# 2AC

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**We meet – remove authority to do**

**Exclusion is a war power**

**IRLI 10** [Immigration Reform Law Institute]

(MOTION FOR LEAVE TO FILE BRIEF OUT OF TIME AND BRIEF OF AMICUS CURIAE IMMIGRATION REFORM LAW INSTITUTE IN SUPPORT OF RESPONDENTS, www.americanbar.org/content/dam/aba/publishing/preview/publiced\_preview\_briefs\_pdfs\_09\_10\_08\_1234\_RespondentAmCuIRLAmotion.authcheckdam.pdf)

The question presented is whether **the Executive Branch has the authority to exclude, expel, and detain foreigners,** in accordance with the immigration laws as prescribed by Congress and **through the Executive’s war power.** The plenary power of the political branches to exclude and expel foreigners from the United States has been recognized by the Court for over a century. Chae Chan Ping v. United States, 130 U.S. 581, 609 (1889); Bridges v. Wixon, 326 U.S. 135, 161 (1945) (“[Because] an alien . . . brings with him no constitutional rights, Congress may exclude him in the first instance for whatever reason it sees fit”). It is a power that is inherent within each nation’s sovereignty, and can only be limited by treaty, statute, or some other express constitutional limitation. Fong Yue Ting v. United States, 149 U.S. 698, 705 (1893); Kleindienst v. Mandel, 408 U.S. 753, 765-66 (1972) Should the Court grant Petitioners habeas corpus relief, Petitioners cannot seek the remedy of admission into the territorial United States. It is well established that Congress sets the laws by which the Executive Branch may exclude foreigners from entering this country. Harisiades v. Shaughnessy, 342, U.S. 580, 588-89 (1952) (“It is pertinent to observe that **any policy towards aliens is vitally and intricately interwoven with contemporaneous policies in regard to** the conduct of foreign relations**, the** **war power**, and the maintenance of a republican form of government. Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or inference”). However, **the Executive Branch may** also **exclude foreigners in the interests of national security under the war power** and in the interests of self-preservation of government. **The Executive’s power to exercise such exclusion does not require war, for any “internal dangers short of war . . . may lead to its use**” that are within the constraints prescribed by Congress. Id. at 518.

#### The President’s “war powers” authority is his ability to conduct war

Gerald G. Howard - Spring, 2001, Senior Notes and Comments Editor for the Houston Law Review, COMMENT: COMBAT IN KOSOVO: IGNORING THE WAR POWERS RESOLUTION, 38 Hous. L. Rev. 261, LexisNexis

[\*270] The issue, then, becomes one of defining and monitoring the authority of the political leader in a democratic nation. Black's Law Dictionary defines "war power" as "the constitutional authority of Congress to declare war and maintain armed forces, and of the President to conduct war as commander-in-chief." n45 The power and authority of United States political leaders to conduct war stems from two documents: the United States Constitution and the War Powers Resolution. n46 One must understand each of these sources of authority to properly assess the legality of the combat operations in Kosovo.

#### Authority is legally granted permission

Taylor, 1996 (Ellen, 21 Del. J. Corp. L. 870 (1996), Hein Online)

The term authority is commonly thought of in the context of the law of agency, and the Restatement (Second) of Agency defines both power and authority.'89 Power refers to an agent's ability or capacity to produce a change in a legal relation (whether or not the principal approves of the change), and authority refers to the power given (permission granted) to the agent by the principal to affect the legal relations of the principal; the distinction is between what the agent can do and what the agent may do.

Predictions

#### Calculating key to ethical engagement in the world – trying to identify with suffering directly fails

Santilli, Philosophy Professor at Siena College, ‘3 (Paul, May 22, “Radical Evil, Subjection, and Alain Badiou’s Ethics of the Truth Event” World Congress of the international Society for Universal Dialogue, www.isud.org/papers/pdfs/Santilli.pdf)

From the standpoint of an ethics of subjection there is even something unnecessary or superfluous about the void of suffering in the subject bearers of evil. For Levinas, the return to being from the ethical encounter with the face and its infinite depths is fraught with the danger the subject will reduce the other to a "like-me," totalizing and violating the space of absolute alterity. As Chalier puts it, "Levinas conceives of the moral subject's awakening, or the emergence of the human in being, as a response to that pre-originary subjection which is not a happenstance of being."28 But if there really is something inaccessible about suffering itself, about the 'other' side of what is manifestly finite, subjected, and damaged, then to a certain extent it is irrelevant to ethics, as irrelevant as the judgment of moral progress in the subject-agent. Let me take the parent-child relation again as an example. Suppose the child to exhibit the symptoms of an illness. Are not the proper "ethical" questions for the parent to ask questions of measure and mathematical multiples: How high is the fever? How long has it lasted? How far is the hospital? Can she get out of bed? Has this happened before? These are the questions of the doctor, the rescue squads and the police. They are questions about being, about detail, causes and effects. Ethically our response to the needs of must be reduced to a positivity simply because we have access to nothing but the symptoms, which are like mine. Our primary moral responsibility is to treat the symptoms that show up in being, not the radically other with whom I cannot identify. Say we observe someone whose hands have been chopped off with a machete. How would we characterize this? Would it not be slightly absurd to say, "He had his limbs severed and he suffered," as though the cruel amputation were not horror enough. Think of the idiocy in the common platitude: "She died of cancer, but thank God, she did not suffer", as though the devastating annihilation of the human by a tumor were not evil itself. For ethics, then, the only suffering that matters are the visible effects of the onslaught of the world. All other suffering is excessive and inaccessible. Therefore, it is in being, indeed in the midst of the most elemental facts about ourselves and other people, that we ethically encounter others by responding to their needs and helping them as best we can.

It is precisely by identifying being and not pretending that we know any thing about suffering, other than it is a hollow in the midst of being, that we can act responsibly. What worries me about Levinas is that by going beyond being to what he regards as the ethics of absolute alterity, he risks allowing the sheer, almost banal facticity of suffering to be swallowed in the infinite depths of transcendence. Indeed, it seems to me that Levinas too often over emphasizes the importance of the emergence of the subject and the inner good in the ethical encounter, as though the point of meeting the suffering human being was to come to an awareness of the good within oneself and not to heal and repair. I agree with Chalier's observation that Levinas's "analyses adopt the point of view of the moral subject, not that of a person who might be the object of its solicitude."29 Ethics has limits; there are situations like the Holocaust where to speak of a moral responsibility to heal and repair seems pathetic. But an ethics that would be oriented to the vulnerabilities of the subjected (which are others, of course, but also myself) needs to address the mutilation, dismemberment, the chronology of torture, the numbers incarcerated, the look of the bodies, the narratives, the blood counts, the mines knives, machetes, and poisons. Evil really is all that. When the mind does its work, it plunges into being, into mathematical multiples and starts counting the cells, the graveyards, and bullet wounds. Rational practical deliberation is always about the facts that encircle the void inaccessible to deliberation and practical reason.

