*I negate: Resolved- The United States ought to extend to non-citizens accused of terrorism the same constitutional due process protections it grants to citizens.*

I value MORALITY. The standard is CONSISTENCY WITH THE RIGHTFUL CONDITION OF THE STATE.

The state is defined by the obligations it has since the state is only formed present an agreement between governing and non-governing individuals. States are definitionally bound to adhere to their obligations since they are mechanisms which lack private wills. Ripstein:  
Arthur Ripstein, “Force and Freedom”, page 321

**The sovereign cannot exempt itself in pursuit of a private purpose because the sovereign is not a private actor; the sovereign is the omnilateral will, and its only purposes are those inherent in the idea of the original contract.** So **the sovereign has no discretion over the ends** that **it will pursue**, **and** so **does not have means in the way that a private person has means subject to his or her choice in setting and pursuing ends.** To fail to punish, then, would be to treat its coercive power as an instrument to be used for discretionary purposes, and so to do wrong in the highest degree by renouncing its own principle, even in the form of a single exception

The rightful condition of the state only enables the state to act in order to uphold the omnilateral will and the laws which maintain it. Ripstein 2:

Arthur Ripstein, “Force and Freedom”, page 196

**Powers exercised within a rightful condition provide the omnilateral will** required to repair each of the three defects in a state of nature. **Public acts are omnilateral because they are not any particular person’s unilateral choice, but instead are exercised on behalf of the citizens considered as a collective body.** They are also omnilateral in a further sense: **a unilateral will always has some particular end, some matter of choice. The omnilateral will is different, because all that it provides is a form of choice, by providing procedures through which laws can be made, applied, and enforced.** To return to Kant’s initial example, when the state authorizes the acquisition of private property, it does not make the having of property, or the accumulation of wealth, its purpose. Its purpose is to enable individual human beings to have things as their own as against each other, in accordance with the postulate of private right. **When the state acts to sustain a rightful condition,** in the ways to be discussed in Chapters 8 and 9, it does not have the happiness of its citizens or the gross national product as its end; **it only acts to preserve the formal conditions through which people can rule themselves.** And when the state punishes criminals, the topic of Chapter 10, it does not do so to prevent harm or to see to it that wrongdoers get what they deserve. **It simply upholds the supremacy of its own law.**

It follows that the state cannot voluntarily submit itself to an absolute authority higher than itself and its laws in order to maintain consistency with the rightful condition. Ripstein 3:  
Arthur Ripstein, “Force and Freedom”, page 230

Kant writes that “**this alliance must**, however, **involve no sovereign authority** (as in a civil Constitution), but only an association (federation)**;** **it must be an alliance that can be renounced at any time and so must be renewed** from time to time. This is a right *in subsidium* of another and original right, to avoid getting involved in a state of actual war among the other members.”81 Each has the right to defend itself, and to defend others, but no other state has an enforceable right that others put themselves in danger to defend it. The right to avoid getting involved in war is itself a re flection of the public nature of a rightful condition; **the state can only enter into arrangements with other states that secure its status as a** fully **rightful condition, but no such arrangement could involve giving up the entitlement to do what seems** good and **right to it.** **Perpetual peace is unattainable because the only rightful forum for establishing it is voluntary and can be dissolved.** **Its voluntary nature does not mean that it could not last a long time**, even forever. **It cannot, however, be perpetual, because it has no resources** at its disposal **to guarantee its own preservation.** A rightful condition between persons may dissolve over the course of time, or even choose to dissolve itself,82 but **so long as it exists it must regard itself as existing in perpetuity, because** as a matter of right, **it has an entitlement to perpetuate itself, both by enforcing its own laws and by securing the conditions of a united will. No member of a rightful condition between persons is entitled to dissolve it. A permanent congress of states has no resources to perpetuate itself, and any member is entitled to withdraw from it.**

This doesn’t just mean that states can’t have obligations according to some authority external to themselves; states are prohibited from forming such obligations since the rightful condition mandates they serve only the structure of domestic lawgiving, not pursue private ends.

Non-citizen terror suspects thus cannot be protected under state obligations because they are not part of the omnilateral will; non-citizens can’t vote or express consent to the state, so extending the omnilateral will to non-citizens falls outside the jurisdiction of the US government.

