## Solvency

### Comstock link

#### Comstock is sufficiently distinct – not applied to the aff

Columbia Law National Security Blog (citing an anonymous Harvard Law school graduate) 2010 “Comstock Case Augments Federal Detention Authority” http://blogs.law.columbia.edu/nsls/2010/05/19/comstock-case-augments-federal-detention-authority/

Over at Slate, Dahlia Lithwick worries that a likely consequence of this view of federal power is acceptance of the positions of the Bush and Obama administrations on the indefinite preventative detention of terrorism suspects. According to Lithwick, “the Supreme Court has just handed Congress broad authority to detain people merely because they show signs of future dangerousness.”¶ As explained in the (as always) excellent summary of Comstock on SCOTUSblog, Comstock holds in part that¶ the Necessary and Proper Clause grants Congress ‘broad authority,’ requiring only that a statute ‘constitute[] a means that is rationally related’ to the implementation of an enumerated power. This can build on itself: Congress has broad powers to create federal crimes to further various enumerated powers. Congress can then ensure enforcement of these crimes by imprisoning offenders in federal prisons. In turn, it can take action to guarantee the safety of those who may be affected by federal imprisonment, including those in surrounding communities.¶ For Lithwick, this “very expansive view of federal crime-fighting authority” may open the door to the indefinite detention of those deemed by the government to be dangerous as a result of their suspected or proven terrorist connections. This is particularly so because the rationale underlying the detention of sex offenders beyond their criminal sanctions translates so readily into the terrorism context: “Incurable and mentally unstable sex offenders are no more terrifying than incurable and mentally unstable jihadists.”¶ Lithwick notes that there may be sufficient distinctions between the commitment of sex offenders and the detention of terrorism suspects to contain Comstock’s holding, including the fact that the sex offenders have “presumably had trials and served their time.” ¶ [Ed.: Lithwick largely begins with the assumption - broadly but not universally accepted - that preventative detention is an unnecessary evil. She then skirts the rationale for "preventative" detention of terrorists as military opponents. Although Lithwick may be right that there are convincing analogies between the government's interests in Comstock and in many of the terrorism cases, she does not elaborate on her "worries" about this power. ]

### Circumvention DA

#### More evidence

Kundmueller 2002 [Michelle, Journal of Legislation, p. lexis]

This section of this Note, on the legal authority of customary international law vis-a-vis federal legislation, has not been included with the purpose of discovering which position is correct. Rather, the overview of this debate holds a central place in this Note because it demonstrates some of the issues at stake as U.S. courts begin to integrate customary international law into what were previously thought of as purely or primarily domestic issues. Admittedly, the number of cases using customary international law in this manner is still few and primarily based on some enabling federal statute. Nonetheless, these decisions take on a greater importance in light of the debate discussed above. Should theorists such as Paust and Lillich prevail, these early cases, taking the first modern steps in the process of identifying and applying customary international law would become crucial precedent in a law-making process that Congress would be powerless to overturn. On the other hand, the case law about to be analyzed will lie at the mercy of the will of the people and their Congress, should the theories of Kelley and Garland prove prophetic. It is still too early to know which faction will dominate, but this analysis of their theories does survey the potential spectrum of outcomes and the legal and political issues yet to be determined.

#### Your evidence doesn’t apply to our mechanism- circumvention happened before because rulings weren’t explicit restrictions

Bradely 10 (Curtis is the William Van Alstyne Professor of Law, Professor of Public Policy Studies, and Senior Associate Dean for Faculty & Research at the Duke University School of Law, “CLEAR STATEMENT RULES AND¶ EXECUTIVE WAR POWERS”, http://www.harvard-jlpp.com/wp-content/uploads/2010/01/bradley.pdf)

The Court’s decision in Boumediene v. Bush4 might seem an¶ aberration in this regard, but it is not. Although the Court in¶ Boumediene did rely on the Constitution in holding that the detainees¶ at Guantanamo have a right to seek habeas corpus review¶ in U.S. courts, it did not impose any specific restrictions¶ on the executive’s detention, treatment, or trial of the detain‐ees.5 In other words, Boumediene was more about preserving a¶ role for the courts than about prohibiting the executive from¶ exercising statutorily conferred authority.

#### Combining statutory and judicial restrictions effectively limits the executive

Aziz Z. Huq 12, Assistant Professor of Law, University of Chicago Law School, "Binding the Executive (by Law or by Politics)", May 25, www.law.uchicago.edu/files/file/400-ah-binding.pdf