#### No link – we don’t use apocalyptic rhetoric. There are no extinction scenarios in the 1AC.

#### **Predictions most ethical – failure of preventative action and predictions drives structural violence and inequality, only actions that act to preserve future generations can resolve power relations**

Kurasawa‘4,

(Fuyuki, Assistant Prof. of Sociology @ York University, Cautionary Tales, Constellations Vol. 11, No. 4, Blackwell Synergy)

In the previous section, I described how the capacity to produce, disseminate, and receive warning signals regarding disasters on the world stage has developed in global civil society. Yet the fact remains that audiences may let a recklessness or insouciance toward the future prevail, instead of listening to and acting upon such warnings. There is no doubt that the short-sightedness and presentism are strong dynamics in contemporary society, which is enveloped by a “temporal myopia” that encourages most individuals to live in a state of chronological self-referentiality whereby they screen out anything that is not of the moment.22 The commercial media, advertising, and entertainment industries are major contributors to this “tyranny of real time”23 that feeds a societal addiction to the ‘live’ and the immediate while eroding the principle of farsightedness. The infamous quip attributed to Madame de Pompadour, ‘après nous, le déluge,’ perfectly captures a sense of utter callousness about the future that represents one of presentism’s most acute manifestations. Two closely related notions underlie it: the belief that we should only concern ourselves with whether our actions, or lack thereof, have deleterious consequences visible to us in the short-to medium-term (temporally limited responsibility); and sheer indifference toward the plight of those who will come after us (generational self-centeredness). Substantively, the two are not much different because they shift the costs and risks of present-day decisions onto our descendants. “The crisis of the future is a measure of the deficiency of our societies, incapable as they are of assessing what is involved in relationships with others,” Bindé writes. “This temporal myopia brings into play the same processes of denial of others as social shortsightedness. The absence of solidarity in time between generations merely reproduces selfishness in space within the same generation.”24 Thus, to the NIMBY (‘not-in-my-back-yard’) politics of the last few decades can be added the ‘not-in-my-lifetime’ or ‘not-to-my-children’ lines of reasoning. For members of dominant groups in the North Atlantic region, disasters are something for others to worry about – that is, those who are socio-economically marginal, or geographically and temporally distant. The variations on these themes are numerous. One is the oft-stated belief that prevention is a luxury that we can scarcely afford, or even an unwarranted conceit. Accordingly, by minimizing the urgency or gravity of potential threats, procrastination appears legitimate. Why squander time, energy, and resources to anticipate and thwart what are, after all, only hypothetical dangers? Why act today when, in any case, others will do so in the future? Why not limit ourselves to reacting to cataclysms if and when they occur? A ‘bad faith’ version of this argument goes even further by seeking to discredit, reject, or deny evidence pointing to upcoming catastrophes. Here, we enter into the domain of deliberate negligence and “culpable ignorance,”25 as manifest in the apathy of US Republican administrations toward climate change or the Clinton White House’s disengenuous and belated responses to the genocides in ex-Yugoslavia and Rwanda. At another level, instrumental-strategic forms of thought and action, so pervasive in modern societies because institutionally entrenched in the state and the market, are rarely compatible with the demands of farsightedness. The calculation of the most technically efficient means to attain a particular bureaucratic or corporate objective, and the subsequent relentless pursuit of it, intrinsically exclude broader questions of long-term prospects or negative side-effects. What matters is the maximization of profits or national self-interest with the least effort, and as rapidly as possible. Growing risks and perils are transferred to future generations through a series of trade-offs: economic growth versus environmental protection, innovation versus safety, instant gratification versus future well-being. What can be done in the face of short-sightedness? Cosmopolitanism provides some of the clues to an answer, thanks to its formulation of a universal duty of care for humankind that transcends all geographical and socio-cultural borders. I want to expand the notion of cosmopolitan universalism in a temporal direction, so that it can become applicable to future generations and thereby nourish a vibrant culture of prevention. Consequently, we need to begin thinking about a farsighted cosmopolitanism, a chrono-cosmopolitics that takes seriously a sense ¶ of “intergenerational solidarity” toward human beings who will live in our wake as much as those living amidst us today.26 But for a farsighted cosmopolitanism to take root in global civil society, the latter must adopt a thicker regulative principle of care for the future than the one currently in vogue (which amounts to little more than an afterthought of the non-descript ‘don’t forget later generations’ ilk). Hans Jonas’s “imperative of responsibility” is valuable precisely because it prescribes an ethico-political relationship to the future consonant with the work of farsightedness.27 Fully appreciating Jonas’s position requires that we grasp the rupture it establishes with the presentist assumptions imbedded in the intentionalist tradition of Western ethics. In brief, intentionalism can be explained by reference to its best-known formulation, the Kantian categorical imperative, according to which the moral worth of a deed depends upon whether the a priori “principle of the will” or “volition” of the person performing it – that is, his or her intention – should become a universal law.28 Ex post facto evaluation of an act’s outcomes, and of whether they correspond to the initial intention, is peripheral to moral judgment. A variant of this logic is found in Weber’s discussion of the “ethic of absolute ends,” the “passionate devotion to a cause” elevating the realization of a vision of the world above all other considerations; conviction without the restraint of caution and prudence is intensely presentist.29 By contrast, Jonas’s strong consequentialism takes a cue from Weber’s “ethic of responsibility,” which stipulates that we must carefully ponder the potential impacts of our actions and assume responsibility for them – even for the incidence of unexpected and unintended results. Neither the contingency of outcomes nor the retrospective nature of certain moral judgments exempts an act from normative evaluation. On the contrary, consequentialism reconnects what intentionalism prefers to keep distinct: the moral worth of ends partly depends upon the means selected to attain them (and vice versa), while the correspondence between intentions and results is crucial. At the same time, Jonas goes further than Weber in breaking with presentism by advocating an “ethic of long-range responsibility” that refuses to accept the future’s indeterminacy, gesturing instead toward a practice of farsighted preparation for crises that could occur.30 From a consequentialist perspective, then, intergenerational solidarity would consist of striving to prevent our endeavors from causing large-scale human suffering and damage to the natural world over time. Jonas reformulates the categorical imperative along these lines: “Act so that the effects of your action are compatible with the permanence of genuine human life,” or “Act so that the effects of your action are not destructive of the future possibility of such life.”31 What we find here, I would hold, is a substantive and future-oriented ethos on the basis of which civic associations can enact the work of preventive foresight.