Supreme Court precedent confirms. National security is the highest priority of the government and justifies unlimited Executive discretion over potential security threats. Justice Clarence Thomas 1:  
“Hamdi v. Rumsfeld: Dissent,” Justice Clarence Thomas. June 28th, 2004. <http://www.law.cornell.edu/supct/html/03-6696.ZD1.html>

**“It is ‘obvious and unarguable’ that no governmental interest is more compelling than the security of the Nation.”** ***Haig* v. *Agee* [ruled that]***,* [453 U.S. 280](http://www.law.cornell.edu/supct-cgi/get-us-cite?453+280), 307 (1981) (quoting *Aptheker* v. *Secretary of State,* [378 U.S. 500](http://www.law.cornell.edu/supct-cgi/get-us-cite?378+500), 509 (1964)). The **national security**, after all, **is the primary responsibility** and purpose **of the Federal Government.** See, *e.g.,* *Youngstown Sheet & Tube Co.* v. *Sawyer,* [343 U.S. 579](http://www.law.cornell.edu/supct-cgi/get-us-cite?343+579), 662 (1952) (Clark, J., concurring in judgment); The Federalist No. 23, pp. 146—147 (J. Cooke ed. 1961) (A. Hamilton) (“The principle purposes to be answered by Union are these–The common defence of the members–the preservation of the public peace as well against internal convulsions as external attacks”). But **because the Founders understood that they could not foresee** the myriad **[all]** potential **threats to** national **security that might** later **arise, they** chose to **create[d] a Federal Government that** necessarily **possesses** sufficient **power to handle any threat to the security of the Nation**. The power to protect the Nation “ought to exist **without limitation** … *[b]ecause it is* *impossible to foresee or define the extent and variety* *of* *national exigencies, or the correspondent extent &* *variety of the means which may be necessary to satisfy them.* The circumstances that endanger the safety of nations are infinite; and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed.” *Id.,*at 147. See also The Federalist Nos. 34 and 41. The Founders intended that the President have primary responsibility–along with the necessary power–to protect the national security and to conduct the Nation’s foreign relations. They did so principally because the structural advantages of a unitary Executive are essential in these domains. “Energy in the executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks.” The Federalist No. 70, p. 471 (A. Hamilton). The principle “ingredien[t]” for “energy in the executive” is “unity.” *Id.,* at 472. This is because “[d]ecision, activity, secrecy, and dispatch will generally characterise the proceedings of one man, in a much more eminent degree, than the proceedings of any greater number.” Ibid. These structural advantages are most important in the national-security and foreign-affairs contexts. “Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand.” The Federalist No. 74, p. 500 (A. Hamilton). Also for these reasons, John Marshall explained that “[t]he President is the sole organ of the nation in its external relations, and its sole representative with foreign nations.” 10 Annals of Cong. 613 (1800); see *id.,* at 613—614. To this end, the Constitution vests in the President “[t]he executive Power,” Art. II, §1, provides that he “shall be Commander in Chief of the” armed forces, §2, and places in him the power to recognize foreign governments, §3. **This Court has long** recognized these features and has accordingly **held that the President has *constitutional* authority to protect** the **national security** and that this authority carries **with** it **broad discretion.** “If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority… . Whether the President in fulfilling his duties, as Commander in-chief, in suppressing an insurrection, has met with such armed hostile resistance … is a question to be decided *by him*.” *Prize Cases,* 2 Black 635, 668, 670 (1863).

The Supreme Court has zero right to limit the Executive’s authority over security. Thomas 2:

**Congress**, to be sure, **has** a substantial **an**d **essential role in** both foreign affairs and **national security. But** it is crucial to recognize that ***judicial* interference in these domains destroys the purpose of vesting primary responsibility in a unitary Executive.** I cannot improve on Justice Jackson’s words, speaking for the Court: “The President, both as Commander-in-Chief and as the Nation’s organ for foreign affairs, has available intelligence services whose reports are not and ought not to be published to the world. **It would be intolerable that courts**, without the relevant information, should **review and** perhaps **nullify actions of the Executive** taken on information properly held secret. Nor can courts sit *in camera*in order to be taken into executive confidences. But even if courts could require full disclosure, the very nature of executive decisions as to foreign policy is political, not judicial. **Such decisions are wholly confided by our Constitution to the political departments of the government, Executive and Legislative.** They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. **They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility** and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry.” Ibid. Several points, made forcefully by Justice Jackson, are worth emphasizing. First, with respect to certain decisions **relating to national security and foreign affairs**, the courts simply lack the relevant information and expertise to second-guess determinations made by the President based on information properly withheld**.** Second, even if the courts could compel the Executive to produce the necessary information, such decisions are simply not amenable to judicial determination because “[t]hey are delicate, complex, and involve large elements of prophecy.” *Ibid.* Third **the Court in *Chicago & Southern Air Lines***and elsewhere has correctly **recognized the primacy of the political branches in** the foreign-affairs and **national-security contexts.**

