# 1NC

## DA 3

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

Loss of executive quarantine authority causes extinction

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]

As demonstrated above, the **executive powers are subject to certain checks and balances. However, an active executive may credibly stretch these powers given exigent circumstances, most particularly those requiring immediate response to a crisis.3**19 There are none more necessary or imminent than in a public health emergency scenario, where the smallest delay can cause extensive loss of life. **In some circumstances, the executive can tread more cautiously and take the time to carefully document and justify his actions. But in a health emergency scenario,** the fastest and most direct action is often the most effective**.** In such a case, the public, despite knowing that **the President‘s actions infringe upon the liberties of the few for the good of the many**, may nonetheless yield without much conflict. One of the foremost experts on public health ethics of our times, Catholic University law professor, George P. Smith II,320 summed up the issue of the willingness for restriction of civil liberties: [w]hat remains is for the vox populi to be educated as to their responsibilities of citizenship which demand—in times of national and public health emergencies—that the common good be protected and secured, and further, that this responsibility justifies the curtailment of basic liberties and rights during the time of the emergency. The failure to recognize or accept this responsibility courts the collapse of society itself.321 Professor Smith notes that **when a health epidemic breaks out, the public is best suited by** allowing the executive to do what it does best**, even with the prospect of having to comply with isolation or** quarantine **measures, as failure to do so is to facilitate many more** injuries or **deaths**, i.e., to court the collapse of society itself.322 To gain a better understanding of the circumstances within which the executive may be required to take immediate action, this Article addresses the judicial and legislative history of the health pandemics that once faced or continue to face our nation.

## CP

The Office of Legal Counsel should write and disclose its legal opinion that the use of the Internment Cases as a basis for the war powers authority of the President of the United States in the area of indefinite detention should be restricted. The Attorney General should endorse this opinion. The President should sign an executive order implementing this opinion and requiring consultation with the Office of Legal Counsel on future related issues.

The CP is a binding constitutional decision

Dellinger, Assistant Attorney General ’93-’96, et al, 2004

(Walter E. & Dawn Johnsen, Acting Assistant Attorney General 1997-98; Deputy AAG 1993-97 & Randolph Moss, Assistant Attorney General 2000-01, Acting 1998-2000; Deputy AAG 1996-98 & Christopher Schroeder, Acting Assistant Attorney General 1997; Deputy AAG 1994-96 & Joseph R. Guerra, Deputy Assistant Attorney General 1999-2001 & [\*1611] Beth Nolan, Deputy Assistant Attorney General 1996-99; Attorney Advisor 1981-85 & Todd Peterson, Deputy Assistant Attorney General 1997-99; Attorney Advisor 1982-85 & Cornelia T.L. Pillard, Deputy Assistant Attorney General 1998-2000 & H. Jefferson Powell, Deputy Assistant Attorney General and Consultant 1993-2000 & Teresa Wynn Roseborough, Deputy Assistant Attorney General 1994-1996 & Richard Shiffrin, Deputy Assistant Attorney General 1993-97 & William Michael Treanor, Deputy Assistant Attorney General 1998-2001 & David Barron, Attorney Advisor 1996-99 & Stuart Benjamin, Attorney Advisor 1992-1995 & Lisa Brown, Attorney Advisor 1996-97 & Pamela Harris, Attorney Advisor 1993-96 & Neil Kinkopf, Attorney Advisor 1993-97 & Martin Lederman, Attorney Advisor 1994-2002 & Michael Small, Attorney Advisor 1993-96, Appendix to “The Role of Institutional Context in Constitutional Law: Faithfully Executing the Laws: Internal Legal Constraints on Executive Power,” 54 UCLA L. Rev. 1559, Lexis)

The Office of Legal Counsel (OLC) is the Department of Justice component to which the Attorney General has delegated the function of providing legal advice to **guide the actions of the President and the agencies of the executive branch**. **OLC's legal determinations are** considered **binding on the executive branch**, subject to the supervision of the Attorney General and the ultimate authority of the President. From the outset of our constitutional system, Presidents have recognized that compliance with their constitutional obligation to act lawfully requires a reliable source of legal advice. In 1793, Secretary of State Thomas Jefferson, writing on behalf of President Washington, requested the Supreme Court's advice regarding the United States' treaty obligations with regard to the war between Great Britain and France. The Supreme Court declined the request, in important measure on the grounds that **the Constitution vests responsibility for** such **legal determinations within the executive branch itself**: "The three departments of government ... being in certain respects checks upon each other, and our being judges of a court in the last resort, are considerations which afford strong arguments against the propriety of our extrajudicially deciding the questions alluded to, especially as the power given by the Constitution to the President, of calling on the heads of departments for opinions seems to have been purposely as well as expressly united to the executive departments." Letter from John Jay to George Washington, August 8, 1793, quoted in 4 The Founders' Constitution 258 (Philip B. Kurland & Ralph Lerner, eds. 1987).

From the Washington Administration through the present, Attorneys General, and in recent decades the Office of Legal Counsel, have served as the source of legal determinations regarding the executive's legal obligations and authorities. The resulting body of law, much of which is published in volumes entitled Opinions of the Attorney General and Opinions of the Office of Legal Counsel, offers powerful testimony to the importance of the rule-of-law values that President Washington sought to secure and to the Department of Justice's profound tradition of respect for the rule of law. Administrations of both political parties [\*1604] have maintained this tradition, which reflects a dedication to the rule of law that is as significant and as important to the country as that shown by our courts. As a practical matter, the responsibility for preserving this tradition cannot rest with OLC alone. It is incumbent upon the Attorney General and the President to ensure that OLC's advice is sought on important and close legal questions and that the advice given reflects the best executive branch traditions. The principles set forth in this document are based in large part on the longstanding practices of the Attorney General and the Office of Legal Counsel, across time and administrations.

## DA 2

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.

The plan is that doctrinal repudiation

Pennelle ‘6

Laura, California Western Law School, “THE GUANTANAMO GAP: CAN FOREIGN NATIONALS OBTAIN REDRESS FOR PROLONGED ARBITRARY DETENTION AND TORTURE SUFFERED OUTSIDE THE UNITED STATES?,” 36 Cal. W. Int'l L.J. 303

Assuming there was a judicially cognizable remedy available to foreign national detainees, issues of justiciability present an additional barrier to recovery. The political question doctrine reflects concerns about keeping the federal judiciary from inappropriate involvement in sensitive political issues that are best addressed by the political branches of government." 3 Under the political question doctrine, a federal court can decline to hear a case that presents such a nonjusticiable political question.214 The doctrine generally "excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch.'215 In addition, the political question doctrine may also exclude cases when there is an "impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government;.., or the potentiality of embarrassment from multifarious pronouncements by various departments on one question. 2 6 Certainly, the detention of alien prisoners at the GBNB is a sensitive political issue that is likely to have consequences for U.S. foreign relations. However, the Supreme Court has stated that, "it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance. 21 7 Nevertheless, the D.C. Circuit has warned, "the special needs of foreign affairs must stay our hand in the creation of damage remedies against military and foreign policy officials for allegedly unconstitutional treatment of foreign subjects causing injury abroad. '218 This warning applies to the situation in Guantanamo Bay and reflects the policy that courts should defer to the political branches in addressing problems best resolved by those branches, since the political question doctrine is "primarily a function of the separation of powers. ' 219 Arguably, the decision to detain foreign nationals at the GBNB during the "war on terror" involves decisions made by the political and not judicial branches of government. Indeed, Congress's passage of the AUMF and the President's subsequent Detention Order initiated "war on terror" and brought foreign nationals to the GBNB. 22° Furthermore, Article III of the Constitution, which defines the scope of judicial power, "provides no authority for policymaking in the realm of foreign relations or provision of national security. '22' Finally, it would be difficult for a court to award damages for detainees' alleged claims without "expressing lack of the respect due coordinate branches of government. 2 2

PQD key to Sonar training

Gartland ‘12

Maj. Charles, B.A., University of Alaska - Anchorage; J.D., cum laude, Gonzaga University School of Law; LL.M., George Washington University Law School) is a United States Air Force judge advocate currently serving as the Environmental Liaison Officer for the Air Force Materiel Command, “ARTICLE: AT WAR AND PEACE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT: WHEN POLITICAL QUESTIONS AND THE ENVIRONMENT COLLIDE,” 68 A.F. L. Rev. 27

The public interest in conducting training exercises with active sonar under realistic conditions plainly outweighs the interests advanced by the plaintiffs" (emphasis added). n407 At least two Supreme Court Justices disagreed n408 with Chief Justice Roberts' characterization in Winter, and, arguably, four of them disagreed (depending on how the partial concurrence/dissent by Justice Breyer, partially joined by Justice Stevens, is construed). n409 Certainly the Ninth Circuit disagreed, n410 and that highlights a significant rub, namely, that the drastic remedy of an injunction appears to have no predictability whatsoever. In one nuclear detonation case, Committee for Nuclear Responsibility v. Schlesinger, the test goes forward; n411 another two years later, Enewetak, a different test is enjoined. n412 In one training case, Barcelo v. Brown, military training exercises are allowed to proceed, n413 whereas in others, Evans and Winter (until the Supreme Court phase) they are enjoined. n414 Such uncertainty is a natural outcome of the process unfolding in all these cases: a judicial decision to grant an injunction under NEPA against a national defense activity is--by the very nature of the four part injunction test--a policy decision; and people (and judges) disagree about what constitutes good public policy. Policy decisions lie with the legislative and executive branches, and in the case of national defense, the policy decision has already been settled by statute and the Constitution--both of which provide for a national defense establishment that, in protecting the Republic, allows statutes like NEPA to exist in the first place.

**That’s key to overall Naval power and anti-submarine warfare.**

Popeo et al ‘8

Daniel, Paul Kamenar, Washington Legal Foundation, Andrew McBride, Thomas McCarthy, Andrew Miller, William R. Dailey, Wiley Rein LLP, “Brief for Amici Curiae The Washington Legal Foundation, Rear Admiral James J. Carey, U.S. Navy (Ret.), National Defense Committee, and Allied Educational Foundation in Support of Petitioners,” http://www.wlf.org/upload/07-1239winter.pdf