#### Policymakers will inevitably make predictions – failure to use explicit risk calculation causes poor decision-making

Fitzsimmons, Defence Analyst, ‘7 (Michael, Winter, “The Problem of Uncertainty in Strategic Planning” Survival)

In defence of prediction Uncertainty is not a new phenomenon for strategists. Clausewitz knew that ‘many intelligence reports in war are contradictory; even more are false, and most are uncertain’. In coping with uncertainty, he believed that ‘what one can reasonably ask of an officer is that he should possess a standard of judgment, which he can gain only from knowledge of men and affairs and from common sense. He should be guided by the laws of probability.’34 Granted, one can certainly allow for epistemological debates about the best ways of gaining ‘a standard of judgment’ from ‘knowledge of men and affairs and from common sense’. Scientific inquiry into the ‘laws of probability’ for any given strate- gic question may not always be possible or appropriate. Certainly, analysis cannot and should not be presumed to trump the intuition of decision-makers. Nevertheless, Clausewitz’s implication seems to be that the burden of proof in any debates about planning should belong to the decision-maker who rejects formal analysis, standards of evidence and probabilistic reasoning. Ultimately, though, the value of prediction in strategic planning does not rest primarily in getting the correct answer, or even in the more feasible objective of bounding the range of correct answers. Rather, prediction requires decision- makers to expose, not only to others but to themselves, the beliefs they hold regarding why a given event is likely or unlikely and why it would be important or unimportant. Richard Neustadt and Ernest May highlight this useful property of probabilistic reasoning in their renowned study of the use of history in decision-making, Thinking in Time. In discussing the importance of probing presumptions, they contend: The need is for tests prompting questions, for sharp, straightforward mechanisms the decision makers and their aides might readily recall and use to dig into their own and each others’ presumptions. And they need tests that get at basics somewhat by indirection, not by frontal inquiry: not ‘what is your inferred causation, General?’ Above all, not, ‘what are your values, Mr. Secretary?’ ... If someone says ‘a fair chance’ ... ask, ‘if you were a betting man or woman, what odds would you put on that?’ If others are present, ask the same of each, and of yourself, too. Then probe the differences: why? This is tantamount to seeking and then arguing assumptions underlying different numbers placed on a subjective probability assessment. We know of no better way to force clarification of meanings while exposing hidden differences ... Once differing odds have been quoted, the question ‘why?’ can follow any number of tracks. Argument may pit common sense against common sense or analogy against analogy. What is important is that the expert’s basis for linking ‘if’ with ‘then’ gets exposed to the hearing of other experts before the lay official has to say yes or no.’35 There are at least three critical and related benefits of prediction in strate- gic planning. The first reflects Neustadt and May’s point – prediction enforces a certain level of discipline in making explicit the assumptions, key variables and implied causal relationships that constitute decision-makers’ beliefs and that might otherwise remain implicit. Imagine, for example, if Shinseki and Wolfowitz had been made to assign probabilities to their opposing expectations regarding post-war Iraq. Not only would they have had to work harder to justify their views, they might have seen more clearly the substantial chance that they were wrong and had to make greater efforts in their planning to prepare for that contingency. Secondly, the very process of making the relevant factors of a decision explicit provides a firm, or at least transparent, basis for making choices. Alternative courses of action can be compared and assessed in like terms. Third, the transparency and discipline of the process of arriving at the initial strategy should heighten the decision-maker’s sensitivity toward changes in the environment that would suggest the need for adjustments to that strategy. In this way, prediction enhances rather than under-mines strategic flexibility. This defence of prediction does not imply that great stakes should be gambled on narrow, singular predictions of the future. On the contrary, the central problem of uncertainty in plan- ning remains that any given prediction may simply be wrong. Preparations for those eventualities must be made. Indeed, in many cases, relatively unlikely outcomes could be enormously consequential, and therefore merit extensive preparation and investment. In order to navigate this complexity, strategists must return to the dis- tinction between uncertainty and risk. While the complexity of the international security environment may make it somewhat resistant to the type of probabilistic thinking associated with risk, a risk-oriented approach seems to be the only viable model for national-security strategic planning. The alternative approach, which categorically denies prediction, precludes strategy. As Betts argues, Any assumption that some knowledge, whether intuitive or explicitly formalized, provides guidance about what should be done is a presumption that there is reason to believe the choice will produce a satisfactory outcome – that is, it is a prediction, however rough it may be. If there is no hope of discerning and manipulating causes to produce intended effects, analysts as well as politicians and generals should all quit and go fishing.36 Unless they are willing to quit and go fishing, then, strategists must sharpen their tools of risk assessment. Risk assessment comes in many varieties, but identification of two key parameters is common to all of them: the consequences of a harmful event or condition; and the likelihood of that harmful event or condition occurring. With no perspective on likelihood, a strategist can have no firm perspective on risk. With no firm perspective on risk, strategists cannot purposefully discriminate among alternative choices. Without purposeful choice, there is no strategy. \* \* \* One of the most widely read books in recent years on the complicated relation- ship between strategy and uncertainty is Peter Schwartz’s work on scenario-based planning, The Art of the Long View. Schwartz warns against the hazards faced by leaders who have deterministic habits of mind, or who deny the difficult implications of uncertainty for strategic planning. To overcome such tenden- cies, he advocates the use of alternative future scenarios for the purposes of examining alternative strategies. His view of scenarios is that their goal is not to predict the future, but to sensitise leaders to the highly contingent nature of their decision-making.37 This philosophy has taken root in the strategic-planning processes in the Pentagon and other parts of the US government, and properly so. Examination of alternative futures and the potential effects of surprise on current plans is essential. Appreciation of uncertainty also has a number of organisational impli- cations, many of which the national-security establishment is trying to take to heart, such as encouraging multidisciplinary study and training, enhancing information sharing, rewarding innovation, and placing a premium on speed and versatility. The arguments advanced here seek to take nothing away from these imperatives of planning and operating in an uncertain environment. But appreciation of uncertainty carries hazards of its own. Questioning assumptions is critical, but assumptions must be made in the end. Clausewitz’s ‘standard of judgment’ for discriminating among alternatives must be applied. Creative, unbounded speculation must resolve to choice or else there will be no strategy. Recent history suggests that unchecked scepticism regarding the validity of prediction can marginalise analysis, trade significant cost for ambig- uous benefit, empower parochial interests in decision-making, and undermine flexibility. Accordingly, having fully recognised the need to broaden their strategic-planning aperture, national-security policymakers would do well now to reinvigorate their efforts in the messy but indispensable business of predicting the future.

