# 1nc

## t – test case

Judicial action requires a test case

Oxford Companion to the US Supreme Court no date (http://www.answers.com/topic/test-case)

A test case has usually been thought of as one in which an individual, but more likely an interest group, initiates a case in order to challenge the constitutionality, or perhaps a particular disliked interpretation, of a statute. There are other situations that, although somewhat different from this traditional sense of “test case,” can also be loosely called “test cases.” Some people challenge laws, not necessarily with the thought of “going to the Supreme Court,” but simply because the laws are thought improper, but their cases end up in the Supreme Court; examples are provided by civil rights demonstrators who sat in at restaurants in the South in the 1950s and 1960s. Their convictions on a variety of misdemeanor charges provided convenient opportunities for the federal courts to speak out against racial discrimination. Others might specifically provoke arrest under a statute, with the intention that the case reach the high court, as occurred after Congress in 1989 passed a statute against flag burning. In still other situations, when individuals run afoul of a law they did not specifically seek to break, a lawyer taking their case may challenge the statute's validity rather than try to avoid a conviction.¶ The examples just noted are relatively recent civil liberties or civil rights situations. Instances of test cases are also found in economic regulation: many challenges to New Deal regulatory legislation were intentionally brought by businesses, their trade associations, or conservative interest groups like the Liberty Lobby. Test cases can be found much earlier as well. One example is the famous “separate but equal” case, Plessy v. Ferguson (1896), which resulted from a concerted effort by some lawyers, joined by railroads, to invalidate Jim Crow statutes; another was an effort by conservatives to challenge the federal income tax through action masked in a collusive suit, Pollock v. Farmers' Loan and Trust Company (1895).

The plan doesn’t provide or specify one – that’s a voter

Kills neg ground – all of our court links are based on precedence as a result of specific test cases – makes disad link ground impossibly unstable

Limits – allows a court ruling on almost anything – not real world and kills court education

## 1nc war powers

Korematsu is a key precedent – it’s the foundation of modern judicial deference to presidential war powers

Friedman 12 [FRIEDMAN, JOSHUA L. (Attorney Advisor@US Social Sec. Admin., Office of Disability Adjud. & Review; JD@U of Maryland; MBA@U of Baltimore); “EMERGENCY POWERS OF THE EXECUTIVE: THE PRESIDENT'S AUTHORITY WHEN ALL HELL BREAKS LOOSE”; Journal Of Law & Health 25(2):265-306; July 2012]

Indeed**, the judicial record is replete with controversy over** theExecutive emergency powers. n167 In **Ex parte Milligan**, the Court noted that "[t]he Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances." n168 This statement **is just the beginning of discourse** against **broadening Executive powers in emergency scenarios**. The Court further reasons that "[n]o doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or [\*282] despotism." n169 According to the Milligan Court, the government, acting within the confines of the Constitution, has "all the powers granted to it, which are necessary to preserve its existence." n170 When the executive branch failed to follow the necessary and proper procedures that were established by Congress, the President took "measures incompatible with the expressed or implied will of Congress." n171

This result was intended to address the prevailing opinion at the time that, according to Justice Jackson in Youngstown, "[the Framers] knew what emergencies were, knew the pressures they engender for authoritative action, knew, too, how they afford a ready pretext for usurpation . . . they suspected that emergency powers would tend to kindle emergencies." n172 Justice Jackson argued that the Framers did not envision a constitutional conception of emergency powers for the Executive and did not intend to broaden these same powers except with Congressional or judicial oversight. n173

**In more recent decisions, the Court** has ventured off the historical path **by refusing to impede the Executive in the** exercise of its emergency powers. In Hirabayashi, the Court concluded that, "[w]here . . . the conditions call for the exercise of judgment and discretion and for the choice of means by those branches of the Government on which the Constitution has placed the responsibility of war-making, it is not for any court to sit in review of the wisdom of their action or to substitute its judgment for theirs." n174 The Court dictated that it could not reasonably intrude on delicate matters where the Executive has discretion. n175 The Court also specifically referred to the Executive's emergency powers in Hibayashi, when it stated that "it is enough that circumstances within the knowledge of those charged with the responsibility for maintaining the national defense afforded a rational basis for the decision which they made. Whether we would have made it is irrelevant." n176

Similarly, **in** Korematsu**, the Court held that "when under conditions of modern warfare our shores are threatened by hostile forces, the** power to protect must be commensurate with the threatened danger." n177 **This is** clearly applicable **to a domestic emergency scenario.** While a President must be permitted to act outside of the boundaries of congressional authority in an emergency scenario, the Court has dictated that a standing President cannot be permitted to act beyond the boundaries of reason. n178

**The expansive "rational basis" standard of Hirabayashi and** Korematsu carries weight even as recent as 2011, **when** President **Obama argued that he had the right to** [\*283] **engage in warfare through military operations in Libya.** n179 **The administration contended that U.S. forces in Libya engaged in "a limited and well-defined mission in support of international efforts to protect civilians and prevent a humanitarian disaster."** n180 President **Obama argued that his actions were justified** absent a formal declaration of war against Libya, pursuant to U.N. Security Council Resolution of 1973, **and** that his actions were "**in the national securit**y and foreign policy **interests of the United States, pursuant to my constitutional authority** to conduct U.S. foreign relations and **as** Commander in Chief and **Chief Executive**." n181 **The Court noted** its dismay **that the claimants were attempting to circumvent constitutional authority to "achieve what appear to be purely political ends, when it should be clear to them that this Court is** powerless to depart from clearly established precedent **of the Supreme Court and the D**istrict of **C**olumbia **Circuit**." n182 On this basis, the Court dismissed the matter. n183

**This case echoes** the result in **Campbell v. Clinton**, when several members of Congress sued over President Clinton's military campaign in Yugoslavia. n184 **There, the Court found that Congress had a broad range of legislative remedies and could have noted their objection to the Yugoslavian mission in that manner, rather than appealing to the judiciary that was precluded from entering the fray due to the** political question doctrine. n185

It spills over to destabilize all presidential war powers.

Heder ’10

(Adam, J.D., magna cum laude , J. Reuben Clark Law School, Brigham Young University, “THE POWER TO END WAR: THE EXTENT AND LIMITS OF CONGRESSIONAL POWER,” St. Mary’s Law Journal Vol. 41 No. 3, <http://www.stmaryslawjournal.org/pdfs/Hederreadytogo.pdf>)

This constitutional silence invokes Justice Rehnquist’s oftquoted language from the landmark “political question” case, Goldwater v. Carter . 121 In Goldwater , a group of senators challenged President Carter’s termination, without Senate approval, of the United States ’ Mutual Defense Treaty with Taiwan. 122 A plurality of the Court held, 123 in an opinion authored by Justice Rehnquist, that this was a nonjusticiable political question. 124 He wrote: “In light of the absence of any constitutional provision governing the termination of a treaty, . . . the instant case in my view also ‘must surely be controlled by political standards.’” 125 Notably, Justice Rehnquist relied on the fact that there was no constitutional provision on point. Likewise, there is **no constitutional provision** on whether Congress has the legislative power to **limit, end, or otherwise redefine the scope of a war**. Though Justice Powell argues in Goldwater that the Treaty Clause and Article VI of the Constitution “add support to the view that the text of the Constitution does not unquestionably commit the power to terminate treaties to the President alone,” 126 **the same cannot be said about Congress’s legislative authority** to terminate or limit a war in a way that goes beyond its explicitly enumerated powers. There are no such similar provisions that would suggest Congress may decline to exercise its appropriation power but nonetheless legally order the President to cease all military operations. Thus, the case for deference to the political branches on this issue is even greater than it was in the Goldwater context. Finally, the Constitution does not imply any additional powers for Congress to end, limit, or redefine a war. The textual and historical evidence suggests the Framers purposefully **declined to grant Congress such powers**. And as this Article argues, granting Congress this power would be **inconsistent with the general war powers structure of the Constitution.** Such a reading of the Constitution would **unnecessarily empower Congress** and **tilt the scales heavily in its favor**. More over, it would strip the President of his Commander in Chief authority to direct the movement of troops at a time **when the Executive’s expertise is needed.** 127 And fears that the President will grow too powerful are unfounded, given the reasons noted above. 128 In short, the Constitution does not impliedly afford Congress any authority to prematurely terminate a war above what it explicitly grants. 129 Declaring these issues nonjusticiable political questions would be the most practical means of balancing the textual and historical demands, the structural demands, and the practical demands that complex modern warfare brings . Adjudicating these matters would only lead the courts to engage in impermissible line drawing — lines that would both confus e the issue and add layers to the text of the Constitution in an area where the Framers themselves declined to give such guidance.

War powers affect executive power – momentum of power

Weiner ’13 [Greg Weiner, 5/1/13, Liberty Forum, Liberty Forum is a platform for the discussion of the legal and philosophical principles that inform and govern a free people, “Congress and Deliberation in the Age of Woodrow Wilson: An Elegy,” http://www.libertylawsite.org/liberty-forum/congress-and-deliberation-in-the-age-of-wilson-an-elegy/, accessed 6/30/13, JTF]

Wilson ultimately found a strong Presidency useful for Progressive aims; contemporary neoconservatives have tended to find it hospitable to their goals in national security and foreign affairs.[2] But they would do well to remember that the power inheres in the office, not the function. It is difficult to quarantine it to a single purpose. If Congress is emasculated on matters of foreign policy it can hardly assert itself on issues of domestic affairs, just as a President who possesses extraordinary powers to wage war on terror is sure to claim them to wage war on purported domestic crises too. President Obama already has, threatening Congress to its face in the State of the Union address that either it would act on climate change or he would, the two courses apparently being interchangeable.

Strong foreign affairs Obama solves warming

**Wold ‘12**

Christopher, Professor of Law & Director, International Environmental Law Project (IELP), Lewis & Clark Law School, “Climate Change, Presidential Power, and Leadership: “We Can’t Wait”

In 2007, then-Senator Barack Obama wrote, “As the world’s largest producer of greenhouse gases, America has the **responsibility** to lead.” 1 As President, he has led. At the domestic level, working primarily through the Environmental Protection Agency, President Obama has increased fuel economy standards,2 imposed new limits on greenhouse gas emissions from “major emitting facilities,” 3 and imposed limits on emissions relating to the development of oil and gas,4 among many other things.5 As he has said, he must use his **executive power** **because “We Can’t Wait” for Congress to act on climate change**.6 Nonetheless, he must do more. President Obama has pledged to the international community that the United States will reduce its greenhouse gases by 17% of 2005 levels by 2020 and by 83% by 2050.7The President has also set a goal of ensuring that “[b]y 2035 we will generate 80 percent of our electricity from a diverse set of clean energy sources—including renewable energy sources like wind, solar, biomass, and hydropower; nuclear power; efficient natural gas; and clean coal.” 8 None of his actions come close to meeting these goals. Moreover, he must do more to help the international community reach its goal of keeping average global temperatures from increasing 2°C above pre-industrial levels.9 **Many scientists argue** that the 2°C goal can be met, and the worst impacts of climate change avoided, if we keep carbon dioxide concentrations below 350 parts per million (ppm). 10 As of July 2012, atmospheric concentrations of carbon dioxide exceeded 394 ppm.11 The United States is by far the largest historic contributor to these high levels of atmospheric carbon dioxide, having contributed 28.52% of carbon dioxide from energy.12 As such, the United States must do much more to ensure that the world’s largest historic emitter of greenhouse gases fulfills its moral and perhaps **legal obligation to reduce greenhouse gases** before we reach climate change tipping points beyond which climate change will be irreversible for millennia to come. And indeed, President Obama can do much more. As described below, the president can use his foreign affairs power **to take a more positive role on** the international stage, whether that stage is the climate change negotiations, the negotiations concerning other international treaties, or within the World Trade Organization. He can also do more with his executive power, not only by increasing existing standards but also by applying them to existing sources of greenhouse gases, not just new sources. Further, President Obama has so far failed to take advantage of strategies to mitigate emissions of short-term climate forcers such as black carbon that could provide significant climate benefits. Lastly, the approaches adopted so far have not pushed regulated entities or others to develop the transformative technologies that will be needed to deliver sufficient climate change benefits to avert the environmental and economic crisis that lies ahead if we fail to take more aggressive action. Section II of this article summarizes the climate change challenges facing humanity. Section III reviews the major climate-related actions supported and adopted by President Obama. Section IV describes how these actions fall short of what is needed and the additional steps that the President can take. Section V concludes that, while congressional action is preferable to presidential action, the President has many more climate change mitigation opportunities available to him. His failure to pursue them will have grave consequences for the United States and the world.

Extinction

**Flournoy 12** (Citing Dr. Feng Hsu, a NASA scientist at the Goddard Space Flight Center, in 2012, Don Flournoy, PhD and MA from the University of Texas, Former Dean of the University College @ Ohio University, Former Associate Dean @ State University of New York and Case Institute of Technology, Project Manager for University/Industry Experiments for the NASA ACTS Satellite, Currently Professor of Telecommunications @ Scripps College of Communications @ Ohio University, Citing Dr. "Solar Power Satellites," Chapter 2: What Are the Principal Sunsat Services and Markets?, January, Springer Briefs in Space Development, Book)

In the Online Journal of Space Communication, Dr. Feng Hsu, a NASA scientist at Goddard Space Flight Center, a research center in the forefront of science of space and Earth, writes, “The evidence of global warming is alarming,” noting the potential for a catastrophic planetary climate change is real and troubling (Hsu 2010). Hsu and his NASA colleagues were engaged in monitoring and analyzing cli- mate changes on a global scale, through which they received first-hand scientific information and data relating to global warming issues, including the dynamics of polar ice cap melting. After discussing this research with colleagues who were world experts on the subject, he wrote: I now have no doubt global temperatures are rising, and that global warming is a serious problem confronting all of humanity. No matter whether these trends are due to human interference or to the cosmic cycling of our solar system, there are two basic facts that are crystal clear: (a) there is overwhelming scientific evidence showing positive correlations between the level of CO2 concentrations in Earth’s atmosphere with respect to the historical fluctuations of global temperature changes; and (b) the overwhelming majority of the world’s scientific community is in agreement about the risks of a potential catastrophic global climate change. That is, if we humans continue to ignore this problem and do noth- ing, if we continue dumping huge quantities of greenhouse gases into Earth’s biosphere, humanity will be at dire risk (Hsu 2010). As a technology risk assessment expert, Hsu says he can show with some confi- dence that the planet will face more risk doing nothing to curb its fossil-based energy addictions than it will in making a fundamental shift in its energy supply. “This,” he writes, “is because the risks of a catastrophic anthropogenic climate change can be potentially the extinction of human species, a risk that is simply too high for us to take any chances” (Hsu 2010). It was this NASA scientist’s conclusion that humankind must now embark on the next era of “sustainable energy consumption and re-supply, the most obvious source of which is the mighty energy resource of our Sun” (Hsu 2010) (Fig. 2.1).

## 1nc legalism

The affirmative re-inscribes the primacy of liberal legalism as a method of restraint—that paradoxically collapses resistance to Executive excesses.

**Margulies ‘11**

Joseph, Joseph Margulies is a Clinical Professor, Northwestern University School of Law. He was counsel of record for the petitioners in Rasul v. Bush and Munaf v. Geren. He now is counsel of record for Abu Zubaydah, for whose torture (termed harsh interrogation by some) Bush Administration officials John Yoo and Jay Bybee wrote authorizing legal opinions. Earlier versions of this paper were presented at workshops at the American Bar Foundation and the 2010 Law and Society Association Conference in Chicago., Hope Metcalf is a Lecturer, Yale Law School. Metcalf is co-counsel for the plaintiffs/petitioners in Padilla v. Rumsfeld, Padilla v. Yoo, Jeppesen v. Mohammed, and Maqaleh v. Obama. She has written numerous amicus briefs in support of petitioners in suits against the government arising out of counterterrorism policies, including in Munaf v. Geren and Boumediene v. Bush., “Terrorizing Academia,” http://www.swlaw.edu/pdfs/jle/jle603jmarguilies.pdf