Throughout our Nation's history, the Navy has played a vital role in major world events occurring during both times of war and peace. As a maritime Nation, the United States relies on the "Navy's ability to operate freely at sea to guarantee access, sustain trade and commerce, and partner with other nations to ensure not only regional security but defense of our own homeland." App. 314a (statement of Rear Admiral Ted N. Branch). For this reason, it has been recognized that this ability "to operate freely at sea is one of the most important enablers of national power- diplomatic, information, military and economic." App. 315a-316a (statement of Rear Admiral Ted N. Branch). The only way to ensure our Nation's ability to so operate at sea is through naval training. Indeed, it is a Navy maxim that "We train as we will fight so that we will fight as we have trained." J.A. 576 (statement of Captain Martin N. May). Antisubmarine warfare has long been a key component of naval warfare. Because submarine detection and antisubmarine warfare require the coordinated efforts of vast numbers of Navy personnel, repeated training in battle conditions is essential to naval readiness. And, in our modern era, advanced technologies enable our enemies to deploy submarines that are capable of carrying long-range weapons while operating in virtual silence, nearly wholly undetectable except through the use of MFA sonar. Thus, antisubmarine warfare training utilizing MFA sonar is an absolute necessity in preparing our Navy to detect and combat enemy submarines. It goes without saying that, in a time of armed conflict, naval training and readiness are indispensable. Indeed, with American troops currently deployed throughout the world and, specifically, engaged in war in Afghanistan and Iraq, the Navy's role in our national security has never been more important than at the present. Maintaining an effective and proficient Navy, therefore, is of the utmost importance to the United States' national defense and homeland security. It is for this reason that the President determined that "the COMPTUEX and JTFEX, including the use of mid-frequency active sonar in these exercises, are in the paramount interest of the United States." App. 232a. A. A Well-Trained Navy Has Always Been A Cornerstone Of Our National Defense. Naval training has undoubtedly been at the center of the U.S. Navy's prior wartime and peacetime successes. Only a well-trained navy could have successfully fought in both the Atlantic and Pacific oceans simultaneously, as the U.S. Navy demonstrated in World War II. During World War II, the U.S. Navy's antisubmarine training was largely responsible for defeating the German submarines that were dangerously close to securing victory in the Battle of the Atlantic. See THEODORE ROSCOE & RICHARD G. VOGE, UNITED STATES SUBMARINE OPERATIONS IN WORLD WAR II xviii (Naval Institute Press 1949). It was also the joint training exercises of Operation Tiger that prepared the U.S. Navy and Army for the Normandy Invasion. See Operational Archives, Naval Historical Center, Operation Tiger, available at http-//www.history. navy.mil/faqs/faq20-l.htm (last visited July 23, 2008). Without this preparation, one of the most important battles in world history, D-Day, may have resulted in devastating failure for the United States and its allies. The Cuban Missile Crisis presented another major world event in which the Navy's readiness was of critical importance to our national security. In 1962, naval forces under U.S. Atlantic Command maintained a month-long naval "quarantine" of the island of Cuba in order to prevent the Soviet Union's deployment of ballistic missiles there. Cuban Missile Crisis, 1962, available at http '//www. history, navy. mil/faqs/faq90-l.htm (last visited July 23, 2008). The immediate readiness of the U.S. Navy in these circumstances defused a situation that came as close as the United States and Soviet Union ever came to global nuclear war. Id. At a minimum, the Navy blockade was a demonstration of the United States' strength. Naturally, the beneficial effects of naval training did not end with World War II or even the Cold War. Naval training exercises have continued to adequately prepare the Navy for effective and safe military campaigns and have continued to symbolize a strong Nation at the ready to protect its interests at home and abroad. That a well-trained Navy indicates and symbolizes American strength is not a creation of fantasy. It is a theme well-recognized by our Nation's prior and current enemies. Indeed, the importance of the U.S. Navy was not overlooked by the Japanese in their bombing of Pearl Harbor, nor was the symbolism of a U.S. Navy destroyer lost in al-Qaeda's suicide bombing attack against the USS Cole. That the Navy has been a target of strategic and symbolic attacks from our Nation's enemies further demonstrates the need for proper training to ensure the safety and success of the Navy in its vital role of defending the homeland. Undoubtedly, thorough training is a requisite to an effective Navy. **On-the-job** **training in combat**, it follows, "is the worst possible way of training personnel" and can place the success of military missions "at significant risk." App. 278a (statement of Rear Admiral John M. Bird). Consequently, naval training should be performed prior to actual combat to ensure the preparedness and eventual success in our Navy's military missions. This seemingly obvious statement is, quite possibly, even more relevant to the Navy's mission of defending against enemy submarines. B. Training For Anti-Submarine Warfare Is A Critical Component Of Naval Readiness. The Navy is the only service—military or otherwise—that can address the threat from submarines, and any curtailment of its ability to train for this mission would decrease the Navy's ability to handle that threat. App. 315a (statement of Rear Admiral Ted N. Branch). For years, the Navy has employed SONAR to "identify and track submarines, determine water depth, locate mines, and provide for vessel safety." App. 266a (statement of Rear Admiral John M. Bird). The Navy started using SONAR after World War I, and every naval vessel engaged in antisubmarine activity was equipped with sonar systems by the start of World War II. App. 268a. Indeed, as indicated above, antisubmarine warfare was integral to the Navy's successful campaigns against German submarines in World War II. Antisubmarine warfare is a science in which considerable effort goes into making and maintaining contact with the submarine. App. 354a~356a; see also App. 278a ("ASW occurs over many hours or days. Unlike an aerial dogfight, over in minutes and even seconds, ASW is a cat and mouse game that requires large teams of personnel working in shifts around the clock to work through an ASW scenario.") This fact is even more applicable when quiet, diesel-electric submarines—submarines increasingly utilized by hostile nations—are involved; modern diesel-electric submarines are capable of defeating the best available passive sonar technology by "suppress[ing] emitted noise levels." App. 274a. In addition, the far-reaching range of weapons found on modern submarines make it possible for those submarines to avoid placing themselves within range of passive sonar. App. 274a. As a result, active sonar is necessary to detect the presence of diesel-electric submarines. App. 269a\_270a. The Nation's top naval officers agree that the Navy must be able to freely utilize MFAS during antisubmarine warfare training in order to properly defend against the threats posed by diesel-electric submarines. See, e.g., App. 311a-325a, 338a-347a, 350a-357a.. If the Navy were prevented from training with MFAS or other active sonar, and were limited to using passive sonar in certain situations, the survivability of the Navy's antisubmarine missions would ultimately be placed at "great risk." App. 269a (statement of Rear Admiral John M. Bird). "[Rlealistic and repetitive [antisubmarine warfare] training with active SONAR is necessary for our forces to be confident and knowledgeable in the Navy's plans, tactics, and procedures to perform and **survive** in situations leading up to hostilities as well as combat." App. 277a. Therefore, blanket mitigation measures on MFAS training "would dramatically reduce the realism of [antisubmarine warfare] training" and would be fraught with "severe national security consequences." App. 273a (statement of Rear Admiral John M. Bird). C. The Navy's Use Of MFA Sonar In The Challenged Military Exercises Is Indispensable To Our National Security In This Time Of Armed Hostilities Across the Globe. It is clear that the COMPTUEX and JTFEX training exercises are the only way the Navy's Pacific Fleet can gain the realistic training that is necessary, especially during a time of war. These exercises represent the singular opportunity for 6,000-plus Sailors and Marines to train together in a realistic environment prior to deployment and to gain proficiency in MFAS. App. 270a-271a; App. 343a. Anytime a strike group is prevented from becoming fully proficient in MFAS, and therefore cannot be certified as combat ready, national security is negatively affected. App. 271a (statement of Rear Admiral John M. Bird). And, considering the heightened sensibilities in a time of war, any interference creates a severe impact on training and certification of readiness to perform realistic antisubmarine warfare. Because the stakes of antisubmarine warfare are so high, contact with an enemy submarine is not surrendered unless there is an order to do so. App. 355a. Even a few minutes of MFAS shutdown "would be potentially fatal in combat." App. 355a-356a (statement of Vice Admiral Samuel J. Locklear, III). As a result, a single lost contact with the submarine "cripples certification for the units involved" in the exercises. App. 356a>\* see also id. ("It may take days to get to the pivotal attack in antisubmarine warfare, but only minutes to confound the results upon which certification is based."). For these reasons, the Chief of Naval Operations, who is specifically responsible for organizing, training, equipping, preparing and maintaining the readiness of Navy forces, described COMPTUEX and JTFEX as "indispensable" training exercises. App. 342a (statement of Admiral Gary Roughead). Unsuccessful naval training in the area of antisubmarine warfare can have far-reaching consequences. As Rear Admiral Ted N. Branch recognized Any restriction or disadvantage imposed on our [antisubmarine warfare] capability that impedes the U.S. Navy's ability to retain control of the sea or project naval forces may . . . result in nothing less than a breakdown of the global system, a significant change in our international standing, and an alteration in our established way of life.

That unleashes a laundry list of nuclear conflicts

Eaglen ‘11

(Mackenzie research fellow for national security – Heritage, and Bryan McGrath, former naval officer and director – Delex Consulting, Studies and Analysis, “Thinking About a Day Without Sea Power: Implications for U.S. Defense Policy,” Heritage Foundation

Global Implications. Under a scenario of dramatically reduced naval power, **the** **U**nited **S**tates **would cease to be active in any international alliances.** While it is reasonable to assume that land and air forces would be similarly reduced in this scenario, the lack of credible maritime capability to move their bulk and establish forward bases would render these forces irrelevant, even if the Army and Air Force were retained at today’s levels. In Iraq and Afghanistan today, 90 percent of material arrives by sea, although material bound for Afghanistan must then make a laborious journey by land into theater. China’s claims on the South China Sea, previously disputed by virtually all nations in the region and routinely contested by U.S. and partner naval forces, are accepted as a fait accompli, effectively **turning the region into a “Chinese lake.”** China establishes expansive oil and gas exploration with new deepwater drilling technology and secures its local sea lanes from intervention. Korea, unified in 2017 after the implosion of the North, signs a mutual defense treaty with China and solidifies their relationship. Japan is increasingly isolated and in 2020–2025 executes long-rumored plans to create an indigenous nuclear weapons capability.[11] By 2025, Japan has 25 mobile nuclear-armed missiles ostensibly targeting China, toward which Japan’s historical animus remains strong. China’s entente with Russia leaves the Eurasian landmass dominated by Russia looking west and China looking east and south. Each cedes a sphere of dominance to the other and remains largely unconcerned with the events in the other’s sphere. Worldwide, trade in foodstuffs collapses. Expanding populations in the Middle East increase pressure on their governments, which are already stressed as the breakdown in world trade disproportionately affects food importers. Piracy increases worldwide, driving food transportation costs even higher. In the Arctic, Russia aggressively asserts its dominance and effectively shoulders out other nations with legitimate claims to seabed resources. No naval power exists to counter Russia’s claims. India, recognizing that its previous role as a balancer to China has lost relevance with the retrenchment of the Americans, agrees to supplement Chinese naval power in the Indian Ocean and Persian Gulf to protect the flow of oil to Southeast Asia. In exchange, China agrees to exercise increased influence on its client state Pakistan. The great typhoon of 2023 strikes Bangladesh, killing 23,000 people initially, and 200,000 more die in the subsequent weeks and months as the international community provides little humanitarian relief. Cholera and malaria are epidemic. Iran dominates the Persian Gulf and is a nuclear power. Its navy aggressively patrols the Gulf while the Revolutionary Guard Navy harasses shipping and oil infrastructure to force Gulf Cooperation Council (GCC) countries into Tehran’s orbit. Russia supplies Iran with a steady flow of military technology and nuclear industry expertise. Lacking a regional threat, the Iranians happily control the flow of oil from the Gulf and benefit economically from the “protection” provided to other GCC nations. In Egypt, the decade-long experiment in participatory democracy ends with the ascendance of the Muslim Brotherhood in a violent seizure of power. The United States is identified closely with the previous coalition government, and riots break out at the U.S. embassy. Americans in Egypt are left to their own devices because the U.S. has no forces in the Mediterranean capable of performing a noncombatant evacuation when the government closes major airports. Led by Iran, a coalition of Egypt, Syria, Jordan, and Iraq attacks Israel. Over 300,000 die in six months of fighting that includes a limited nuclear exchange between Iran and Israel. Israel is defeated, and the State of Palestine is declared in its place. Massive “refugee” camps are created to house the internally displaced Israelis, but a humanitarian nightmare ensues from the inability of conquering forces to support them. The NATO alliance is shattered. The security of European nations depends increasingly on the lack of external threats and the nuclear capability of France, Britain, and Germany, which overcame its reticence to military capability in light of America’s retrenchment. Europe depends for its energy security on Russia and Iran, which control the main supply lines and sources of oil and gas to Europe. Major European nations stand down their militaries and instead make limited contributions to a new EU military constabulary force. No European nation maintains the ability to conduct significant out-of-area operations, and Europe as a whole maintains little airlift capacity. Implications for America’s Economy. If the United States slashed its Navy and ended its mission as a guarantor of the free flow of transoceanic goods and trade, globalized world trade would decrease substantially. As early as 1890, noted U.S. naval officer and historian Alfred Thayer Mahan described the world’s oceans as a “great highway…a wide common,” underscoring the long-running importance of the seas to trade.[12] Geographically organized trading blocs develop as the maritime highways suffer from insecurity and rising fuel prices. Asia prospers thanks to internal trade and Middle Eastern oil, Europe muddles along on the largesse of Russia and Iran, and the Western Hemisphere declines to a “new normal” with the exception of energy-independent Brazil. For America, Venezuelan oil grows in importance as other supplies decline. Mexico runs out of oil—as predicted—when it fails to take advantage of Western oil technology and investment. Nigerian output, which for five years had been secured through a partnership of the U.S. Navy and Nigerian maritime forces, is decimated by the bloody civil war of 2021. Canadian exports, which a decade earlier had been strong as a result of the oil shale industry, decline as a result of environmental concerns in Canada and elsewhere about the “fracking” (hydraulic fracturing) process used to free oil from shale. State and non-state actors increase the hazards to seaborne shipping, which are compounded by the necessity of traversing key chokepoints that are easily targeted by those who wish to restrict trade. These chokepoints include the Strait of Hormuz, which Iran could quickly close to trade if it wishes. **More than half of the world’s oil is transported by sea.** “From 1970 to 2006, the amount of goods transported via the oceans of the world…increased from 2.6 billion tons to 7.4 billion tons, an increase of over 284%.”[13] In 2010, “$40 billion dollars [sic] worth of oil passes through the world’s geographic ‘chokepoints’ on a daily basis…not to mention $3.2 trillion…annually in commerce that moves underwater on transoceanic cables.”[14] These quantities of goods simply cannot be moved by any other means. Thus, a reduction of sea trade reduces overall international trade. U.S. consumers face a greatly diminished selection of goods because domestic production largely disappeared in the decades before the global depression. As countries increasingly focus on regional rather than global trade, costs rise and Americans are forced to accept a much lower standard of living. Some domestic manufacturing improves, but at significant cost. In addition, shippers avoid U.S. ports due to the onerous container inspection regime implemented after investigators discover that the second dirty bomb was smuggled into the U.S. in a shipping container on an innocuous Panamanian-flagged freighter. As a result, American consumers bear higher shipping costs. The market also constrains the variety of goods available to the U.S. consumer and increases their cost. A Congressional Budget Office (CBO) report makes this abundantly clear. A one-week shutdown of the Los Angeles and Long Beach ports would lead to production losses of $65 million to $150 million (in 2006 dollars) per day. A three-year closure would cost $45 billion to $70 billion per year ($125 million to $200 million per day). Perhaps even more shocking, the simulation estimated that employment would shrink by approximately 1 million jobs.[15] These estimates demonstrate the effects of closing only the Los Angeles and Long Beach ports. On a national scale, such a shutdown would be catastrophic. The Government Accountability Office notes that: [O]ver 95 percent of U.S. international trade is transported by water[;] thus, the safety and economic security of the United States depends in large part on the secure use of the world’s seaports and waterways. A successful attack on a major seaport could potentially result in a dramatic slowdown in the international supply chain with impacts in the billions of dollars.[16]