There is some merit to this story. But in my view it again understates the observed effect of positive legal constraints on executive discretion. Recent scholarship, for example, has documented congressional influence on the shape of military policy via framework statutes . This work suggests Congress influences executive actions during military engagements through hearings and legislative proposals. 75 Consistent with this account, two legal scholars have recently offered a revisionist history of constitutional war powers in which “ Congress has been an active participant in setting the terms of battle, ” in part because “ congressional willingness to enact [ ] laws has only increased ” over time. 76 In the last decade, Congress has often taken the initiative on national security, such as enacting new statutes on military commissions in 2006 and 2009. 77 Other recent landmark security reforms, such as a 2004 statute restr ucturing the intelligence community, 78 also had only lukewarm Oval Office support. 79 Measured against a baseline of threshold executive preferences then , Congress has achieved nontrivial successes in shaping national security policy and institutions through both legislated and nonlegislated actions even in the teeth of White House opposition. 80¶ The same point emerges more forcefully from a review of our “ fiscal constitution. ” 81 Article I, § 8 of the Constitution vests Congress with power to “ lay and collect Tax es ” and to “ borrow Money on the credit of the United States, ” while Article I, § 9 bars federal funds from being spent except “ in Consequence of Appropriations made by Law. ” 82 Congress has enacted several framework statutes to effectuate the “ powerful limitations ” implicit in these clauses. 83 The resulting law prevents the President from repudiating past policy commitments (as Skowronek suggests) as well as imposing barriers to novel executive initiatives that want for statutory authorization . 84¶ Three statutes merit attention here. First, the Miscellaneous Receipts Act of 1849 85 requires that all funds “ received from customs, from the sales of public lands, and from all miscellaneous sources, for the use of the United States, shall be paid . . . into the treasur y of the United States. ” 86 It ensures that the executive cannot establish off - balance - sheet revenue streams as a basis for independent policy making. Second, the Anti - Deficiency Act, 87 which was first enacted in 1870 and then amended in 190 6 , 88 had the effect of cementing the principle of congressional appropriations control. 89 With civil and criminal sanctions, it prohibits “ unfunded monetary liabilities beyond the amounts Congress has appropriated, ” and bars “ the borrowing of funds by federal a gencies . . . in anticipation of future appropriations. ” 90 Finally, the Congressional Budget and Impoundment Control Act of 1974 91 (Impoundment Act) channels presidential authority to decline to expend appropriated funds. 92 It responded to President Nixon ’ s e xpansive use of impoundment. 93 Congress had no trouble rejecting Nixon ’ s claims despite a long history of such impoundments. 94 While the Miscellaneous Receipts Act and the Anti - Deficiency Act appear to have succeeded, the Impoundment Act has a more mixed rec ord. While the Supreme Court endorsed legislative constraints on presidential impoundment, 95 President Gerald Ford increased impoundments through creative interpretations of the law. 96 But two decades later, Congress concluded the executive had too little di scretionary spending authority and expanded it by statute. 97 ¶ Moreover, statutory regulation of the purse furnishes a tool for judicial influence over the executive. Judicial action in turn magnifies congressional influence. A recent study of taxation litiga tion finds evidence that the federal courts interpret fiscal laws in a more pro - government fashion during military engagements supported by both Congress and the White House than in the course of unilateral executive military entanglements. 98 Although the r esulting effect is hard to quantify, the basic finding of the study suggests that fiscal statutes trench on executive discretion not only directly, but also indirectly via judicially created incentives to act only with legislative endorsement. 99¶ To be sure, a persistent difficulty in debates about congressional efficacy, and with some of the claims advanced in The Executive Unbound , is that it is unclear what baseline should be used to evaluate the outcomes of executive - congressional struggles. What counts, that is, as a “win” and for whom? What, for example, is an appropriate level of legislative control over expenditures? In the examples developed in this Part , I have underscored instances in which a law has been passed that a President disagrees with in substantial part, and where there are divergent legislative preferences reflected in the ultimate enactment. I do not mean to suggest, however, that there are not alternative ways of delineating a baseline for analysis. 100¶ In sum, there is strong evidence that law and lawmaking institutions have played a more robust role in delimiting the bounds of executive discretion over the federal sword and the federal purse than The Executive Unbound intimates. Congress in fact impedes presidential agendas. The White House in practice cannot use presidential administration as a perfect substitute. Legislation implementing congressional control of the purse is also a significant, if imperfect, tool of legislative influence on the ground. This is true even when Presidents influence the budgetary agenda 101 and agencies jawbone their legislative masters into new funding. 102 If Congress and statutory frameworks seem to have such nontrivial effects on the executive ’ s choice set , this at minimum i mplies that the conditions in which law matters are more extensive than The Executive Unbound suggests and that an account of executive discretion that omits law and legal institutions will be incomplete .

#### Legitimacy is tanked already

Rosen 12 (Jeffrey – Legal Affairs Editor at New Republic, “The Supreme Court Has a Legitimacy Crisis, But Not For the Reason You Think “, 2012, http://www.tnr.com/article/politics/103987/the-supreme-court-has-legitimacy-crisis-not-the-reason-you-think)

Last week, a New York Times/CBS poll found that only 44 percent of Americans approve of the Supreme Court’s job performance and 75 percent say the justices are sometimes influenced by their political views. But although the results of the poll were striking, commentators may have been too quick to suggest a direct link between the two findings. In the Times article on the poll, for example, Adam Liptak and Allison Kopicki suggested that the drop in the Court's 66 percent approval ratings in the late 1980s “could reflect a sense that the court is more political, after the ideologically divided 5-to-4 decisions in Bush v. Gore and Citizens United.” At the beginning of his tenure, Chief Justice John Roberts said that he subscribed to a similar theory. “I do think the rule of law is threatened by a steady term after term after term focus on 5-4 decisions,” Roberts told me. But a new study by Nathaniel Persily of Columbia Law School and Stephen Ansolabehere of Harvard suggests that the relationship between the Court’s declining approval ratings and increased perceptions of the Court’s partisanship may be more complicated than the New York Times and the Chief Justice suggest. According to the study, Americans already judge the Court according to political criteria: They generally support the Court when they think they would have ruled the same way as the justices in particular cases, or when they perceive the Court overall to be ruling in ways that correlate with their partisan views. If this finding is correct, the most straightforward way for the Court to maintain its high approval ratings is to hand down decisions that majorities of the public agree with. And, like its predecessors, the Roberts Court has, in fact, managed to mirror the views of national majorities more often than not. In a 2009 survey, Persily and Ansolabehere found that the public strongly supported many of the Supreme Court’s recent high-profile decisions, including conservative rulings recognizing gun rights and upholding bans on partial birth abortions, as well as liberal rulings upholding the regulation of global warming and striking down a Texas law banning sex between gay men. But if the public agrees with most of the Court's decisions, why is it more unpopular than ever? Part of the answer has to do with the fact that there are a handful of high profile decisions on which the Court is out of step with public opinion, including the Kelo decision allowing a local government to seize a house under eminent domain and the Boumediene case extending habeas corpus to accused enemy combatants abroad, and recent First Amendment decisions protecting unpopular speakers, such as funeral protesters, manufacturers of violent video games, and corporations (in the Citizens United case.) All of these decisions were unpopular with strong majorities of the public. But Persily and Ansolabehere also found that even decisions that closely divide the public can lead to a decrease in the Court’s approval rating over time, by increasing the perception among half the public that the Court is out of step with its partisan preferences. Bush v. Gore is perhaps the clearest example. In the short term, the Court’s overall approval ratings didn’t suffer: Republicans liked the decision, while Democrats didn’t, and the two effects canceled each other out. But Persily and his colleagues found that ten years later, Bush v. Gore continues to define the Court for many citizens, destroying confidence in the Court among Democrats while reinvigorating it among Republicans. Since an important component of the Court’s overall approval rating is whether Americans perceive themselves to be in partisan agreement with the Court as an institution, Bush v. Gore has led to a statistically significant decline in approval among Democrats as a whole.