### Deference

#### Reject deference—if the court overreaching, Congress can fill in and ensure executive authority, but there’s no comparable check on executive overreaching—star this argument

Jinks and Katyal 7 [April, 2007, Derek Jinks is Assistant Professor of Law, University of Texas School of Law. Neal Kumar Katyal is Professor of Law, Georgetown University Law Center, “Disregarding Foreign Relations Law”, 116 Yale L.J. 1230]

Courts say that the nation must speak in "one voice" in its foreign policy; the executive can do this, while Congress and the courts cannot. They say that the executive has expertise and flexibility, can keep secrets, can efficiently monitor developments, and can act quickly and decisively; the other branches cannot. As emphasized in Chevron, the executive, unlike the judiciary, is politically accountable as well as uniquely knowledgeable ... . n78¶ This line of reasoning misses the mark in several important respects and, in our view, offers no good reason to augment the deference already accorded executive interpretations of international law. First, there is no reason to conclude that the current scope of judicial deference unacceptably impedes the ability of the President to respond to a crisis. Second, wholly adequate checking mechanisms limit the power of the courts to foist unwelcome interpretations of international law on the political branches. Consider a few examples. The political branches, in the course of negotiating, ratifying, performing, and otherwise implementing U.S. treaty obligations, undertake a series of actions that signal, and at times establish, the U.S. interpretation of specific treaty terms. When the United States has authoritatively and discernibly embraced an interpretation of its treaty obligations, courts give effect to this interpretation. n79 The President might also issue formal interpretations of U.S. treaty obligations through the proper exercise of his substantial lawmaking (or delegated rulemaking) n80 authority. n81 In addition, the President has the constitutional [\*1251] authority to execute the laws - this power almost certainly includes the authority to terminate, suspend, or withdraw from treaties in accordance with international law. Congress has the constitutional authority to abrogate, in whole or in part, U.S. treaty obligations via an ordinary statute - a lawmaking process that, of course, includes the President. Augmenting the law-interpreting (and lawbreaking) power of the President drastically diminishes the role of courts - thereby effectively depriving international law in the executive-constraining zone of its capacity to constrain meaningfully and, [\*1252] consequently, its status as enforceable "law." Such an expansion of the President's authority also subverts the institutional capacity (and hence, the political will) of Congress to regulate the executive in these domains. These themes merit some elaboration.¶ Exigency does not compel a rejection of the status quo. Indeed, Posner and Sunstein's article is not concerned with whether the President can put boots on the ground without a statute; rather, it is addressed to litigation and what courts should do, typically years after the fact. Speed is often irrelevant. n82 So, too, is accountability. The legislature is just as accountable as the executive. And textually, of course, Congress has a strong role to play in the incorporation of international law into the domestic sphere, from its Article I, Section 8 powers to "declare War," to "make Rules concerning Captures on Land and Water," and to "punish ... Offences against the Law of Nations," to the Senate's Article II, Section 2 power to ratify treaties. n83¶ In one sense, then, our disagreement centers around default rules. Posner and Sunstein acknowledge that Congress can specify an antidelegation/ antideference principle. n84 Yet oddly, their whole article frames the relevant issue as the competence of the executive branch versus that of the judiciary. But given the fact that this tussle between the executive and the judiciary will always play out within a matrix set by the legislature, it is not quite appropriate to compare the foreign policy expertise of the executive branch with that of the courts. n85 After all, Congress could specify a prodelegation/prodeference policy [\*1253] most of the time as well. (In fact, it has repeatedly done so. n86) The more precise question is which entity is better suited to interpret a legislative act of some ambiguity, when international law principles would yield an answer that restrains the executive branch.¶ Once the question is properly framed, much of Posner and Sunstein's challenge to the status quo falls out. Most crucially, they fail to account for a dynamic statutory process - through which mistakes (if any) made by courts in the area can be corrected by the legislature. Such legislative corrections can take place in both the statutory and the treaty realm. If a court reads a statute in light of international law principles and Congress disagrees with those principles, it can rewrite the statute. And if a court reads a treaty to constrain the executive in a way Congress does not like, it can trump the treaty, in whole or in part, with a statute under the "last-in-time" rule. n87 More fundamentally, the Senate can define the role of courts up front - during the ratification process - by attaching to the instrument of ratification specific reservations, declarations, or understandings concerning the judicial enforceability of the treaty. n88¶ With a stylized account that criticizes the relative competence of the judiciary, Posner and Sunstein make it appear that a judicial decision in foreign affairs is the last word. But that set of events would rarely, if ever, unfold in this three-player game. If the courts err in a way that fails to give the executive enough power, Congress will correct them. Surely national security is not an area rife with process failures. In that sense, current law works better than the Posner and Sunstein proposal because it forces democratic deliberation before international law is violated.¶ For this reason, it obscures more than it illuminates to say that "the courts, and not the executive, might turn out to be the fox." n89 Such language assumes [\*1254] a stagnant legislative process, so that the choice is "court" versus "executive," when the real choice is really "court + Congress." That is to say, if the courts grab power in a way that undermines the executive, Congress can correct them. The relevant calculus turns on which type of judicial error is more likely to be resolved, one in which the court wrongly sides with the President (in which case Congress would have to surmount the veto) or one in which the court wrongly sides against the President (in which case the veto would be unlikely to be a barrier to corrective legislation).¶ Recall that Posner and Sunstein are not addressing their argument to constitutional holdings by courts, but statutory ones that are the subject of Chevron deference. There is much to criticize when courts declare government practices unconstitutional in the realm of foreign affairs, as those practices cannot then be resuscitated by the legislature absent a constitutional amendment. But when a court's holding centers on a statutory interpretation, the dynamic legislative process ensures that the judiciary will not have the last word.¶ Indeed, in this statutory area, the risks of judicial error are asymmetric - that is, judicial decisions that side with the President are far less likely to be the subject of legislative correction than those that side against him. While contemporary case law and theory have not taken the point into account, we believe that they provide a powerful reason to reject Posner and Sunstein's proposal. Our claim centers on the President's veto power and how the structure of the Constitution imposes serious hurdles when Congress tries to modify existing statutes to restrict presidential power.¶ Suppose that, for example, the President asserts that the Detainee Treatment Act, n90 sponsored by Senator John McCain and others to prohibit the torture of detainees, does not forbid a particular practice, such as waterboarding. A group of plaintiffs, in contrast, argue that standard principles of international law and treaties ratified by the Senate forbid waterboarding, and that these principles require reading the statute to forbid the practice. Now imagine that the matter goes to the Supreme Court. The risks from judicial error are not equivalent. If the Court sides with the plaintiffs, the legislature can - presumably with presidential encouragement - modify the statute to permit waterboarding, provided that a bare majority of Congress agrees. The [\*1255] prospect of legislative revision explains why many of the criticisms of the Supreme Court's involvement in the war on terror thus far are entirely overblown. n91¶ Now take the other possibility - that the Court sides with the President. In such a case, it is virtually impossible to alter the decision. That would be so even if everyone knew that the legislative intent at the time of the Act was to forbid waterboarding. Even if, after that Court decision, Senator McCain persuaded every one of his colleagues in the Senate to reverse the Court's interpretation of the Detainee Treatment Act and to modify the Act to prohibit waterboarding, the Senator would also have to persuade a supermajority in the House of Representatives. After all, the President would be able to veto the legislation, thus upping the requisite number of votes necessary from a bare majority to two-thirds. And his veto power functions ex ante as a disincentive even to begin the legislative reform process, as Senators are likely to spend their resources and time on projects that are likely to pass. n92¶ So what Posner and Sunstein seek is not a simple default rule, but one with a built-in ratchet in favor of presidential power. The President can take, under the guise of an ambiguous legislative act, an interpretation that gives him striking new powers, have that interpretation receive deference from the courts, and then lock the interpretation into place for the long term by brandishing his veto power. For authors who assert structural principles as [\*1256] their touchstone, Posner and Sunstein's omission of the veto is striking and provides a lopsided view of what would happen under their proposal.