## K

Korematsu is a living precedent and a monument to internment—overturn buries that historical context in favor of racial redemption

Hashimoto 96 [Dean Hashimoto, law at Boston College, Fall 1996 (4 UCLA Asian Pac. Am. L.J. 72)]

The failure to overrule Korematsu reflects an inability to move analytically from a point of consensus toward issues in which there is a lack of consensus. There is a modern consensus that it was wrongly decided. There is, however, uneasiness and uncertainty about what meaning to attribute the case. In other words, once Korematsu is overruled, what then? **We should guard against oversimplification of Korematsu's meaning.** Indeed, even the Korematsu Court stated: "Our task would be simple, our duty clear, were this a case involving the imprisonment of a loyal citizen in a concentration camp because of racial prejudice." 332 While we all would agree with the Korematsu Court on this bare statement, our disagreement results from defining the appropriateness of the degree and place for judicial deference. The complicated issue in Korematsu involves deciding what amount of deference, if any, should be accorded by the Court to government authorities in times of perceived emergency.  
There are two basic approaches to answering this difficult problem. The first approach relies on judicial deference to government authorities rather than on substantive judicial review. For example, Justice Jackson favored the creation of an unreviewable zone of discretion for military authorities in emergent wartime situations. Justice Jackson advocated that this should be achieved by declaring wartime actions by military authorities to be nonjusticiable. 333 A different approach relying on a per  [\*121]  se rule could forbid all racial classifications imposed by the government. 334 Those favoring avoidance of substantive judicial review point to judicial inexpertise, practicality, and the otherwise distorting effect of wartime precedent on constitutional law. 335  
A second approach favors judicial review. For example, although Justices Roberts and Murphy emphasized that the judgment of military authorities should not be "overruled lightly" 336 they still insisted on a significant role for substantive judicial review of judgments made by military authorities in emergencies. Justice Roberts emphasized the importance of the Court's definition of when conditions actually constitute an "emergency" 337 and in ensuring that the means are "temporary." 338  [\*122]  Justice Murphy contended that it was important to require a reasonable and necessary relationship between the means used and the fears of sabotage and espionage. 339 He also emphasized that "we must not exact a too high or too meticulous standard," given the expertise of the military and the emergency of the crisis. 340 Similarly,  [\*123]  Justice Frankfurter offered a lesser role for judicial review when he contended that satisfactory review should be achieved by defining what means are appropriate to conducting war and then allowing military authorities discretion as long as they did not exceed the defined means. 341  
 [\*124]  The central lesson we learn from Korematsu appears to be that there is an important role for judicial review of substantive decisions by military authorities, even if this judgment involves action labelled "temporary" and "emergency." 342 Because there is a consensus that Korematsu was wrongly decided, it represents the easy case. But the lack of consensus stems from indecision regarding how to proceed. For example, does it necessarily follow that the Court should impose strict scrutiny on federal affirmative action programs, as the Court concluded in Adarand, because of distrust of all governmental racial classifications? What if anything does Korematsu teach us about the merits of constitutional doctrine which relies heavily on the doctrine of judicial deference in the areas of national security and immigration?  
I, for one, cannot offer definitive and detailed answers on this issue without hearing public conversations about the advantages and dangers of alternative judicial approaches. The existence of a current consensus that Korematsu was wrongly decided serves as an opportunity to begin our public conversations in agreement, but we should move forward to **make Korematsu relevant to the modern day. We need to connect our narratives with what we think Korematsu means.** The Court should undertake this difficult task and no longer silently avoid it. By advocating the privileging of the interpretive-narrative link, I mean that the Court should rely on interpretive approaches that demonstrate a connection with the meaning of Korematsu. Thus, we need to acknowledge that Korematsu is living precedent.

In declaring Korematsu to be living precedent, I recognize that my view is at odds with the position taken thus far by leaders of the Japanese American community. I understand their **wishes and desires** to declare Korematsu dead, especially after the successes of the restitution movement and the coram nobis litigations. But **I fear that there is a great danger in** forgetting what should not be forgotten. I believe  [\*128]  that **it is safer to be honest and recognize Korematsu's continued perpetuation as doctrine than to prematurely declare the conclusion of a noble cause. Korematsu's persistance, as** legal precedent **and as a** memory of the internment itself**, must serve to** remind **us to be vigilant in protecting our civil liberties**.

That severs us from our racist legacy, sanitizing whiteness and entrenching a paradigm of “innocent” oppression—only rejection of historical denialism solves

Gotanda 4 [Neil Gotanda, law at Western State University, Spring 2004 (13 Temp. Pol. & Civ. Rts. L. Rev. 663)]

**When Warren finally turns to racial segregation, he emphasizes a** break with the past**.** "In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when Plessy v. Ferguson was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation." 64 **In this fashion,** **Warren** severs this decision from the past history of segregation. **He disclaims past questions by emphasizing that** the past is gone**, and the Court will address the present and future.** It is not until this section that Warren presents his specific rationale for overturning racially segregated schools. He makes his famous argument that racial segregation "generates a feeling of inferiority." 65 He supports this conclusion by asserting that "this finding of [psychological knowledge] is amply supported by modern authority," citing the now famous studies in footnote eleven. 66 By focusing upon current research, **Warren emphasizes the** newness **of this approach**. He adds by way of introducing his conclusion, "Whatever may have been the extent of psychological knowledge at the time of Plessy v. Ferguson, this finding is amply supported by modern authority." 67 Warren thus completes the **separation of this decision from any responsibility for whatever harms may have occurred in the past**. In effect he is arguing that it is **only at the present time**, with these new psychological studies, **that we finally understand the harm of racial segregation** in education. **With these new revelations, the Court has created an "Aha! Moment" to justify overturning the precedent** of Plessy.  
How are we then to interpret this exercise in avoidance? I suggest that a relatively simple interpretation captures much of the ideological content of the Brown opinion. Once the momentous decision to overturn racially segregated schools was made, the text of Brown is an **exercise in white innocence.** 68  
 [\*673]  My use of white innocence is narrow. The term resonates with many expansive and highly charged suggestions. I use "innocence" in the sense that **the Aha! Moment has, through the use of a "new" beginning,** cut off the moral, social, economic and political ties to the past. The "innocence" is the innocence of a new beginning. There are many other aspects to the notion of innocence that can be drawn from my simple idea of a new beginning. For example, one could attempt to build inquiries into such issues as responsibility, guilt, or compensation from the idea of innocence. I am not certain that the language of Brown can support those extensions. One would need to go much further into the Equal Protection and race decisions of the Court to properly carry out such an exploration.  
My use of "white" is also relatively narrow. I use "white" to describe the context - racial segregation of schools. The basic framework is Black and White. Whites are preferred and African Americans are excluded as part of a broad pattern of subordination of African Americans. If I did not differentiate between Black and White in the context of segregation and the history of race, the implication would be that there were **comparable new beginnings** for both Blacks and whites included within the innocence of Brown's Aha! Moment. **That seems to me dishonest given the reality of race in 1954**. For whites, the claim of a new beginning could be seen to offer advantages as America embarked upon the difficult and dangerous path of desegregation. For African Americans, the end of segregation was a major step forward. But the legacy of Brown-desegregation is complex. **The use of "white" in my description of white innocence therefore, is necessary to encompass the reality of racial subordination and the** differential benefits **of the innocence created by the Aha! Moment**.  
The idea of differential racial benefits was distilled by Derrick Bell in his now famous "racial interest-convergence" thesis. Bell's thesis is that progress in questions of race comes when there is a convergence of White and Black interests. His deceptively simple suggestion has spawned significant literature re-examining race relations in areas well beyond segregated education. 69  
I end this essay with this tentative definition of white innocence and a restatement of the **methodologies of re-reading Court opinions.** Within the narrow analytical framework of "**new beginnings" and racially differentiated benefits**, the idea of **white innocence and its doctrinal** moment - the **Aha! Moment - offer possibilities for the re-examination of other Supreme Court race opinions**. Just as legal process theorists look to a particularized understanding of the Court's opinions within democratic theory, **the methodology used in this essay suggests that careful attention to the Court's language reveals** important ideological assumptions **within the traditional doctrinal forms**. This alternative view of Brown supports Tribe's call to recognize the limitations of constitutional democratic  [\*674]  process theory and look once again to theories of substantive rights.

## Second adv

## 1NC

**1) Focus on extinction is ethical –** extinction would be enormously painful

**2) Util is inevitable** – they just shift util to be about what group of people is worth the most, even if util is bad only they make it about something other than numbers which is worse

**3) All lives infinitely valuable—only ethical option is maximizing 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 this way—this point still does not justify deontological 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 I *may* still save two; it is just that my reason cannot be that the two compensate for the loss of one. Consider Hill’s example of a priceless object: If I can save two of three priceless statutes only by destroying one, then I cannot claim that saving 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 loss of 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.

**4) Ethics focus turns the K - Focus on guilt-based pancea politics leads to compassion fatigue that results in a net-decrease in ethical acts**