### 2AC Impact D

#### Zero impact- no cases coming now that protect the environment and if they do they’ll only effect US policy which means the impact is inevitable globally

#### Their impact evidence is alarmist and false

Kaleita ‘7 (Amy, PhD, Assistant Professor of Agricultural and Biosystems Engineering @ IA State, “Hysteria’s History: Environmental Alarmism in Context,” <http://www.pacificresearch.org/docLib/20070920_Hysteria_History.pdf>, 2007)

Apocalyptic stories about the irreparable, catastrophic damage that humans are doing to the natural environment have been around for a long time. These hysterics often have some basis in reality, but are blown up to illogical and ridiculous proportions. Part of the reason they’re so appealing is that they have the ring of plausibility along with the intrigue of a horror flick. In many cases, the alarmists identify a legitimate issue, take the possible consequences to an extreme, and advocate action on the basis of these extreme projections. In 1972, the editor of the journal Nature pointed out the problem with the typical alarmist approach: “[Alarmists’] most common error is to suppose that the worst will always happen.”82 But of course, if the worst always happened, the human race would have died out long ago. When alarmism has a basis in reality, the challenge becomes to take appropriate action based on that reality, not on the hysteria. The aftermath of Silent Spring offers examples of both sorts of policy reactions: a reasoned response to a legitimate problem and a knee-jerk response to the hysteria. On the positive side, Silent Springbrought an end to the general belief that all synthetic chemicals in use for purposes ranging from insect control to household cleaning were uniformly wonderful, and it ushered in an age of increased caution on their appropriate use. In the second chapter of her famous book, Carson wrote, “It is not my contention that chemical insecticides must never be used. I do contend that… we have allowed these chemicals to be used with little or no advance investigation of their effect on soil, water, wildlife, and man himself.” Indeed, Carson seemed to advocate reasoned response to rigorous scientific investigation, and in fact this did become the modern approach to environmental chemical licensure and monitoring. An hour-long CBS documentary on pesticides was aired during the height of the furor over Silent Spring. In the documentary, Dr. Page Nicholson, a water-pollution expert with the Public Health Service, wasn’t able to answer how long pesticides persist in water once they enter it, or the extent to which pesticides contaminate groundwater supplies. Today, this sort of information is gathered through routine testing of chemicals for use in the environment. 20 V: Lessons from the Apocalypse Ironically, rigorous investigation was not used in the decision to ban DDT, primarily due to the hysteria Silent Spring generated. In this example, the hysteria took on a life of its own, even trumping the author’s original intent. There was, as we have seen, a more sinister and tragic response to the hysteria generated by Silent Spring. Certain developing countries, under significant pressure from the United States, abandoned the use of DDT. This decision resulted in millions of deaths from malaria and other insect-borne diseases. In the absence of pressure to abandon the use of DDT, these lives would have been spared. It would certainly have been possible to design policies requiring caution and safe practices in the use of supplemental chemicals in the environment, without pronouncing a death sentence on millions of people. A major challenge in developing appropriate responses to legitimate problems is that alarmism catches people’s attention and draws them in. Alarmism is given more weight than it deserves, as policy makers attempt to appease their constituency and the media. It polarizes the debaters into groups of “believers” and “skeptics,” so that reasoned, fact-based compromise is difficult to achieve. Neither of these aspects of alarmism is healthy for the development of appropriate policy. Further, alarmist responses to valid problems risk foreclosing potentially useful responses based on ingenuity and progress. There are many examples from the energy sector where, in the presence of economic, efficiency, or societal demands, the marketplace has responded by developing better alternatives. That is not to say that we should blissfully squander our energy resources; on the contrary, we should be careful to utilize them wisely. But energy-resource hysteria should not lead us to circumvent scientific advancement by cherry-picking and favoring one particular replacement technology at the expense of other promising technologies. Environmental alarmism should be taken for what it is—a natural tendency of some portion of the public to latch onto the worst, and most unlikely, potential outcome. Alarmism should not be used as the basis for policy. Where a real problem exists, solutions should be based on reality, not hysteria.

## T

### 2AC T

#### 2) Ruling on the Geneva Conventions is a restriction

Wolensky 9 (Spring, 2009¶ Chapman Law Review¶ 12 Chap. L. Rev. 721¶ LENGTH: 10495 words Comment: Discretionary Sentencing in Military Commissions: Why and How the Sentencing Guidelines in the Military Commissions Act Should be Changed\* \* This article was initially written and published when the state of military commissions were in flux. It reflects the events regarding military commissions up to and through April 2009. However, an important decision was made by President Obama in May of 2009. See William Glaberson, Obama Considers Allowing Please by 9/11 Suspects, N. Y. Times, June 6, 2009, at A1, A12. Obama decided to continue the use of military commissions under a new set of rules which provide more protections for detainees. Id. Due to the timing of publication, this decision is not incorporated in this article. Although Obama has decided to continue the military commissions, he has not finalized a set of rules. Id. This article serves as a recommendation for changes to the rules of the Military Commissions Act, which Congress and the Obama Administration should consider. NAME: Brian Wolensky\*\*)

One of the main treatises included in the Law of War is the Third Geneva Convention, which was enacted in 1949 to regulate the treatment of prisoners of war**.** [n31](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.719762.7040113385&target=results_DocumentContent&returnToKey=20_T17977639921&parent=docview&rand=1376739692140&reloadEntirePage=true#n31) The Law of War places restrictions on the way certain countries can act during times of warand the United States is bound by it when it establishes and uses military commissions. [n32](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.719762.7040113385&target=results_DocumentContent&returnToKey=20_T17977639921&parent=docview&rand=1376739692140&reloadEntirePage=true#n32)

#### Counter-interpretation- treaty-based regulations constitute a restriction

Barron 8 (Professor of Law, Harvard Law School, Harvard Law Review, January 2008, Retrieved 6/1/2013, Lexis/Nexis)

2. Armed Conflict Against Terrorist Organizations and Preexisting Framework Statutes. - Beyond this general executive trend, certain central features of the current military conflict against al Qaeda help to create the conditions for constitutional battles over the legal status of statutory (and treaty-based) limitations that apply to the war on terrorism. Important in this regard is the fact that in most traditional wars, the Executive has perhaps had less reason to feel unduly constrained [\*713] by extant statutory and treaty-based regulations on his treatment of the enemy, in part because many such restrictions (such as those in multilateral treaties) have, at least nominally, merely put the nation on common ground with its enemies with respect to the methods of battle and the treatment of prisoners.

