand to carry out the proposed task. As Lippmann warned, Without the controlling principle that the nation must maintain its objectives and its power in equilibrium, its purposes within its means and its means equal to its purposes, its commitments related to its resources and its resources adequate to its commitments, it is impossible to think at all about foreign affairs.8 Commenting on this maxim, Owen Harries, founding editor of The National Interest, noted, "This is a truth of which Americans—more apt to focus on ends rather than means when it comes to dealing with the rest of the world—need always to be reminded."9 In fact, Morgenthau noted that "there can be no political morality without prudence."10 This virtue of prudence—which Morgenthau identified as the cornerstone of realism—should not be confused with expediency. Rather, it takes as its starting point that it is more moral to fulfill one's commitments than to make "empty" promises, and to seek solutions that minimize harm and produce sustainable results. Morgenthau concluded: [End Page 18] Political realism does not require, nor does it condone, indifference to political ideals and moral principles, but it requires indeed a sharp distinction between the desirable and the possible, between what is desirable everywhere and at all times and what is possible under the concrete circumstances of time and place.11 This is why, prior to the outbreak of fighting in the former Yugoslavia, U.S. and European realists urged that Bosnia be decentralized and partitioned into ethnically based cantons as a way to head off a destructive civil war. Realists felt this would be the best course of action, especially after the country's first free and fair elections had brought nationalist candidates to power at the expense of those calling for inter-ethnic cooperation. They had concluded—correctly, as it turned out—that the United States and Western Europe would be unwilling to invest the blood and treasure that would be required to craft a unitary Bosnian state and give it the wherewithal to function. Indeed, at a diplomatic conference in Lisbon in March 1992, the various factions in Bosnia had, reluctantly, endorsed the broad outlines of such a settlement. For the purveyors of moralpolitik, this was unacceptable. After all, for this plan to work, populations on the "wrong side" of the line would have to be transferred and resettled. Such a plan struck directly at the heart of the concept of multi-ethnicity—that different ethnic and religious groups could find a common political identity and work in common institutions. When the United States signaled it would not accept such a settlement, the fragile consensus collapsed. The United States, of course, cannot be held responsible for the war; this lies squarely on the shoulders of Bosnia's political leaders. Yet Washington fell victim to what Jonathan Clarke called "faux Wilsonianism," the belief that "high-flown words matter more than rational calculation" in formulating effective policy, which led U.S. policymakers to dispense with the equation of "balancing commitments and resources."12 Indeed, as he notes, the Clinton administration had criticized peace plans calling for decentralized partition in Bosnia "with lofty rhetoric without proposing a practical alternative." The subsequent war led to the deaths of tens of thousands and left more than a million people homeless. After three years of war, the Dayton Accords—hailed as a triumph of American diplomacy—created a complicated arrangement by which the federal union of two ethnic units, the Muslim-Croat Federation, was itself federated to a Bosnian Serb republic. Today, Bosnia requires thousands of foreign troops to patrol its internal borders and billions of dollars in foreign aid to keep its government and economy functioning. Was the aim of U.S. policymakers, academics and journalists—creating a multi-ethnic democracy in Bosnia—not worth pursuing? No, not at all, and this is not what the argument suggests. But aspirations were not matched with capabilities. As a result of holding out for the "most moral" outcome and encouraging the Muslim-led government in Sarajevo to pursue maximalist aims rather than finding a workable compromise that could have avoided bloodshed and produced more stable conditions, the peoples of Bosnia suffered greatly. In the end, the final settlement was very close [End Page 19] to the one that realists had initially proposed—and the one that had also been roundly condemned on moral grounds.

#### Specifically key for the Middle East

Telhami 4 – Shibley Telhami, Anwar Sadat Professor for Peace and Development, University of Maryland; Nonresident Senior Fellow, the Brookings Institution, October 15, 2004, online: http://pewforum.org/events/?EventID=61

And here I would put on the table the differentiation – to use Max Weber's terminology – between the ethics of conviction and the ethics of responsibility. There's a big difference between the two. A person can be moved by the ethics of conviction; society must judge by the ethics of responsibility. There are many ways of unpacking that differentiation, but one way to unpack it certainly pertains to what we seek to do and our concern for the consequences of what we do. And in this particular case, if you examine, for example, the notion that we ought to advocate democracy in Iraq or in the Middle East, that that is our aim – put aside for a moment our right to do so, but focus on accepting that notion. Do we not have a responsibility to examine the consequences of what we do for democracy? Do we not have, in going to war with Iraq, the responsibility, the ethical obligation, to listen to the experts about whether in fact our action is likely to lead to less or more democracy? Today, by the way, in the Middle East, in surveys I've conducted, the vast majority say the Middle East today is less democratic than it was before the war. The vast majority of people think Iraqis are worse off than they were before the war. That is troubling because it goes to the heart of our obligation, ethically, to make an assessment of the consequences.   
Final point: who decides what's ethical? We can decide what's ethical for us; we can decide what's good for us. Can we decide what's good for America? This obviously is what the ethical question in foreign policy is. I start with the notion that if your actions affect someone else even more than they affect you, you cannot make the decision alone about that action. And in that sense, I think I am fully in agreement with Father Hehir about the need to have some sort of consensus internationally about what we do, and that consensus need not be always having a coalition at the UN And let me give you three different examples to drive the point. I'll end with that.   
The first is the war in Afghanistan. Certainly there was a UN resolution and there was a huge coalition, but put that aside for a moment. Had the United States decided to go it alone in Afghanistan, I think most people around the world would have understood, for one reason: because there is an international norm that most people accept, even if they don't vote accordingly in the UN, that says when you're attacked you have a right to defend yourself. And everyone – most people, anyway; even those who were not persuaded that we had made the case for the link with the Taliban – understood we had that right. And even had we done it alone, I think it would have been seen as an ethical action.   
If you look at another occasion, Rwanda, where we did not, certainly, intervene – the UN didn't intervene; the UN didn't get a resolution to intervene, and they were responsible. Anyway, we had a huge genocide in the international system – not one that threatened the security of the U.S. or anyone else. Had we decided to do it alone without the UN, most people would have applauded. It would have been a unilateral war; it would have been a war of choice, not of necessity, but I think most people would have accepted that it was an ethical war.   
Contrast that with the Iraq war. The difference was not only that we didn't get a coalition; the difference was that the consequences of the war were vitally more important to every single major actor in the region than they were to us. We can pick up and go – we're a powerful nation – even without resolving it. Jordan is going to have to live with it for decades. Turkey is going to have to live with it for decades. Of course the Iraqi people are going to have to live with it for decades. The Iranians, the Syrians, the Egyptians, the Saudis, the Europeans – it was far more consequential for them than for us, and they didn't want it to happen and we made it happen. In this case, this was an issue about the consequences for everyone else versus the consequences for us. And in this case, we went against the norm, and for that reason, I think, our actions have not been deemed as ethical from the point of view of international standards.