In an observation more often repeated than defended, we are told that the attacks of September 11 “changed everything.” Whatever merit there is in this notion, it is certainly true that 9/11—and in particular the legal response set in motion by the administration of President George W. Bush—left its mark on the academy. Nine years after 9/11, it is time to step back and assess these developments and to offer thoughts on their meaning. In Part II of this essay, we analyze the post-9/11 scholarship produced by this “emergency” framing. We argue that legal scholars writing in the aftermath of 9/11 generally fell into one of three groups: unilateralists, interventionists, and proceduralists. Unilateralists argued in favor of tilting the allocation of government power toward the executive because the state’s interest in survival is superior to any individual liberty interest, and because the executive is best able to understand and address threats to the state. Interventionists, by contrast, argued in favor of restraining the executive (principally through the judiciary) precisely to prevent the erosion of civil liberties. Proceduralists took a middle road, informed by what they perceived as a central lesson of American history.1 Because at least some overreaction by the state is an inevitable feature of a national crisis, the most one can reasonably hope for is to build in structural and procedural protections to preserve the essential U.S. constitutional framework, and, perhaps, to minimize the damage done to American legal and moral traditions. Despite profound differences between and within these groups, legal scholars in all three camps (as well as litigants and clinicians, including the authors) shared a common perspective—viz., that repressive legal policies adopted by wartime governments are temporary departures from hypothesized peacetime norms. In this narrative, metaphors of bewilderment, wandering, and confusion predominate. The country “loses its bearings” and “goes astray.” Bad things happen until at last the nation “finds itself” or “comes to its senses,” recovers its “values,” and fixes the problem. Internment ends, habeas is restored, prisoners are pardoned, repression passes. In a show of regret, we change direction, “get back on course,” and vow it will never happen again. Until the next time, when it does. This view, popularized in treatments like All the Laws but One, by the late Chief Justice Rehnquist,2 or the more thoughtful and thorough discussion in Perilous Times by Chicago’s Geoffrey Stone,3 quickly became the dominant narrative in American society and the legal academy. **This narrative also figured heavily in the many challenges to Bush-era policies,** including by the authors. The narrative permitted litigators and legal scholars to draw upon what elsewhere has been referred to as America’s “civic religion”4 and to cast the courts in the role of hero-judges5 **whom we hoped would restore legal order.**6 But by framing the Bush Administration’s response as the latest in a series of regrettable but temporary deviations from a hypothesized liberal norm, the legal academy ignored the more persistent, and decidedly illiberal, authoritarian tendency in American thought to demonize communal “others” during moments of perceived threat. Viewed in this light, what the dominant narrative identified as a brief departure caused by a military crisis is more accurately seen as part of a recurring process of intense stigmatization tied to periods of social upheaval, of which war and its accompanying repressions are simply representative (and particularly acute) illustrations. It is worth recalling, for instance, that the heyday of the Ku Klux Klan in this country, when the organization could claim upwards of 3 million members, was the early-1920s, and that the period of greatest Klan expansion began in the summer of 1920, almost immediately after the nation had “recovered” from the Red Scare of 1919–20.7 Klan activity during this period, unlike its earlier and later iterations, focused mainly on the scourge of the immigrant Jew and Catholic, and flowed effortlessly from the anti-alien, anti-radical hysteria of the Red Scare. Yet this period is almost entirely unaccounted for in the dominant post-9/11 narrative of deviation and redemption, which in most versions glides seamlessly from the madness of the Red Scare to the internment of the Japanese during World War II.8 And because we were studying the elephant with the wrong end of the telescope, we came to a flawed understanding of the beast. In Part IV, we argue that the interventionists and unilateralists came to an incomplete understanding by focusing almost exclusively on what Stuart Scheingold called “the myth of rights”—the belief that if we can identify, elaborate, and secure judicial recognition of the legal “right,” **political structures and policies will adapt their behavior to the requirements of the law** and change will follow more or less automatically.9 Scholars struggled to define the relationship between law and security primarily through exploration of structural10 and procedural questions, and, to a lesser extent, to substantive rights. And they examined the almost limitless number of subsidiary questions clustered within these issues. Questions about the right to habeas review, for instance, generated a great deal of scholarship about the handful of World War II-era cases that the Bush Administration relied upon, including most prominently Johnson v. Eisentrager and Ex Parte Quirin. 11 Regardless of political viewpoint, a common notion among most unilateralist and interventionist scholars was that when law legitimized or delegitimized a particular policy, **this would have a direct and observable effect on actual behavior**. The premise of this scholarship, in other words, was that policies “struck down” by the courts, or credibly condemned as lawless by the academy, would inevitably be changed—and that this should be the focus of reform efforts. Even when disagreement existed about the substance of rights or even which branch should decide their parameters, it reflected shared acceptance of the primacy of law, often to the exclusion of underlying social or political dynamics. Eric Posner and Adrian Vermeule, for instance, may have thought, unlike the great majority of their colleagues, that the torture memo was “standard fare.”12 But their position nonetheless accepted the notion that if the prisoners had a legal right to be treated otherwise, then the torture memo authorized illegal behavior and must be given no effect.13 Recent developments, however, cast doubt on two grounding ideas of interventionist and unilateralist scholarship—viz., that post-9/11 policies were best explained as responses to a national crisis (and therefore limited in time and scope), and that the problem was essentially legal (and therefore responsive to condemnation by the judiciary and legal academy). One might have reasonably predicted that in the wake of a string of Supreme Court decisions limiting executive power, apparently widespread and bipartisan support for the closure of Guantánamo during the 2008 presidential campaign, and the election of President Barack Obama, which itself heralded a series of executive orders that attempted to dismantle many Bush-era policies, the nation would be “returning” to a period of respect for individual rights and the rule of law. Yet the period following Obama’s election has been marked by an increasingly retributive and venomous narrative surrounding Islam and national security. **Precisely when the dominant narrative would have predicted change** and redemption, we have seen retreat and retrenchment. This conundrum is not adequately addressed by dominant strands of post-9/11 legal scholarship. In retrospect, it is surprising that much post-9/11 scholarship appears to have set aside critical lessons from previous decades as to the relationship among law, society and politics.14 Many scholars have long argued in other contexts that rights—or at least the experience of rights—are subject to political and social constraints, particularly for groups subject to historic marginalization. Rather than self-executing, rights are better viewed as contingent political resources, capable of mobilizing public sentiment and generating social expectations.15 From that view, a victory in Rasul or Boumediene no more guaranteed that prisoners at Guantánamo would enjoy the right to habeas corpus than a victory in Brown v. Board16 guaranteed that schools in the South would be desegregated.17 Rasul and Boumediene, therefore, should be seen as part (and probably only a small part) of a varied and complex collection of events, including the fiasco in Iraq, the scandal at the Abu Ghraib prison, and the use of warrantless wiretaps, as well as seemingly unrelated episodes like the official response to Hurricane Katrina. These and other events during the Bush years merged to give rise to a powerful social narrative critiquing an administration committed to lawlessness, content with incompetence, and engaged in behavior that was contrary to perceived “American values.”18 Yet the very success of this narrative, culminating in the election of Barack Obama in 2008, produced quiescence on the Left, even as it stimulated massive opposition on the Right. The result has been the emergence of a counter-narrative about national security that has produced a vigorous social backlash such that most of the Bush-era policies will continue largely unchanged, at least for the foreseeable future.19 Just as we see a widening gap between judicial recognition of rights in the abstract and the observation of those rights as a matter of fact, there appears to be an emerging dominance of proceduralist approaches, which take as a given that rights dissolve under political pressure, and, thus, are best protected by basic procedural measures. But that stance falls short in its seeming readiness to trade away rights in the face of political tension. First, it accepts the tropes du jour surrounding radical Islam—namely, that it is a unique, and uniquely apocalyptic, threat to U.S. security. In this, proceduralists do not pay adequate heed to the lessons of American history and sociology. And second, it endorses too easily the idea that procedural and structural protections will protect against substantive injustice in the face of popular and/or political demands for an outcome-determinative system that cannot tolerate acquittals. Procedures only provide protection, however, if there is sufficient political support for the underlying right. Since the premise of the proceduralist scholarship is that such support does not exist, it is folly to expect the political branches to create meaningful and robust protections. In short, a witch hunt does not become less a mockery of justice when the accused is given the right to confront witnesses. And a separate system (especially when designed for demonized “others,” such as Muslims) cannot, by definition, be equal. In the end, we urge a fuller embrace of what Scheingold called “the politics of rights,” which recognizes the contingent character of rights in American society. We agree with Mari Matsuda, who observed more than two decades ago that rights are a necessary but not sufficient resource for marginalized people with little political capital.20 To be effective, therefore, we must look beyond the courts and grapple with the hard work of long-term change with, through and, perhaps, in spite of law. These are by no means new dilemmas, but the post-9/11 context raises difficult and perplexing questions that deserve study and careful thought as our nation settles into what appears to be a permanent emergency.

Legalism underpins the violence of empire and creates the conditions of possibility for liberal violence.

Dossa ‘99

Shiraz, Department of Political Science, St. Francis Xavier University, Antigonish, Nova Scotia, “Liberal Legalism: Law, Culture and Identity,” The European Legacy, Vol. 4, No. 3, pp. 73-87,1

No discipline in the rationalized arsenal of modernity is as rational, impartial, objective as the province of law and jurisprudence, in the eyes of its liberal enthusiasts. Law is the exemplary countenance of the conscious and calculated rationality of modern life, **it is the** emblematic face of liberal civilization. Law and legal rules symbolize the spirit of science, the march of human progress. As Max Weber, the reluctant liberal theorist of the ethic of rationalization, asserted: judicial formalism enables the legal system to operate like a technically **rational machine**. Thus it guarantees to individuals and groups within the system a relative of maximum of freedom, and greatly increases for them the possibility of predicting the legal consequences of their action. In this reading, law encapsulates the western capacity to bring order to nature and human beings, to turn the ebb and flow of life into a "rational machine" under the tutelage of "judicial formalism".19 Subjugation of the Other races in the colonial empires was motivated by power and rapacity, but it was justified and indeed rationalized, by an appeal to the civilizing influence of religion and law: western Christianity and liberal law. To the imperialist mind, "the civilizing mission of law" was fundamental, though Christianity had a part to play in this program.20 Liberal colonialists visualized law, civilization and progress as deeply connected and basic, they saw western law as neutral, universally relevant and desirable. The first claim was right in the liberal context, the second thoroughly false. In the liberal version, the mythic and irrational, emblems of thoughtlessness and fear, had ruled all life-forms in the past and still ruled the lives of the vast majority of humanity in the third world; in thrall to the majesty of the natural and the transcendent, primitive life flourished in the environment of traditionalism and lawlessness, hallmarks of the epoch of ignorance. By contrast, liberal ideology and modernity were abrasively unmythic, rational and controlled. Liberal order was informed by knowledge, science, a sense of historical progress, a continuously improving future. But this canonical, secular, bracing self-image, is tendentious and substantively illusory: it blithely scants the bloody genealogy and the extant historical record of liberal modernity, liberal politics, and particularly liberal law and its impact on the "lower races" (Hobson). In his Mythology of Modern Law, Fitzpatrick has shown that the enabling claims of liberalism, specifically of liberal law, are not only untenable but implicated in canvassing a racist justification of its colonial past and in eliding the racist basis of the structure of liberal jurisprudence.21 Liberal law is mythic in its presumption of its neutral, objective status. Specifically, the liberal legal story of its immaculate, analytically pure origin obscures and veils not just law's own ruthless, violent, even savage and disorderly trajectory, but also its constitutive association with imperialism and racism.22 In lieu of the transcendent, divine God of the "lower races", modern secular law postulated the gods of History, Science, Freedom. Liberal law was to be the instrument for realizing the promise of progress that the profane gods had decreed. Fitzpatrick's invasive surgical analysis lays bare the underlying logic of law's self-articulation in opposition to the values of cultural-racial Others, and its strategic, continuous reassertion of liberalism's superiority and the civilizational indispensability of liberal legalism. Liberal law's self-presentation presupposes a corrosive, debilitating, anarchic state of nature inhabited by the racial Others and lying in wait at the borders of the enlightened modern West. This mythological, savage Other, creature of raw, natural, unregulated fecundity and sexuality, justified the liberal conquest and control of the racially Other regions.23 Law's violence and resonant savagery on behalf of the West in its imperial razing of cultures and lands of the others, has been and still is, justified in terms of the necessary, beneficial spread of liberal civilization. Fitzpatrick's analysis parallels the impassioned deconstruction of this discourse of domination initiated by Edward Said's Orientalism, itself made possible by the pioneering analyses of writers like Aime Cesaire and Frantz Fanon. Fitzpatrick's argument is nevertheless instructive: his focus on law and its machinations unravels the one concrete province of imperial ideology that is centrally modern and critical in literally transforming and refashioning the human nature of racial Others. For liberal law carries on its back the payload of "progressive", pragmatic, **instrumental modernity**, its ideals of order and rule of law, its articulation of human rights and freedom, its ethic of procedural justice, its hostility to the sacred, to transcendence or spiritual complexity, its recasting of politics as the handmaiden of the nomos, its valorization of scientism and rationalization in all spheres of modern life. Liberal law is not synonymous with modernity tout court, but it is the exemplary voice of its rational spirit, **the custodian of its civilizational ambitions.** For the colonized Others, no non-liberal alternative is available: a non-western route to economic progress is inconceivable in liberal-legal discourse. For even the truly tenacious in the third world will never cease to be, in one sense or another, the outriders of modernity: their human condition condemns them to **playing perpetual catch-up**, eternally subservient to Western economic and technological superiority in a epoch of self-surpassing modernity.24 If the racially Other nations suffer exclusion globally, the racially other minorities inside the liberal loop enjoy the ambiguous benefits of inclusion. As legal immigrants or refugees, they are entitled to the full array of rights and privileges, as citizens (in Canada, France, U.K., U.S—Germany is the exception) they acquire civic and political rights as a matter of law. Formally, they are equal and equally deserving. In theory liberal law is inclusive, but concretely it is routinely **partial and invidious**. Inclusion is conditional: it depends on how robustly the new citizens wear and deploy their cultural difference. Two historical facts account for this phenomenon: liberal law's role in western imperialism and the Western claim of civilizational superiority that pervades the culture that sustains liberal legalism. Liberal law, as the other of the racially Other within its legal jurisdiction, differentiates and locates this other in the enemy camp of the culturally raw, irreducibly foreign, making him an unreliable ally or citizen. Law's suspicion of the others socialized in "lawless" cultures is instinctive and undeniable. Liberal law's constitutive bias is in a sense incidental: the real problem is racism or the racist basis of liberal ideology and culture.25 The internal racial other is not the juridical equal in the mind of liberal law but the juridically and humanly inferior Other, the perpetual foreigner.

The alternative is to vote negative to endorse political, rather than legal restrictions on Presidential war powers authority.

**Goldsmith ‘12**

Jack, Harvard Law School Professor, focus on national security law, presidential power, cybersecurity, and conflict of laws, Former Assistant Attorney General, Office of Legal Counsel, and Special Counsel to the Department of Defense, Hoover Institution Task Force on National Security and Law, March 2012, Power and Constraint, p. 205-209

DAVID BRIN is a science-fiction writer who in 1998 turned his imagination to a nonfiction book about privacy called The Transparent Society. Brin argued that individual privacy was on a path to extinction because government surveillance tools—tinier and tinier cameras and recorders, more robust electronic snooping, and bigger and bigger databases—were growing irreversibly more powerful. His solution to this attack on personal space was not to erect privacy walls, which he thought were futile, but rather to induce responsible government action by turning the surveillance devices on the government itself. A government that citizens can watch, Brin argued, is one subject to criticism and reprisals for its errors and abuses, and one that is more careful and responsible in the first place for fear of this backlash. A transparent government, in short, is an accountable one. "If neo-western civilization has one great trick in its repertoire, a technique more responsible than any other for its success, that trick is accountability," Brin argues, "[e]specially the knack—which no other culture ever mastered—of making accountability apply to the mighty."' Brin's notion of reciprocal transparency is in some ways the inverse of the penological design known as a "panopticon," made famous by the eighteenth-century English utilitarian philosopher Jeremy Bentham. Bentham's brother Samuel had designed a prison in Paris that allowed an "inspector" to monitor all of the inmates from a central location without the prisoners knowing whether or when they were being watched (and thus when they might be sanctioned for bad behavior). Bentham described the panopticon prison as a "new mode of obtaining power of mind over mind" because it allowed a single guard to control many prisoners merely by conveying that he might be watching.' The idea that a "watcher" could gain enormous social control over the "watched" through constant surveillance backed with threats of punishment has proved influential. Michel Foucault invoked Bentham's panopticon as a model for how modern societies and governments watch people in order to control them.' George Orwell invoked a similar idea three decades earlier with the panoptical telescreen in his novel 1984. More recently, Yale Law School professor Jack Balkin used the panopticon as a metaphor for what he calls the "National Surveillance State," in which governments "use surveillance, data collection, and data mining technologies not only to keep Americans safe from terrorist attacks but also to prevent ordinary crime and deliver social services." The direction of the panopticon can be reversed, however, creating a "synopticon" in which many can watch one, including the government.' The television is a synopticon that enables millions to watch the same governmental speech or hearing, though it is not a terribly robust one because the government can control the broadcast. Digital technology and the Internet combine to make a more powerful synopticon that allows many individuals to record and watch an official event or document in sometimes surprising ways. Video recorders placed in police stations and police cars, cell-phone video cameras, and similar tools increase citizens' ability to watch and record government activity. This new media content can be broadcast on the Internet and through other channels to give citizens synoptical power over the government—a power that some describe as "sousveillance" (watching from below)! These and related forms of watching can have a disciplining effect on government akin to Brin's reciprocal transparency. The various forms of watching and checking the presidency described in this book constitute a vibrant presidential synopticon. Empowered by legal reform and technological change, the "many"—in the form of courts, members of Congress and their staff, human rights activists, journalists and their collaborators, and lawyers and watchdogs inside and outside the executive branch—constantly gaze on the "one," the presidency. Acting alone and in mutually reinforcing networks that crossed organizational boundaries, these institutions extracted and revealed information about the executive branch's conduct in war—sometimes to adversarial actors inside the government, and sometimes to the public. The revelations, in turn, forced the executive branch to account for its actions and enabled many institutions to influence its operations. The presidential synopticonalso promoted responsible executive action merely through its broadening gaze. One consequence of a panopticon, in Foucault's words, is "to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power."' The same thing has happened in reverse but to similar effect within the executive branch, where officials are much more careful merely by virtue of being watched. The presidential synopticon is in some respects not new. Victor Davis Hanson has argued that "war amid audit, scrutiny, and self-critique" has been a defining feature of the Western tradition for 2,500 years.' From the founding of the nation, American war presidents have been subject to intense scrutiny and criticism in the unusually open society that has characterized the United States. And many of the accountability mechanisms described in this book have been growing since the 1970s in step with the modern presidency. What is new, however, is the scope and depth of these modern mechanisms, their intense legalization, and their robust operation during wartime. In previous major wars the President determined when, how, and where to surveil, target, detain, transfer, and interrogate enemy soldiers, often without public knowledge, and almost entirely without unwanted legal interference from within the executive branch itself or from the other branches of government.' Today these decisions are known inside and outside the government to an unprecedented degree and are heavily regulated by laws and judicial decisions that are enforced daily by lawyers and critics inside and outside the presidency. Never before have Congress, the courts, and lawyers had such a say in day-to-day military activities; never before has the Commander in Chief been so influenced, and constrained, by law. This regime has many historical antecedents, but it came together and hit the Commander in Chief hard for the first time in the last decade. It did so because of extensive concerns about excessive presidential power in an indefinite and unusually secretive war fought among civilians, not just abroad but at home as well. These concerns were exacerbated and given credibility by the rhetoric and reality of the Bush administration's executive unilateralism—a strategy that was designed to free it from the web of military and intelligence laws but that instead galvanized forces of reaction to presidential power and deepened the laws' impact. Added to this mix were enormous changes in communication and collaboration technologies that grew to maturity in the decade after 9/11. These changes helped render executive branch secrets harder to keep, and had a flattening effect on the executive branch just as it had on other hierarchical institutions, making connections between (and thus accountability to) actors inside and outside the presidency much more extensive.