## K

### 2AC K

The alternative should be evaluated based on their ability to engage 1AC institutions- society shapes individual beliefs and create behavioral patterns for macro-level trends- their pedagogy is irrelevant absent a method of engagement

Wight – Professor of IR @ University of Sydney – 6

(Colin, Agents, Structures and International Relations: Politics as Ontology, pgs. 48-50

One important aspect of this relational ontology is that these relations constitute our identity as social actors. According to this relational model of societies, one is what one is, by virtue of the relations within which one is embedded. A worker is only a worker by virtue of his/her relationship to his/her employer and vice versa. ‘Our social being is constituted by relations and our social acts presuppose them.’ At any particular moment in time an individual may be implicated in all manner of relations, each exerting its own peculiar causal effects. This ‘lattice-work’ of relations constitutes the structure of particular societies and endures despite changes in the individuals occupying them. Thus, the relations, the structures, are ontologically distinct from the individuals who enter into them. At a minimum, the social sciences are concerned with two distinct, although mutually interdependent, strata. There is an ontological difference between people and structures: ‘people are not relations, societies are not conscious agents’. Any attempt to explain one in terms of the other should be rejected. If there is an ontological difference between society and people, however, we need to elaborate on the relationship between them. Bhaskar argues that we need a system of mediating concepts, encompassing both aspects of the duality of praxis into which active subjects must fit in order to reproduce it: that is, a system of concepts designating the ‘point of contact’ between human agency and social structures. This is known as a ‘positioned practice’ system. In many respects, the idea of ‘positioned practice’ is very similar to Pierre Bourdieu’s notion of *habitus*. Bourdieu is primarily concerned with what individuals do in their daily lives. He is keen to refute the idea that social activity can be understood solely in terms of individual decision-making, or as determined by surpa-individual objective structures. Bourdieu’s notion of the *habitus* can be viewed as a bridge-building exercise across the explanatory gap between two extremes. Importantly, the notion of a habitus can only be understood in relation to the concept of a ‘social field’. According to Bourdieu, a social field is ‘a network, or a configuration, of objective relations between positions objectively defined’. A social field, then, refers to a structured system of social positions occupied by individuals and/or institutions – the nature of which defines the situation for their occupants. This is a social field whose form is constituted in terms of the relations which define it as a field of a certain type. A *habitus* (positioned practices) is a mediating link between individuals’ subjective worlds and the socio-cultural world into which they are born and which they share with others. The power of the habitus derives from the thoughtlessness of habit and habituation, rather than consciously learned rules. The habitus is imprinted and encoded in a socializing process that commences during early childhood. It is inculcated more by experience than by explicit teaching. Socially competent performances are produced as a matter of routine, without explicit reference to a body of codified knowledge, and without the actors necessarily knowing what they are doing (in the sense of being able adequately to explain what they are doing). As such, the *habitus* can be seen as the site of ‘internalization of reality and the externalization of internality.’ Thus social practices are produced in, and by, the encounter between: (1) the *habitus* and its dispositions; (2) the constraints and demands of the socio-cultural field to which the habitus is appropriate or within; and (3) the dispositions of the individual agents located within both the socio-cultural field and the *habitus*. When placed within Bhaskar’s stratified complex social ontology the model we have is as depicted in Figure 1. The explanation of practices will require all three levels. Society, as field of relations, exists prior to, and is independent of, individual and collective understandings at any particular moment in time; that is, social action requires the conditions for action. Likewise, given that behavior is seemingly recurrent, patterned, ordered, institutionalised, and displays a degree of stability over time, there must be sets of relations and rules that govern it. Contrary to individualist theory, these relations, rules and roles are not dependent upon either knowledge of them by particular individuals, or the existence of actions by particular individuals; that is, their explanation cannot be reduced to consciousness or to the attributes of individuals. These emergent social forms must possess emergent powers. This leads on to arguments for the reality of society based on a causal criterion. Society, as opposed to the individuals that constitute it, is, as Foucault has put it, ‘a complex and independent reality that has its own laws and mechanisms of reaction, its regulations as well as its possibility of disturbance. This new reality is society…It becomes necessary to reflect upon it, upon its specific characteristics, its constants and its variables’.

#### Consquences first – always VTL

Bernstein ‘2

(Richard J., Vera List Prof. Phil. – New School for Social Research, “Radical Evil: A Philosophical Interrogation”, p. 188-192)

There is a basic value inherent in **organic** being, a basic affirmation, "The Yes' of Life" (IR 81). 15 "The self-affirmation of being becomes emphatic in the opposition of life to death. Life is the explicit confrontation of being with not-being. . . . The 'yes' of all striving is here sharpened by the active `no' to not-being" (IR 81-2). Furthermore — and this is the crucial point for Jonas — this affirmation of life that is in all organic being has a binding obligatory force upon human beings. This blindly self-enacting "yes" gains obligating force in the seeing freedom of man, who as the supreme outcome of nature's purposive labor is no longer its automatic executor but, with the power obtained from knowledge, can become its destroyer as well. He must adopt the "yes" into his will and impose the "no" to not-being on his power. But precisely this transition from willing to obligation is the critical point of moral theory at which attempts at laying a foundation for it come so easily to grief. Why does now, in man, that become a duty which hitherto "being" itself took care of through all individual willings? (IR 82). We discover here the transition from is to "ought" — from the self-affirmation of life to the binding obligation of human beings to preserve life not only for the present but also for the future. But why do we need a new ethics? The subtitle of The Imperative of Responsibility — In Search of an Ethics for the Technological Age — indicates why we need a new ethics. Modern technology has transformed the nature and consequences of human action so radically that the underlying premises of traditional ethics are no longer valid. For the first time in history human beings possess the knowledge and the power to destroy life on this planet, including human life. Not only is there the new possibility of total nuclear disaster; there are the even more invidious and threatening possibilities that result from the unconstrained use of technologies that can destroy the environment required for life. The major transformation brought about by modern technology is that the consequences of our actions frequently exceed by far anything we can envision. Jonas was one of the first philosophers to warn us about the unprecedented ethical and political problems that arise with the rapid development of biotechnology. He claimed that this was happening at a time when there was an "ethical vacuum," when there did not seem to be any effective ethical principles to limit ot guide our ethical decisions. In the name of scientific and technological "progress," there is a relentless pressure to adopt a stance where virtually anything is permissible, includ-ing transforming the genetic structure of human beings, as long as it is "freely chosen." We need, Jonas argued, a new categorical imperative that might be formulated as follows: "Act so that the effects of your action are compatible with the permanence of genuine human life"; or expressed negatively: "Act so that the effects of your action are not destructive of the future possibility of such a life"; or simply: "Do not compromise **the conditions for** an indefinite continuation of humanity on earth**"; or again turned positive:** "In your present choices, include the future wholeness of Man among the objects of your will."