#### Defer to empirics—Judicial review has minimal impact on military operations

Vladeck 12 [10/01/12, Professor Stephen I. Vladeck of the Washington College of Law at American University, “Detention Policies: What Role for Judicial Review?”, http://www.abajournal.com/magazine/article/detention\_policies\_what\_role\_for\_judicial\_review/)]

Irony pervades Greg Jacob’s hortatory defense of the current state of the D.C. Circuit’s jurisprudence regarding U.S. detainee policy. On the one hand, Jacob sings the praises of the Court of Appeals for adopting standards that are “flexible and fair” in the Guantanamo cases, and for “ensuring that detainees are not held at the whim of the executive and with no supporting evidence, while recognizing that judicial review of military detentions requires some reasonable alterations to the habeas standards to which we are more accustomed.” Never mind that the D.C. Circuit has yet to rule on the merits in favor of a single detainee (and has repeatedly reversed grants of habeas relief by the district court), or that its jurisprudence has in various places manifested thinly veiled—if not downright overt—hostility to the Supreme Court’s decision in Boumediene. From Jacob’s perspective, one can look to the work of the D.C. Circuit with respect to Guantanamo as striking the “appropriate balance” between the government’s compelling interests and the rights (such as they are) of the detainees—and more generally as a model for how courts should approach “the vagaries of habeas litigation.” And yet, at the same time, Jacob praises the D.C. Circuit for virtually foreclosing judicial review of the detention of noncitizens anywhere else in the world in Maqaleh v. Gates, suggesting that, “absent extraordinary circumstances, the cost to security of judicial interference in active overseas military operations outweighs the liberty cost of potentially erroneous detentions pursuant to those operations.” Jacob offers no evidence of the “cost to security of judicial interference in active overseas military operations,” nor does he proffer any explanation for why the D.C. Circuit wouldn’t approach such detentions with equal (if not greater) deference to the government’s interests—for why the same approach he celebrates in one part of his essay doesn’t suggest that judicial review would not be disruptive elsewhere. Instead, it’s enough merely to assert that “Maqaleh requires the judiciary to exercise some humility and defer to most military detention decisions in active theaters of war.” Of course, even this conclusion marginalizes the most relevant fact in Maqaleh—that none of the three petitioners were actually seized in an “active theater … of war.” Instead, the government chose to move the detainees into a theater of active combat operations for the purpose of detention. The D.C. Circuit held that this point was irrelevant to the availability of habeas unless the detainees could prove that the government’s purpose in so moving them was to avoid judicial review. But logically, if the government’s true goal was to avoid judicial interference with active combat operations—rather than to avoid judicial review regardless—moving the detainees into an active theater of war seems a rather odd decision, to say the least. Reasonable minds may well disagree about the result in Maqaleh. The larger question that I’m left with after Jacob’s response, though, is why we should be so afraid of judicial review. After all, no one has identified a single example in the Guantanamo litigation in which classified information was improperly disclosed by a detainee’s counsel. Add that to the fact that the government has prevailed in every case in which it appealed a district court’s grant of habeas relief or in which the detainee appealed the denial. Taken together, these points bespeak a record in which judicial review has done exceedingly little to jeopardize the government’s interests. Indeed, it may have had the opposite effect, as I described in my initial contribution, of lending legitimacy to our detention program both at Guantanamo and elsewhere. At minimum, it has had the salutary effect of requiring the government to make its case before a neutral magistrate, something that, in the case of an overwhelming majority of the men who have since been released from Guantanamo, it declined to even attempt.

#### Exigent decisionmaking leads to ineffective action and undermines US credibility

O’Neil 11 [Winter, 2011, Robin O'Neil, “THE PRICE OF PURITY: WEAKENING THE EXECUTIVE MODEL OF THE UNITED STATES' COUNTER-TERROR LEGAL SYSTEM”, 47 Hous. L. Rev. 1421]

Those opposed to enacting anti-terror policy through the regular bicameral process criticize the legislative method as being ill-suited for responding to threats to national security because of the time it requires before any plan of action may be [\*1446] implemented. n160 Unilateral executive action certainly permits greater speed in enacting policy decisions and may be preferable in urgent situations that call for swift action. n161 Under the pure form of the executive model, the executive is theoretically limited only by the time it takes him or her to divine the strategy, policy, or act. In contrast, the weak form of the executive model's preference for congressionally enacted counter-terror policy does tend to slow the pace at which new strategies are put in place. Fast action, however, even in exigent circumstances, does not necessarily equate effective action. n162 Feeling compelled to react immediately in a crisis situation can lead the executive to act impulsively, without considering potentially more effective alternatives. n163 For example, the violent interrogation sessions that followed the sudden executively authorized departure from longstanding international rules regarding the treatment of detainees caused great domestic and international controversy during the Bush Administration, and compromised the United States' credibility abroad. n164

#### There’s no impact even if a Court messes up foreign policy

Knowles 9 [Spring, 2009, Robert Knowles is an Acting Assistant Professor, New York University School of Law, “American Hegemony and the Foreign Affairs Constitution”, ARIZONA STATE LAW JOURNAL, 41 Ariz. St. L.J. 87]