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It all started with an advertising campaign. We have all been cued by that famous series of ads by Save the Children. You can help this child or you can turn the page. The first time a reader sees the advertisement he is arrested by guilt. He may come close to actually sending money to the organization. The second time the reader sees the ad he may linger over the photograph, read the short paragraphs of copy and only then turn the page. The third time the reader sees the ad he typically turns the page without hesitation. The fourth time the reader sees the ad he may pause again over the photo and text, not to wallow in guilt, but to acknowledge with cynicism how the advertisement is crafted to manipulate readers like him— even if it is in a “good” cause. As the Chicago Tribunes 1998 series investigating four international charities bluntly stated, “Child sponsorship is one of the most powerful and seductive philanthropic devices ever conceived.” 7 Most media consumers eventually get to the point where they turn the page. Because most of us do pass the advertisement by, its curse is on our heads. “Either you help or you turn away,” stated one ad. “Whether she lives or dies, depends on what you do next.” Turning away kills this child. We are responsible. “Because without your help, death will be this child’s only relief.” 8 In turning away we become culpable. But we can’t respond to every appeal. And so we’ve come to believe that we don’t care. If we turn the page originally because we don’t want to respond to what is in actuality a fund-raising appeal, although in the guise of a direct humanitarian plea, it becomes routine to thumb past the pages of news images showing wide-eyed children in distress. We’ve got compassion fatigue, we say, as if we have involuntarily contracted some kind of disease that we’re stuck with no matter what we might do. But it’s not just the tactics of the advocacy industry which are at fault in our succumbing to this affliction. After all, how often do we see one of their ads, anyway?…unless it’s Christmastime and we’re opening all our unsolicited mail. It’s the media that are at fault. How they typically cover crises helps us to feel overstimulated and bored all at once. Conventional wisdom says Americans have a short attention span. A parent would not accept that pronouncement on a child; she would step in to try to teach patience and the rewards of sticktoitiveness. But the media are not parents. In this case they are more like the neighborhood kid who is the bad influence on the block. Is your attention span short? Well then, let the media give you even more staccato bursts of news, hyped and wired to feed your addiction. It is not that there’s not good, comprehensive, responsible reporting out there. There is. “Sometimes,” said the late Jim Yuenger, former foreign editor with the Chicago Tribune, “you put the news in and people just aren’t going to read it and you have to say the hell with it.” 9 But that type of coverage is expensive as well as spaceand time-consuming. It rarely shows enough bang for the buck. So only a few elite media outlets emphasize such coverage, and even they frequently lapse into quick once-over reporting. “We give you the world,” yes, but in 15-second news briefs. The print and broadcast media are part of the entertainment industry— an industry that knows how to capture and hold the attention of its audience. “The more bizarre the story,” admitted UPI foreign editor Bob Martin, “the more it’s going to get played.” 10 With but a few exceptions, the media pay their way through selling advertising, not selling the news. So the operating principle behind much of the news business is to appeal to an audience— especially a large audience— with attractive demographics for advertisers. Those relatively few news outlets that consider international news to be of even remote interest to their target audiences try to make the world accessible. The point in covering international affairs is to make the world fascinating— or at least acceptably convenient: “News you can use.” “When we do the readership surveys, foreign news always scores high,” said Robert Kaiser, former managing editor of The Washington Post. “People say they’re interested and appreciate it, and I know they’re lying but I don’t mind. It’s fine. But I think it’s an opportunity for people to claim to be somewhat better citizens than they are.” 11 But in reality, they’re bored. When problems in the news can’t be easily or quickly solved— famine in Somalia, war in Bosnia, mass murder of the Kurds— attention wanders off to the next news fashion. “What’s hardest,” said Yuenger, “is to sustain interest in a story like Bosnia, which a lot of people just don’t want to hear about.” The media are alert to the first signs in their audience of the compassion fatigue “signal,” that sign that the short attention span of the public is up. “If we’ve just been in Africa for three months,” said CBS News foreign editor Allen Alter, “and somebody says, ‘You think that’s bad? You should see what’s down in Niger,’ well, it’s going to be hard for me to go back. Everybody’s Africa’d out for the moment.” As Milan Kundera wrote in The Book of Laughter and Forgetting, “The bloody massacre in Bangladesh quickly covered over the memory of the Russian invasion of Czechoslovakia, the assassination of Allende drowned out the groans of Bangladesh, the war in the Sinai Desert made people forget Allende, the Cambodian massacre made people forget Sinai and so on and so forth, until ultimately everyone lets everything be forgotten.” 12 The causes of compassion fatigue are multiple. Sometimes there are just too many catastrophes happening at once. “I think it was the editor Harold Evans,” said Bill Small, former president of NBC News and UPI, “who noted that a single copy of the [London] Sunday Times covers more happenings than an Englishman just a few hundred years ago could be expected to be exposed to in his entire lifetime.” 13 In 1991, for instance, it was hard not to be overwhelmed by the plethora of disasters. So compassion fatigue may simply work to pre-empt attention of “competing” events. Americans seem to have an appetite for only one crisis at a time. The phenomenon is so well-known that even political cartoonists make jokes about it, such as the frame drawn by Jeff Danziger of a newsroom with one old hack saying to someone on the phone: “Tajikistan? Sorry, we’ve already got an ethnic war story,” and another old warhorse saying on another phone: “Sudan? Sorry we’ve already got a famine story.” 14 Even during “slower” disaster seasons, there is always a long laundry list of countries and peoples in upheaval. Many and perhaps most of the problems are not of the quick-fix variety— the send-in-the-blankets-and-vaccination-suppliesand-all-will-be-well emergencies. Most global problems are entrenched and longlasting, rarely yielding to easy solutions available to individuals or even NGO and governmental authorities. “The same theme just dulls the psyche. For the reader, for the reporter writing it, for the editor reading it,” said Bernard Gwertzman, former foreign editor at The New York Times. 15 Tom Kent, international editor at the Associated Press, noted the same problem in covering ongoing crises. “Basically, in our coverage we cover things until there’s not much new to say. And then we back off daily coverage and come back a week or a month later, but not day-to-day.” He could tell, he said, when the sameness of the situation was drugging an audience into somnolence. We can certainly get a sense for the degree that people care about a story in the public. For example, when Bosnia started, people were calling up all the time for addresses of relief organizations and how we can help and all that. We did lists, and then requests dropped off. And in the first part of the Somalia story we heard “How can we help?” “How can we get money to these people?” We sent out the lists, then those calls dropped off Either the people who wanted to contribute had all the information they needed, or there just wasn’t anybody else who was interested. In Rwanda, we got practically no inquiries about how to help, although our stories certainly suggested there’s as much misery in Rwanda as anywhere else. 16 Sometimes to Americans, international problems just seem too permanent to yield to resolution. Sometimes even when problems flare out into crisis— by which point it is too late for the patch-’em-up response— the public is justified in believing that outside intervention will do little good…so what’s the use in caring? It’s difficult for the media and their audience to sustain concern about individual crises over a period of months and maybe even years. Other more decisive— and short-term— events intervene, usurping attention, and meanwhile, little seems to change in the original scenario. There is a reciprocal circularity in the treatment of low-intensity crises: the droning “same-as-it-ever-was” coverage in the media causes the public to lose interest, and the media’s perception that their audience has lost interest causes them to downscale their coverage, which causes the public to believe that the crisis is either over or is a lesser emergency and so on and so on. Another, especially pernicious form of compassion fatigue can set in when a crisis seems too remote, not sufficiently connected to Americans’ lives. Unless Americans are involved, unless a crisis comes close to home— either literally or figuratively— unless compelling images are available, preferably on TV, crises don’t get attention, either from the media or their audience. Some of the public may turn the television off when they see sad reports from around the world, but unless the news is covered by the media, no one has an opportunity to decide whether to watch or not. “Thanks to the news media,” noted Newsweek, “the face of grieving Kurdish refugees replaced the beaming smiles of victorious GIs.” Publicity, Newsweek argued, “galvanized the public and forced the president’s hand.” In just two weeks, the Bush administration sent $188 million in relief to the Kurds. 17 It’s a bit like that tree falling in the middle of the forest. If it falls and no one hears, it’s like it never happened. The tree may lie on the forest floor for years, finally to rot away, without anyone ever realizing it once stood tall.

**Nuclear war is not obsolete—reluctance doesn’t translate into wartime restraint**

**Joyner 2010** – managing editor of the Atlantic Council, Ph.D. in national security affairs from the University of Alabama (3/5, James, Atlantic, “Are nuclear weapons obsolete?”, http://www.acus.org/new\_atlanticist/are-nuclear-weapons-obsolete, WEA)

Nuclear Weapons Obsolete?

There appears to be a growing sentiment in Europe that nuclear weapons are obsolete, kept around only for symbolic value.   Their use is considered so morally reprehensible, the argument goes, that no political leader would dare authorize their use and be forever a pariah.  And, if there are no circumstances under which they might be used by Western leaders, then the deterrence argument goes out the window.

The problem with that theory is that desperation changes the utility equation.  No sane Japanese government would have provoked war with the United States in 1941.  But, facing even worse alternatives, they threw a Hail Mary with the Pearl Harbor bombing and hoped for the best.

Could China or Russia be backed into a corner and become so desperate that they'd launch a nuclear first strike?  It's pretty hard to imagine.  Then again, the mere fact that they have that theoretical option makes it less likely that they'll be backed into a corner.

It's a little easier to come up with a scenario under which North Korea's Kim Jong Il or a nuclear-empowered Iranian ayatollah might see nuclear weapons as a plausible option.   Or, goodness knows, India and Pakistan.  More likely, though, the sense of security that comes with being a nuclear possessor will prevent conflicts that might otherwise have been tenable.

Clausewitz taught us that war and politics are inextricably linked.  So, the distinction between the "political" and "military" viability of nuclear weapons is one without meaning.  The bottom line is that deterrence theory still works, at least amongst state actors.   After all, no nuclear power has ever been attacked by another state. The same can't be said about attacks by nuclear powers against non-nuclear states.

Indeed, this argument was laid out quite nicely three years ago by Des Browne, the UK's then-Secretary of State for Defense, in a speech to King's College:

Why do we need a nuclear deterrent?

The answer is because it works. Our deterrent has been a central plank of our national security strategy for fifty years. And the fact is that over this fifty years, neither our nor any other country’s nuclear weapons have ever been used, nor has there been a single significant conflict between the world’s major powers. We believe our nuclear deterrent, as part of NATO, helped make this happen.

In the same speech, he asked, "Are we prepared to tolerate a world in which countries who care about morality lay down their nuclear weapons, leaving others to threaten the rest of the world or hold it to ransom?"  Quite obviously, the answer is No.

A World Without Nuclear Weapons

The obvious retort, then, is that we maintain nuclear weapons only because others might use them against us.  So why not rid ourselves of these weapons entirely?

The Europeans seem very enthusiastic about President Obama's Prague nuclear disarmament speech of last April, in which he promised, "The United States will take concrete steps toward a world without nuclear weapons."  While most Americans likely took that as rhetorical throat clearing, what with the difficulty of uninventing 60-year-old technology.  (Indeed, Obama acknowledged that "This goal will not be reached quickly –- perhaps not in my lifetime.") Europeans apparently see that as a legitimate goal.  Indeed, one parliamentarian announced that "no sane person" would disagree with it.

Predictions don’t have to be perfect, just good enough

BRUCE BUENO **DE MESQUITA**, Julius Silver Professor of Politics at New York University, July 18th, 20**11**“FOX-HEDGING OR KNOWING: ONE BIG WAY TO KNOW MANY THINGS” <http://www.cato-unbound.org/2011/07/18/bruce-bueno-de-mesquita/fox-hedging-or-knowing-one-big-way-to-know-many-things/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+cato-unbound+%28Cato+Unbound%29>

It is hard to say which is more surprising, that anyone still argues that we can predict very little or that anyone believes expertise conveys reliable judgment. Each reflects a bad habit of mind that we should overcome. It is certainly true that predictive efforts, by whatever means, are far from perfect and so we can always come up with examples of failure. But a proper assessment of progress in predictive accuracy, as Gardner and Tetlock surely agree, requires that we compare the rate of success and failure across methods of prediction rather than picking only examples of failure (or success). How often, for instance, has The Economist been wrong or right in its annual forecasts compared to other forecasters? Knowing that they did poorly in 2011 or that they did well in some other selected year doesn’t help answer that question. That is why, as Gardner and Tetlock emphasize, predictive methods can best be evaluated through comparative tournaments.

Reliable prediction is so much a part of our daily lives that we don’t even notice it. Consider the insurance industry. At least since Johan de Witt (1625–1672) exploited the mathematics of probability and uncertainty, insurance companies have generally been profitable. Similarly, polling and other statistical methods for predicting elections are sufficiently accurate most of the time that we forget that these methods supplanted expert judgment decades ago. Models have replaced pundits as the means by which elections are predicted exactly because various (imperfect) statistical approaches routinely outperform expert prognostications. More recently, sophisticated game theory models have proven sufficiently predictive that they have become a mainstay of high-stakes government and business auctions such as bandwidth auctions. Game theory models have also found extensive use and well-documented predictive success on both sides of the Atlantic in helping to resolve major national security issues, labor-management disputes, and complex business problems. Are these methods perfect or omniscient? Certainly not! Are the marginal returns to knowledge over naïve methods (expert opinion; predicting that tomorrow will be just like today) substantial? I believe the evidence warrants an enthusiastic “Yes!” Nevertheless, despite the numerous successes in designing predictive methods, we appropriately focus on failures. After all, by studying failure methodically we are likely to make progress in eliminating some errors in the future.

Experts are an easy, although eminently justified, target for critiquing predictive accuracy. Their failure to outperform simple statistical algorithms should come as no surprise. Expertise has nothing to do with judgment or foresight. What makes an expert is the accumulation of an exceptional quantity of facts about some place or time. The idea that such expertise translates into reliable judgment rests on the false belief that knowing “the facts” is all that is necessary to draw correct inferences. This is but one form of the erroneous linkage of correlation to causation; a linkage at the heart of current data mining methods. It is even more so an example of confusing data (the facts) with a method for drawing inferences. Reliance on expert judgment ignores their personal beliefs as a noisy filter applied to the selection and utilization of facts. Consider, for instance, that Republicans, Democrats, and libertarians all know the same essential facts about the U.S. economy and all probably desire the same outcomes: low unemployment, low inflation, and high growth. The facts, however, do not lead experts to the same judgment about what to do to achieve the desired outcomes. That requires a theory and balanced evidence about what gets us from a distressed economy to a well-functioning one. Of course, lacking a common theory and biased by personal beliefs, the experts’ predictions will be widely scattered.

Good prediction—and this is my belief—comes from dependence on logic and evidence to draw inferences about the causal path from facts to outcomes. Unfortunately, government, business, and the media assume that expertise—knowing the history, culture, mores, and language of a place, for instance—is sufficient to anticipate the unfolding of events. Indeed, too often many of us dismiss approaches to prediction that require knowledge of statistical methods, mathematics, and systematic research design. We seem to prefer “wisdom” over science, even though the evidence shows that the application of the scientific method, with all of its demands, outperforms experts (remember Johan de Witt). The belief that area expertise, for instance, is sufficient to anticipate the future is, as Tetlock convincingly demonstrated, just plain false. If we hope to build reliable predictions about human behavior, whether in China, Cameroon, or Connecticut, then probably we must first harness facts to the systematic, repeated, transparent application of the same logic across connected families of problems. By doing so we can test alternative ways of thinking to uncover what works and what doesn’t in different circumstances. Here Gardner, Tetlock, and I could not agree more. Prediction tournaments are an essential ingredient to work out what the current limits are to improved knowledge and predictive accuracy. Of course, improvements in knowledge and accuracy will always be a moving target because technology, ideas, and subject adaptation will be ongoing.