**Securitization is crucial to politicization and breaks down antagonism- their theory is wrong and their alt is worse**

**Trombetta ‘8** (Maria Julia Trombetta, (Delft University of Technology, postdoctoral researcher at the department of Economics of Infrastructures) 3/19/08 http://archive.sgir.eu/uploads/Trombetta-the\_securitization\_of\_the\_environment\_and\_the\_transformation\_of\_security.pdf

On the one hand, an approach that considers the discursive formation of security issues provides a new perspective to analyse the environmental security discourse and its transformative potential. First, it allows for an investigation of the political process behind the selection of threats, exploring why some of them are considered more relevant and urgent than others. The focus shifts from the threats to the collectivities, identities and interests that deserve to be protected and the means to be employed. Second, securitization suggests that the awareness of environmental issues can have a relevant role in defining and transforming political communities, their interests and identities, since the process creates new ideas about who deserve to be protected and by whom. Finally, as Behnke points out, **securitization can open the space for a “genuinely political” constitutive and formative struggle through which political structures are contested and reestablished**.(Behnke 2000: 91) Securitization allows for the breaking and transforming of rules that are no longer acceptable, including the practices associated with an antagonistic logic of security. On the other hand, securitization is problematic because of the set of practices it is supposed to bring about. For the CopS security “carries with it a history and a set of connotations that it cannot escape.”(Wæver 1995: 47) While securitizing an issue is a political choice, the practices it brings about are not. Accordingly, transforming an issue into a security issue is not always an improvement. In the case of the environment, the warning seems clear: “When considering securitizing moves such as ‘environmental security’...one has to weigh the always problematic side effects of applying a mind-set of security against the possible advantages of focus, attention, and mobilization.”(Buzan, Wæver and Wilde 1998: 29) The School shares the normative suggestion that “[a] society whose security is premised upon a logic of war should be re-shaped, re-ordered, simply changed.”(Aradau 2001: introduction) For the CopS this does not mean to transform the practices and logic of security, because, as it will be shown below, for the School, this is impossible. The CopS suggests avoiding the transformation of issues into security issues. It is necessary “to turn threats into challenges; to move developments from the sphere of existential fear to one where they could be handled by ordinary means, as politics, economy, culture, and so on.”(Wæver 1995: 55, quoting Jahn). This transformation, for the CopS, is “desecuritization”, and the School has introduced a distinction between politicization - “meaning the issue is part of public policy, requiring government decision and resources allocation s”(Buzan, Wæver and Wilde 1998: 23) - and securitization - “meaning the issue is presented as an existential threat, requiring emergency measures and justifying actions outside the normal bounds of political procedure.”(Buzan, Wæver and Wilde 1998: 23) The slogan is: “less security, more politics!”(Wæver 1995: 56) Nevertheless, there are two major problems behind this suggestion. First, if securitization is normatively problematic, desecuritization can be even more problematic. It can lead to a depoliticization and marginalisation of urgent and serious issues, **while leaving unchallenged the practices associated with security**. In the case of the environment, many appeals to security are aimed at both soliciting action and transforming what counts as security and the way of providing it. Second, within the School’s framework, desecuritization cannot be possible. Securitization in fact can be inescapable, the unwanted result of discussing whether or not the environment is a security issue. As Huysmans has noticed, the performative, constitutive approach suggested by the speech act theory implies that even talking and researching about security can contribute to the securitization of an issue, even if that (and the practices associated with it) is not the desired result. “The normative dilemma thus consists of how to write or speak about security when the security knowledge risks the production of what one tries to avoid, what one criticizes: that is, the securitization of migration, drugs and so forth.”(Huysmans 2002: 43) When the understanding of security is the problematic one described by the CopS, research itself can become a danger. This captures a paradox that characterizes the debate about environmental security. As Jon Barnett has showed in The Meaning of Environmental Security (2001) the securitization of the environment can have perverse effects and several attempts to transform environmental problems into security issues have resulted in a spreading of the national security paradigm and the enemy logic, even if the intentions behind them were different. Barnett has argued that “environmental security is not about the environment, it is about security; as a concept, it is at its most meaningless and malign”(2001: 83) in this way, he seems to accept the ineluctability of the security mindset or logic evoked by securitization. However, his suggestion of promoting a “human centered” understanding of security, in which environmental security is not about (national) security but about people and their needs, within the securitization logic, cannot escape the trap he has described. Why, in fact, should the sort of his claim be different from that of similar ones? 2. The fixity of Security practices These dilemmas, however, are based on the idea that security practices are inescapable and unchangeable and the theory of securitization, as elaborated by the CopS, has contributed to suggest so. The CopS has achieved the result of making a specific, negative understanding of security – which has characterised the dominant Realist discourse within IR - appear as “natural” and unchangeable since all the attempts to transform it appear to reinforce its logic. To challenge this perverse mechanism it is necessary to unpack securitization further. First, it will be shown that securitization is