## 1nc pqd

The judiciary adheres to political question deference now—but doctrinal repudiation would reverse that.

Franck ‘12

Thomas, Murray and Ida Becker Professor of Law, New York University School of Law Wolfgang Friedmann Memorial Award 1999, *Political Questions/Judicial Answers*

Sensitive to this historical perspective, many scholars, but few judges, have openly decried the judiciary’s tendency to suspend at the water’s edge their jealous defense of the power to say what the law is. Professor Richard Falk, for example, has criticized judges’ “ad hoc subordinations to executive policy”5 and urged that if the object of judicial deference is to ensure a single coherent American foreign po1icy, then that objective is far more likely to be secured if the policy is made in accordance with rules “that are themselves not subject to political manipulation.”6 Moreover, as a nation publicly proclaiming its adherence to the rule of law, Falk notes, it is unedifying for America to refuse to subject to that rule the very aspect of its governance that is most important and apparent to the rest of the world.7 Professor Michael Tigar too has argued that the deference courts show to the political organs, when it becomes abdication, defeats the basic scheme of the Constitution because when judges speak of “the people” as “the ultimate guardian of principle” in political-question cases, they overlook the fact that “the people” are the “same undifferentiated mass” that “historically, unmistakably and, at times, militantly insisted that when executive power immediately threatens personal liberty, a judicial remedy must be available.” Professor Louis Henkin, while acknowledging that certain foreign relations questions are assigned by the Constitution to the discretion of the political branches, also rejects the notion that the judiciary can evade responsibility for deciding the appropriate limits to that discretion, particularly when its exercise comes into conflict with other rights or powers rooted in the Constitution or laws enacted in accordance with its strictures.9 His views echo earlier ones espoused by Professor Louis Jaffe, who argued that while the courts should listen to advice tendered by the political branches on matters of foreign pol icy and national security, “[t]his should not mean that the court must follow such advice, but that without it the court should not prostrate itself before the fancied needs of diplomacy and foreign policy. The claim of policy should be made concrete in the particular instance. Only so may its weight, its content, and its value be appreciated. The claims of diplomacy are not absolute; to question their compulsion is not treason.”° There has been little outright support from the judiciary for such open calls to repudiate the practice of refusing to adjudicate foreign affairs cases on their merits. While some judges do refuse to apply the doctrine, holding it inapplicable in the specific situation or passing over it in silence, virtually none have hitherto felt able to repudiate it frontally. On the other side, some judges continue to argue vigorously for the continued validity of judicial abdication in cases implicating foreign policy or national security. These proponents still rely occasion ally on the early shards of dicta and more rarely on archaic British precedents that run counter to the American constitutional ethos. More frequently today, their arguments rely primarily on a theory of constitutionalism—separation of powers—and several prudential reasons.

Korematsu sets a vital precedent for court deference – any overturn undermines the PQD

Green ‘9

Craig, Associate Professor, Temple Law School; University Fellowship, Princeton History Department; J.D., Yale Law School, “Ending the Korematsu Era: A Modern Approach ,” http://works.bepress.com/cgi/viewcontent.cgi?article=1002&context=roger\_craig\_green

B. “The Tools Belong To The Man Who Can Use Them”269

Another lesson from sixty years of wartime cases concerns the role of precedent itself in guiding presidential action. Two viewpoints merit special notice, with each having roots in opinions by Justice Jackson. On one hand is his explanation in Korematsu that courts must not approve illegal executive action: A military order, however unconstitutional, is not apt to last longer than the military emergency. . . . But once a judicial opinion . . . show[s] that the Constitution sanctions such an order, the Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon, ready for the hand of any authority that can bring forward a plausible claim of an urgent need. Every repetition imbeds that principle more deeply in our law and thinking and expands it to new purposes. . . . A military commander may overstep the bounds of constitutionality, and it is an incident. But if we review and approve, that passing incident becomes the doctrine of the Constitution. There it has a generative power of its own, and all that it creates will be in its own image.270 This “loaded weapon” idea is orthodox in analysis of Korematsu as a racist morality play. The passage is cited as evidence that Supreme Court precedents really matter, and that tragically racist errors retain their menacing power throughout the decades.271 Students are reminded that Korematsu has never been directly overruled, thereby inviting imagination that Korematsu itself is a loaded weapon just waiting for a President to grasp and fire.272 This conventional approach is incomplete. As we have seen, the first and decisive precedent supporting World War II’s racist policies was not Korematsu but Hirabayashi; thus, Jackson himself helped to “load” the doctrinal “weapon” over which he worried just a year later.273 Jackson’s willingness to eviscerate Hirabayashi in Korematsu only exemplifies (as if anyone could doubt it) that no Supreme Court decision can fiat a legal principle “for all time.”274 Past cases can be overruled, disfavored, ignored, or reinterpreted if the Court finds reason to do so, and this is effectively what has happened to Korematsu and Hirabayashi themselves in the wake of Brown, the civil rights era, and other modern history.275 Korematsu was a direct “repetition” of Hirabayshi’s racism for “expand[ed]” purposes, yet it only launched these two cases farther toward their current pariah status.276 A second perspective on war-power precedents is Jackson’s Youngstown concurrence, which rejected President Truman’s effort to seize steel mills and maintain output for the Korean War.277 Jackson’s opinion ends with selfreferential pessimism about judicial authority itself: I have no illusion that any decision by this Court can keep power in the hands of Congress if it is not wise and timely in meeting its problems. . . . If not good law, there was worldly wisdom in the maxim attributed to Napoleon that “The tools belong to the man who can use them.” We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers.278 This “no illusion” realism about presidential authority views judicial limitations on the President as contingent on Congress’s political wisdom and responsiveness — without any bold talk about precedents as “loaded weapons” or stalwart shields. On the contrary, if taken seriously, Jackson’s opinion almost suggests that judicial decisions about presidential wartime activities are epiphenomenal: When Congress asserts its institutional prerogatives and uses them wisely, the executive might be restrained, but the Court cannot do much to swing that political balance of power. Jackson’s hardnosed analysis may seem intellectually bracing, but it understates the real-world power **of judicial precedent to shape what is politically possible**.279 Although Presidents occasionally assert their willingness to disobey Supreme Court rulings, actual disobedience of this sort is vanishingly rare and would carry grave political consequences.280 Even President Bush’s repeated losses in the GWOT did not spur serious consideration of noncompliance, despite strong and obvious support from a Republican Congress.281 Likewise, from the perspective of strengthening presidential power, Korematsu-era precedents clearly emboldened President Bush in his twenty-first-century choices about Guantanamo and military commissions.282 The modern historical record thus shows that judicial precedent can both expand and limit the operative sphere of presidential action. Indeed, the influence of judicial precedent is stronger than a court-focused record might suggest. The past sixty years have witnessed a massive bureaucratization and legalization of all levels of executive government.283 From the White House Counsel, to the Pentagon, to other entities addressing intelligence and national security issues, lawyers have risen to such high levels of governmental administration that almost no significant policy is determined without multiple layers of internal legal review.284 And these executive lawyers are predominantly trained to think — whatever else they may believe — that Supreme Court precedent is authoritative and binding.285 Some middle ground seems therefore necessary between the “loaded weapon” and “no illusion” theories of precedent. Although Supreme Court decisions almost certainly influence the scope of presidential war powers, such practical influence is neither inexorable nor timeless. A more accurate theory of war-power precedents will help explain why it matters that American case law includes a reservoir of Korematsu-era decisions supporting excessive executive war power, and will also suggest how lawyers, judges, and scholars might eviscerate such rulings’ force. Korematsu is the kind of iconic negative precedent that few modern lawyers would cite for its legal holding. Yet even as Korematsu’s negative valence is beyond cavil, the breadth and scope of that negativity are not clear. Everyone knows that Korematsu is wrong, yet like other legal icons — Marbury, Dred Scott, Lochner, Erie, and Brown — its operative meaning is debatable. Just as Korematsu was once an authoritative precedent and is now discredited, this Article has sought to revise Korematsu’s cultural meaning even further, transforming it from an isolated and irrelevant precedent about racial oppression to a broadly illuminating case about how courts supervise presidential war powers. Under a “loaded weapon” theory of timelessly fixed precedential meaning, this Article’s project might be impossible; and under a “no illusion” theory of politics, all precedential analysis must wilt before the hot wind of power. On the other hand, if Korematsu is indelibly wrong, but its scope and substance are malleable, then **interpreting Korematsu**’s meaning **could be** very important**. A culturally situated view of iconic precedents’ force suggests that Korematsu’s significance does** not simply appear from the Court’s written opinions**.** **Instead, the decision’s import is a matter of** doctrinal **and historical** exegesis**,** and any interpretation’s success may be measured by its influence on the current generation of scholars and commentators, who will in turn guide the next generation of lawyers and judges.286 If our judges and executive lawyers of the future can be persuaded that Korematsu is not just a case of racist internment, but also represents an era of excessive judicial deference to military necessity, then that precedential and cultural truth may influence the next generation’s presidential advice and case law. This is how iconic precedents function, and **it is also why they are perennially worth fighting over**. To borrow Jackson’s language, the influential and changeable role of iconic precedents is another “something” that “we should learn” from our experience of applying Korematsu-era case law in the GWOT.287

Destroying the PQD ends nuclear deterrence.

Damrosch ‘86

Lori, Assistant Professor of Law, Columbia, “BANNING THE BOMB: LAW AND ITS LIMITS.,” 86 Colum. L. Rev. 653

Professor Miller's assessment of the dim prospects for judicial action against nuclear arms is correct, but he does not do justice to the reasons for judicial self-restraint. His vision is of a judiciary that would move boldly to dismantle a military structure based on nuclear arms, just as Brown v. Board of Education n12 required the dismantling of segregated school systems. Brown did not change the world overnight, but it was a spur to action, a rallying cry for revitalizing the political struggle, and ultimately a symbol of our society's commitment to human dignity. Unfortunately for Professor Miller's thesis, the hypothetical case of Brown v. The Pentagon could not fill the same bill. It is not just that the law suit would inevitably founder for threshold reasons such as standing, ripeness, or the political question doctrine, as noted in the brief [\*657] comments following Professor Miller's piece. n13 Nor is it that judges are temperamentally resistant to becoming involved in controversial issues or breaking new ground, as some of Professor Miller's characterizations imply. More basically, the problem is that in the unlikely event of a judicial hearing on what to do to preserve the human race from nuclear disaster, judges would have to find a principled basis for endorsing some solution in place of the policies developed by executive and congressional officials, who presumably are committed to that very effort. Professor Miller asserts that he makes no plea for unilateral disarmament (p. 238), but that would seem to be the only relief that a court persuaded by his argument could order. Surely the Supreme Court could not supervise the conduct of negotiations for mutual reductions, or even decide whether space-based defenses are likely to render nuclear weapons impotent. The constitutional responsibility to prevent the horror of nuclear war must lie where the constitutional power is n14 -- with Congress and the President.

The impact is nuclear war

John P. Caves 10, Senior Research Fellow in the Center for the Study of Weapons of Mass Destruction at the National Defense University, “Avoiding a Crisis of Confidence in the U.S. Nuclear Deterrent”, <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ada514285>

Perceptions of a compromised U.S. nuclear deterrent as described above would have profound policy implications, particularly if they emerge at a time when a nucleararmed great power is pursuing a more aggressive strategy toward U.S. allies and partners in its region in a bid to enhance its regional and global clout. ■ A dangerous period of vulnerability would open for the United States and those nations that depend on U.S. protection while the United States attempted to rectify the problems with its nuclear forces. As it would take more than a decade for the United States to produce new nuclear weapons, ensuing events could preclude a return to anything like the status quo ante. ■ The assertive, nuclear-armed great power, and other major adversaries, could be willing to challenge U.S. interests more directly in the expectation that the United States would be less prepared to threaten or deliver a military response that could lead to direct conflict. They will want to keep the United States from reclaiming its earlier power position. ■ Allies and partners who have relied upon explicit or implicit assurances of U.S. nuclear protection as a foundation of their security could lose faith in those assurances. They could compensate by accommodating U.S. rivals, especially in the short term, or acquiring their own nuclear deterrents, which in most cases could be accomplished only over the mid- to long term. A more nuclear world would likely ensue over a period of years. ■ Important U.S. interests could be compromised or abandoned, or a major war could occur as adversaries and/or the United States miscalculate new boundaries of deterrence and provocation. At worst, war could lead to state-on-state employment of weapons of mass destruction (WMD) on a scale far more catastrophic than what nuclear-armed terrorists alone could inflict. Continuing Salience of Nuclear Weapons Nuclear weapons, like all instruments of national security, are a means to an end— national security—rather than an end in themselves. Because of the catastrophic destruction they can inflict, resort to nuclear weapons should be contemplated only when necessary to defend the Nation’s vital interests, to include the security of our allies, and/or in response to comparable destruction inflicted upon the Nation or our allies, almost certainly by WMD. The retention, reduction, or elimination of nuclear weapons must be evaluated in terms of their contribution to national security, and in particular the extent to which they contribute to the avoidance of circumstances that would lead to their employment. Avoiding the circumstances that could lead to the employment of nuclear weapons involves many efforts across a broad front, many outside the military arena. Among such efforts are reducing the number of nuclear weapons to the level needed for national security; maintaining a nuclear weapons posture that minimizes the likelihood of inadvertent, unauthorized, or illconsidered use; improving the security of existing nuclear weapons and related capabilities; reducing incentives and closing off avenues for the proliferation of nuclear and other WMD to state and nonstate actors, including with regard to fissile material production and nuclear testing; enhancing the means to detect and interdict the transfer of nuclear and other WMD and related materials and capabilities; and strength ening our capacity to defend against nuclear and other WMD use. For as long as the United States will depend upon nuclear weapons for its national security, those forces will need to be reliable, adequate, and credible. Today, the United States fields the most capable strategic nuclear forces in the world and possesses globally recognized superiority in any conventional military battlespace. No state, even a nuclear-armed near peer, rationally would directly challenge vital U.S. interests today for fear of inviting decisive defeat of its conventional forces and risking nuclear escalation from which it could not hope to claim anything resembling victory. But power relationships are never static, and current realities and trends make the scenario described above conceivable unless corrective steps are taken by the current administration and Congress.

## 1nc precedent

Korematsu not key – its a discredited precedent with regards to race

Harris 11 [David A. Harris (Law Prof @ U of Pittsburgh); “On the Contemporary Meaning of Korematsu: “Liberty Lies in the Hearts of Men and Women””; *Missouri Law Review*: Vol. 76, No. 1; WINTER 2011]

Korematsu Is Dead

**More than sixty-five years after the** Supreme Court’s **Korematsu decision and more than twenty-five years after the reversal** of the original conviction, **one might well ask what relevance the case has today. With the historical record corrected and the defendant vindicated, most commentators view Korematsu as a dead case**. They see it as a historical curiosity, a relic of an era in which the country collectively lost its head to the toxic combination of war hysteria, xenophobia, and racism.

For example, **the eminent constitutional scholar Laurence Tribe of Harvard Law School wrote that the dissenting opinion of Justice Jackson, not the majority opinion of Justice Black, has “carried the day in the court of history**.”38 **The Commission on Wartime Relocation and Internment of Civilians went even further, stating** in its report **that the** Supreme Court’s **Korematsu opinion “lies** overruled” by history**.**39 **A multitude of scholars has said that** no court would rely on Korematsu today to sustain similar action **by the government.**40

**More importantly,** some members of **the Supreme Court** have **weighed in** on the issue. For example, **Justice** Antonin **Scalia ranked Korematsu among the worst decisions that the Supreme Court ever made, comparing it to** the universally despised **Dred Scott** case, which helped plunge the nation into the Civil War.41 **With** the **other justices opining about the case either in decisions or during** their **confirmation hearings, eight of the current justices of the Supreme Court have said that** courts could not rely on the core principle of Korematsu today.42

**If all of this ignominy heaped on Korematsu does not convince one that the case has no life left in it, one must also consider the actions of** Congress and the President. **In** 19**88**, **Congress** enacted a bill that gave redress to Japanese Americans who suffered through the internment camps.43 This statute **officially apologized to the Japanese** – both those who held American citizenship at the time and those who did not – **for the suffering they endured** due to their removal from their homes and businesses and for their internment in camps. **In the words of the law, “[f]or these fundamental violations of the basic civil liberties and constitutional rights of these individuals of Japanese ancestry, the Congress apologizes on behalf of the Nation.”**44 The statute also created a fund out of which previously interned individuals could receive a payment of $20,000.45 **When** President **Reagan signed the bill** on August 10, 1988, **he “admit[ted] a wrong” and “reaffirm[ed] our commitment as a nation to equal justice under the law.”46**

**With that kind of reputation – as bad as Dred Scott, as big a civil liberties mistake as the country has ever made, and as clear a consensus that the dissent and not the majority got it right –** one couldjustifiably think of Korematsu as a dead case, upon which no court today would, or could, ever rely.