But there are limits. Although speed matters a great deal during crises, its importance diminishes over time and other institutional competences assume greater importance. When decisions made in response to emergencies are cemented into policy over the course of years, the courts' institutional capabilities - information-forcing and stabilizing characteristics - serve an important role in evaluating those policies. n394 Once a sufficient amount of time has passed, the amount of deference given to executive branch determinations should be reduced so that it matches domestic deference standards. One of the core realist arguments for deference, the risk of collateral consequences, carries far less weight under a hegemonic model. Court decisions have consequences for third parties in the domestic realm all of the time. Given the hierarchical nature of U.S. hegemony, the response from other nations is likely to be more similar to the response by domestic parties than in the past. A typical example invoked by deferentialists involves a court decision - for example, recognizing the government of Taiwan - that angers the Chinese government. n395 Although such a scenario is not out of the question, there are several reasons why the consequences would not be as dire as often predicted by deferentialists. American military dominance [\*151] makes it highly unlikely that war would result from such an incident. n396 Moreover, China, too, cares about legitimacy and is far more likely to retaliate in some other way, possibly harming the United States' interests, but through means that would capture attention in the U.S. domestic realm, leading to accountability opportunities. Assuming that the decision is non-constitutional, the Chinese government could seek to have its preferred interpretation enacted into law. Indeed, it is entirely possible that other nations would be content with conflicting decisions from different branches of the U.S. government. Suppose that the President roundly condemns the offensive court decision and declares the judge to be an "activist." If the damage done by the court decision was largely dignitary, an angry denouncement from the executive branch may be all that is needed. Past empires relied on multi-vocal signaling to maintain imperial rule. n397 But with the advent of globalization, intra-executive branch multi-vocality is much more difficult because advances in co mmunication permit various parts of the "rim" to communicate with one another. n398 The American separation-of-powers system provides a way around this problem, allowing the U.S. government to "speak in different voices" at once.

### XO

#### Judicial action is key to judicial globalization

Flaherty—executive

Key to Modeling—Suto, CJA, and Kersch

#### Internal executive actions don’t restore legitimacy—still perceived as not credible independent of the action taken

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These are unhappy developments for the president who in his first inaugural address pledged with supercilious confidence that, unlike his predecessor, he would not expend the "rule of law" for "expedience's sake." Obama reportedly bristles at the legal and political questions about his secret war, and the lack of presidential trust that they imply. "This is not Dick Cheney we're talking about here," he recently pleaded to Democratic senators who complained about his administration's excessive secrecy on drones, according to Politico. And yet the president has ended up in this position because he committed the same sins that led Cheney and the administration in which he served to a similar place. The first sin is an extraordinary institutional secrecy that Obama has long promised to reduce but has failed to. In part this results from any White House's inevitable tendency to seek maximum protection for its institutional privileges and prerogatives. The administration's disappointing resistance to sharing secret legal opinions about the secret war with even a small subset of Congress falls into this category. MUCH OF WHAT THE ADMINISTRAT-ION SAYS ABOUT ITS SECRET WAR SEEMS INCOMPLETE, SELF-SERVING, AND ULTIMATELY NON-CREDIBLE. But the point goes deeper, for secrecy is the essence of the type of war that Obama has chosen to fight. The intelligence-gathering in foreign countries needed for successful drone strikes there cannot be conducted openly. Nor can lethal operations in foreign countries easily be acknowledged. Foreign leaders usually insist on non-acknowledgment as a condition of allowing American operations in their territories. And in any event, an official American confirmation of the operations might spark controversies in those countries that would render the operations infeasible. The impossible-to-deny bin Laden raid was a necessary exception to these principles, and the United States is still living with the fallout in Pakistan. For official secrecy abroad to work, the secrets must be kept at home as well. In speeches, interviews, and leaks, Obama's team has tried to explain why its operations abroad are lawful and prudent. But to comply with rules of classified information and covert action, the explanations are conveyed in limited, abstract, and often awkward terms. They usually raise more questions than they answer—and secrecy rules often preclude the administration from responding to follow-up questions, criticisms, and charges. As a result, much of what the administration says about its secret war—about civilian casualties, or the validity of its legal analysis, or the quality of its internal deliberations—seems incomplete, self-serving, and ultimately non-credible. These trust-destroying tendencies are exacerbated by its persistent resistance to transparency demands from Congress, from the press, and from organizations such as the aclu that have sought to know more about the way of the knife through Freedom of Information Act requests. A related sin is the Obama administration's surprising failure to secure formal congressional support. Nearly every element of Obama's secret war rests on laws—especially the congressional authorization of force (2001) and the covert action statute (1991)—designed for different tasks. The administration could have worked with Congress to update these laws, thereby forcing members of Congress to accept responsibility and take a stand, and putting the secret war on a firmer political and legal foundation. But doing so would have required extended political efforts, public argument, and the possibility that Congress might not give the president precisely what he wants. The administration that embraced the way of the knife in order to lower the political costs of counterterrorism abroad found it easier to avoid political costs at home as well. But this choice deprived it of the many benefits of public argumentation and congressional support. What Donald Rumsfeld said self-critically of Bush-era unilateralism applies to Obama's unilateralism as well: it fails to "take fully into account the broader picture—the complete set of strategic considerations of a president fighting a protracted, unprecedented and unfamiliar war for which he would need sustained domestic and international support." Instead of seeking contemporary congressional support, the administration has relied mostly on government lawyers' secret interpretive extensions of the old laws to authorize new operations against new enemies in more and more countries. The administration has great self-confidence in the quality of its stealth legal judgments. But as the Bush administration learned, secret legal interpretations are invariably more persuasive within the dark circle of executive branch secrecy than when exposed to public sunlight. On issues ranging from proper targeting standards, to the legality of killing American citizens, to what counts as an "imminent" attack warranting self-defensive measures, these secret legal interpretations—so reminiscent of the Bushian sin of unilateral legalism—have been less convincing in public, further contributing to presidential mistrust. Feeling the heat from these developments, President Obama promised in his recent State of the Union address "to engage with Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world." So far, this promise, like similar previous ones, remains unfulfilled. The administration has floated the idea of "[shifting] the CIA's lethal targeting program to the Defense Department," as The Daily Beast reported last month. Among other potential virtues, this move might allow greater public transparency about the way of the knife to the extent that it would eliminate the covert action bar to public discussion. But JSOC's non-covert targeted killing program is no less secretive than the CIA's, and its congressional oversight is, if anything, less robust. A bigger problem with this proposed fix is that it contemplates executive branch reorganization followed, in a best-case scenario, by more executive branch speeches and testimony about what it is doing in its stealth war. The proposal fails to grapple altogether with the growing mistrust of the administration's oblique representations about secret war. The president cannot establish trust in the way of the knife through internal moves and more words. Rather, he must take advantage of the separation of powers. Military detention, military commissions, and warrantless surveillance became more legitimate and less controversial during the Bush era because adversarial branches of government assessed the president's policies before altering and then approving them. President Obama should ask Congress to do the same with the way of the knife, even if it means that secret war abroad is harder to conduct. Administration officials resist this route because they worry about the outcome of the public debate, and because the president is, as The Washington Post recently reported, "seen as reluctant to have the legislative expansion of another [war] added to his legacy." But the administration can influence the outcome of the debate only by engaging it. And as Mazzetti makes plain, the president's legacy already includes the dramatic and unprecedented unilateral expansion of secret war. What the president should be worried about for legacy purposes is that this form of warfare, for which he alone is today responsible, is increasingly viewed as illegitimate.