not analytically accurate, the environment representing a relevant case. Second, the assumptions behind this problematic fixity will be explored. The CopS explores the specificity of the environmental sector in Security: A Framework for Analysis (Buzan, Wæver and Wilde 1998) (Security hereafter), the theoretical book where the CopS illustrates the theory of securitization and analyses the dynamics of securitization within five relevant sectors. For each sector the School identifies the actors or objects (referent objects) that are threatened, specifies the relevant threats and the agents that promote or facilitate securitization.11[11] The environmental sector is rather different from the others and the transformative intent that is associated with the appeal to environmental security is more evident.12[12] Amongst the peculiarities of the environmental sector described by the School, three deserve a specific analysis for their implications: First, the presence of two agendas - a scientific and a political one; second, the multiplicity of actors; third, the politicization/securitization relationship. They will be analysed in turn “One of the most striking features of the environmental sector,” it is argued in Security, “is the existence of two different agendas: a scientific agenda and a political agenda.”(Buzan, Wæver and Wilde 1998: 71) The scientific one refers mainly to natural science and non-governmental activities. The “scientific agenda is about the authoritative assessment of threat,”(Buzan, Wæver and Wilde 1998: 72) and Buzan, Wæver and de Wilde admit that “the extent to which scientific argument structures environmental security debates strikes us as exceptional.”(Buzan, Wæver and Wilde 1998: 72) Quoting Rosenau, they suggest that “the demand for scientific proof is a broader emerging characteristic in the international system.”(Buzan, Wæver and Wilde 1998: 72) This 11[11] So for instance in the military sector the referent object is usually the state and the threats are mainly military ones, while in the societal sector the referent objects are collective identities “that can function independent of the state, such as nations and religions.”(Buzan, Wæver and Wilde 1998: 22-3) 12[12] This is the case even if the School adopts a conservative strategy that appears from the choice of the referent object (or what is threatened). In the first works of the School, the referent object within the environmental sector was the biosphere: “Environmental security concerns the maintenance of the local and the planetary biosphere as the essential support system on which all other human enterprises depend.” (Buzan 1991: 19) In Security the School narrows down this perspective and identifies the level of civilization (with all the contradictions that contribute to environmental problems) as the main referent object. This move favours a conservative perspective which considers the securitization of the environment as a way to preserve the status quo and the security strategies on which it is based. Despite this, the description of the environmental sector captures the specificity of the sector and reveals the tensions within the overall framework. questions the “self referentiality” of the speech act security. Are some threats more “real” than others thanks to scientific proof? Can considerations developed to characterize reflective behaviours be applied to natural systems? Even if dealing with these issues is beyond the scope of this article, it is necessary to note that the appeal to an external discourse has serious implications. First, it questions the possibility and opportunity of desecuritization. Is it possible and what does it mean to “desecuritize” an issue which is on the scientific agenda? If scientific research outlines the dangerousness of an environmental problem, how is it possible to provide security? Second, it suggests that security and the practices associated with it can vary from one sector to another and thus from one context to another. The second peculiarity of the environmental sector is the presence of many actors. This contrasts with Wæver’s suggestion that “security is articulated only from a specific place, in an institutional voice, by elites.”(Wæver 1995: 57) The multiplicity of actors is largely justified by the School with the relative novelty of the securitization of the environment. “The discourses, power struggles, and securitizing moves in the other sectors are reflected by and have sedimented over time in concrete types of organizations - notably states...nations (identity configurations), and the UN system,”(Buzan, Wæver and Wilde 1998: 71) however, this is not the case with the environment: “It is as yet undetermined what kinds of political structures environmental concerns will generate.”(Buzan, Wæver and Wilde 1998: 71). In this way a tension appears since the attempts to securitize the environment are described as having a transforming potential, requiring and calling for new institutions. Within the environmental sector securitization moves seem to have a transformative intent that contrasts with the conservative one, that characterizes other sectors. The third peculiarity is that many securitizing moves result in politicization. This is problematic for the School, which argues that “transcending a security problem by politicising it cannot happen through thematization in security terms, only away from such terms.”(Wæver 1995: 56) For the School, once the enemy logic has been inscribed in a context, it is very difficult to return to an open debate. Nevertheless the various politicizations of environmental issues that followed the appeal to security – those the CopS dismissed as failed securitizations - seem to reinforce the argument, suggested by Edkins, that there is a tendency to politicize issues through their securitization. (Edkins 1999: 11) **This represents another signal that securitization**, within the environmental sector, **can take a different form, and that the problematic aspects of evoking security are not so evident.** Securitization theory, for the CopS, is meant to be descriptive, however the environmental sector suggests that some of its aspects prevent it from providing an adequate instrument for analysis. To understand why this occurs, it is necessary to explore in more detail the conceptualization of security by Wæver, who has introduced securitization within the School and is the strongest opponent of any attempt to securitize the environment.