Given what we know today and given the problems inherent in dealing with human interaction, what is a leading contender for making accurate, discriminating, useful predictions of complex human decisions? In good hedgehog mode I believe one top contender is applied game theory. Of course there are others but I am betting on game theory as the right place to invest effort. Why? Because game theory is the only method of which I am aware that explicitly compels us to address human adaptability. Gardner and Tetlock rightly note that people are “self-aware beings who see, think, talk, and attempt to predict each other’s behavior—and who are continually adapting to each other’s efforts to predict each other’s behavior, adding layer after layer of new calculations and new complexity.” This adaptation is what game theory jargon succinctly calls “endogenous choice.” Predicting human behavior means solving for endogenous choices while assessing uncertainty. It certainly isn’t easy but, as the example of bandwidth auctions helps clarify, game theorists are solving for human adaptability and uncertainty with some success. Indeed, I used game theoretic reasoning on May 5, 2010 to predict to a large investment group’s portfolio committee that Mubarak’s regime faced replacement, especially by the Muslim Brotherhood, in the coming year. That prediction did not rely on in-depth knowledge of Egyptian history and culture or on expert judgment but rather on a game theory model called selectorate theory and its implications for the concurrent occurrence of logically derived revolutionary triggers. Thus, while the desire for revolution had been present in Egypt (and elsewhere) for many years, logic suggested that the odds of success and the expected rewards for revolution were rising swiftly in 2010 in Egypt while the expected costs were not.

This is but one example that highlights what Nobel laureate Kenneth Arrow, who was quoted by Gardner and Tetlock, has said about game theory and prediction (referring, as it happens, to a specific model I developed for predicting policy decisions): “Bueno de Mesquita has demonstrated the power of using game theory and related assumptions of rational and self-seeking behavior in predicting the outcome of important political and legal processes.” Nice as his statement is for me personally, the broader point is that game theory in the hands of much better game theorists than I am has the potential to transform our ability to anticipate the consequences of alternative choices in many aspects of human interaction.

How can game theory be harnessed to achieve reliable prediction? Acting like a fox, I gather information from a wide variety of experts. They are asked only for specific current information (Who wants to influence a decision? What outcome do they currently advocate? How focused are they on the issue compared to other questions on their plate? How flexible are they about getting the outcome they advocate? And how much clout could they exert?). They are not asked to make judgments about what will happen. Then, acting as a hedgehog, I use that information as data with which to seed a dynamic applied game theory model. The model’s logic then produces not only specific predictions about the issues in question, but also a probability distribution around the predictions. The predictions are detailed and nuanced. They address not only what outcome is likely to arise, but also how each “player” will act, how they are likely to relate to other players over time, what they believe about each other, and much more. Methods like this are credited by the CIA, academic specialists and others, as being accurate about 90 percent of the time based on large-sample assessments. These methods have been subjected to peer review with predictions published well ahead of the outcome being known and with the issues forecast being important questions of their time with much controversy over how they were expected to be resolved. This is not so much a testament to any insight I may have had but rather to the virtue of combining the focus of the hedgehog with the breadth of the fox. When facts are harnessed by logic and evaluated through replicable tests of evidence, we progress toward better prediction.

No link—their ev describes worst-case scenarios that proffer doom without evidence—we may say extinction is likely, but there’s evidence to back it up

We’re not the precautionary principle—there’s no built-in presumption against the plan, we need to prove the plan is a *bad* idea to win

Throwing out scenarios is a terrible corrective—they replace probability neglect with consequence neglect—the best middle ground is to balance magnitude with probability

**Friedman 12**, PhD candidate in public policy, and Zeckhauser, professor of political economy – Kennedy School @ Harvard, ‘12

(Jeffrey A. and Richard, “Assessing Uncertainty in Intelligence,” HKS Faculty Research Working Paper Series RWP12-027)

To provide empirical support for its discussion, this article examines a broad range of National Intelligence Estimates (NIEs). Though NIEs comprise only a small fraction of overall estimative intelligence, their production is so highly scrutinized that it is reasonable to assume that their flaws would characterize lower-profile estimates as well.8 In addition to examining more than a dozen specific estimates, the following sections describe general patterns across a database of 379 declassified NIEs that were written between 1964 and 1994 and that were released through the Central Intelligence Agency’s Historical Review Program.9 Throughout the following sections, this combination of deductive and inductive analysis helps to draw out the tensions between eliminating uncertainty and assessing uncertainty in estimative intelligence.

Analyzing Alternatives

Intelligence analysts often wrestle with alternatives. To return to the example of an analyst studying Syria in 2012, this analyst would have had to consider a wide range of possibilities. If al-Assad were to survive the year, his domestic and international standing could presumably change in any number of ways. If al-Assad left power, the transition might be stable but it might also descend into widespread violence, while al-Assad’s eventual successors could be relatively friendly or hostile to the United States. There are many relevant scenarios here. An intelligence analyst who seeks to eliminate uncertainty would argue that one of them constitutes the ‘correct answer’, and that her ideal goal should be to identify what that answer is. Intelligence tradecraft often encourages this kind of thinking when it comes to analyzing alternative possibilities.

When estimates focus on a single possibility, it is called ‘single-outcome forecasting’. This practice has been criticized for some time, because analysts often have insufficient information for making definitive predictions, and because policymakers should be aware of a range of potential contingencies.10 Yet even when analysts do consider multiple possibilities, several elements of standard practice reveal a tendency to assume that one of those scenarios should be considered the most important or the most correct.

For instance, most NIEs highlight a ‘Best Estimate’ or ‘Key Judgments’. In principle, calling some estimates ‘Best’ does not exclude the idea that there are other possibilities. Meanwhile, the Key Judgments section of an NIE is generally intended to serve the function of an executive summary, so it does not inherently privilege one alternative over another. In practice, however, these sections often highlight a subset of relevant possibilities and encourage consumers to give these possibilities special attention. NIEs typically present their judgments in sequence, often with one or two possibilities receiving the bulk of explanation and support. Many NIEs contain a distinct section enumerating ‘Alternatives’ that often receive relatively limited discussion.

This treatment can suggest that certain alternative views are relatively insignificant, and the 2002 NIE on Iraq’s Continuing Programs for Weapons of Mass Destruction serves as a prominent example. The Key Judgments section of this NIE begins with 42 paragraphs supporting the assessment that Iraq ‘has continued its weapons of mass destruction (WMD) programs’ and that ‘if left unchecked, it probably will have a nuclear weapon during this decade’. That conclusion, as is now widely known, was based on controversial information. Doubts about the NIE’s main judgment were raised in a two-paragraph text box at the end of the opening section, arguing that the evidence does not ‘add up to a compelling case that Iraq is currently pursuing… an integrated and comprehensive approach to acquire nuclear weapons’. It is almost impossible to miss this objection – but it is equally difficult to miss the disparity in emphasis between these very different points of view about Iraq’s nuclear program.

The tendency to privilege particular judgments goes beyond the structure of intelligence estimates. Ironically, it permeates many of the conceptual frameworks that are intended to encourage analysts to consider multiple possibilities in the first place. For instance, one prominent text on analytic tradecraft recommends that analysts approach complex questions by generating multiple hypotheses, evaluating the ‘credibility’ of each hypothesis, sorting hypotheses ‘from most credible to least credible’, and then ‘select[ing] from the top of the list those hypotheses most deserving of attention’.11 Though its authors intend for this method of ‘multiple hypothesis generation’ to ensure that important alternatives do not get overlooked, the instruction to focus on the ‘most credible’ predictions indicates an assumption that unlikely possibilities are less ‘deserving of attention’. Yet that is often untrue. The most consequential events (such as major terrorist attacks, the outbreak of conventional wars, and the collapse of state governments) are often perceived as unlikely before they occur, yet they can have such enormous impact that **they deserve serious consideration.** The overall significance of any event is a product of its probability *and* its consequences, and so both of these factors must be considered when comparing alternative scenarios.

To give another example, many intelligence analysts are trained in a practice called Analysis of Competing Hypotheses (ACH). ACH seems to embrace the goal of assessing uncertainty. It instructs analysts to form a matrix of potential hypotheses and available information that helps to show how much evidence supports (or contradicts) each possibility. This practice combats first impressions and promotes alternative thinking.12 Yet the word ‘Competing’ is important here. Competing for what? The original description of ACH explains its goal as being to determine ‘Which of several possible explanations is the correct one? Which of several possible outcomes is the most likely one?’13 A recent manual introduces ACH as a tool for ‘selecting the hypothesis that best fits the evidence’.14 To this end, ACH instructs analysts to ‘focus on disproving hypotheses’.15 This does not mean that ACH always generates single-outcome estimates, and the method is designed to indicate places where the evidence sustains multiple interpretations. When this occurs, ACH tells analysts to rank remaining possibilities from ‘weakest’ to ‘strongest’.

An analyst seeking to assess uncertainty would approach the issue differently. She would not see the relevant possibilities as rival or competing. She would say that no possibility merits attention for being ‘correct’ and that focusing on disproving hypotheses places unnecessary emphasis on eliminating relevant scenarios from consideration. Moreover, she would argue that it makes little sense to say that any possibility is ‘weak’ or ‘strong’ so long as analysts accurately assess its likelihood.16 This is not to claim that all scenarios have equal significance. But to repeat, the significance of any possibility is the product of its likelihood and its potential consequences. For that reason, ACH’s method of ranking hypotheses based on probability exposes analysts to consequence neglect.

## First adv

## 1nc

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

No wars will result from the existence of korematsu – status quo proves .

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

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.

# 2NC

## Overview – 2NC

OLC opinions are the most authoritative—Courts would follow-on

Powell, Professor, Duke Law School, March 1999

(H. Jefferson, The President's Authority over Foreign Affairs: An Executive Branch Perspective, 67 Geo. Wash. L. Rev. 527, Lexis)

B. The Special Role of Executive Branch Legal Opinions and Historical Practice

Executive branch lawyers interpret the Constitution employing the same tools of analysis that are generally employed by the legal profession in the United States. In particular, executive branch lawyers' concern for historical practice is not unique. The Supreme Court has identified separation of pow ers as an area that, due to the lessons of history, warrants heightened re [\*536] spect. n42 At various times, the Court has suggested that weight must be given to old, or longstanding, governmental practice as a matter of constitutional design, n43 or because of the special claim to insight of the First Congress or the founding generation, n44 or for sheerly practical reasons. n45 What is unique about constitutional reasoning from an executive branch perspective is the weight given to the considered legal judgments of the two political branches, and particularly to legal opinions and arguments that the President and other executive branch officials formally advanced. n46

An executive branch perspective on constitutional law is one formulated in the context of a history, now two centuries old, of presidential action and assertion, and of efforts by the President's legal advisors to defend executive authority and, at times, to prevent its misuse. Walter Dellinger, a former acting Solicitor General, and before that head of the Office of Legal Counsel ("OLC"), has written:

An executive branch attorney [has] an obligation to work within a tradition of reasoned, executive branch precedent, memorialized in formal written opinions. Lawyers in the executive branch have thought and written for decades about the President's legal author ity... When lawyers who are now at the Office of Legal Counsel begin to research an issue... they are expected to look to the previous opinions of the Attorneys General and of heads of [OLC] to develop and refine the executive branch's legal positions. n47

From an executive branch perspective, therefore, presidential assertions of authority, and executive branch legal opinions interpreting the Constitution, are legal authorities that shape the contours within which lawyers should address constitutional issues - especially in the areas of foreign affairs and national security where there is relatively little judicial precedent. The authoritative nature of the "tradition of reasoned, executive branch precedent" is not simply a pragmatic issue of institutional authority - indeed the existence of such a tradition "memorialized in written opinions" is one of the factors that enables executive branch lawyers to press the claims of law [\*537] against the urgencies of policy. The tradition of formal legal argument by presidents and their legal advisors is, instead, central to the executive's fulfillment over time of the President's duty to interpret and ensure the faithful execution of the Constitution.