Non-citizens can always be detained without due process due to the potential security risk they pose as terror suspects. This is the case regardless of the Due Process Clause of the Fifth Amendment. Thomas 3:

I agree with the plurality that **the Federal Government has power to detain those that the Executive** Branch **determines to be enemy combatants.** See*ante*, at 10. But I do not think that the plurality has adequately explained the breadth of the President’s authority to detain enemy combatants, an authority that includes making virtually conclusive factual findings. In my view, the structural considerations discussed above, as recognized in our precedent, demonstrate that we lack the capacity and responsibility to second-guess this determination. This makes complete sense once the process that is due Hamdi is made clear. As an initial matter, it is possible that the Due Process Clause requires only “that our Government must proceed according to the ‘law of the land’–that is, according to written constitutional and statutory provisions.” *In re Winship,* [397 U.S. 358](http://www.law.cornell.edu/supct-cgi/get-us-cite?397+358), 382 (1970) (Black, J., dissenting). I need not go this far today because the Court has already explained the nature of due process in this context. In a case strikingly similar to this one, the Court addressed a Governor’s authority to detain for an extended period a person the executive believed to be responsible, in part, for a local insurrection. Justice Holmes wrote for a unanimous Court: “When it comes to a decision by the head of the State upon a matter involving its life, the ordinary rights of individuals must yield to what *he deems* the necessities of the moment. Public danger warrants the substitution of executive process for judicial process. This was admitted with regard to killing men in the actual clash of arms, and we think it obvious, although it was disputed, that the same is true of temporary detention to prevent apprehended harm.” *Moyer*, 212 U.S., at 85 (citation omitted; emphasis added). The Court answered Moyer’s claim that he had been denied due process by emphasizing that “it is familiar that what is due process of law depends on circumstances. It varies with the subject-matter and the necessities of the situation. Thus summary proceedings suffice for taxes, and executive decisions for exclusion from the country… . Such arrests are not necessarily for punishment, but are by way of precaution to prevent the exercise of hostile power.” *Id.,* at 84—85 (citations omitted). In this context, **due process requires nothing more than a good-faith executive determination.** To be clear: **The Court has held that an executive**, acting pursuant to statutory and constitutional authority **may, consistent with the Due Process Clause, unilaterally decide to detain an individual if** the executive **[they] deem**s **this necessary for the public safety *even if he is mistaken*.**

The Supreme Court ruled in *US v. Salerno* that the Due Process Clause is not absolute and individuals can be detained whenever they pose a potential national security risk. Thomas 4:

Almost 140 years later, **in *United States*** **v. *Salerno,***[481 U.S. 739](http://www.law.cornell.edu/supct-cgi/get-us-cite?481+739), 748 (1987), **the Court explained that the Due Process Clause “lays down [no] categorical imperative.” The Court continued: “**We have repeatedly held that the Government’s regulatory interest in community safety can, in appropriate circumstances, outweigh an individual’s liberty interest. For example, **in times of war** or insurrection**, when society’s interest is at its peak, the Government may detain individuals whom the Government believes to be dangerous.”** Ibid. The Court cited *Ludecke* v. *Watkins,* [335 U.S. 160](http://www.law.cornell.edu/supct-cgi/get-us-cite?335+160) (1948), for this latter proposition even though *Ludecke* actually involved detention of enemy aliens. See also *Selective Draft Law Cases,* [245 U.S. 366](http://www.law.cornell.edu/supct-cgi/get-us-cite?245+366) (1918); *Jacobson* v.*Massachusetts,* [197 U.S. 11](http://www.law.cornell.edu/supct-cgi/get-us-cite?197+11), 27—29 (1905) (upholding legislated mass vaccinations and approving of forced quarantines of Americans even if they show no signs of illness); cf. *Kansas* v. *Hendricks,* [521 U.S. 346](http://www.law.cornell.edu/supct-cgi/get-us-cite?521+346) (1997); *Juragua Iron Co.* v. *United States,* [212 U.S. 297](http://www.law.cornell.edu/supct-cgi/get-us-cite?212+297) (1909).