**Professor David Cole, one of the strongest and most outspoken defenders of civil liberties in the post-9/11 era**,47 **says that Korematsu “**has not proved to be the ‘loaded weapon’ **that Justice Jackson feared” and he doubts that it ever will, given that such a healthy majority of the Supreme Court’s justices have repudiated it.**48 **Professor Eric Muller, who has made the study of the Japanese internment the centerpiece of his scholarship,49 believes that** “Korematsu did leave a loaded weapon lying about, as Justice Jackson feared.”50 Even so, Muller agrees with Cole in substance, because “the passage of six decades may have emptied much of the ammunition from its chambers.”51

Korematsu is not an impactful starting point for problematizing race; it paints an ineffective and incomplete picture, and excludes multiple critical contingencies – THEIR 1AC AUTHOR

Green 11 [Craig Green (Prof of Law@Temple University Law, JD Yale); “ENDING THE KOREMATSU ERA: AN EARLY VIEW FROM THE WAR ON TERROR CASES”; 2011; Northwestern University Law Review: Vol. 105, No. 3]

Korematsu’s Modern Relevance.—This Article’s **revisionism concerning Korematsu’s original meaning also explains the decision’s continued significance.** Even as Korematsu’s salience to issues of racial equality has declined, the decision remains important as a war powers precedent. **If Korematsu is to be studied by modern commentators—as** I think **it should be—the relevance of this iconic case should** shift **to reflect such doctrinal developments. Conventional interpreters sometimes cite Hirabayashi and Korematsu as** a matter of ordinarily authoritative (positive) **precedent to prove** either (i) that “[d]istinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality”61 or (ii) that **antiracist principles** of equality constrain the federal government and not just the states.62 Regardless of these arguments’ historical anachronism,63 Brown and its progeny have now superseded the doctrinal importance of Hirabayashi and Korematsu on such topics.64 There were decisions even before 1943 holding that equal protection prohibits racist denials of civil rights.65 But Brown and its successors made these early precedents doctrinally superfluous. Likewise, the question of whether equal protection should be “reverse incorporated” against the federal government was once highly provocative, but that issue was not ad-dressed in Korematsu; instead, it was resolved a full decade later in Bolling v. Sharpe, a companion to Brown.66 **Most often, Korematsu is studied as a** discredited (negative) **precedent that exemplifies how doctrine can be abused in the service of racial prejudice**. 67 **Yet** even as an illustration of **how** racial issues **should not be treated** under the Constitution, Korematsu merits only secondary prominence. **The Court’s opinions in** Dred Scott v. Sandford, the Civil Rights Cases, and Plessy v. Ferguson all incorporate governmental racism more directly than Korematsu,**68 and** the most robust evidence of racial oppression lies predominantly outside federal courts **in lynching, de facto segregation, voter intimidation, employment abuse, and suchlike**.69 Thus, **although the internment cases are a** horrible instance **of American racism, their segment of that narrative is** incomplete and unrepresentative**. Korematsu also** sheds little light on current debates over racial profiling, affirmative action, disparate impact, and the treatment of nonracial groups **like homosexuals.**70 **In sum,** if Korematsu were studied today simply for its contribution to equal protection jurisprudence, its doctrinal importance would be mild indeed.

No racial discrimination – President is restricting detention authority to enemy combatants now

Gonzales 10 [Alberto R. Gonzales (Prof @ Texas Tech U, Fmr. Counsel to the President and United States Attorney General under the George W. Bush Administration, Fmr. Judge of the Texas Supreme Court); “WAGING WAR WITHIN THE CONSTITUTION”; Texas Tech Law Review: Summer, 2010]

Despite the care exercised in correctly identifying enemy combatants, our government made mistakes. In this new unconventional conflict, our enemies wage war in our neighborhoods and over the Internet. They fight wearing civilian clothes. They do not wear a uniform or openly carry a weapon. Difficulties exist in telling the bad guys from the good guys. Any mistake is regrettable, but mistakes here are magnified because of the possible lengthy duration of hostilities with al Qaeda, creating the danger that an innocent person is mistakenly detained for a long period of time. While no one knew with certainty when previous conflicts would end, the age of terrorism appears to be with us for the foreseeable future. The battlefield will likely resurface here within our borders, and it will involve American citizens acting either alone or in concert with others overseas. Under these circumstances, perhaps some judges feel the judiciary has an added responsibility to ensure that only the guilty are detained. Some scholars believe President Bush's blanket determination that all members of the Taliban are not entitled to prisoner of war protections has added to the possibility of mistaken identity.369 In essence, this decision dispensed with the need to make battlefield status determinations by a competent tribunal as required under Article 5 of the Geneva Conventions whenever there is any question about the appropriate status of a detainee.37°

Such criticism fails to recognize the **enormous efforts**, some of which are discussed above, undertaken by the Bush Administration-and **continued now by the Obama Administration**-to properly **identify and detain** only enemy combatants**.37** ' Scholarly criticism also **fails to recognize** that, when mistakes have been identified, **corrective action was taken as soon as possible**.372 Hundreds **of captured individuals have been released from Guantanamo and** thousands **more released from detention facilities in Afghanistan.**373 President **Bush often said that he** did not **want the United States to be the world's jailer**.374 **Nor did they want to detain innocent people. These are the reasons why the U.S. government has taken such** extraordinary steps to protect the innocent**.**

Courts fail to enforce in emergencies but political constraints solve

Tushnet 6 [Mark V. Tushnet (Law Prof @ Gtown); “The Political Constitution of Emergency Powers”; http://deysine.com/index.php?option=com\_docman&task=doc\_download&gid=17&Itemid=54]

Suppose we agree with Dyzenhaus that **courts quite** frequently flag in their defense of the rule of law. On the view sketched here, that is not a counsel of despair, or only a goad for urging the courts to do better. We can consider the possibility that **politics conducted in** parliaments, **separation-of-powers** legislatures, bureaucracies, and civil society **will** fill in the “rule of law” gaps – not black holes – **that the courts put up with or create**. The kind of politics I have in mind is a (partly) moralized politics, in which **political leaders appeal for support on the basis of moral claims in addition to appealing for support on the basis of constituents’ non-moral preferences**.21 So, **for example, leaders** might **contend**, as they have, **that engaging in torture is simply not what we** as Americans **do**.22 Once again, there is nothing in the **concept** of politics that excludes the possibility that these appeals will fail.23 **The** institutional location of sovereignty **in a system characterized by a partially moralized politics opens up the possibility of** real-world limits **on the exercise of** emergency powers.

Starting with the courts presents the foremost threat to our democratic polity

Bottum, 97

(PhD in philosophy and editor of *First Things* *Journal*, January, http://www.firstthings.com/ftissues/ft9701/articles/editors.html)

What we called the regime is an aberration. We do not agree that the judicial usurpation of politics is inevitable or irreversible, that it is, in fact, to be equated with the government of the United States. It is this regime of the judicial usurpation of politics that is illegitimate. We are sorry that this crucial distinction was not clear to some of our readers. It seems part of the difficulty is in the use of the term "regime," which in some political theory has a very definite and comprehensive connotation. In order to avoid confusion, we suggest the term should be used with caution, if at all, as the discussion continues. Of course, the question inevitably arises as to whether the aberration is somehow inherent in the constitutional order itself, in which case some may argue that it is not, properly speaking, an aberration. In the symposium, Judge Bork writes: "On the evidence, we must conclude, I think, that this tendency of courts, including the Supreme Court, is the inevitable result of our written Constitution and the power of judicial review." An aberration that is, in retrospect, seen as an inevitable result is still an aberration. The Founders may be accused of a lack of prescience, but it is certain that they did not intend a government by what Bork calls judicial oligarchy. All the participants in the symposium, with the editors, believe that the aberration of a nation governed by judges is not irreversible. Different remedies are suggested and varying degrees of hopefulness are expressed about the likelihood of their being adopted or, if adopted, whether they will be effective. But there should be no doubt that the symposium is an urgent call for the American people to reassert the theory and practice of democratic self-government and thus revive the republic bequeathed us by the Founders. It is said that the question of illegitimate government is not and should not be a subject of contention. That, some contend, is a question that was agitated in the radicalisms of the sixties, and should now be consigned to the past and declared undiscussable. While the editors are not of one mind as to how the discussion should proceed, the question was a subject of contention, also in our pages, before the November symposium, and will continue to be a subject of contention, whether or not we want it to be. The question of legitimate and illegitimate government, and what it means for the governance of this country, *should* be a subject of contention. It has been that since the founding of this republic, and will be so long as it endures. To give the experience of the sixties veto power over the democratic discourse of today is to grant the madnesses of that time a victory that they do not deserve. Respondents in this issue remind us that the problem is more with the culture than with the courts. We wholeheartedly agree. The operating premise of this journal is that **politics and law are, most importantly, aspects of culture.** At the heart of culture is morality, and at the heart of morality is religion. No one can fairly accuse this journal of neglecting our cultural crisis. Professor Glendon and others render an important service by placing this discussion in the context of what she calls the several "pathologies in the body politic." The question of the judicial usurpation of politics is not the most critical question facing our country. The most critical question is that of spiritual and moral reawakening. The judicial usurpation of politics was, however, the question posed for discussion in the November issue. And, as that symposium amply demonstrates, **it is a question closely related to the spiritual and moral, as well as political, health of the body politic. Democracy can assume different forms**, and governments that do not style themselves as democratic are not necessarily illegitimate. Remember, too, that the Communist totalitarianism of our century spuriously claimed to be democratic. For a discussion of the institutions and practices that mark authentic democracy, we refer the reader to the above-mentioned "Christianity and Democracy." For present purposes, we note only that a government, such as ours, that makes its claim to legitimacy on the basis of democratic theory and practice raises a question about its legitimacy when it violates democratic theory and practice. **The judicial usurpation of politics is a** grievous violation **of democratic theory and practice.** Our position, our hope, is that this violation has not been perpetrated by the government of the United States. It does not have and will not obtain the consent of the executive and legislative branches nor of the sovereign people. The people and their representatives have not, in the words of Lincoln's First Inaugural, addressing the Supreme Court's decision in *Dred Scott*, "practically resigned their government into the hands of that eminent tribunal." The problem before us is precisely one of judicial *usurpation*. Anarchy and despotism are indeed to be greatly feared, but it is not we who are raising that prospect. That prospect is raised by the **courts that deny the democratic deliberation of vital questions** affecting the whole people. Lincoln in the same address: "A majority, held in restraint by constitutional checks, and limitations, and always changing easily, with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people. Whoever rejects it, does, of necessity, **fly to anarchy or to despotism**. Unanimity is impossible; the rule of a minority, as a permanent arrangement, is wholly inadmissable; so that, rejecting the majority principle, anarchy, or despotism in some form, is all that is left." Permanent rule by the small minority that is the judicial elite is wholly inadmissable. It is our hope that the people and their political leaders will come to share that conviction and give it public effect. Some object that there have been many wrongs in the past-for instance, slavery and the Vietnam War-that did not raise the question of legitimacy. Distinctions are in order. The toleration of slavery was an ominous and deliberate compromise in the founding. Many people, with Lincoln, believed that the eventual extinction of slavery was intended by the Founders. The Vietnam War, whatever one may think of its justice, was a failed policy of the executive and legislative branches. The judicial usurpation of politics is qualitatively different. In *Roe, Casey, Romer*, and other decisions, this most illiberal Court has imposed not only what we believe are wrong policies, but has imposed them in the form of unchallengeable constitutional principles. [continues] Yes, there is a danger that the very discussion of these matters could be exploited by the violent who do not share our devotion to this constitutional order and the rule of law. As the specter of illegitimacy is raised by **justices** **in black robes who replace the rule of law with their personal predilections, so the specter of** violent revolution is raisedby angry men in army fatigues playing war games in the woods of Idaho. We believe, however, that the delusions of weekend revolutionaries should not set the boundaries of political discussion. Indeed, acquiescence in judicial usurpation, far from warding off extremism, **would likely increase the number of Americans who believe there is no alternative to violent change.** We therefore call for the vigorous pursuit of every peaceful and constitutional means to return our country to its democratic heritage, and to encourage its people to take up again what Professor Glendon calls the hard work of **being citizens rather than subjects**.

Cant solve – Bush preempted this with an XO

Healy ‘8 - vice president at Cato; J.D. from the University of Chicago Law School (Gene Healy, “The Cult of the Presidency: America's Dangerous Devotion to Presidential Power”, 225-229)

In business or in politics, responsibility without authority is any chîef executive’s worst nightmare. That was the political nightmare that gripped the Bush administration in the weeks after Katrina. As the Natfotial Post’s Colby Cosh put it, “The 49 percent of Americans who have been complaining for five years about George W. Bush being a dictator are now vexed to the point of titter incoherence because for the last fortnight he has failed to do a sufficiently convinc ing impression of a dictator.’”” Small wonder, then, that President Bush promptly sought the authority to head off future political disasters by overriding the decisions of state and local officials and using the military at home.

Empowering Pharaoh

Though few in the media noticed, the president got that authority. **On October 17, 2006**, the same day he signed the Military Commissions Act, **the president** also **signed the Defense Authorization Act for Fiscal Year 2007**, **Section 1076** of which **covers the “Use of the Armed Forces in Major Public Emergencies.” That provision amends the 1807 Insurrection Act and provides a** new, gaping exception **to the Posse Comitatus Act.** Where the Insurrection Act had limited the president’s domestic use of the military to situations involving “insurrection, domestic violence, unlawful combination, or conspiracy,” **the new language allows him to use the army to “restore public order and enforce the laws of the United States” in “natural disaster[s],” “epidemic[s],” “serious public health emergenc[ies],” and “other condition[s]”—a** catchall phrase **that greatly expands the president’s power to use troops against citizens. Under the new law,** when the president decides—all by himself, **apparently—that impending storms, spreading illness, or “other condition[s]” have “hinder[ed] the execution of the laws,” he can declare himself** supreme military commander within the afflicted state.

Executive quarantines inevitable – a laundry list of laws and XOs ensure he can do whatever he wants

Friedman 12 [FRIEDMAN, JOSHUA L. (Attorney Advisor@US Social Sec. Admin., Office of Disability Adjud. & Review; JD@U of Maryland; MBA@U of Baltimore); “EMERGENCY POWERS OF THE EXECUTIVE: THE PRESIDENT'S AUTHORITY WHEN ALL HELL BREAKS LOOSE”; Journal Of Law & Health 25(2):265-306; July 2012]

Several pieces of legislation have been enacted for the purpose of dealing with a health pandemic. In 1976, **Congress passed the** National Emergencies Act to formally limit the emergency powers of the president during a state of emergency.343 The Executive is authorized to declare a national emergency but must specify the statutory authorities to be used under such declaration, report them to Congress, and publish this information in the Federal Register.344 Congress can terminate the emergency, and it also may be revoked by proclamation of the President.345 The U.S. has been under a state of national emergency since 9/11.346 **Under the** Stafford Act of 1988,347 C**ongress has also previously** sanctioned the President to commit federal troops to assist state governments during emergencies**, as long as the work is ―essential for the preservation of life and property**.‖348 The Stafford Act conditions the President‘s power upon the existence of a natural disaster and the permission from the governor of the state requesting aid.349 In the case of a ―major disaster‖ or ―emergency‖ the Stafford Act allows the President to coordinate administration of disaster relief through FEMA or other government agencies.350 The state must implement its emergency plan before the President may invoke these emergency powers.351 However, in the case where the emergency involves ―federal primary responsibility‖ such as one occurring on a federal property, the President may overrule state action.352 **The** Public Health Service Act,353 **enacted in 1994, grants the executive** unilateral authorization to declare a national emergency and allows broad discretion during a public health emergency **such as making grants, entering into contracts, investigating the cause, treatment and prevention of a disease or disorder causing the emergency, and authorizing emergency use of unapproved products or approved products for unauthorized uses.354** Quarantine may also be used **as ―necessary‖ to prevent the introduction, transmission, or spread of communicable diseases.355 President Obama used this Act to declare a Public Health Emergency for the H1N1 pandemic during 2009.**356 In 2001, the Model State Emergency Health Powers Act (―MSEHPA‖) was drafted to address new health threats, such as SARS and influenza.357 This important piece of model legislation was intended to standardize and modernize state public health legislation which would thereby enable state actors to take immediate action in the event of a disaster.358 The MSEHPA established provisions for reporting diseases and other health conditions.359 It broadly defined the circumstances under which a public health emergency may be declared or whether compulsory actions may be undertaken, and permitted the same ―when the situation calls for prompt and timely action.‖360 The MSEHPA also defined and established mechanisms for enforcement of the states‘ compulsory powers through quarantine or isolation.361 A majority of states have enacted legislation based on the MSEHPA.362 **On November 1, 2005, the** National Strategy for Pandemic Influenza **was released by then-President Bush to prepare the nation‘s response during a**n influenza **pandemic**.363 **The Strategy set forth distribution protocols for the limited availability of vaccine and antiviral medication during the outbreak. President Bush also signed the** National Security and Homeland Security Presidential Directive**,** **which created an "Enduring Constitutional Government" in the case the federal government [\*301] was drastically affected. n365 This legislature established a "cooperative effort" as a matter of comity among the three branches of federal government,** coordinated by the President**.** n366

## util

Util’s the only moral framework

**Murray 97** (Alastair, Professor of Politics at U. Of Wales-Swansea, *Reconstructing Realism*, p. 110)

Weber emphasised that, while the 'absolute ethic of the gospel' must be taken seriously, it is inadequate to the tasks of evaluation presented by politics. Against this 'ethic of ultimate ends' — Gesinnung — he therefore proposed the 'ethic of responsibility' — Verantwortung. First, whilst the former dictates only the purity of intentions and pays no attention to consequences, the ethic of responsibility commands acknowledgement of the divergence between intention and result. Its adherent 'does not feel in a position to burden others with the results of his [OR HER] own actions so far as he was able to foresee them; he [OR SHE] will say: these results are ascribed to my action'. Second, the 'ethic of ultimate ends' is incapable of dealing adequately with the moral dilemma presented by the necessity of using evil means to achieve moral ends: Everything that is striven for through political action operating with violent means and following an ethic of responsibility endangers the 'salvation of the soul.' If, however, one chases after the ultimate good in a war of beliefs, following a pure ethic of absolute ends, then the goals may be changed and discredited for generations, because responsibility for consequences is lacking. The 'ethic of responsibility', on the other hand, can accommodate this paradox and limit the employment of such means, because it accepts responsibility for the consequences which they imply. Thus, Weber maintains that only the ethic of responsibility can cope with the 'inner tension' between the 'demon of politics' and 'the god of love'. 9 The realists followed this conception closely in their formulation of a political ethic.10 This influence is particularly clear in Morgenthau.11 In terms of the first element of this conception, the rejection of a purely deontological ethic, Morgenthau echoed Weber's formulation, arguing tha/t:the political actor has, beyond the general moral duties, a special moral responsibility to act wisely ... The individual, acting on his own behalf, may act unwisely without moral reproach as long as the consequences of his inexpedient action concern only [HER OR] himself. What is done in the political sphere by its very nature concerns others who must suffer from unwise action. What is here done with good intentions but unwisely and hence with disastrous results is morally defective; for it violates the ethics of responsibility to which all action affecting others, and hence political action par excellence, is subject.12 This led Morgenthau to argue, in terms of the concern to reject doctrines which advocate that the end justifies the means, that the impossibility of the logic underlying this doctrine 'leads to the negation of absolute ethical judgements altogether'.13

Prioritizing critique in the face of the death is the least ethical option

**Isaac 02** – Professor of political science at Indiana-Bloomington, Director of the Center for the Study of Democracy and Public Life, phd from Yale (Jeffery C., Dissent Magazine, Vol. 49, Iss. 2, “Ends, Means, and Politics,” p. Proquest)

As a result, the most important political questions are simply not asked. It is assumed that U.S. military intervention is an act of “aggression” but no consideration is given to the aggression to which intervention is a response. The status quo ante in Afghanistan is not, as peace activists would have it, peace, but rather terrorist violence abetted by a regime—the Taliban—that rose to power through brutality and repression. This requires us to ask a question that most “peace” activists would prefer not to ask: what should be done to respond to the violence of a Saddamn Hussein or a Milosevic or a Taliban regime—the Taliban—that rose to power through brutality and repression. What means are likely to stop violence and bring criminal to justice? Calls for diplomacy and international law are well intended and important: they implicate a decent and civilized ethic of global order. But they are also vague and empty, because they are not accompanied by any account of how diplomacy or international law can work effectively to address the problem at hand. The campus left offers no such account. To do so would require it to contemplate tragic choices in which moral goodness is of limited utility/ here what matters is not purity of intention but the intelligent exercise of power. Power is not a dirty word or an unfortunate feature of the world. Politics, in large part, involves contests over the distribution and use of power. To accomplish anything in the political world, one must attend to the means that are necessary to bring it about. And to develop such means is to develop, and to exercise power. To say this is not to say that power is beyond morality. It is to say that power is not reducible to morality.