## CP

### 2AC Congress CP

#### CP doesn’t solve and links to the net-benefit- Congressional statues would be reviewed by the Supreme Court, but wouldn’t be effective and would take years to solidify

Eviatar 10 (Daphne- Senior Associate in Human Rights First’s Law and Security Program, June 10, “Judges to Congress: Don't Legislate Indefinite Detention”, http://www.huffingtonpost.com/daphne-eviatar/judges-to-congress-dont-l\_b\_607801.html)

For months now, certain commentators and legislators have been arguing that Congress needs to pass a new law authorizing the indefinite detention without charge or trial of suspected terrorists and their supporters.¶ On its face, that would seem to violate some basic tenets of the U.S. Constitution. But the U.S. government is already detaining hundreds of suspects captured abroad at Guantanamo Bay and elsewhere. The question is whether Congress should expand that authority and define it in more detail.¶ Writers such as Benjamin Wittes of the Brookings Institution and lawmakers such as Senator Lindsey Graham of South Carolina argue that even though hundreds of people have been detained over the last eight years at Guantanamo Bay, the law that justifies their detention or mandates their release isn't clear, and Congress needs to step in and make new rules.¶ In fact, as a new report issued today by 16 former federal judges makes clear, that's nonsense. The people in the best position to decide when military detention is legal are already doing just that. The new report, published by Human Rights First and the Constitution Project, explains exactly how that process is working -- and demonstrates that it's actually working very well. Responding to a series of habeas corpus petitions, where Guantanamo detainees have asked the federal court to review the legality of their detentions, federal district court judges in Washington, D.C., have already issued written opinions concerning 50 different detainees that set out the legal standard for indefinite wartime detention, and which cases do and do not meet it.¶ The claim by Wittes and Graham that judges are somehow overstepping their bounds and usurping the role of Congress reflects a fundamental misunderstanding of how the federal courts and judges work. In fact, the courts are doing just what they're supposed to do: interpret the law.¶ The reason judges are so well-situated to explain the contours of U.S. detention authority is because, according to judicial rulings, the right to detain arises out of existing laws, including the Authorization for Use of Military Force against Terrorists, or AUMF, passed by Congress in 2001; the traditional law of war; and the U.S. Constitution.¶ Traditionally, a government at war can detain fighting members of the enemy's forces, under humane conditions, until the war is over. Although that authority is less clear when the government is fighting a loose coalition of insurgent forces around the world rather than another country, the Supreme Court has said that at least in some circumstances, pursuant to the AUMF, the United States can detain enemy fighters seized on the battlefield.¶ It's the Supreme Court's rulings on the subject, combined with the law of war and the mandates of the U.S. Constitution, that highly experienced federal judges have been applying to the habeas corpus cases that have come before them. Applying those rulings, they've developed a clear and consistent body of law that explains what kind of evidence the government needs to have amassed against a suspected insurgent to justify his military detention.¶ Under the D.C. District Court's rulings, for example, Fouad Al Rabiah, a 43-year-old, 240-pound, Kuwaiti Airways executive with a long history of volunteering for Islamic charities who'd been discharged from compulsory military service in Kuwait due to a knee injury, and who suffered from high blood pressure and chronic back pain, did not meet the requirement of being "part of" or having "substantially supported" al Qaeda, the Taliban or associated forces. Although seized while attempting to leave Afghanistan in 2001, by the time of Al Rabiah's hearing, even the government had decided the witnesses who claimed he'd helped al Qaeda weren't credible. The government's own interrogators didn't believe his "confessions," which the court determined had been coerced and were "entirely incredible."¶ On the other hand, Fawzi Al Odah, also Kuwaiti, did meet the law's detention standards. The same judge found that he'd attended a Taliban training camp, learned to use an AK-47, traveled with other armed fighters on a route common to jihadists, and took directions from Taliban leaders - all making it more likely than not that he was a member of Taliban fighting forces.¶ Still, despite the courts' careful analysis in these cases, Congress could step in and write its own new law on indefinite detention. But how can any one statute possibly address all the vastly different factual scenarios, many spanning several countries and decades, that constitute the government's claims that any particular individual is detainable? What's more, any new law will still have to meet the requirements of the U.S. Constitution, and the Supreme Court gets the ultimate say on that. Any new statute passed by Congress, then, would likely be challenged as soon as it's applied, causing more confusion about what the law really is until the U.S. Supreme Court weighs in on that new statute several years later.¶ The federal judges of the D.C. District Court and Court of Appeals are already way ahead of that game. In addition to the trial court opinions, the appellate court recently issued its own opinion setting out the law of detention and the government's constitutional authority. That decision may be appealed to the Supreme Court, whose opinion would set out the binding standard that every judge and future U.S. administration will have to follow.¶ The upshot of all this is that if Congress legislates some new detention standard now, it will actually take a lot longer to get a clearly-defined and binding law that guides the government than it would if Congress just let the courts continue to play the role they're supposed to: deciding the legality of government detention.¶ Wittes, Graham and others may secretly be hoping that Congress will legislate in this area anyway and try to expand the government's indefinite detention autuhority beyond Guantanamo Bay to reach even suspects arrested on U.S. soil. But that would create a whole new constitutional firestorm, resulting in exactly the opposite of what they say they're after: a clear and reliable statement of the law.

#### Only SCOTUS action revitalizes the rule of law

Pearlstein 3 (Deborah N.- Deputy Director of the U.S. Law and Security Program at the Lawyers Committee for Human Rights, and a Visiting Fellow at the Stanford University Center for Democracy, Development and the Rule of Law, , “The Role of the Courts in Protecting Civil Liberties and Human Rights for the Post-9/11 United States”, 2nd Pugwash Workshop on Terrorism: External and Domestic Consequences of the War on Terrorism, <http://www.pugwash.org/reports/nw/terrorism2003-pearlstein.htm>)

In each of the historical examples just given, the judiciary ultimately played a critical role in evaluating the legality of executive action. In the Civil War case, Lambdin Milligan, who had led armed uprisings against Union forces in Indiana, appealed his military tribunal prosecution to the U.S. Supreme Court. In Ex Parte Milligan (1865), the U.S. Supreme Court held Milligan's military prosecution unconstitutional, holding that as long as the civilian "courts are open and their process unobstructed, . . . they can never be applied to civilians in states which have upheld the authority of the government." In Ex Parte Quirin (1942), the Supreme Court reviewed the military prosecution of the German army spies for violations of the laws of war and concluded that it was within the executive's power. Unlike the civilian subject to military justice in Ex Parte Milligan, the Quirin defendants were members of the army of a nation with which the United States was in declared war. And critically, Congress had expressly authorized military commission trials for the offenses for which they were accused. The Supreme Court likewise upheld the exclusion of Japanese-Americans from their homes in Korematsu v. United States (1944), explaining: "Korematsu was not excluded from the military area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire, because the properly constituted military authorities feared an invasion of our West Coast and felt constrained to take proper security measures, and finally, because Congress, reposing its confidence in this time of war in our military leaders - as inevitably it must - determined that they should have the power to do just this."¶ As these examples demonstrate, the U.S. Supreme Court has not always acted to enforce positive legal protections in favor of the individual against the government's exercise of 'wartime' power. Nonetheless, the Court's structural involvement conveyed a critical political message that executive power remained subject to the rule of law. In addition, the Court's published majority opinions clarified the nature of the executive action taken in response to perceived wartime threats, providing a basis for comparative analysis of subsequent executive conduct. In vigorous and public dissenting opinions accompanying each decision, minority justices gave expression to the strong opposing arguments on the resolution of the legal questions presented. Perhaps most important, the judicial decisions provided Congress, legal scholars, and the American public a means for understanding and, in the relative calm of post-war decision-making, for reevaluating the political wisdom of the challenged actions. Thus, for example, a federal court eventually granted a writ of coram nobis in Mr. Korematsu's case as a result of executive misrepresentations. (Korematsu v. United States (N.D. Cal. 1984)). In 1971, to rein in what was by then broadly recognized as executive excesses, Congress passed 18 U.S.C. § 4001(a), providing: "No citizen shall be . . . detained by the United States except pursuant to an Act of Congress." And in 1988, Congress awarded reparations to the remaining survivors and descendants of those interned during World War II as a result of the military exclusion order.