Executive branch legal opinions are of great importance to any constitutional argument from an executive branch perspective, but they are central to the discussion of issues in the areas of foreign affairs and national security. As the Supreme Court itself has acknowledged, its decisions on these topics are peculiarly unlikely to generate broad doctrinal frameworks. The Court has frequently observed that the Constitution confers authority over foreign affairs and national security, with few exceptions, to the political branches, creating the risk that judicial intervention will itself be a serious violation of separation of powers. n48 As a result, when the Court does address issues involving these topics, it typically avoids broad pronouncements about the Constitution's meaning. In a leading modern case involving foreign affairs, for example, the Court noted that "the decisions of the Court in this area have been rare, episodic, and afford little precedential value for subsequent cases." n49 Because of "the broad range of vitally important day-to-day questions regularly decided by Congress or the Executive" with respect to foreign affairs and national security, the Court described itself as "acutely aware of the necessity to rest [judicial] decisions on the narrowest possible ground capable of deciding the case." n50 Unlike its tendency in the domestic sphere to give short shrift to the constitutional views of the political branches, the Court's practice in cases involving foreign affairs and national security invites Congress and the President to exercise the interpretive role that the execu tive branch perspective maintains is theirs generally, and in principle. Executive branch thinking on the constitutional issues raised by foreign policy and national security takes place against this backdrop of judicial reticence.

As a historical matter, the form in which the executive branch has articulated its "considered constitutional judgments" has varied, and a contemporary executive branch perspective will give differing weights to various types [\*538] of statements depending on their original historical context. Obviously, formal statements that the President signs himself have the clearest institutional status. Constitutional conclusions articulated in any form by the administra tion of George Washington are of great importance. Washington and his advisors were acutely aware that they were setting precedents, and considered many constitutional issues in a collective fashion that lends added weight to their decisions. n51 The largest corpus of executive branch constitutional reasoning consists of the opinions signed by or issued under the authority of the Attorney General. Since the enactment of the Judiciary Act of 1789, n52 the Attorney General has been the chief law officer of the government, and his or her legal opinions ordinarily are the definitive expressions of the executive branch's legal view. By regulation, the actual execution of the Attorney General's opinion function is now delegated to the Office of Legal Counsel, n53 and only a small percentage of the legal opinions are now signed by the At torney General personally, but for the most part OLC opinions are equally authoritative. The Department of Justice shares "jurisdiction" over legal is sues involving foreign affairs with the office of the Legal Adviser to the De partment of State; the Legal Adviser's views on the treaty power and on the interpretation of treaties and other international agreements are particularly important.

## 2nc solvency run

Sends the same signal as the plan

Setty, professor of law at Western New England, March 2009

(Sudha, No More Secret Laws: How Transparency of Executive Branch Legal Policy Doesn't Let the Terrorists Win, 57 Kan. L. Rev. 579, Lexis)

A. Greater Information Disclosure Increases the Integrity of OLC Opinions

One effect of nondisclosure is legal memoranda that reflect underdeveloped legal reasoning, a criticism that has been levied against previously secret OLC memoranda that were either leaked to the public or eventually declassified. n138 Making disclosure the default standard encourages self-policing by OLC lawyers. **Disclosure would** also **generate political and public sentiment regarding legal policies**, **the same way that congressional lawmaking and judicial opinions are subject to public scrutiny**. n139 Obviously, public outcry could influence an administration to back away from a controversial policy, as has apparently occurred in the case of the Bybee and Yoo Memoranda; or, as in the cases of Lincoln and Roosevelt, publication of legal policy could serve to garner public and congressional support for controversial policies.

Outweighs Court decisions – people look to OLC first

Richards, JD UC-Berkeley, January 2006

(Nelson, “The Bricker Amendment and Congress's Failure to Check the Inflation of the Executive's Foreign Affairs Powers, 1951-1954,” not as ridiculous as the Jennings Amendment, 94 Calif. L. Rev. 175, Lexis)

[\*208] H. Jefferson Powell has posited that the Supreme Court has all but ceded the creation of a foreign affairs and national security legal framework to the OLC. n209 Indeed, he goes so far as to assert that OLC legal opinions, not Supreme Court opinions, are the **first sources** the executive branch looks to when researching foreign affairs and national security law. n210 Another set of John Yoo's writings support the validity of Powell's claim: the infamous memos declaring enemy combatants outside the protection of the Geneva Conventions. n211 These, combined with the "Torture Memos," n212 the expanding practice of "extraordinary rendition," n213 and the current Administration's blase response to the Supreme Court's ruling that prisoners held at Guantanamo Bay are entitled to judicial access, n214 have brought peculiar focus to the weight and seriousness of the OLC's legal authority.

OLC opinions are authoritative legal precedents – the Supreme Court looks to the executive – (esp. true with international law)

Powell, Professor, Duke Law School, March 1999

(H. Jefferson, The President's Authority over Foreign Affairs: An Executive Branch Perspective, 67 Geo. Wash. L. Rev. 527, Lexis)

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The Supreme Court cites the OLC—that snuffs out Korematsu

Aden, Chief Litigation Counsel for The Rutherford Institute, 2000

(Steven H., “HIV/AIDS AND THE PUBLIC ACCOMMODATIONS PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT,” 9 Temp. Pol. & Civ. Rts. L. Rev. 395, Lexis)

The ADA's directive against determining the existence of a direct threat on the basis of speculative evidence was reinforced by the Supreme Court's decision in Bragdon v. Abbott, n70 which will almost certainly become the seminal case in ADA HIV/AIDS direct threat jurisprudence for some time to come. The Court in Bragdon addressed whether an individual who is infected with the HIV virus, but has not manifested its most serious symptoms, has a disability for the purposes of an ADA claim. The Court held that even if an individual infected with HIV had not progressed to the so-called symptomatic phase, HIV still potentially constituted a "disability" under the ADA, n71 as "a physical impairment that substantially limits one or more of the [individual's] major life activities. ..." n72

The Court reasoned that from "the moment of infection" and "during every stage of the disease" HIV infection satisfies the statutory and regulatory definition of a "physical impairment." n73 The Court also discussed a "comprehensive and significant administrative precedent," an opinion issued by the Justice Department's Office of Legal Counsel (OLC). n74 Citing the OLC opinion, the Court concluded that HIV infection must be regarded as a physiological disorder with an immediate, constant, and detrimental effect on the hemic and lymphatic systems. n75

And it’s studied by students so it spills over to spaces like debate

Scheuerman, Professor of Political Science at Indiana University, Summer 2012

(William E., “Emergencies, Executive Power, and the Uncertain Future of US Presidential Democracy,” 37 Law & Soc. Inquiry 743, Lexis)

In addition, the president's control over the massive administrative apparatus provides the executive with a daunting array of institutional weapons, while the Office of Legal Counsel (OLC) and Office of Counsel to the President offer hyperpoliticized sites from which distinctly executive-centered legal and constitutional views now are rapidly disseminated. Ackerman raises some tough questions for those who deem the OLC and related executive organs fundamentally sound institutions that somehow went haywire under David Addington and John Yoo. In his view, their excesses represent a logical result of basic structural trends currently transforming both the executive and political system as whole. OLC's partisan and sometimes quasi-authoritarian legal pronouncements are now being eagerly studied by law students and cited by federal courts (2010, 93). Notwithstanding an admirable tradition of executive deference to the Supreme Court, presidents are better positioned than ever to claim higher political legitimacy and neutralize political rivals. Backed by eager partisan followers, adept at the media game, and well armed with clever legal arguments constructed by some of the best lawyers in the country, prospective presidents may conceivably stop deferring to the Court (2010, 89).

Key to citations and international precedent—that’s a key internal to their racism arguments

Huckabee, Associate Professor of Business Law, University of South Dakota, 2009

(Gregory M., “The Politicizing of Military Law - Fruit of the Poisonous Tree,” 45 Gonz. L. Rev. 611, Lexis)

Without waiting for a State Department review of the January 18 revised Yoo draft memo to DoD General Counsel, Mr. William J. Haynes, DOJ OLC Assistant Attorney General Jay S. Bybee issued an official legal opinion to both Alberto R. Gonzales, Counsel to the President, and the DoD General Counsel Mr. Haynes four days later. n71 Incorporating virtually all of the Yoo memos verbatim, OLC in thirty-seven pages proceeded to state as definitive legal interpretation its determination that international law was inapplicable to the President in the exercise of his Commander-in-Chief responsibilities under Article II of the U.S. Constitution. n72

Despite opportunity and warning before the administration proceeded on a legal policy course it would come to regret, political positions hardened and the law became capable of political interpretation. This was a turning point. French philosopher Voltaire once observed, "Define your terms, you will permit me again to say, or we shall never understand one another." n73 Dr. Philip D. Zelikow, Counselor of the U.S. Department of State, offers: "Legal Policy is a term I would define as those policies that shape the administration of justice. That's different from offering an interpretation of the law. It's a policy task: What do you think the law should be? How do we think the administration of justice should be developed?" n74 But just as egos are strong in lawyers, they prove even stronger in politicians, and all the draft opinions and comments became permanent positions demarcating differences of thought, with law coming in second place.

Known as the "New Paradigm," this plenary interpretation of presidential war power is based "on a reading of the Constitution that few legal scholars share." n75 Fundamentally it states "that the President, as Commander-in-Chief, has the authority to disregard virtually all previously known boundaries if national security demands it." n76 The public policy behind the New Paradigm was as follows:

[\*627]

To allow the Pentagon to bring terrorists to justice as swiftly as possible. Criminal courts and military courts, with their exacting standards of evidence and emphasis on protecting defendants' rights, were deemed too cumbersome. Instead, the President authorized a system of detention and interrogation that operated outside the international standards for the treatment of prisoners of war established by the 1949 Geneva Conventions ... In November, 2001, [Vice President] Cheney said of the military commissions, "We think it guarantees that we'll have the kind of treatment of these individuals that we believe they deserve. n77

A former DOJ Associate Attorney General in the Reagan administration, Bruce Fein, observed that Bush's presidential legal advisors had "staked out powers that are a universe beyond any other Administration. This President has made claims that are really quite alarming. He's said that there are no restraints on his ability, as he sees it, to collect intelligence, to open mail, to commit torture, and to use electronic surveillance." n78 Fein extrapolated this New Paradigm of constitutional war power interpretation noting, "If you used the President's reasoning, you could shut down Congress for leaking too much." n79 In particular, he observed about the expansive nature of the new paradigm:

9/11 is a novel case. War against a tactic rather than a nation-state is constitutionally troublesome because it means permanent war. There will always be at least one terrorist somewhere in the world hoping to kill an American, which is the definition of post-9/11 war under the Bush-Cheney doctrine. n80

D. The Last Hope for Legal Discretion

At the level of presidential legal policymaking, one must understand that the Counsel to the President is the coordinator of various legal opinions, who applies significant thought, reflection, and discretion before recommending a significant change in legal policy involving the law of war. On January 25, three days after receiving the DOJ OLC opinion, Counsel to the President Gonzales prepared a draft memo to the President, Subject: Decision Re Application of the Geneva Convention [\*628] on Prisoners of War to the Conflict with Al-Qaeda and the Taliban. n81 In his January 25 draft memo he stated in his introduction that he had advised the President on January 18 [2002] that DOJ had issued a legal opinion that held that Geneva Convention III on the Treatment of Prisoners of War (GPW) did not apply to the conflict with Al-Qaeda. n82 This is interesting because the Bybee DOJ OLC memo is dated January 22, 2002, so Gonzales had reviewed and communicated its contents to the President prior to its official release, and prior to the opportunity for the State Department to provide its legal review and analysis.

Gonzales writes that the Secretary of State requested that the President reconsider his earlier decision on this issue, concluding that the GPW does apply to both Al-Qaeda and Taliban detainees. n83 In support of the DOJ OLC's earlier opinion, Gonzales argued that "OLC's interpretation of this legal issue is definitive. The Attorney General is charged by statute with interpreting the law for the Executive Branch. This interpretive authority "extends to both domestic and international law. He has, in turn, delegated this role to OLC." n84 After stating this, Gonzales indicated that the Legal Advisor to the Secretary of State had expressed a different view. n85 Nevertheless, arguing that inapplicability of the GCW preserves presidential war power flexibility, Gonzales sided with OLC in denigrating the legal importance, applicability, and relevance of the GCW:

The nature of the new war places a high premium on other factors, such as the ability to quickly obtain information from captured terrorists and their sponsors in order to avoid further atrocities against American civilians, and the need to try terrorists for war crimes such as wantonly killing civilians. In my judgment, this new paradigm renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions requiring that captured enemy be afforded such things as commissary privileges, scrip (i.e., advances of monthly pay), athletic uniforms, and scientific instruments. n86

## Binding / Compliance – 2NC

The entire executive branch will comply

Johnsen, professor of law at Indiana University, August 2007

(Dawn, “The Role of Institutional Context in Constitutional Law: Faithfully Executing the Laws: Internal Legal Constraints on Executive Power,” 54 UCLA L. Rev. 1559, Lexis)

The Torture Opinion thrust into the public eye a previously obscure, though enormously influential, office within the Department of Justice: the Office of Legal Counsel. The constitutional text and structure make plain the President's obligation to act in conformity with the law and to ensure that all in the executive branch do the same as they perform myriad responsibilities. To fulfill their oath of office n82 and obligation to "take Care that the Laws be faithfully executed," n83 Presidents require a reliable source of legal advice. In recent decades OLC has filled that role. Thus, OLC's core function is to provide the legal advice that the President - and, by extension, the entire executive branch - needs to faithfully execute the laws.