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

Warming outweighs:

It entrenches global inequality

**Steiner** **7** Administrator Executive Director, U.N. Development Programme and Environment Programme [Adam, “Fighting Climate Change: Human Solidarity in a Divided World,” 07/08 http://hdr.undp.org/en/media/hdr\_20072008\_en\_complete.pdf]

In reality, the world is a heterogeneous place: people have unequal incomes and wealth and climate change will affect regions very differently. This is, for us, the most compelling reason to act rapidly. Climate change is already starting to affect some of the poorest and most vulnerable communities around the world. A worldwide average 3° centigrade increase (compared to preindustrial temperatures) over the coming decades would result in a range of localized increases that could reach twice as high in some locations. The effect that increased droughts, extreme weather events, tropical storms and sea level rises will have on large parts of Africa, on many small island states and coastal zones will be inflicted in our lifetimes. In terms of aggregate world GDP, these short term effects may not be large. But for some of the world’s poorest people, the consequences could be apocalyptic. In the long run climate change is a massive threat to human development and in some places it is already undermining the international community’s efforts to reduce extreme poverty.

Focusing on the global, existential threat of climate change solves global violence

Vail et al ‘12

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The vast majority of the scientific community agrees that the earth’s climate is changing, that these changes have the potential to produce catastrophic consequences, and that humans have been contributing to this phenomenon (e. g., Canadian Meteorological & Oceanographic Society, 2002; Joint Science Academies, 2005). Although the severity of the predicted effects of climate change are disputed by some (Ball, 2007), many scientists have warned of the potential for cataclysmic global disasters, including extinction of animal species, flooding of densely populated coastal areas, forced evacuations and migrations in regions no longer able to support agriculture, disruptions of weather patterns, drought, famine, and increased competition for resources (Hileman, 1999; Intergovernmental Panel on Climate Change [IPCC], 1996; Schneider, 1997). Building on research from psychology, sociology, political science, economics, history, and geography, Anderson and DeLisi (2011) present evidence that global climate change might intensify existing intergroup conflicts and create new ones. Both experimental and correlational studies establish that uncomfortably warm temperatures increase physical aggression and violence (e.g., Anderson & Anderson, 1998; Anderson, Anderson, Dorr, DeNeve, & Flanagan, 2000). In addition to the direct effects of global climate change on irritability and aggression, there would likely also be indirect effects on populations whose livelihoods and survival are threatened by the changes brought about by global climate change. As realistic group conflict theory (Sherif et al., 1961) suggests, the inevitable decrease in resources precipitated by global climate change could lead to more intergroup violence as groups try to secure the resources they need. In fact, some argue that climate change already has exacerbated existing tensions and conflicts in the Darfur region of Sudan and in Bangladesh (Anderson & DeLisi, 2011). Although the potential for global catastrophe, including increased intergroup conflict, is great if the projected effects of global climate change occur, research and theory (Allport, 1954; Gaertner et al., 1993) suggest another possibility, at least before these consequences become too severe. Awareness of the shared nature of this impending threat could encourage cooperation among those affected and might even facilitate resolution of long-standing conflicts. This article presents three studies examining the interactive effect of existential threat and contemplating the consequences of global climate change. Based on TMT and classic theories and research on the impact of shared goals and threats, we hypothesized that reminders of death would lead people focusing on the shared global consequences of climate change to increase their support for peace and reconciliation and decrease their support for war.

Warming is real, anthropogenic, and causes mass death

Deibel 7(Terry L, Professor of IR @ National War College, “Foreign Affairs Strategy: Logic for American Statecraft”, Conclusion: American Foreign Affairs Strategy Today)

Finally, there is one major existential threat to American security (as well as prosperity) of a nonviolent nature, which, though far in the future, demands urgent action. It is the threat of global warming to the stability of the climate upon which all earthly life depends. Scientists worldwide have been observing the gathering of this threat for three decades now, and what was once a mere possibility has passed through probability to near certainty. Indeed not one of more than 900 articles on climate change published in refereed scientific journals from 1993 to 2003 doubted that anthropogenic warming is occurring. “In legitimate scientific circles,” writes Elizabeth Kolbert, “it is virtually impossible to find evidence of disagreement over the fundamentals of global warming.” Evidence from a vast international scientific monitoring effort accumulates almost weekly, as this sample of newspaper reports shows: an international panel predicts “brutal droughts, floods and violent storms across the planet over the next century”; climate change could “literally alter ocean currents, wipe away huge portions of Alpine Snowcaps and aid the spread of cholera and malaria”; “glaciers in the Antarctic and in Greenland are melting much faster than expected, and…worldwide, plants are blooming several days earlier than a decade ago”; “rising sea temperatures have been accompanied by a significant global increase in the most destructive hurricanes”; “NASA scientists have concluded from direct temperature measurements that 2005 was the hottest year on record, with 1998 a close second”; “Earth’s warming climate is estimated to contribute to more than 150,000 deaths and 5 million illnesses each year” as disease spreads; “widespread bleaching from Texas to Trinidad…killed broad swaths of corals” due to a 2-degree rise in sea temperatures. “The world is slowly disintegrating,” concluded Inuit hunter Noah Metuq, who lives 30 miles from the Arctic Circle. “They call it climate change…but we just call it breaking up.” From the founding of the first cities some 6,000 years ago until the beginning of the industrial revolution, carbon dioxide levels in the atmosphere remained relatively constant at about 280 parts per million (ppm). At present they are accelerating toward 400 ppm, and by 2050 they will reach 500 ppm, about double pre-industrial levels. Unfortunately, atmospheric CO2 lasts about a century, so there is no way immediately to reduce levels, only to slow their increase, we are thus in for significant global warming; the only debate is how much and how serious the effects will be. As the newspaper stories quoted above show, we are already experiencing the effects of 1-2 degree warming in more violent storms, spread of disease, mass die offs of plants and animals, species extinction, and threatened inundation of low-lying countries like the Pacific nation of Kiribati and the Netherlands at a warming of 5 degrees or less the Greenland and West Antarctic ice sheets could disintegrate, leading to a sea level of rise of 20 feet that would cover North Carolina’s outer banks, swamp the southern third of Florida, and inundate Manhattan up to the middle of Greenwich Village. Another catastrophic effect would be the collapse of the Atlantic thermohaline circulation that keeps the winter weather in Europe far warmer than its latitude would otherwise allow. Economist William Cline once estimated the damage to the United States alone from moderate levels of warming at 1-6 percent of GDP annually; severe warming could cost 13-26 percent of GDP. But the most frightening scenario is runaway greenhouse warming, based on positive feedback from the buildup of water vapor in the atmosphere that is both caused by and causes hotter surface temperatures. Past ice age transitions, associated with only 5-10 degree changes in average global temperatures, took place in just decades, even though no one was then pouring ever-increasing amounts of carbon into the atmosphere. Faced with this specter, the best one can conclude is that “humankind’s continuing enhancement of the natural greenhouse effect is akin to playing Russian roulette with the earth’s climate and humanity’s life support system. At worst, says physics professor Marty Hoffert of New York University, “we’re just going to burn everything up; we’re going to heat the atmosphere to the temperature it was in the Cretaceous when there were crocodiles at the poles, and then everything will collapse.” During the Cold War, astronomer Carl Sagan popularized a theory of nuclear winter to describe how a thermonuclear war between the Untied States and the Soviet Union would not only destroy both countries but possibly end life on this planet. Global warming is the post-Cold War era’s equivalent of nuclear winter at least as serious and considerably better supported scientifically. Over the long run it puts dangers from terrorism and traditional military challenges to shame. It is a threat not only to the security and prosperity to the United States, but potentially to the continued existence of life on this planet.

# 2nc

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Representations of nuclear war are key broad based activism

Susan T. **Fiske**, Department of Psychology, Tobin Hall, University of Massachusetts, Amherst, **1987**, “People's Reactions to Nuclear War: Implications for Psychologists” American Psychologist Issue: Volume 42(3), March 1987, p 207–217

As defined here, even the antinuclear activist's typical activities are few and modest: writing congressional representatives and donating money to an antinuclear group. Nevertheless, this is far more than the average person does and far more than people's usual levels of political activity. Even this humble degree of antinuclear protest is worth examining. Factors that motivate antinuclear protest most centrally include an extreme chronic salience of the issue and an unusual sense of political efficacy, as well as some attitudinal and demographic factors. Chronic personal salience of the nuclear issue clearly distinguishes the activist. Antinuclear activists report frequently thinking about the issue (Fiske et al., 1983; Hamilton, Chavez, & Keilin, 1986; Pavelchak & Schofield, 1985), on the order of several minutes a day. Having the issue on their minds apparently creates **detailed and concrete images of nuclear war** (Fiske et al., 1983; Milburn & Watanabe, 1985) like those mentioned earlier: images of **dismembered bodies, people screaming, buildings on fire, miles of rubble, and barren landscapes**. Presumably, their uniquely salient concreteimages **are motivating for antinuclear activists**. Moreover, **the combination of high perceived severity and high perceived likelihood of nuclear war is a good predictor of intent to become involved in antinuclear activity** (Wolf et al., 1986). A strong sense of political efficacy also distinguishes the activist (Garrett, 1985; Flamenbaum, Hunter, Silverstein, & Yatani, 1985; Hamilton et al., 1985; Milburn & Watanabe, 1985; Oskamp et al., 1985; Tyler & McGraw, 1983); this is true of political activists in general (Nie & Verba, 1975). The antinuclear activist believes that nuclear war is preventable, not inevitable, and that citizens working together can influence government action to decrease the chance of a nuclear war. **The** antinuclear **activist is** specifically **motivated by a sense of personal** political **capability combined with a belief in the efficacy of political action** (Wolf et al., 1986). The correlation between political efficacy and behavioral intent is substantial by social science standards (Schofield & Pavelchak, 1984; Wolf et al., 1986). Moreover, although activists believe that governments create the risk of nuclear war, they also believe that citizens can and should be responsible for preventing it (Tyler & McGraw, 1983). Not surprisingly, **considering their strong** sense of **political efficacy, antinuclear activists tend to participate in other types of political activity as well** (Fiske et al., 1983; Milburn & Watanabe, 1985; Oskamp et al., 1985). Thus, their antinuclear activity is not a special case.

## 2nc ov

As their green evidence makes clear, korematsu resides in an elite group of worst American cases of all time such as plessy v. fergusson and Dred Scott v. Stanford – These cases remain to be the darkest of spots in our history regardless of whether they’ve been overturned or not – this is why in 1983 ruled to reverse the convictions on Korematsu as a result of the case and did so by recognizing how the Solicitor General fabricated significant evidence in order to provide legal defense for FDR’s internment policy and the Korematsu decision –

this too is why the negative endorses a meaningful recognition of Neal Katyal’s, acting solicitor general, public recognition of the failure of the US supreme court to overcome the racist internment policy – doing so is the most important step to helping ensure the future rights of all Americans

Neal Katyal, Acting Solicitor General of the United States, 11 [“Confession of Error: The Solicitor General’s Mistakes During the Japanese-American Internment Cases,” May 20, Department of Jusstice, http://blogs.justice.gov/main/archives/1346]

It has been my privilege to have served as Acting Solicitor General for the past year and to have served as Principal Deputy Solicitor General before that. The Solicitor General is responsible for overseeing appellate litigation on behalf of the United States, and with representing the United States in the Supreme Court. There are several terrific accounts of the roles that Solicitors General have played throughout history in advancing civil rights. **But it is also important to remember the mistakes.** One episode of particular relevance to AAPI Heritage Month is the Solicitor General’s **defense of the forced relocation and internment of Japanese-American during World War II.¶** Following the attack on Pearl Harbor, the United States uprooted more than 100,000 people of Japanese descent, most of them American citizens, and confined them in internment camps. **The Solicitor General was largely responsible for the defense of those policies**.¶ By the time the cases of Gordon Hirabayashi and Fred Korematsu reached the Supreme Court, the Solicitor General had learned of a key intelligence report that undermined the rationale behind the internment. The Ringle Report, from the Office of Naval Intelligence, found that only a small percentage of Japanese Americans posed a potential security threat, and that the most dangerous were already known or in custody. **But the Solicitor General did not inform the Court of the report, despite warnings from Department of Justice attorneys that failing to alert the Court “might approximate the suppression of evidence.”** Instead, he argued that it was impossible to segregate loyal Japanese Americans from disloyal ones. Nor did he **inform the Court that a key set of allegations** used to justify the internment, that Japanese Americans were using radio transmitters to communicate with enemy submarines off the West Coast, had been discredited by the FBI and FCC. And to make matters worse, **he relied on gross generalizations** about Japanese Americans, such as that they were disloyal and motivated by “racial solidarity.”¶ The Supreme Court upheld Hirabayashi’s and Korematsu’s convictions. And it took nearly a half century for courts to overturn these decisions. **One court decision in the 1980s that did so highlighted the role played by the Solicitor General, emphasizing that the Supreme Court gave “special credence” to the Solicitor General’s representations**. The court thought it unlikely that the Supreme Court would have ruled the same way had the Solicitor General exhibited complete candor. **Yet those decisions still stand today as a reminder of the mistakes of that era.¶** Today, our Office takes this history as an important reminder that the “special credence” the Solicitor General enjoys before the Supreme Court requires great responsibility and a duty of absolute candor in our representations to the Court**. Only then can we fulfill our responsibility to defend the United States and its Constitution, and to protect the rights of all Americans**.

## 2nc doesn’t solve racism

Korematsu has been butchered as a precedent for racial classifications – its only function now is a springboard for condemning racism

Muller 3 [Eric L. Muller (Law Prof @ UNC); “Inference or Impact? Racial Profiling and the Internment's True Legacy”; Ohio State Journal of Criminal Law, Vol. 1, No. 1; November 7, 2003]

**All of this worrying about Korematsu’s vitality** in our **post-9/11** world **is**, in a sense, **understandable. Pearl Harbor is, after all, the clearest and most recent analogue to the attacks of September 11**.25 And at the level of legal doctrine, some see a revival of Korematsu’s tolerance for racial classifications in the Supreme Court’s recent decisions suggesting and holding that government may take race into account in making certain sorts of decisions.26 **But the worrying is also rather odd. Korematsu is a** defunct decision. Eight of the nine currently sitting Justices **of the United States Supreme Court** have called it a mistake.27 In Adarand Constructors, Inc. v. Peña,28 J**ustice O’Connor called the Roosevelt Administration’s program an “illegitimate racial classification,”29 and the Korematsu Court’s decision to uphold it an “error.”30 Justices Thomas, Scalia, and Kennedy and the Chief Justice joined her. Justices Ginsburg and Breyer, dissenting in the same case, took the Korematsu Court to task for giving “a pass for an odious, gravely injurious racial classification.”31 For Justice Scalia, Korematsu is not just a mistake, but** a mistake on par with Dred Scott.32 It is hard to imagine a more thorough repudiation of a case than the one the Court has given Korematsu.33

Dissenting in Korematsu, Justice Robert Jackson warned that the Court’s endorsement of racial discrimination in criminal procedure and of “transplanting American citizens” would “lie[ ] about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need.”34 This prediction has not come true, **at least in the context of the government’s response to the attacks of September 11.**35 **But Korematsu remains a** loaded weapon—a loaded rhetorical weapon,that is—for criticizing race consciousness **in law enforcement**.36 For some, it seems, any action that the government predicates in any way on national origin becomes not just poor policy but a replay of past outrages. Any government consciousness of national origin is, as David Cole puts it, “the same kind of ethnic stereotyping that characterized the fundamental error of the Japanese internment.”37

Any effect Korematsu has now is just as a foundational anti-racism doctrine

Harris 11 [David A. Harris (Law Prof @ U of Pittsburgh); “On the Contemporary Meaning of Korematsu: “Liberty Lies in the Hearts of Men and Women””; *Missouri Law Review*: Vol. 76, No. 1; WINTER 2011]

Korematsu as the Source of Suspect Class Analysis Under the Equal Protection Clause

**Korematsu may have a different meaning for lawyers whose careers began less than twenty years ago** than it does for those whose careers began earlier. For the post-World War II generations – attorneys who came of age professionally in the 1950s and 1960s – Korematsu embodied the Japanese internment. But for those who came later, the case might have an entirely different primary importance. The Supreme Court has used Korematsu in majority opinions, concurrences, and dissents to establish the important principle that the government’s use of racial distinctions in the treatment of its citizens is immediately suspect. **Korematsu lives today primarily because it serves as the source of suspect class analysis and strict scrutiny.** The heart of Justice Black’s majority opinion began by declaring:

“[A]ll legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can.”62

**If history has overruled the majority opinion and vindicated the dissenters**, as Laurence Tribe said,63 **Justice Black’s analysis of discrimination under the Equal Protection Clause still stands. Indeed, the Supreme Court’s modern thinking about equal protection begins with Korematsu**. Every subsequent case that construes the Equal Protection Clause descends directly from Korematsu.