## Deference

### Deference DA

#### No link- plan is the courts telling congress to clarify the AUMF and NDAA which isn’t judicial non-deference

#### No deference now--- lots of rulings

Flaherty 2011 (Martin Flaherty, Leitner Professor of International Law, Fordham Law School, “Judicial Foreign Relations Authority After 9/11,” NYLS Law Review, http://www.nylslawreview.com/wordpress/wp-content/uploads/2011/08/Flaherty-56-1.pdf)

For a time the forces of judicial isolationism appeared to have gained traction and ¶ may yet carry the day. It is all the more surprising, then, that the Supreme Court ¶ reasserted the judiciary’s traditional foreign affairs role in the areas in which its ¶ opponents assert deference is most urgent—national security, terrorism, and war. Yet ¶ so far, in every major case arising out of 9/11, the Court has rejected the position ¶ staked out by the executive branch, even when supported by Congress. At critical ¶ points, moreover, each of these rejections involved the Court reclaiming its primacy ¶ in legal interpretation, an area in which advocates of judicial deference have appeared ¶ to make substantial progress. The Court nonetheless rejected deference in statutory ¶ construction in Rasul v. Bush.¶ 16 It took the same tack with regard to treaties in ¶ Hamdan v. Rumsfeld.¶ 17 It further rejected deference in constitutional interpretation in ¶ both Hamdi v. Rumsfeld18 and Boumediene v. Bush.¶ 19 Together, these cases represent a ¶ stunning reassertion of the judiciary’s proper role in foreign relations. Whether ¶ reassertion will mean restoration, however, still remains to be seen.

#### Congress already has taken away Obama’s control of detention

Janet Cooper Alexander 13, professor of law at Stanford University, March 21st, 2013, "The Law-Free Zone and Back Again," Illinois Law Review, [illinoislawreview.org/wp-content/ilr-content/articles/2013/2/Alexander.pdf](http://illinoislawreview.org/wp-content/ilr-content/articles/2013/2/Alexander.pdf)

Congressalsopassed legislation requiringsuspectedmembers of al- Qaeda or “associated forces” to be held in military custody,again making it difficult to prosecute them in federal court.The bill as passed contained some moderating elements, including the possibility of presidential waiver of the military custody requirement, 7 recognition of the FBI’s ability to interrogate suspects, 8 and a disclaimer stating that the statute was not intended to change existing law regarding the authority of the President, the scope of the Authorization for Use of Military Force, 9 or the detention of U.S. citizens, lawful residents, or persons captured in the United States. 10 All the while, Republican presidential hopefuls were vying to see who could be the most vigorous proponent of indefinite detention, barring trials in civilian courts, and reinstating a national policy of interrogation by torture.¶11¶During the same period, the D.C. Circuit issued a series of decisions that effectively reversed the Supreme Court’s habeas decisions of 2004 and 2008. 12The Supreme Court’s failure to review these decisions has left detainees with essentially no meaningful opportunity to challenge their custody.¶Thus,a decade that began with the executive branch’s assertion of sole and exclusive power to act unconstrained by law or the other branches ended, ironically, with Congress asserting its power to countermand the executive branch’s decisions, regardless of detainee claims of legal rights, in order to maintain those law-free policies. And although the Supreme Court had blocked the Bush administration’s law-free zone strategy by upholding detainees’ habeas rights, the D.C. Circuit has since rendered those protections toothless

#### Checks on the Presidents power solves deterrence better- makes our threats credible

**Waxman 13** (Matthew C- Professor of Law at Columbia Law School; Adjunct Senior Fellow for Law and Foreign Policy, Council on Foreign Relations, “The Constitutional Power to Threaten War”, Forthcoming in Yale Law Journal, vol. 123 (2014), 8/25/2013, PDF)

A second argument, this one advanced by some congressionalists, is that stronger legislative checks on presidential uses of force would improve deterrent and coercive strategies by making them more selective and credible. The most credible U.S. threats, this argument holds, are those that carry formal approval by Congress, which reflects strong public support and willingness to bear the costs of war; requiring express legislative backing to make good on threats might therefore be thought to enhance the potency of threats by encouraging the President to seek congressional authorization before acting.181 A frequently cited instance is President Eisenhower’s request (soon granted) for standing congressional authorization to use force in the Taiwan Straits crises of the mid- and late-1950s – an authorization he claimed at the time was important to bolstering the credibility of U.S. threats to protect Formosa from Chinese aggression.182 (Eisenhower did not go so far as to suggest that congressional authorization ought to be legally required, however.) “It was [Eisenhower’s] seasoned judgment … that a commitment the United States would have much greater impact on allies and enemies alike because it would represent the collective judgment of the President and Congress,” concludes Louis Fisher. “Single-handed actions taken by a President, without the support of Congress and the people, can threaten national prestige and undermine the presidency. Eisenhower’s position was sound then. It is sound now.”183 A critical assumption here is that legal requirements of congressional participation in decisions to use force filters out unpopular uses of force, the threats of which are unlikely to be credible and which, if unsuccessful, undermine the credibility of future U.S. threats.¶ A third view is that legal clarity is important to U.S. coercive and deterrent strategies; that ambiguity as to the President’s powers to use force undermines the credibility of threats.

Michael Reisman observed, for example, in 1989: “Lack of clarity in the allocation of competence and the uncertain congressional role will sow uncertainty among those who depend on U.S. effectiveness for security and the maintenance of world order. Some reduction in U.S. credibility and diplomatic effectiveness may result.”184 Such stress on legal clarity is common among lawyers, who usually regard it as important to planning, whereas strategists tend to see possible value in “constructive ambiguity”, or deliberate fudging of drawn lines as a negotiating tactic or for domestic political purposes.185 A critical assumption here is that clarity of constitutional or statutory design with respect to decisions about force exerts significant effects on foreign perceptions of U.S. resolve to make good on threats, if not by affecting the substance of U.S. policy commitments with regard to force then by pointing foreign actors to the appropriate institution or process for reading them.

### 1AR Obama wants close

#### Obama wants to close

Rueters 6/19 (Obama says U.S. to redouble efforts to close Guantanamo, http://www.reuters.com/article/2013/06/19/us-germany-obama-guantanamo-idUSBRE95I0LY20130619)

U.S. President Barack Obama said on Wednesday the United States would step up its attempts to close Guantanamo Bay prison.

"Even as we remain vigilant about the threat of terrorism, we must move beyond the mindset of perpetual war and in America that means redoubling our efforts to close the prison at Guantanamo," Obama said in a speech in front of Berlin's Brandenburg Gate.