[\*1577] OLC functions as a kind of general counsel to the numerous other top lawyers in the executive branch who tend to send OLC their most difficult and consequential legal questions. n84 OLC's staff of about two dozen lawyers (most of whom are career employees, led by several political appointees) responds to legal questions from the counsel to the President, the attorney general, the general counsels of the various executive departments and agencies, and the assistant attorneys general for the other components of the Department of Justice. A relatively high percentage of OLC's work comes from the White House or otherwise involves the White House. Regulations require the submission of legal disputes between executive branch agencies to OLC for resolution. n85 **By virtue of regulation and tradition**, **OLC's legal interpretations** typically **are** considered **binding within the executive branch**, unless overruled by the attorney general or the President (an exceedingly rare occurrence). n86

OLC's advice therefore ordinarily must be **followed by the entire executive branch**, from the counsel to the President and cabinet officers to the military and career administrators, **regardless of any disagreement or unhappiness**. The President, however, may overrule the advice through formal means or simply by declining to follow it. To take a quasi-hypothetical example, if the CIA wanted to use waterboarding to interrogate a detainee but the Department of Justice's criminal division and the U.S. Department of State believed that doing so would be illegal, OLC would resolve that dispute. The CIA would be bound by an OLC conclusion that waterboarding was unlawful. The President or attorney general could lawfully override OLC only pursuant to a good faith determination that OLC erred in its legal analysis. The President would violate his constitutional obligation if he were to reject OLC's advice solely on policy grounds. [\*1578] Of course, even if OLC were to find waterboarding lawful, the President or other appropriate officials could make the policy determination not to use it as a method of interrogation. The President or the attorney general also could disagree with OLC's interpretation of the relevant law and prohibit waterboarding on legal grounds.

Presidential endorsement guarantees

Morrison, professor of law at Columbia, May 2011

(Trevor W., ‘LIBYA, "HOSTILITIES," THE OFFICE OF LEGAL COUNSEL, AND THE PROCESS OF EXECUTIVE BRANCH LEGAL INTERPRETATION,’ 124 Harv. L. Rev. F. 62, Lexis)

OLC does not have the power to impose conclusive, binding legal obligations on the President, but by longstanding tradition its opinions are treated as presumptively binding and are virtually never overruled by the President or Attorney General. As re-specified by Ackerman, that is the most the Supreme Executive Tribunal could ever hope for -- but without the benefit of longstanding traditions to sustain it. In either case, the key is not any external statutory guarantee of interpretive authority, but **a commitment by the White House to respect the legal conclusions in question**. Yet if presidents are not willing to engage in executive self-binding with respect to a time-honored institution like OLC, why should we expect they would do so for Ackerman's new Tribunal? We should not. What this reveals is that newfangled institutions are not the answer. As I say in the conclusion to my review of Decline and Fall, "[t]he key lies not in any transformation of the executive branch but in the 'cultural norms' of offices like OLC . . . and in a President, [\*74] Congress, and public that care whether those norms are preserved." n32

That alone creates solvency

Johnsen, professor of law at Indiana University, August 2007

(Dawn, “The Role of Institutional Context in Constitutional Law: Faithfully Executing the Laws: Internal Legal Constraints on Executive Power,” 54 UCLA L. Rev. 1559, Lexis)

Public cynicism notwithstanding, **it is** both **possible** and necessary **for executive branch lawyers to constrain** unlawful **executive branch action**. Ultimately, though, **the President's own attitude toward the rule of law will go a long way toward setting the tone for the administration**. If the President desires only a rubberstamp, OLC will have to struggle mightily to provide an effective check on unlawful action. In addition to being prepared to say no, therefore, the assistant attorney general for OLC and other top Department of Justice officials must also be prepared to resign in the extraordinary event the President persists in acting unlawfully or demands that OLC legitimize unlawful activity. Even from within the Bush Administration, some cause for optimism can be found in reports of internal opposition to extreme interrogation policies, as well as in the threatened resignation of up to thirty Department of Justice officials if Bush had persisted in a domestic surveillance program the Department had determined was unlawful. n169 This is as it should be: Commitment to the rule of law must not be a partisan issue. Congress, the courts, and the public should all work to empower principled executive branch legal advisors - in administrations of both political parties - to safeguard our constitutional democracy.

## 2nc ov

New zoonotic diseases cause extinction – different from past diseases

Quammen, award-winning science writer, long-time columnist for *Outside* magazine, writer for National Geographic, Harper's, Rolling Stone, the New York Times Book Review and others, 9/29/2012

(David, “Could the next big animal-to-human disease wipe us out?,” The Guardian, pg. 29, Lexis)

Infectious disease is all around us. It's one of the basic processes that ecologists study, along with predation and competition. Predators are big beasts that eat their prey from outside. Pathogens (disease-causing agents, such as viruses) are small beasts that eat their prey from within. Although infectious disease can seem grisly and dreadful, under ordinary conditions, it's every bit as natural as what lions do to wildebeests and zebras. **But conditions aren't always ordinary**.

Just as predators have their accustomed prey, so do pathogens. And just as a lion might occasionally depart from its normal behaviour - to kill a cow instead of a wildebeest, or a human instead of a zebra - so a pathogen can shift to a new target. **Aberrations occur**. When a pathogen leaps from an animal into a person, and succeeds in establishing itself as an infectious presence, sometimes causing illness or death, the result is a zoonosis.

It's a mildly technical term, zoonosis, unfamiliar to most people, but it helps clarify the biological complexities behind the ominous headlines about swine flu, bird flu, Sars, emerging diseases in general, and the threat of a global pandemic. It's a word of the future, destined for heavy use in the 21st century.

Ebola and Marburg are zoonoses. So is bubonic plague. So was the so-called Spanish influenza of 1918-1919, which had its source in a wild aquatic bird and emerged to kill as many as 50 million people. All of the human influenzas are zoonoses. As are monkeypox, bovine tuberculosis, Lyme disease, West Nile fever, rabies and a strange new affliction called Nipah encephalitis, which has killed pigs and pig farmers in Malaysia. Each of these zoonoses reflects the action of a pathogen that can "spillover", crossing into people from other animals.

Aids is a disease of zoonotic origin caused by a virus that, having reached humans through a few accidental events in western and central Africa, now passes human-to-human. This form of interspecies leap is not rare; about 60% of all human infectious diseases currently known either cross routinely or have recently crossed between other animals and us. Some of those - notably rabies - are familiar, widespread and still horrendously lethal, killing humans by the thousands despite centuries of efforts at coping with their effects. Others are new and inexplicably sporadic, claiming a few victims or a few hundred, and then disappearing for years.

**Zoonotic pathogens can hide**. The least conspicuous strategy is to lurk within what's called a reservoir host: a living organism that carries the pathogen while suffering little or no illness. When a disease seems to disappear between outbreaks, it's often still lingering nearby, within some reservoir host. A rodent? A bird? A butterfly? A bat? To reside undetected is probably easiest wherever biological diversity is high and the ecosystem is relatively undisturbed. The converse is also true: ecological disturbance causes diseases to emerge. Shake a tree and things fall out.

Michelle Barnes is an energetic, late 40s-ish woman, an avid rock climber and cyclist. Her auburn hair, she told me cheerily, came from a bottle. It approximates the original colour, but the original is gone. In 2008, her hair started falling out; the rest went grey "pretty much overnight". This was among the lesser effects of a mystery illness that had nearly killed her during January that year, just after she'd returned from Uganda.

Her story paralleled the one Jaap Taal had told me about Astrid, with several key differences - the main one being that Michelle Barnes was still alive. Michelle and her husband, Rick Taylor, had wanted to see mountain gorillas, too. Their guide had taken them through Maramagambo Forest and into Python Cave. They, too, had to clamber across those slippery boulders. As a rock climber, Barnes said, she tends to be very conscious of where she places her hands. No, she didn't touch any guano. No, she was not bumped by a bat. By late afternoon they were back, watching the sunset. It was Christmas evening 2007.

They arrived home on New Year's Day. On 4 January, Barnes woke up feeling as if someone had driven a needle into her skull. She was achy all over, feverish. "And then, as the day went on, I started developing a rash across my stomach." The rash spread. "Over the next 48 hours, I just went down really fast."

By the time Barnes turned up at a hospital in suburban Denver, she was dehydrated; her white blood count was imperceptible; her kidneys and liver had begun shutting down. An infectious disease specialist, Dr Norman K Fujita, arranged for her to be tested for a range of infections that might be contracted in Africa. All came back negative, including the test for Marburg.

Gradually her body regained strength and her organs began to recover. After 12 days, she left hospital, still weak and anaemic, still undiagnosed. In March she saw Fujita on a follow-up visit and he had her serum tested again for Marburg. Again, negative. Three more months passed, and Barnes, now grey-haired, lacking her old energy, suffering abdominal pain, unable to focus, got an email from a journalist she and Taylor had met on the Uganda trip, who had just seen a news article. In the Netherlands, a woman had died of Marburg after a Ugandan holiday during which she had visited a cave full of bats.

Barnes spent the next 24 hours Googling every article on the case she could find. Early the following Monday morning, she was back at Dr Fujita's door. He agreed to test her a third time for Marburg. This time a lab technician crosschecked the third sample, and then the first sample.

The new results went to Fujita, who called Barnes: "You're now an honorary infectious disease doctor. You've self-diagnosed, and the Marburg test came back positive."

The Marburg virus had reappeared in Uganda in 2007. It was a small outbreak, affecting four miners, one of whom died, working at a site called Kitaka Cave. But Joosten's death, and Barnes's diagnosis, implied a change in the potential scope of the situation. That local Ugandans were dying of Marburg was a severe concern - sufficient to bring a response team of scientists in haste. But if tourists, too, were involved, tripping in and out of some python-infested Marburg repository, unprotected, and then boarding their return flights to other continents, the place was not just a peril for Ugandan miners and their families. It was also an international threat.

The first team of scientists had collected about 800 bats from Kitaka Cave for dissecting and sampling, and marked and released more than 1,000, using beaded collars coded with a number. That team, including scientist Brian Amman, had found live Marburg virus in five bats.

Entering Python Cave after Joosten's death, another team of scientists, again including Amman, came across one of the beaded collars they had placed on captured bats three months earlier and 30 miles away.

"It confirmed my suspicions that these bats are moving," Amman said - and moving not only through the forest but from one roosting site to another. Travel of individual bats between far-flung roosts implied circumstances whereby Marburg virus might ultimately be transmitted all across Africa, from one bat encampment to another. It voided the comforting assumption that this virus is strictly localised. And it highlighted the complementary question: why don't outbreaks of Marburg virus disease happen more often? Marburg is only one instance to which that question applies. Why not more Ebola? Why not more Sars?

In the case of Sars, the scenario could have been very much worse. Apart from the 2003 outbreak and the aftershock cases in early 2004, it hasn't recurred. . . so far. Eight thousand cases are relatively few for such an explosive infection; 774 people died, not 7 million. Several factors contributed to limiting the scope and impact of the outbreak, of which humanity's good luck was only one. Another was the speed and excellence of the laboratory diagnostics - finding the virus and identifying it. Still another was the brisk efficiency with which cases were isolated, contacts were traced and quarantine measures were instituted, first in southern China, then in Hong Kong, Singapore, Hanoi and Toronto. If the virus had arrived in a different sort of big city - more loosely governed, full of poor people, lacking first-rate medical institutions - **it might have burned through a much larger segment of humanity**.

One further factor, possibly the most crucial, was inherent in the way Sars affects the human body: symptoms tend to appear in a person before, rather than after, that person becomes highly infectious. That allowed many Sars cases to be recognised, hospitalised and placed in isolation before they hit their peak of infectivity. With influenza and many other diseases, the order is reversed. That probably helped account for the scale of worldwide misery and death during the 1918-1919 influenza. And that infamous global pandemic occurred in the era before globalisation. Everything nowadays moves around the planet faster, including viruses. **When the Next Big One comes**, **it will** likely **conform to the** same perverse pattern as the **1918 influenza**: high infectivity preceding notable symptoms. That will help it move through cities and airports like an angel of death.