**For example, in** the 1967 case **Loving v. Virginia, the Supreme Court** addressed the constitutionality of Virginia’s miscegenation law.64 The statute at issue made it a criminal offense for a white person and a black person to leave the state to marry and return to Virginia to live together as spouses.65 The Supreme Court **found the law unconstitutional, and its discussion of why the law violated the Equal Protection Clause put Korematsu in a central position.** “At the very least, the Equal Protection Clause demands that racial classifications, especially suspect in criminal statutes, be subjected to the ‘most rigid scrutiny,’” the Court said, **quoting Justice Black’s key phrase**.66 **The statutory scheme could pass muster under the Korematsu standard only if the racial classifications it established proved necessary to accomplish a “permissible state objective, independent of the racial discrimination which it was the object of the Fourteenth Amendment to eliminate**.”67 Virginia’s miscegenation law failed this test.68 **Loving’s embrace of Korematsu’s Equal Protection Clause standard did not prove an anomaly**.69 **In fact,** this standard has carried over into many equal protection cases testing various contemporary claims involving racial classifications by the government. In Adarand Constructors, Inc. v. Peña, a **1995 case challenging affirmative action** based minority set asides, the Court **invoked** the key phrases of **Korematsu**. 70 “‘[**A]ll legal restrictions which curtail the civil rights of a single racial group are immediately suspect . . . [and] courts must subject them to the most rigid scrutiny**.’”71 **In Missouri v. Jenkins, a school desegregation case,** the Court relied on Korematsu when **it declared that “we must subject all racial classifications to the strictest of scrutiny,”** which was almost always fatal to the government’s action.72 **In Grutter v. Bollinger, one of the Court’s two most recent cases challenging affirmative action in university admissions,73 the Court quoted portions of Loving and Adarand Constructors (both of which referenced Korematsu’s equal protection standard) to declare that** governments cannot treat people differently based on race without a compelling reason.74 **In an even more recent case, Parents Involved in Community Schools v. Seattle School District No. 1, 75 Justice Thomas amplified the point in his concurring opinion. “We have made it unusually clear that** strict scrutiny applies to every racial classification,” he said, citing as authority the passage in Adarand Constructors. 76 Thomas also noted that strict scrutiny applied to racial classifications as early as 1967 in Loving, **which relied upon Korematsu**.77

**Thus, even though it seems a bit paradoxical,** Korematsu lives as a vital part of the modern equal protection jurisprudence**. The case and its direct descendants still show up in contemporary cases.78 Of course, when current decisions cite Korematsu, they do so not to show acceptance of racial discrimination but to** support discussion concerning the odiousness of these practices**. Thus, for current law students reading only modern cases, Korematsu will stand out as one of the great cases** presaging and supporting the dawning of the civil rights era. As Professors John Nowak and Ronald Rotunda wrote, “[i]f you only read the cases citing Korematsu, and not Korematsu, itself, you would never know Mr. Korematsu lost.”79

## at: green

1. Their methodology is flawed – their focus on Korematsu as a race precedent clouds the fact that in modern times it serves only to preserve judicial deference not perpetuate racism – Korematsu has already been discredited with regards to race

Green 11 [Craig Green (Prof of Law@Temple University Law, JD Yale); “ENDING THE KOREMATSU ERA: AN EARLY VIEW FROM THE WAR ON TERROR CASES”; 2011; Northwestern University Law Review: Vol. 105, No. 3]

My first step is to introduce the Korematsu era and analyze how the period as a whole earned its disfavored status. This Article’s terminological model is the Lochner era, in which **a single case represents a group of decisions that in turn embody** distinct principles of judicial activity.For the Lochner era, the ideas at stake were extreme solicitude for private property and judges’ failure to respect governmental policy judgments.25 This Part identifies comparably thematic principles for Korematsu-era cases. Section A **challenge**s **the conventional account of Korematsu as principally concerning governmental racism and mass internments**. Although Korematsu of course involved indefensible discrimination, its context and **its precursor Hirabayashi clarify that Korematsu was not** just **a referendum on** unconstitutional **racism**; instead, **it was** more **preoccupied with** assertions of executive power and military necessity. Section B supports this revisionist interpretation by collecting other cases from the 1940s and 1950s that **reflected Korematsu’s deference toward executive power but did not involve racial classifications**. Section C suggests that late twentieth-century events undermined the doctrinal authority of Korematsu-era precedents and that such cases qualify as disreputable “negative precedents” regardless of Korematsu’s racism. A. A Revisionist History of Korematsu v. United States Prior to the GWOT, American law schools had taught Korematsu for decades as a case principally about race,26 and **it is easy to see why**.As with slavery and Jim Crow, the decision to intern more than 70,000 United States citizens based on their Japanese ancestry **burns at the modern conscience** and illustrates the evils of racial discrimination.27 At first glance, Korematsu’s dissenting opinions seem to channel present-day outrage.28 And the majority’s dicta concerning racial discrimination have led some modern courts to cite Korematsu as a precursor of “strict scrutiny” in equal protection—**despite the fact that only Justice Murphy’s dissent even mentioned the words “equal protection**.”29 This section claims that **standard race-focused interpretations of Korematsu have** overshadowed the decision’s relevance to presidential power and military necessity**.** I do not suggest that Korematsu must be either a race case or a war powers case; of course it is **both**. **What I propose is an important shift in emphasis, stressing an aspect of Korematsu that is often** clouded by the visceral reaction to the decision’s racial discrimination.

1. Their race-based view of Korematsu is flawed – its primarily a key precedent for War Powers and deference

Green 11 [Craig Green (Prof of Law@Temple University Law, JD Yale); “ENDING THE KOREMATSU ERA: AN EARLY VIEW FROM THE WAR ON TERROR CASES”; 2011; Northwestern University Law Review: Vol. 105, No. 3]

**This** race-based **interpretation of Korematsu, which was nearly universal before 9/11, may seem** familiar and almost comfortable **because it links World War II internment with other extreme examples of premodern racism** such as **lynchings, peonage, and explicitly racist exclusions of voters and jurors—**all of which are now shelved in the dusty past.48 **Yet this racial focus** risks an anachronism that misrepresents the past and disserves the present. As we shall see, **this is a field where** reinterpreting Korematsu **as the Court decided it in 1944 may also** improve constitutional analysis today**.** **Simple vote counting shows that** the Korematsu Court itself did not view the case as involving straightforward racial discrimination**.** Several **Justices** who were **sensitive to racial issues in other cases—including Douglas, Rutledge, Black, and Stone—were majority votes for the government in Korematsu.**49 And **two Justices with far less progressive records on race— Roberts and Jackson—were among Korematsu’s dissenters**.50 This indicates that **these Justices did not find the cases’ racial elements to be decisive; other doctrinal factors were driving their determinations.** Modern scholars have largely ignored the difficult and decisive issue confronting the Court**: what to do with the Court’s year-old decision in Hirabayashi, which had relied on identical** claims of military need **to uphold an identically racist curfew.51 In Hirabayashi, all nine Justices endorsed the sweeping principle that governmental officials could adopt public safety measures “in the crisis of war and of threatened invasion, . . . based upon the recognition of facts and circumstances which indicate that a group of one national extraction may menace that safety more than others” notwithstanding the fact that “in other and in most circumstances racial distinctions are irrelevan**t**.”52 This** simple holding **established that** presidential claims of wartime necessity **could displace ordinary norms against racism**. And the Court in World War II might have fairly doubted whether, as distant East Coast judges, they could ever know what kind of military response would be necessary to counter Japanese threats or how much racism might be appropriate as opposed to excessive. **No Justice in Korematsu suggested that Hirabayashi was incorrect or should be overruled**. On the contrary, Korematsu’s majority fiercely asserted that the two cases could not be distinguished, and the dissenters offered no serious counterargument.53 **For the entire Court in Hirabayashi and the majority in Korematsu,** these decisions were primarily about whether Presidents could keep America safe by any means necessary; they were not about how racial groups should generally be treated.54 **The Court’s focus on** military need **explains not only the majority opinion in Korematsu but also the dissents. For the three dissenting Justices, something had dramatically changed during the year that separated Hirabayashi and Korematsu. What**ever **drove that change**, however, it **certainly was not a radical shift in the Justices’ constitutional philosophies of race. Instead, the passing months had mainly clarified the true scope of danger to American domestic security and the government’s ebbing credibility in arguing about such subjects. Threats of invasion and sabotage had dissipated** in 1944, **and a military report released in January had embarrassed DeWitt**’s justification for his actions.55 **That report was so disgraceful that Justice Murphy’s dissent quoted it extensively and a journalist used it to wage an extensive attack on the government’s factual claims.**56 **By 1944, the government itself had admitted that some prisoners in relocation centers were entirely loyal thereby revealing that its decision to detain Japanese-Americans was unjustifiably broad**.57 The internment period was also distressingly long, having lasted for two years with no sign of stopping. **From the perspective of military necessity, the government’s drastic and unending policy of mass internment was much harder to defend in 1944 than its seemingly temporary house arrest was in 1943.** The uniquely decisive question in Hirabayashi and Korematsu was how much the Court should defer to the President’s assertions of military necessity. **Such military judgments had been explicitly supported by Congress and were hard to falsify, but they were also increasingly hard to believe. The government’s arguments** in both cases **relied on President Roosevelt’s perceived credibility and competence, which** may have **led some Justices to uphold constitutionally troublesome policies in deference to urgent claims about national security.58 Notwithstanding Hirabayashi’s force under stare decisis as a unanimous year-old decision**, and despite the fact that there was no change in the Court’s membership, **Korematsu’s conference vote was still only five to four.59 If the two cases had both been decided in 1944, with an extra year of information and skepticism, one cannot guess what would have happened.60 It is quite clear, however, that** Korematsu’s majority saw the case as concerning wartime necessity and not general principles of racial discrimination. **Even the Korematsu dissenters’ choice to discard Hirabayashi is more understandable from the perspective of war rather than race.**

## 2nc no future abuse

This proves that there’s no basis for future abuse as a result of leaving korematu’s technically on the books

Multiple constraints solve abuse

Tushnet 6 [Mark V. Tushnet (Law Prof @ Gtown); “The Political Constitution of Emergency Powers”; http://deysine.com/index.php?option=com\_docman&task=doc\_download&gid=17&Itemid=54]

I conclude with a brief discussion on how the perspective developed here might inform our understanding of what Professor Dyzenhaus and others call legal black holes,. These are areas (physical or legal) in which **the courts play no role whatever in regulating the exercise of power.** At least in U.S. constitutional law, the proposition that there are legal black holes is actually **uncontroversial**. The so-called political questions doctrine identifies questions of constitutional law on which the courts simply will not rule.25 No one worries much, except as a matter of abstract theory, about the existence of black holes of this sort, and for good reason: **Political questions can be identified in substantial part by considering whether the** political constraints on decision-makers are at least as strong as those that would be applied were the courts to interven**e**.26

The Military Commissions Act of 2006 purports to deprive the federal courts of all jurisdiction over some claims by those held by the United States as unlawful combatants.27 Assume that, as a matter of positive U.S. law, this denial of judicial intervention is constitutional. The Military Commissions Act would thus create a legal black hole.28 The concern with such black holes is that they may exist within an otherwise reasonably well-functioning democratic system.29

Yet, the perspective developed here requires that we look beyond the fact that courts will not intervene, to ask whether there are **political constraints** on the exercise of power over enemy combatants**. Without contending that those now being detained have always been treated in a manner comporting with minimal human rights requirements**,30 I think **there is reason to believe that there are such constraints** now operating**.** Public revelations **about executive officials’ behavior have** generated legislative pressure on those officials, and **one way to avoid new regulations is to show, credibly, that minimum requirements of decency are being met**. More important, in my view, are **internal bureaucratic constraints.** The best example comes from **the procedures used to determine who is an enemy combatant, through “combatant status review tribunals.**” The tribunals already used, and even more so those to be used in the future if proposed modifications go into effect, satisfy “rule of law” requirements of procedural fairness.31 To take one example: these tribunals will consider hearsay evidence, giving it the weight it rationally has. This is different from the rule applied in criminal trials in the United States, but legal systems around the world admit hearsay evidence routinely. The fact that it is admitted in the CSRTs does not show that those tribunals fail to satisfy “rule of law” requirements.

**Why did the United States develop CSRTs that satisfy “rule of law” requirements when the tribunals were not subject to judicial evaluation for fairness?32 The reasons**, I believe, **combine bureaucratic and professional interests**.33 The CSRTs are at the end of a funnel with a fairly broad mouth. **Those fighting U.S. armed forces in the field were first given a rough-and-ready field assessment by field officers themselves, as minor participants or as serious threats. That assessment was then reviewed**, again **within the zone of active combat, by a group of officers. Some were found not worth holding, and others were transferred to prisons, and eventually to Guantanamo Bay, where a yet more formal evaluation process occurred. The CSRTs are the culmination of these processes. Here** I think **we are observing a** bureaucratic impulse **to increase formality at successive stages of review.34**

**In addition, there are the** professional interests **of lawyers and military officers**. **Press accounts make it clear that military officials, and lawyers within the military, were rather strong voices favoring CSRTs** (and trial-forms for those charged with offenses) that satisfied “rule of law” requirements. **The reasons are professional: Military officials have a sense of military honor and a concern for reciprocity, deeply imbued in their training, that push in the “rule of law” direction. Lawyers of course are increasingly comfortable as procedural formality increases, at least up to the “rule of law” threshold.**

## no legal basis for gitmo

Green 11

As old issues resurfaced concerning detention and military commissions, executive lawyers and federal courts of appeals used Korematsu-era precedents (though not Korematsu itself)

There’s no actual legal precedence for korematsu

Aya Gruber, Professor of Law, University of Colorado Law School, 10 [“AN UNINTENDED CASUALTY OF THE WAR ON TERROR,” Georgia State University Law Review, Winter, 2010, 27 Ga. St. U.L. Rev. 299]

So how was it possible that the Supreme Court found the tribunals to violate Geneva and struck them down, while simultaneously avoiding the question of whether Geneva-based claims are judicially cognizable? Justice **Stevens cleverly but unfortunately did interpretive gymnastics** to attain this result. The Court asserted that Common Article 3 applied to Hamdan, not because the Geneva Conventions are a valid source of enforceable rights, but because Common Article 3 is silently incorporated by **domestic legislation**, specifically the UCMJ. n124 The UCMJ actually does not mention the Geneva Conventions and only briefly speaks of international law. Article 21 of the UCMJ states:¶ The provisions of this chapter conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals. n125¶ The Court interpreted this provision as a domestic statutory requirement that Bush's tribunals comport with international law, [\*322] including Common Article 3. n126 **Essentially, the Court treats the UCMJ as "executing" legislation**.

The problem with the Court's analysis is that the legislative history of and expert consensus on Article 21 do not support this conclusion. Historians are in fair agreement that Article 21, whose predecessor provision was passed long before the Geneva Conventions, was meant only to ensure that the UCMJ's creation of military courts martial would not alter the President's pre-existing authority to convene executive wartime tribunals. n127 It was not meant to require such tribunals to comport with the laws of war.¶ The Supreme Court chose to give detainees Geneva rights **by reading them into a domestic statute** that had little to do with the treaty. Moreover, the **Court knew that Congress was about to pass the** Military Commissions Act (**MCA), which expressly replaces the UCMJ where inconsistent.** n128 This Act is essentially a congressional stamp of approval on Bush's military tribunal process. n129 Although its tribunal procedures differ from those of Bush's tribunals only slightly, n130 the MCA states both that it fulfills any requirements of Common Article 3, n131 and detainees subject to military trial may not [\*323] invoke the Geneva Conventions in litigation. n132 Thus, any international law-like protection culled from UCMJ would be short-lived and soon replaced by the MCA's contempt for international law.¶ As a consequence, although Hamdan might be seen as a liberal victory because it used the Geneva Conventions to give detainees greater rights, **the case proved far less momentous as an indicator of the United States' participation in a worldwide human rights regime**. **To the contrary, the Court deliberately chose to refrain from stemming the tide of anti-internationalism in American treaty jurisprudence**, even though a statement on the status of treaties appeared by every indication warranted, if not required.¶ It is difficult to say why the majority chose to secure Geneva rights through the UCMJ rather than addressing the self-execution issue head on. Perhaps there were not enough votes supporting Geneva enforceability, and the majority wanted to render immediate relief to the detainees. It could be that the majority feared prompting a presidential withdrawal from or congressional repeal of the Geneva Conventions. Maybe the Court's silence on treaty status was merely overprotective but misguided judicial restraint. Attempting to discover the inner motivations of the justices is the province of Court historians and biographers. Nonetheless, as Professor Jordan Paust points out, "every violation of the laws of war is a war crime" and "such caution in the face of international crime is less than satisfying." n133 The "liberal" Hamdan majority certainly did not take the opportunity to affirm the status of treaties in a time when an understanding and acceptance of the international laws of war were more important than ever. This oversight paved the way for the single most exceptionalist Supreme Court treaty decision in history, Medellin v. Texas. n134

## quarantines inevitable

AND this authority is sufficient to trigger their impacts – explicitly includes quarantining groups, precluding entry of foreign nationals, confiscating property, the list goes on

Friedman 12 [FRIEDMAN, JOSHUA L. (Attorney Advisor@US Social Sec. Admin., Office of Disability Adjud. & Review; JD@U of Maryland; MBA@U of Baltimore); “EMERGENCY POWERS OF THE EXECUTIVE: THE PRESIDENT'S AUTHORITY WHEN ALL HELL BREAKS LOOSE”; Journal Of Law & Health 25(2):265-306; July 2012]