#### Perm do both—solves the NB because Obama will be seen as taking the lead

#### Perm do the CP

Anthro 2AC

#### 1. Framework – the affirmative should get to imagine a world of fiat in which the plan happens.

#### That’s best

#### a. Evaluating reps first moots the 1ac and means the aff never wins.

#### b. Teaches us about policy implementation – that’s good education – teaches us cost benefit analysis and decisionmaking

#### 2. Their argument is ethically naïve—ethics should be grounded in direct experience—pain and consciousness should be our moral guidelines.

**Phelps 2k9** Norm, animal rights activist and author of The Longest Struggle: Animal Advocacy from Pythagoras to PETA, “The Quest for a Boundless Ethic: A Reassessment of Albert Schweitzer” Journal for Critical Animal Studies, VII.1,

Here, Schweitzer makes no distinction between the way we should treat sentient and insentient beings. It is life defined as the ability to grow and reproduce that grants ethical standing, not the ability to experience suffering and joy. For reasons that I will discuss in a moment, this constitutes an ethical naïveté that would surprise us in a thinker of Schweitzer’s depth and originality if we had not encountered the same naïveté in his one-man crusade to re-make European civilization and reverse the flow of history. Schweitzer’s errors are often the errors of noble overreaching. In the Preface to Fear and Trembling, Soren Kierkegaard identified the cardinal sin of 19th century philosophy (and Schweitzer is nothing if not a 19th century philosopher) as the urge to “go beyond” established and accepted principles that have stood the test of time. And Kierkegaard’s critique of “going beyond”—that it becomes a denial of the original principle and, therefore, instead of going beyond it, falls short of it—applies to “reverence for life” as well. By trying to go beyond love and compassion, Schweitzer’s ethic—as defined in The Philosophy of Civilization—fails even to equal it. To Will or to Want, That is the Question Like its English cognate, the German noun Wille—at least in everyday usage—implies intention and desire, and therefore, consciousness. Likewise, the related verb wollen (first and third person singular, present active indicative: will), which can be translated into English as either “to will” or “to want,” is the common, everyday verb meaning “to want.” When a German speaker wants a stein of beer, she says “Ich will ein Stein.” “I want to go home” is “Ich will nach Haus gehen.” In the jargon of 19th century German philosophy, however, especially the bastardized Buddhism of Arthur Schopenhauer, the noun Wille acquired the meaning of a vital, but impersonal, force that is the ultimate reality underlying the world of appearances that we experience day-to-day. With this in mind, let’s revisit a statement of Schweitzer’s that I quoted above in the standard English translation. In Schweitzer’s original German, “I am life which wills to live, in the midst of life which wills to live,” is “Ich bin Leben, dass leben will, inmitten von Leben, dass leben will” (Association Internationale), which can just as easily, and a lot more naturally, be translated, “I am life that wants to live surrounded by life that wants to live.” But the translator could not use the more straightforward, natural translation because “wants” implies conscious desire, and Schweitzer makes it clear in the passage about not picking a leaf or plucking a flower that he is including in Leben, “life,” everything that grows and reproduces, not simply beings who are sentient and conscious. In the course of identifying his own will-to-live with all other wills-to-live, Schweitzer systematically confuses the technical, Schopenhaurian meaning of Wille with the commonsense, everyday meaning, a confusion that is facilitated by the happenstance that wollen can mean both “want” and “will.” We can empathize with other wills to live, he tells us, because we can experience our own. But **if another will-to-live cannot experience itself** (or anything else), what is there to empathize with? Consciousness can empathize with consciousness, but to say that consciousness can empathize with an unconscious force is to commit a pathetic fallacy. In short, Schweitzer anchors his ethical thinking to consciousness, which he initially identifies with the “will-to-live.” But he then uses the dual meaning of “will” to extend his ethic to unconscious beings, apparently failing to realize that he has cut it loose from its original moorings. This equivocation is the undoing of reverence for life as Schweitzer describes it in The Philosophy of Civilization. An ethic based on love and compassion is grounded directly in experience. I know from immediate, undeniable experience that my pain is evil. Therefore, I can empathize with your pain and know apodictically that it is also evil. The empathy of an ethic based on love and compassion is a valid empathy. An ethic based on will-to-live understood (at least sometimes) as distinct from and prior to consciousness is grounded in an intellectual abstraction, not direct experience. In this regard, Schweitzer’s “will-to-live” differs little from Descartes’ “thought”. Its empathy is an illusion of abstract thinking. To use Schweitzer’s examples that I quoted above, if I crush an insect I have destroyed a will-to-live that is conscious of itself and wants to continue living, wants to experience pleasure and avoid pain. I know that this is evil because I know directly, immediately, unarguably, that it would be evil if done to me. But neither the leaf nor the tree, the flower nor the plant on which it grows, is conscious. And so when I tear a leaf from a tree or pluck a flower, I do nothing wrong unless I indirectly harm a sentient being, such as a caterpillar for whom the leaf was food or shelter or a honeybee who needs the nectar from the flower. I have caused no pain. I have deprived of life nothing that wanted to live, nothing, in fact, that experienced life in any way. In terms of the suffering I have caused, I might as well have broken a rock with a hammer. All sentient beings are valid objects of love and compassion, and only sentient beings are valid objects of love and compassion. Comparing the crushing of an insect to pulling a leaf from a tree or picking a flower trivializes the crushing of the insect by negating the insect’s consciousness, and it is in that regard that reverence for life, as Schweitzer originally conceived it, falls short of an ethic based on love and compassion by trying to reach beyond it.

#### 3. No Link - We don’t do anything comparative of humans to species centered thinking.

#### 5. Perm Do Both - only politics can settle the question of value judgments. Their alternative is nihilist and refuses the need to still act in the face of value uncertainty.