Emergency legislation has also been passed to control communicable diseases, n367 **such as preventing the** interstate spread **of diseases; n368 preventing the introduction, spread or transmission of** foreign diseases**; n369 establishing the list of** quarantinable communicable diseases and penalties for violating quarantine regulations**; n370** precluding aliens **with communicable public health diseases** from entry **into the U.S.; n371 authorizing the cessation, cancelation or** grounding of flights **or restricting airport airspace due to emergency conditions on the ground; n372** regulating or limiting **the interstate, instrastate or foreign transportation of, or providing for the inspection, cleaning or destruction of,** animals, food, and other property **found to be contaminated or infected; n373 and,** limiting the liability of those administering emergency countermeasures **or those volunteers participating in emergency aid. n374**

All lives are infinitely valuable, the only ethical option is to maximize the number saved

**Cummisky, 96** (David, professor of philosophy at Bates, Kantian Consequentialism, p. 131)

Finally, even if one grants that saving two persons with dignity cannot outweigh and compensate for killing one—because dignity cannot be added and summed in this way—this point still does not justify deontologieal constraints. On the extreme interpretation, why would not killing one person be a stronger obligation than saving two

persons? If I am concerned with the priceless dignity of each, it would seem that 1 may still saw two; it is just that my reason cannot be that the two compensate for the loss of the one. Consider Hills example of a priceless object: If I can save two of three priceless statutes only by destroying one. Then 1 cannot claim that saving two makes up for the loss of the one**. But** Similarly, **the loss of the two is not outweighed by** the **one** that was **not destroyed**. Indeed, even if dignity cannot be simply summed up. How is the extreme interpretation inconsistent with the idea that I should save as many priceless objects as possible? Even if two do not simply outweigh and thus compensate for the lass of the one, each is priceless: thus, I have good reason to save as many as I can. In short, it is not clear how the extreme interpretation justifies the ordinary killing'letting-die distinction or even how it conflicts with the conclusion that the more persons with dignity who are saved, the better.\*

Util accommodates rights

**Shaw, 99** – Professor of Philosophy @ San Jose State

(William H, Contemporary Ethics, p.185-186)

One of the most widespread criticisms of utilitarianism is that it cannot take rights seriously enough. Generally speaking, rights take precedence over considerations of immediate utility. They limit or restrict direct appeals to welfare maximization. For example, to have a right to free speech means that one is free to speak one's mind even if doing so will fail to maximize happiness because others will dislike hearing what one has to say. The right not to be compelled to incriminate oneself entails that it would be wrong to force a criminal defendant to testify against himself even if the results of doing so would be good. If rights are moral claims that trump straightforward appeals to utility," then utilitarianism, the critics argue, cannot meaningfully respect rights because their theory subordinates them to the promotion of welfare. However, the criticism that utilitarianism cannot do right by rights ignores the extent to which utilitarianism can, as discussed in Chapter 5, accommodate the moral rules, principles, and norms other than welfare maximization that appear to constitute the warp and woof of our moral lives. To be sure, utilitarians look at rights in a different light than do . moral theorists who see them as self-evident or as having an independent deontic status grounded on non-utilitarian considerations. For utilitarians, it is not rights, but the promotion of welfare, that lies at the heart of morality. Bentham was consistently hostile to the idea of natural rights, in large measure because he believed that invoking natural rights was only a way of dressing up appeals to intuition in fancy rhetoric. In a similar vein, many utilitarians today believe that in both popular and philosophical discourse people are too quick to declare themselves possessors of all sorts of putative rights and that all too frequently these competing claims of rights only obscure the important, underlying moral issues.

Human rights can be justified by util

**Shaw, 99** – Professor of Philosophy @ San Jose State

(William H, Contemporary Ethics, p. 188-189)

Mill and moral rights. As we have seen, Bentham was attentive to the importance of legal and other institutional rights. John Stuart Mill went further and upheld, on utilitarian grounds, moral rights that are not institutionally based. In an important passage in Utilitarianism, Mill first explains what moral rights are and then affirms that they can be justified only in terms of utility: When we call anything a person's right, we mean that he has a valid claim on society to protect him in the possession of it, either by the force of law or by that of education and opinion. If he has what we consider a sufficient claim, on whatever account, to have something guaranteed to him by society, we say that he has a right to it . . . . To have a right, then, is, I conceive, to have something which society ought to defend me in the possession of. If the objector goes on to ask why it ought, I can give him no other reason than general utility. (52) Today most utilitarians follow Mill in recognizing not just legal rights but also moral rights. That is, they believe that people have certain valid claims or entitlements that others act or not act in certain ways, entitlements that it promotes utility to recognize and protect,

even if these rights are not legally formalized. Just as utilitarians want people in their society to have internalized certain norms and be strongly disposed to follow certain rules, so they want people to be able to recognize that others have rights and to be firmly minded to respect those rights and refrain from violating them. In line with this, most contemporary utilitarians acknowledge the importance of upholding certain basic human rights and insisting that individuals are morally entitled to be treated in certain ways whether or not this is required by the legal system under which they live. These rights include personal liberty and freedom of movement, freedom of religion,freedom of expression and inquiry, and freedom from arbitrary imprisonment or execution and from arbitrary deprivation of property or livelihood. Widely recognized human rights such as these correspond to certain basic human interests, which are central to our well-being. Respecting these rights promotes human flourishing; violating them almost always detracts from human welfare. By identifying as human rights certain fundamental sources of, or preconditions for, well-being, utilitarians attempt to safeguard the most basic interests of individuals and prevent governments and other powerful groups from trampling on them.Because human rights mark as morally impermissible certain salient and easily identifiable harms, they provide a powerful focal point for moral and political criticism. By contrast, criticism that appeals to the general good is often less effective because people disagree about what best promotes the general good in specific cases." Ideally, human rights should be institutionalized by being incorporated into the legal or constitutional structure of all nations. In the meantime they provide an important basis for moral criticism in the court of public opinion. It is possible, of course, for there to be exceptional circumstances when it would be better to violate someone's human rights than to respect them. But utilitarians argue that in practice we can rarely if ever reliably judge ourselves to be in such a situation. In fact, most arguments that purport to justify violating human rights on utilitarian grounds are nothing more than rationalizations, advanced by rulers intent on shoring up their regimes or protecting their privileges. And even when the arguments are in good faith, the supposed utility calculations are overwhelmingly likely to be erroneous. Thus, we do better not to countenance violations of human rights at all, treating them instead as virtually absolute. Consider torture for example. We know that those in power can sometimes convince themselves of the necessity of torturing suspects to obtain information the authorities believe to be vital; doing so, they claim, is justified on utilitarian grounds. Yet we also know that those authorities have always been wrong about this and that state-sponsored torture only diminishes social well-being, crippling its victims and sapping the humanity of its perpetrators.

3. Avoidance of nuclear war is a justified survival claim – Callahan agrees

Daniel **Callahan, 73** The Tyranny of Survival, p. 94-5

A number of types of survival can be distinguished, the most important of which are survival of the species and survival of nations, cultures, groups (racial, ethnic and religious) and individuals. Survival of the species provides the prototype concept of survival. Taken literally, it can be understood to mean a continuation of human existence, specifying nothing about the number of those existing or the quality of their existence. In that sense, the species could survive if only a handful of fertile humans existed, much as the bison or the California condor exists, and even if the level of existence was that of a primitive tribe. If survival of the species alone is the goal, understood in a minimal sense, it is reasonable to suppose that nothing less than a global, all-encompassing catastrophe would suffice to bring about extinction. Nuclear warfare, together with a persistence of life-extinguishing levels of atmospherice radiation, might present that kind of threat.

4. Survival claims are useful

Daniel **Callahan, 73** The Tyranny of Survival, p. 90-91

A beginning can be made toward this integration by noting some of the uses and abuses of the concept of survival. Historically, the uses have been more evident than the abuses. Among the uses are those of a fundamental perception of a biological reality principle: unless one exists, everything else is in vain. That is why survival, the desire to live, is so potent a force, and why the right to life is such a basic part of any reasonably enlightened social, political and legal system. Politically, particularly in time of war, national survival has been a potent force for mobilization of community effort, transcendence of self-interest, and creation of patriotic esprit. For individuals, the desire to ensure the survival of offspring has been the source of great and selfless sacrifice and the voluntary acceptance of obligations to future generations. Within the private self, a will to live, to survive at all costs, has literally kept people alive, staving off a despair which would otherwise have been totally destructive.

# 1nr

## 1nr ov

Warming causes extinction - based on scientific models and consensus - that's Flournoy - that outweighs -

Precautionary principle - the consequences are too big

Podesta and Ogden 7 – \*President of the Center for American Progress and \*\* Senior National Security Analyst at the Center for American Progress (John and Peter, The Security Implications of Climate Change, The Washington Quarterly 31.1, Winter 2007)

Consequently, even though the IPCC projects that temperature increases at higher latitudes will be approximately twice the global average, it will be the developing nations in the earth's low latitudinal bands, as well as sub-Saharan African countries, that will be most adversely affected by climate change. In the developing world, even a relatively small climatic shift can trigger or exacerbate food shortages, water scarcity, destructive weather events, the spread of disease, human migration, and natural resource competition. These crises are all the more dangerous because they are interwoven and self-perpetuating: water shortages can lead to food shortages, which can lead to conflict over remaining resources, which can drive human migration, which can create new food shortages in new regions. Once underway, this chain reaction becomes increasingly difficult to stop. It is therefore critical that policymakers do all they can to prevent the domino of the first major climate change consequence, whether it be food scarcity or the outbreak of disease, from toppling. The most threatening first dominos, where they are situated, and their cascading geopolitical implications are identified in this essay.

Turns case - It entrenches global inequality - this accesses their structural violence claims

**Steiner** **7** Administrator Executive Director, U.N. Development Programme and Environment Programme [Adam, “Fighting Climate Change: Human Solidarity in a Divided World,” 07/08 http://hdr.undp.org/en/media/hdr\_20072008\_en\_complete.pdf]

In reality, the world is a heterogeneous place: people have unequal incomes and wealth and climate change will affect regions very differently. This is, for us, the most compelling reason to act rapidly. Climate change is already starting to affect some of the poorest and most vulnerable communities around the world. A worldwide average 3° centigrade increase (compared to preindustrial temperatures) over the coming decades would result in a range of localized increases that could reach twice as high in some locations. The effect that increased droughts, extreme weather events, tropical storms and sea level rises will have on large parts of Africa, on many small island states and coastal zones will be inflicted in our lifetimes. In terms of aggregate world GDP, these short term effects may not be large. But for some of the world’s poorest people, the consequences could be apocalyptic. In the long run climate change is a massive threat to human development and in some places it is already undermining the international community’s efforts to reduce extreme poverty.

Warming is a much larger internal link to accessing structural violence frameworks

**Stott 7** (Robin Stott, Vice Chair @ Grayson Centre, Journal of the Royal Society of Medicine, 2007, “Climate change, poverty and war”, 100:9, p. 399-402)

These alterations in global ecology are aggravating the already parlous state of the world's most vulnerable populations, and if not tackled will lead to widespread social and economic devastation; the consequences of which, though caused by the rich, fall most heavily on the poor, in an all too familiar story. The impact of climate change is to widen the already substantial resource gulf between the rich and the poor. This gap is increasingly recognized as a significant cause of the increasing levels of despair and desperation among the dispossessed,2 emotions which frequently spiral into violent conflict. The widening gap is mirrored in the deteriorating health status of the poor (Box 3). The security implications of climate change have been debated in the UN Security Council; Margaret Beckett, the UK Foreign Secretary at the time, stated that ‘An unstable climate will exacerbate some of the core drivers of conflict’.3 The US Senate is debating a Bill to have climate change recognized as a security concern,4 and in a report on US National Security, senior American military personnel described climate change as a ‘threat multiplier’ for instability.5 It is not surprising that when considering the major threats to the health of humanity, the interrelated problems of climate change and the gulf between the rich and poor are seen as triggers for war, risking the ultimate health crisis of nuclear war. Resolving these interrelated risks is therefore the key to reducing the possibilities of violent conflict and improving global public health. The Intergovernmental Panel on Climate Change, the World Bank and the World Health Organization (WHO), amongst others, unequivocally state that these global problems can only be resolved through the development and implementation of a global framework.6-8 One framework which fulfils the demanding requirements of controlling atmospheric carbon dioxide levels at the same time as reducing the inequity between rich and poor is Contraction and Convergence, developed by the Global Commons Institute.9

Warming is real, anthropogenic, and causes mass death NOW

Deibel 7(Terry L, Professor of IR @ National War College, “Foreign Affairs Strategy: Logic for American Statecraft”, Conclusion: American Foreign Affairs Strategy Today)

Finally, there is one major existential threat to American security (as well as prosperity) of a nonviolent nature, which, though far in the future, demands urgent action. It is the threat of global warming to the stability of the climate upon which all earthly life depends. Scientists worldwide have been observing the gathering of this threat for three decades now, and what was once a mere possibility has passed through probability to near certainty. Indeed not one of more than 900 articles on climate change published in refereed scientific journals from 1993 to 2003 doubted that anthropogenic warming is occurring. “In legitimate scientific circles,” writes Elizabeth Kolbert, “it is virtually impossible to find evidence of disagreement over the fundamentals of global warming.” Evidence from a vast international scientific monitoring effort accumulates almost weekly, as this sample of newspaper reports shows: an international panel predicts “brutal droughts, floods and violent storms across the planet over the next century”; climate change could “literally alter ocean currents, wipe away huge portions of Alpine Snowcaps and aid the spread of cholera and malaria”; “glaciers in the Antarctic and in Greenland are melting much faster than expected, and…worldwide, plants are blooming several days earlier than a decade ago”; “rising sea temperatures have been accompanied by a significant global increase in the most destructive hurricanes”; “NASA scientists have concluded from direct temperature measurements that 2005 was the hottest year on record, with 1998 a close second”; “Earth’s warming climate is estimated to contribute to more than 150,000 deaths and 5 million illnesses each year” as disease spreads; “widespread bleaching from Texas to Trinidad…killed broad swaths of corals” due to a 2-degree rise in sea temperatures. “The world is slowly disintegrating,” concluded Inuit hunter Noah Metuq, who lives 30 miles from the Arctic Circle. “They call it climate change…but we just call it breaking up.” From the founding of the first cities some 6,000 years ago until the beginning of the industrial revolution, carbon dioxide levels in the atmosphere remained relatively constant at about 280 parts per million (ppm). At present they are accelerating toward 400 ppm, and by 2050 they will reach 500 ppm, about double pre-industrial levels. Unfortunately, atmospheric CO2 lasts about a century, so there is no way immediately to reduce levels, only to slow their increase, we are thus in for significant global warming; the only debate is how much and how serious the effects will be. As the newspaper stories quoted above show, we are already experiencing the effects of 1-2 degree warming in more violent storms, spread of disease, mass die offs of plants and animals, species extinction, and threatened inundation of low-lying countries like the Pacific nation of Kiribati and the Netherlands at a warming of 5 degrees or less the Greenland and West Antarctic ice sheets could disintegrate, leading to a sea level of rise of 20 feet that would cover North Carolina’s outer banks, swamp the southern third of Florida, and inundate Manhattan up to the middle of Greenwich Village. Another catastrophic effect would be the collapse of the Atlantic thermohaline circulation that keeps the winter weather in Europe far warmer than its latitude would otherwise allow. Economist William Cline once estimated the damage to the United States alone from moderate levels of warming at 1-6 percent of GDP annually; severe warming could cost 13-26 percent of GDP. But the most frightening scenario is runaway greenhouse warming, based on positive feedback from the buildup of water vapor in the atmosphere that is both caused by and causes hotter surface temperatures. Past ice age transitions, associated with only 5-10 degree changes in average global temperatures, took place in just decades, even though no one was then pouring ever-increasing amounts of carbon into the atmosphere. Faced with this specter, the best one can conclude is that “humankind’s continuing enhancement of the natural greenhouse effect is akin to playing Russian roulette with the earth’s climate and humanity’s life support system. At worst, says physics professor Marty Hoffert of New York University, “we’re just going to burn everything up; we’re going to heat the atmosphere to the temperature it was in the Cretaceous when there were crocodiles at the poles, and then everything will collapse.” During the Cold War, astronomer Carl Sagan popularized a theory of nuclear winter to describe how a thermonuclear war between the Untied States and the Soviet Union would not only destroy both countries but possibly end life on this planet. Global warming is the post-Cold War era’s equivalent of nuclear winter at least as serious and considerably better supported scientifically. Over the long run it puts dangers from terrorism and traditional military challenges to shame. It is a threat not only to the security and prosperity to the United States, but potentially to the continued existence of life on this planet.