Linda Zerilli 2009 (prof of political science, University of Chicago, Signs 2009, Toward a Feminist Theory of Judgment)

As an alternative epistemology that makes visible the irreducible relations of power in claims to knowledge, there is much to recommend in Haraway’s notion of “limited location and situated knowledge” (1991, 190), as there is in other iterations of standpoint theory. The question, however, is whether the problem of judgment that concerns us here, namely, cross-cultural judgment as a practical problem of feminist politics, can be properly addressed if we hold to the idea that such judgment is fundamentally a problem of having a (more) critical epistemology. An affirmative answer to this question would assume that political problems are fundamentally philosophical/epistemological ones and, further, that the basis of feminism as a critical enterprise is epistemology. As much as I appreciate the contributions of standpoint theory, I want to resist framing the political problem of judgment in epistemological terms. Not only do such terms continually land feminists, notwithstanding their cogent rebuttals (Harding 1986a), back in—if not the crisis—then the problem of relativism and thus rationalism, they are also terms that keep us from seeing judgment as a practical problem of a first-order discourse, namely, politics, which has no philosophical/epistemological secondorder solution.9 This is not because no claims to knowledge and truth are at stake in politics—surely they are—but rather because whether a claim is critical or dogmatic, accepted as valid or not, is “a practical matter of actions and historical context and not abstract issues of epistemic privilege” (Gunnell 1993, 576). It simply cannot be settled at the level of philosophy/epistemology, as if once we have the rules for deciding the question of validity we will be able to adjudicate the significant kinds of practical challenges that are associated with making judgments in the global context of widespread value pluralism. This is the mistake made by Benhabib and Nussbaum, who took for granted that feminist judgments in the register of politics need philosophy/epistemology to underwrite them. In this way, they not only felt that they had to defeat cultural relativism as a kind of epistemological claim but also missed what is really at stake in making cross-cultural judgments, namely, an ability to form an opinion about the particular qua particular precisely in the absence of known rules. If we understand our predicament in terms of relativism, we shall continually be tempted, notwithstanding awareness of the dangers of rationalism, to seek transcontextual criteria and grounds for political judgment, lest we be critically impaired, utterly unable to judge. The threat that relativism supposedly poses to our ability to make judgments in the firstorder discourses that concern us, then, is something we do well to question. It is a picture that holds us captive, to paraphrase Ludwig Wittgenstein (1968, sec. 115), because our epistemologically and philosophically inflected language of politics repeats it to us inexorably. But what would it mean to think about the problem of judgment in terms other than the threat of relativism? Beyond relativism Let us try to bypass the crisis of relativism, and the entire epistemological problematic in which it arises, by turning to the thought of Hannah Arendt. In her view, judgment emerges as a problem in the wake of the collapse of inherited criteria for judgment, or what she calls the final “break in tradition” (1993a, 15) that marked the definitive political event of the twentieth century, namely, totalitarianism. For Arendt, however, the collapse of the shared criteria of judgment represents a practical, first-order problem that has no philosophical, second-order solution. It is not a problem of relativism in the sense of a loss of criteria of judgment that can be solved through the reestablishment of such criteria. On the contrary, it is the very idea that criteria must be given as universal rules governing from above the application of concepts to the particulars of political life that has, in her view, led partly to the breakdown of the capacity to judge critically in the first place. And it is only with the breakdown of such criteria, she argues, that the power of critical judgment can come into its own. Thus, where others see relativism and a crisis of judgment, Arendt sees the chance to practice judgment critically anew. In her effort to foreground judgment as a critical capacity of democratic citizenship precisely once the rules for judgment have collapsed, Arendt (1982) turns to Immanuel Kant’s third Critique (1987). She questions the idea that judgment is the faculty of subsuming particulars under known rules (which is how Kant defined the determinative judgment that he associated with cognitive judgments). Judging is less an act of subsuming, argues Arendt, and more an act of discerning and differentiating (which is how Kant defined the reflective judgment that he associated with aesthetic judgments).10 Arendt’s point is not to contest the idea that we often do subsume particulars under rules (e.g., “this is a war”), but rather to foreground the features of judgment that characterize it as critical value judgment (e.g., “this war is unjust”). The act of mere subsumption that is at stake in a determinative judgment, though far from easy, is not fully reflective and critical, for it mobilizes particulars to confirm the generality of concepts. Lost is the particularity of the particular itself, the “this” that refers to this war and to no other. In the realm of politics, Arendt argues, we have always to do with opinion and thus with value judgments that cannot be adjudicated by an appeal to the objective truth criteria and the ability to give proofs that are at stake in the validity of cognitive (determinative) judgments (see Zerilli 2006). Following Kant’s account of judgments of taste, Arendt (1982) holds that, if political judgments are not objective in the aforementioned sense, neither are they merely subjective, matters of individual or cultural preference. To paraphrase Kant, the judgment “this painting is beautiful” is different from the claim “I like canary wine;” it would be ridiculous to say, this painting “is beautiful for me” (Kant 1987, sec. 7); the judgment of beauty posits or, more precisely, anticipates the agreement of others. Likewise, if I say, “this war is unjust,” I do not mean it is unjust for me but that others too ought to find it unjust. Whether others find it so is another matter, one that cannot be settled by claims to epistemic authority or privilege (knowing which criteria to apply and how to apply them) but that must be worked out in the difficult first-order practice of politics itself, that is, by means of persuasion and the exchange of opinions. Political judgments solicit the agreement of all, but they cannot compel it, as the philosophers and epistemologists would have us believe, in the manner of giving proofs. To argue, as the rationalist tradition has, that practical judgment will be paralyzed in the absence of transcontextual criteria of application is to accept the top-down conception of judgment as a practice of subsumption that Arendt would have us question. The real threat of nihilism is not the loss of standards as such but the refusal to accept the consequences of that loss. The idea that by holding fast to universal criteria we shall avoid a crisis of critical judging neglects the very real possibility that such rules can function as a mental crutch that inhibits our capacity to judge critically. What matters from the perspective of our critical capacities is not the content of the rules as such but the very dependence on rules (Arendt 1971, 436). Rules are like a banister to which we hold fast for fear of losing our footing and not being able to judge at all. The problem with this top-down understanding of judgment is that it leaves whatever rules we employ more or less unexamined; their normativity becomes the takenforgranted basis for every claim to validity. We then risk not only ethnocentricism but also losing the critical purchase that the act of judging might give us on our own rules and standards.

# 1AR

#### Human-centeredness is a pre-requisite to care for the environment

Light 2 – Professor of environmental philosophy

Andrew Light, professor of environmental philosophy and director of the Environmental Conservation Education Program, 2002, Applied Philosophy Group at New York University, METAPHILOSOPHY, v33, n4, July, p. 561

It should be clear by now that endorsing a method­ological environmental pragmatism requires an ac­ceptance of some form of anthropocentrism in envi­ronmental ethics, if only because we have sound empirical evidence that humans think about the value of nature in human terms and pragmatists insist that we must pay attention to how humans think about the value of nature. Indeed, as I said above, it is a common presupposition among committed nonan­thropocentrists that the proposition that humans are anthropocentrist is true, though regrettable. There are many problems involved in the wholesale rejec­tion of anthropocentrism by most environmental philosophers. While I cannot adequately explain my reservations to this rejection, for now I hope the reader will accept the premise that not expressing reasons for environmental priorities in human terms seriously hinders our ability to communicate a moral basis for better environmental policies to the public. Both anthropocentric and nonanthropocentric claims should be open to us.