They've conceded warming is real, anthropogenic, and causes extinction - they've also conceded that they prevent Obama's ability to stop it through international action - THIS IS ALL DROPPED - NO NEW 1AR ARGUMENTS BECAUSE WE MAKE STRATEGIC DECISIONS BASED ON 2AC ARGUMENTS -

## at: inevitable

Doesn't assume strong Obama - he can bring the world in line with a 2 degree temperature rise threshold - that's wold

Presidential action is sufficient to avoid carbon lock-in

**Wold ‘12**

Christopher, Professor of Law & Director, International Environmental Law Project (IELP), Lewis & Clark Law School, “Climate Change, Presidential Power, and Leadership: “We Can’t Wait”

Many scientists argue that CO2 concentrations above 350 ppm and CO2eq concentrations above 450 ppm must be avoided to achieve the current goal of the climate change regime to keep temperatures from increasing 2°C above pre-industrial levels.17 According to the UN Environment Programme, “[e]mission pathways consistent with a ‘likely’ [greater than 66%] chance of **meeting the 2°C target**” must peak before 2020 at emission levels around 44 GtCO2eq, with global emissions declining steeply thereafter—on average 2.6% per year.18 As part of the climate change regime, eighty six countries have pledged to reduce emissions, but these pledges, at best, are 8 GtCO2eq short of meeting that goal.19 In fact, the gap between pledges and the 2°C goal are certain to be much higher because many of the pledges are conditional, 20 and the United States is not close to meeting its pledge, weak as it is, of reducing 2005 emissions by 17% by 2020. According to the International Energy Agency (IEA), any chance of meeting the 2°C goal must begin now and include a significant technological component. In the IEA’s “450 Scenario,” **strong policy actions** must be taken now to peak global energy-related CO2 emissions before 2020, with those emissions declining to 21.6 Gt by 2035. However, the 450 Scenario requires investment in and consumer spending on energy-related equipment totaling $15.2 trillion relative to an emissions pathway that takes us to a long-term rise in the average global temperature in excess of 3.5°C.21 The IEA emphasizes that action must happen now due to the long economic life spans of energy-related infrastructure—power stations, buildings and factories. Already, 80% of global CO2 emissions emitted between 2009 and 2035 in the 450 Scenario are “locked-in” by existing infrastructure or infrastructure that is under construction and will still be operational by 2035.22 If the global community waits until 2017 to take coordinated action, the IEA estimates that “all permissible emissions in the 450 Scenario would come from the infrastructure then existing, so that all new infrastructure from then until 2035 would need to be zero-carbon, unless emitting infrastructure is retired before the end of its economic lifetime to make headroom for new investment.” 23 If action is delayed until 2015, approximately 45% of the global fossil fuel capacity installed by then would have to be retired early or refurbished by 2035.24 Moreover, delayed action will be expensive: “for every $1 of investment in the power sector avoided before 2020, an additional $4.3 would need to be spent after 2020 to compensate for the higher emissions.” 25 The stark implications of a business-as-usual emissions future have led many political leaders to call for dramatic cuts in GHG emissions and a need for a collective effort to retool the energy base of our modern economies to achieve a low-carbon or carbon-free economy. Not only will developed countries have to reduce their emissions drastically, but developing and even least-developed countries will need to increase energy access in a climate-friendly way. Meeting this challenge will require a “transformative technological revolution.” 26 The IEA report reinforces the view that this technological change must be transformative and revolutionary rather than incremental. If not, then we risk locking in technologies for decades, different from the ones we need in a carbon-free future. For example, even “[b]illiondollar investments in hybrid auto engines . . . would still leave future motor vehicles dependent on harmful fossil fuel combustion and would retain little market value when polluting nations must eventually convert their automotive transportation systems to GHG-free methods.” 27 Similarly, a new state-of-the-art coal-fired power plant in India may reduce GHG emissions by 10% compared to traditional power plants, but the new plant will still emit more than 20 million tons of GHGs per year for decades.28 So the question is not whether the president is doing something. **The question is whether the president is doing the right thing**. Are the policies being put in place the ones that will encourage the development of technologies that can help us reach a carbon-free future?

Not irreversible – major emissions reductions are needed

**Nuccitelli 10**

(Dana Nuccitelli is an environmental scientist at a private environmental consulting firm in the Sacramento, California area. He has a Bachelor's Degree in astrophysics from the University of California at Berkeley, and a Master's Degree in physics from the University of California at Davis. He has been researching climate science, economics, and solutions as a hobby since 2006, and has contributed to Skeptical Science since September, 2010., 10/5/2010, "Is CO2 a pollutant?", www.skepticalscience.com/co2-pollutant-advanced.htm)

Quantifying exactly at what point global warming will become dangerous is a difficult task. However, based on the research and recommendations of climate scientists, more than 100 countries have adopted a global warming limit of 2°C or below (relative to pre-industrial levels) as a guiding principle for mitigation efforts to reduce climate change risks, impacts, and damages. This 2°C warming level is considered the "danger limit". During the last interglacial period when the average global temperature was approximately 2°C hotter than today, sea levels were 6.6 to 9.4 meters higher than current sea levels. Large parts of the Antarctic and Greenland ice sheets melted, with the southern part of Greenland having little or no ice. As discussed above, the CO2 we've already emitted has committed us to about 1.4°C warming above pre-industrial levels. Given a climate sensitivity to a doubling of atmospheric CO2 of 2-4.5°C and the fact that on our current path we're headed for a CO2 doubling by mid-to-late 21st century, we're fast-approaching the danger limit. How Soon Will we Reach Dangerous Warming? Meinshausen et al. (2009) found that if we limit cumulative CO2 emissions from 2000-2050 to 1,000 Gt (approximately an 80% cut in global emissions), there is a 25% probability of warming exceeding the 2°C limit, and 1,440 Gt CO2 over that period (an 80% cut in developed country emissions) yields a 50% chance of 2°C warming by the year 2100. If we maintain current emissions levels, there is an approximately 67% chance that we will exceed 2°C warming by 2100. In short, to avoid the amount of global warming which is considered dangerous based on our understanding of the climate and empirical evidence, we need to achieve major reductions in global CO2 emissions in the next 40 years. Thus it becomes quite clear that not only is CO2 a pollutant, but it also poses a risk to public health and welfare.

There’s still time to prevent the worst impacts

**Mann 12**

(Michael E. Mann is a member of the Pennsylvania State University faculty, holding joint positions in the Departments of Meteorology and Geosciences and the Earth and Environmental Systems Institute (EESI). He shared the Nobel Peace Prize in 2007 with other scientists who participated in the Intergovernmental Panel on Climate Change. He recently published a book “The Hockey Stick and the Climate Wars” describing his experiences at the center of the climate change debate., 4/23/2012, “Michael Mann: The Danger Of Climate Change Denial”, http://thinkprogress.org/climate/2012/04/23/469307/michael-mann-the-danger-of-climate-change-denial/)

If we continue down this path, we will be leaving our children and grandchildren a different planet – one with more widespread drought and flooding, greater competition for diminishing water and food resources, and national-security challenges arising from that competition. As a father of a six-year-old daughter, I believe we have an ethical responsibility to make sure that she doesn’t look back and ask why we left her generation a fundamentally degraded planet relative to the one we started with. There’s a tendency for people to be so overwhelmed by the challenge and the threat of climate change that they go from concern to despair. They shouldn’t. While some warming is already locked in, there’s still time to turn the ship around. We can still limit our emissions in the decades to come in a way that prevents some of the most serious impacts of climate change from occurring. The worst thing we can do is bury our heads in the sand and pretend that climate change doesn’t exist. We can, and should, have the worthy debate regarding what to do about it –a discussion that is sorely needed – from Washington to Beijing and back again.

## at: warming reps bad

No specific evidence that warming impacts are bad - they've conceded all the substance above so it's a truth claim

Focusing on the global, existential threat of climate change solves global violence

Vail et al ‘12

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The vast majority of the scientific community agrees that the earth’s climate is changing, that these changes have the potential to produce catastrophic consequences, and that humans have been contributing to this phenomenon (e. g., Canadian Meteorological & Oceanographic Society, 2002; Joint Science Academies, 2005). Although the severity of the predicted effects of climate change are disputed by some (Ball, 2007), many scientists have warned of the potential for cataclysmic global disasters, including extinction of animal species, flooding of densely populated coastal areas, forced evacuations and migrations in regions no longer able to support agriculture, disruptions of weather patterns, drought, famine, and increased competition for resources (Hileman, 1999; Intergovernmental Panel on Climate Change [IPCC], 1996; Schneider, 1997). Building on research from psychology, sociology, political science, economics, history, and geography, Anderson and DeLisi (2011) present evidence that global climate change might intensify existing intergroup conflicts and create new ones. Both experimental and correlational studies establish that uncomfortably warm temperatures increase physical aggression and violence (e.g., Anderson & Anderson, 1998; Anderson, Anderson, Dorr, DeNeve, & Flanagan, 2000). In addition to the direct effects of global climate change on irritability and aggression, there would likely also be indirect effects on populations whose livelihoods and survival are threatened by the changes brought about by global climate change. As realistic group conflict theory (Sherif et al., 1961) suggests, the inevitable decrease in resources precipitated by global climate change could lead to more intergroup violence as groups try to secure the resources they need. In fact, some argue that climate change already has exacerbated existing tensions and conflicts in the Darfur region of Sudan and in Bangladesh (Anderson & DeLisi, 2011). Although the potential for global catastrophe, including increased intergroup conflict, is great if the projected effects of global climate change occur, research and theory (Allport, 1954; Gaertner et al., 1993) suggest another possibility, at least before these consequences become too severe. Awareness of the shared nature of this impending threat could encourage cooperation among those affected and might even facilitate resolution of long-standing conflicts. This article presents three studies examining the interactive effect of existential threat and contemplating the consequences of global climate change. Based on TMT and classic theories and research on the impact of shared goals and threats, we hypothesized that reminders of death would lead people focusing on the shared global consequences of climate change to increase their support for peace and reconciliation and decrease their support for war.

## at: doj

Link - Friedman says it required for the precedent of executive emergency powers - that's the basis for modern expansion of the president -

But this still solves their memory stuff

## at: warming good

CX was pretty clearly - this isn't an argument

A. No uniqueness that there's too much oxygen now so it's not offense

B. Doesn't say degrades oxygen enough to avert extinction

C. No warrant why too much oxygen causes "global holocaust"

There cards are short and blippy - don't read into them

Warming Kills oxygen supplies - extinction

IANS, 10

(6/19, Indo-Asian News Service, citing Ove Hoegh-Guldberg, professor at University of Queensland and Director of the Global Change Institute, and John Bruno, associate professor of Marine Science at UNC, http://www.thaindian.com/newsportal/sci-tech/could-unbridled-climate-changes-lead-to-human-extinction\_100382787.html

Sydney: Scientists have sounded alarm bells about how growing concentrations of greenhouse gases are driving irreversible and dramatic changes in the way the oceans function, providing evidence that humankind could well be on the way to the next great extinction. The findings of the comprehensive report: 'The impact of climate change on the world's marine ecosystems' emerged from a synthesis of recent research on the world's oceans, carried out by two of the world's leading marine scientists. One of the authors of the report is Ove Hoegh-Guldberg, professor at The University of Queensland and the director of its Global Change Institute (GCI). 'We may see sudden, unexpected changes that have serious ramifications for the overall well-being of humans, including the capacity of the planet to support people. This is further evidence that we are well on the way to the next great extinction event,' says Hoegh-Guldberg. 'The findings have enormous implications for mankind, particularly if the trend continues. The earth's ocean, which produces half of the oxygen we breathe and absorbs 30 per cent of human-generated carbon dioxide, is equivalent to its heart and lungs. This study shows worrying signs of ill-health. It's as if the earth has been smoking two packs of cigarettes a day!,' he added. 'We are entering a period in which the ocean services upon which humanity depends are undergoing massive change and in some cases beginning to fail', he added. The 'fundamental and comprehensive' changes to marine life identified in the report include rapidly warming and acidifying oceans, changes in water circulation and expansion of dead zones within the ocean depths. These are driving major changes in marine ecosystems: less abundant coral reefs, sea grasses and mangroves (important fish nurseries); fewer, smaller fish; a breakdown in food chains; changes in the distribution of marine life; and more frequent diseases and pests among marine organisms. Study co-author John F Bruno, associate professor in marine science at The University of North Carolina, says greenhouse gas emissions are modifying many physical and geochemical aspects of the planet's oceans, in ways 'unprecedented in nearly a million years'. 'This is causing fundamental and comprehensive changes to the way marine ecosystems function,' Bruno warned, according to a GCI release.

CO2 emissions drastically reduce oxygen levels and make life impossible – newest and most conclusive studies prove

Tatchell, 8 [Peter, “The oxygen crisis: Could the decline of oxygen in the atmosphere undermine our health and threaten human survival?,” The Guardian, Aug 13, http://www.guardian.co.uk/commentisfree/2008/aug/13/carbonemissions.climatechange]

The rise in carbon dioxide emissions is big news. It is prompting action to reverse global warming. But little or no attention is being paid to the long-term fall in oxygen concentrations and its knock-on effects. Compared to prehistoric times, the level of oxygen in the earth's atmosphere has declined by over a third and in polluted cities the decline may be more than 50%. This change in the makeup of the air we breathe has potentially serious implications for our health. Indeed, it could ultimately threaten the survival of human life on earth, according to Roddy Newman, who is drafting a new book, The Oxygen Crisis. I am not a scientist, but this seems a reasonable concern. It is a possibility that we should examine and assess. So, what's the evidence? Around 10,000 years ago, the planet's forest cover was at least twice what it is today, which means that forests are now emitting only half the amount of oxygen. Desertification and deforestation are rapidly accelerating this long-term loss of oxygen sources. The story at sea is much the same. Nasa reports that in the north Pacific ocean oxygen-producing phytoplankton concentrations are 30% lower today, compared to the 1980s. This is a huge drop in just three decades. Moreover, the UN environment programme confirmed in 2004 that there were nearly 150 "dead zones" in the world's oceans where discharged sewage and industrial waste, farm fertiliser run-off and other pollutants have reduced oxygen levels to such an extent that most or all sea creatures can no longer live there. This oxygen starvation is reducing regional fish stocks and diminishing the food supplies of populations that are dependent on fishing. It also causes genetic mutations and hormonal changes that can affect the reproductive capacity of sea life, which could further diminish global fish supplies. Professor Robert Berner of Yale University has researched oxygen levels in prehistoric times by chemically analysing air bubbles trapped in fossilised tree amber. He suggests that humans breathed a much more oxygen-rich air 10,000 years ago. Further back, the oxygen levels were even greater. Robert Sloan has listed the percentage of oxygen in samples of dinosaur-era amber as: 28% (130m years ago), 29% (115m years ago), 35% (95m years ago), 33% (88m years ago), 35% (75m years ago), 35% (70m years ago), 35% (68m years ago), 31% (65.2m years ago), and 29% (65m years ago). Professor Ian Plimer of Adelaide University and Professor Jon Harrison of the University of Arizona concur. Like most other scientists they accept that oxygen levels in the atmosphere in prehistoric times averaged around 30% to 35%, compared to only 21% today – and that the levels are even less in densely populated, polluted city centres and industrial complexes, perhaps only 15 % or lower. Much of this recent, accelerated change is down to human activity, notably the industrial revolution and the burning of fossil fuels. The Professor of Geological Sciences at Notre Dame University in Indiana, J Keith Rigby, was quoted in 1993-1994 as saying: In the 20th century, humanity has pumped increasing amounts of carbon dioxide into the atmosphere by burning the carbon stored in coal, petroleum and natural gas. In the process, we've also been consuming oxygen and destroying plant life – cutting down forests at an alarming rate and thereby short-circuiting the cycle's natural rebound. We're artificially slowing down one process and speeding up another, forcing a change in the atmosphere. Very interesting. But does this decline in oxygen matter? Are there any practical consequences that we ought to be concerned about? What is the effect of lower oxygen levels on the human body? Does it disrupt and impair our immune systems and therefore make us more prone to cancer and degenerative diseases? Surprisingly, no significant research has been done, perhaps on the following presumption: the decline in oxygen levels has taken place over millions of years of our planet's existence. The changes during the shorter period of human life have also been slow and incremental – until the last two centuries of rapid urbanisation and industrialisation. Surely, this mostly gradual decline has allowed the human body to evolve and adapt to lower concentrations of oxygen? Maybe, maybe not. The pace of oxygen loss is likely to have speeded up massively in the last three decades, with the industrialisation of China, India, South Korea and other countries, and as a consequence of the massive worldwide increase in the burning of fossil fuels. In the view of Professor Ervin Laszlo, the drop in atmospheric oxygen has potentially serious consequences. A UN advisor who has been a professor of philosophy and systems sciences, Laszlo writes: Evidence from prehistoric times indicates that the oxygen content of pristine nature was above the 21% of total volume that it is today. It has decreased in recent times due mainly to the burning of coal in the middle of the last century. Currently the oxygen content of the Earth's atmosphere dips to 19% over impacted areas, and it is down to 12 to 17% over the major cities. At these levels it is difficult for people to get sufficient oxygen to maintain bodily health: it takes a proper intake of oxygen to keep body cells and organs, and the entire immune system, functioning at full efficiency. At the levels we have reached today cancers and other degenerative diseases are likely to develop. And at 6 to 7% life can no longer be sustained.

## at: inevitable

Some warming is inevitable, catastrophic warming is not

**Pew Center 11**

(Pew Center on Global Climate Change, The Pew Center on Global Climate Change is as a non-profit, non-partisan, and independent organization dedicated to providing credible information, straight answers, and innovative solutions in the effort to address global climate change. The Center engages business leaders, policy makers, and other key decision makers at the international, national, regional, and state levels to advance meaningful, cost-effective climate policy and action, “Climate Change 101: Understanding and Responding to Global Climate Change,” January 2011)

The GHGs that are already in the atmosphere because of human activity will continue to warm the planet for decades to come. In other words, some level of continued climate change is inevitable, which means humanity is going to have to take action to adapt to a warming world. However, it is still possible—and necessary—to reduce the magnitude of climate change. A growing body of scientific research has clarified that climate change is already underway and some dangerous impacts have occurred. Avoiding much more severe impacts in the future requires large reductions in human-induced CO2 emissions in the coming decades. Consequently, many governments have committed to reduce their countries’ emissions by between 50 and 85 percent below 2000 levels by 2050. Global emissions reductions on this scale will reduce the costs of damages and of adaptation, and will **dramatically** reduce the probability of catastrophic outcomes.

Only limited warming is inevitable---now is key to preventing irreversible increases

Patrick Moriarty 10 Ph.D.1, Department of Design, Monash University and Damon Honnery Ph.D.2, Department of Mechanical and Aerospace Engineering, Monash University "Why Technical Fixes Won’t Mitigate Climate Change" Journal of Cosmology, 2010, Vol 8, 1921-1927. journalofcosmology.com/ClimateChange107.html

Since the Industrial Revolution, the planet has warmed about 0.76 ºC, and because of thermal inertia of the oceans, a further 0.6 ºC is unavoidable. Yet avoiding dangerous anthropogenic climate change could require us to limit the total temperature rise to 2 ºC above pre-industrial, as adopted by the European Union (Meinshausen et al. 2009). Clearly, if this value is accepted, drastic action is needed either to reduce our emissions of greenhouse gases (GHGs) to the atmosphere, or to somehow counterbalance the positive ‘forcing function’ from GHG increases.