The Next Big One is a subject that disease scientists around the world often address. The most recent big one is Aids, of which the eventual total bigness cannot even be predicted - about 30 million deaths, 34 million living people infected, and with no end in sight. Fortunately, not every virus goes **airborne** from one host to another. If HIV-1 could, you and I might already be dead. If the **rabies** virus could, it **would be the most horrific pathogen on the planet**. The influenzas are well adapted for airborne transmission, which is why a new strain can circle the world within days. The Sars virus travels this route, too, or anyway by the respiratory droplets of sneezes and coughs - hanging in the air of a hotel corridor, moving through the cabin of an aeroplane - and that capacity, combined with its case fatality rate of almost 10%, is what made it so scary in 2003 to the people who understood it best.

Human-to-human transmission is the crux. That capacity is what separates a bizarre, awful, localised, intermittent and mysterious disease (such as Ebola) from a global pandemic. Have you noticed the persistent, low-level buzz about avian influenza, the strain known as H5N1, among disease experts over the past 15 years? That's because avian flu worries them deeply, though it hasn't caused many human fatalities. Swine flu comes and goes periodically in the human population (as it came and went during 2009), sometimes causing a bad pandemic and sometimes (as in 2009) not so bad as expected; but avian flu resides in a different category of menacing possibility. It worries the flu scientists because they know that H5N1 influenza is extremely virulent in people, with a high lethality. As yet, there have been a relatively low number of cases, and it is poorly transmissible, so far, from human to human. It'll kill you if you catch it, very likely, but you're unlikely to catch it except by butchering an infected chicken. But if H5N1 mutates or reassembles itself in just the right way, if it adapts for human-to-human transmission, it could become the biggest and fastest killer disease since 1918.

It got to Egypt in 2006 and has been especially problematic for that country. As of August 2011, there were 151 confirmed cases, of which 52 were fatal. That represents more than a quarter of all the world's known human cases of bird flu since H5N1 emerged in 1997. But here's a critical fact: those unfortunate Egyptian patients all seem to have acquired the virus directly from birds. This indicates that the virus hasn't yet found an efficient way to pass from one person to another.

Two aspects of the situation are dangerous, according to biologist Robert Webster. The first is that Egypt, given its recent political upheavals, may be unable to staunch an outbreak of transmissible avian flu, if one occurs. His second concern is shared by influenza researchers and public health officials around the globe: with all that mutating, with all that contact between people and their infected birds, the virus could hit upon a genetic configuration making it highly transmissible among people.

"As long as H5N1 is out there in the world," Webster told me, "**there is the possibility of disaster**. . . There is the theoretical possibility that it can acquire the ability to transmit human-to-human." He paused. "And then God help us."

We're unique in the history of mammals. No other primate has ever weighed upon the planet to anything like the degree we do. In ecological terms, we are almost paradoxical: large-bodied and long-lived but grotesquely abundant. **We are an outbreak**.

**And here's the thing about outbreaks**: **they end**. In some cases they end after many years, in others they end rather soon. In some cases they end gradually, in others they end with a crash. In certain cases, they end and recur and end again. Populations of tent caterpillars, for example, seem to rise steeply and fall sharply on a cycle of anywhere from five to 11 years. The crash endings are dramatic, and for a long while they seemed mysterious. What could account for such sudden and recurrent collapses? One possible factor is infectious disease, and viruses in particular.

Bioterror causes extinction

Mhyrvold ‘13

Nathan, Began college at age 14, BS and Masters from UCLA, Masters and PhD, Princeton “Strategic Terrorism: A Call to Action,” Working Draft, The Lawfare Research Paper Series

Research paper NO . 2 – 2013

As horrible as this would be, such a pandemic is by no means the worst attack one can imagine, for several reasons. First, most of the classic bioweapons are based on 1960s and 1970s technology because the 1972 treaty halted bioweapons development efforts in the United States and most other Western countries. Second, the Russians, although solidly committed to biological weapons long after the treaty deadline, were never on the cutting edge of biological research. Third and most important, the science and technology of molecular biology have made enormous advances, utterly transforming the field in the last few decades. High school biology students routinely perform molecular-biology manipulations that would have been impossible even for the best superpower-funded program back in the heyday of biological-weapons research. The biowarfare methods of the 1960s and 1970s are now as antiquated as the lumbering mainframe computers of that era. Tomorrow’s terrorists will have vastly more deadly bugs to choose from. Consider this sobering development: in 2001, Australian researchers working on mousepox, a nonlethal virus that infects mice (as chickenpox does in humans), accidentally discovered that a simple genetic modification transformed the virus.10, 11 Instead of producing mild symptoms, the new virus killed 60% of even those mice already immune to the naturally occurring strains of mousepox. The new virus, moreover, was unaffected by any existing vaccine or antiviral drug. A team of researchers at Saint Louis University led by Mark Buller picked up on that work and, by late 2003, found a way to improve on it: Buller’s variation on mousepox was 100% lethal, although his team of investigators also devised combination vaccine and antiviral therapies that were partially effective in protecting animals from the engineered strain.12, 13 Another saving grace is that the genetically altered virus is no longer contagious. Of course, it is quite possible that future tinkering with the virus will change that property, too. Strong reasons exist to believe that the genetic modifications Buller made to mousepox would work for other poxviruses and possibly for other classes of viruses as well. Might the same techniques allow chickenpox or another poxvirus that infects humans to be turned into a 100% lethal bioweapon, perhaps one that is resistant to any known antiviral therapy? I’ve asked this question of experts many times, and no one has yet replied that such a manipulation couldn’t be done. This case is just one example. Many more are pouring out of scientific journals and conferences every year. Just last year, the journal Nature published a controversial study done at the University of Wisconsin–Madison in which virologists enumerated the changes one would need to make to a highly lethal strain of bird flu to make it easily transmitted from one mammal to another.14 Biotechnology is advancing so rapidly that it is hard to keep track of all the new potential threats. Nor is it clear that anyone is even trying. In addition to lethality and drug resistance, many other parameters can be played with, given that the infectious power of an epidemic depends on many properties, including the length of the latency period during which a person is contagious but asymptomatic. Delaying the onset of serious symptoms allows each new case to spread to more people and thus makes the virus harder to stop. This dynamic is perhaps best illustrated by HIV , which is very difficult to transmit compared with smallpox and many other viruses. Intimate contact is needed, and even then, the infection rate is low. The balancing factor is that HIV can take years to progress to AIDS , which can then take many more years to kill the victim. What makes HIV so dangerous is that infected people have lots of opportunities to infect others. This property has allowed HIV to claim more than 30 million lives so far, and approximately 34 million people are now living with this virus and facing a highly uncertain future.15 A virus genetically engineered to infect its host quickly, to generate symptoms slowly—say, only after weeks or months—and to spread easily through the air or by casual contact would be vastly more devastating than HIV . It could silently penetrate the population to unleash its deadly effects suddenly. This type of epidemic would be almost impossible to combat because most of the infections would occur before the epidemic became obvious. A technologically sophisticated terrorist group could develop such a virus and kill a large part of humanity with it. Indeed, terrorists may not have to develop it themselves: some scientist may do so first and publish the details. Given the rate at which biologists are making discoveries about viruses and the immune system, at some point in the near future, someone may create artificial pathogens that could drive the human race to extinction. Indeed, a detailed species-elimination plan of this nature was openly proposed in a scientific journal. The ostensible purpose of that particular research was to suggest a way to extirpate the malaria mosquito, but similar techniques could be directed toward humans.16 When I’ve talked to molecular biologists about this method, they are quick to point out that it is slow and easily detectable and could be fought with biotech remedies. If you challenge them to come up with improvements to the suggested attack plan, however, they have plenty of ideas. Modern biotechnology will soon be capable, if it is not already, of bringing about the demise of the human race— or at least of killing a sufficient number of people to end high-tech civilization and set humanity back 1,000 years or more. That terrorist groups could achieve this level of technological sophistication may seem far-fetched, but keep in mind that it takes only a handful of individuals to accomplish these tasks. Never has lethal power of this potency been accessible to so few, so easily. Even more dramatically than nuclear proliferation, modern biological science has frighteningly undermined the correlation between the lethality of a weapon and its cost, a fundamentally stabilizing mechanism throughout history. Access to extremely lethal agents—lethal enough to exterminate Homo sapiens—will be available to anybody with a solid background in biology, terrorists included.

Also causes rollback/circumvention

Laura Young, Ph.D., Purdue University Associate Fellow, June 2013, Unilateral Presidential Policy Making and the Impact of Crises, Presidential Studies Quarterly, Volume 43, Issue 2

A president looks for chances to increase his power (Moe and Howell 1999). Windows of opportunity provide those occasions. These **openings create an environment where the president faces little backlash from Congress, the judicial branch, or even the public**. Though institutional and behavioral conditions matter, domestic and international crises play a pivotal role in aiding a president who wishes to increase his power (Howell and Kriner 2008, 475). These events overcome the obstacles faced by the institutional make-up of government. They also allow a president lacking in skill and will or popular support the opportunity to shape the policy formation process. In short, focusing events increase presidential unilateral power.

Outweighs their mechanism

Laura Young, Ph.D., Purdue University Associate Fellow, June 2013, Unilateral Presidential Policy Making and the Impact of Crises, Presidential Studies Quarterly, Volume 43, Issue 2

During periods of crisis, the time available to make decisions is limited. Because the decision-making process is often arduous and slow in the legislative branch, it is not uncommon for the executive branch to receive deference during a crisis because of its ability to make swift decisions. The White House centralizes policies during this time, and presidents seize these opportunities to expand their power to meet policy objectives. Importantly, presidents do so with limited opposition from the public or other branches of government (Howell and Kriner 2008). In fact, despite the opposition presidents often face when centralizing policies, research shows policies formulated via centralized processes during times of crisis receive more support from Congress and the American people (Rudalevige 2002, 148-49). For several reasons, a crisis allows a president to promote his agenda through unilateral action. First, a critical exogenous shock shifts attention and public opinion (Birkland 2004, 179). This shift is a phenomenon known as the “rally round the flag” effect (Mueller 1970). The rally effect occurs because of the public's increase in “its support of the president in times of crisis or during major international events” (Edwards and Swenson 1997, 201). Public support for the president rises because he is the leader and, therefore, the focal point of the country to whom the public can turn for solutions. Additionally, individuals are more willing to support the president unconditionally during such times, hoping a “united front” will increase the chance of success for the country (Edwards and Swenson 1997, 201). As a result, a crisis or focusing event induces an environment that shifts congressional focus, dispels gridlock and partisanship, and increases positive public opinion—each of which is an important determinant for successful expansion of presidential power (Canes-Wrone and Shotts 2004; Howell 2003). In other words, a crisis embodies key elements that the institutional literature deems important for presidential unilateral policy making. The president's ability to focus attention on a particular issue is also of extreme importance if he wishes to secure support for his agenda (Canes-Wrone and Shotts 2004; Edwards and Wood 1999; Howell 2003; Neustadt 1990). The role the media play is pivotal in assisting a president in achieving such a result because of its ability to increase the importance of issues influencing the attention of policy makers and the priorities of viewers. Although it is possible a president can focus media attention on the policies he wishes to pursue through his State of the Union addresses or by calling press conferences, his abilities in this regard are limited, and the media attention he receives is typically short lived (Edwards and Wood 1999, 328-29). High-profile events, on the other hand, are beneficial because they allow the president to gain focus on his agenda. This occurs because the event itself generates attention from the media without presidential intervention. Thus, the ability of crises to set the agenda and shift media and public attention provides another means for overcoming the constraints placed upon the president's ability to act unilaterally. Finally, Rudalevige finds support that a crisis increases the success of presidential unilateral power even if the policy process is centralized. A crisis allows little time to make decisions. As a result, “the president and other elected officials are under pressure to ‘do something’ about the problem at hand” (2002, 89, 148). Because swift action is necessary, presidents rely on in-house advice. As a result, the policy formation process is centralized, and the president receives deference to unilaterally establish policies to resolve the crisis. During a crisis, the president has greater opportunity to guide policy because the event helps him overcome the congressional and judicial obstacles that typically stand in his way.2 This affords the president greater discretion in acting unilaterally (Wildavsky 1966). It is possible the institutional make-up of the government will align so that the president will serve in an environment supportive of his policy decisions. It is also likely a president will have persuasive powers that enable him to gain a great deal of support for his policy agenda. An event with the right characteristics, however, enhances the president's ability to act unilaterally, regardless of the institutional make-up of government or his persuasive abilities.

## 2nc link

Korematsu is a key precedent for deference to the executive in emergencies – that’s key to domestic emergency powers

Davies 2k [Major Kirk L. Davies (Chief of Ops Law in the Office of the Staff Judge Advocate, 16th Air Force; BUS & JD from U of Utah, LLM in I-Law & Ops-Law from the Judge Advocate General's School); “The Imposition of Martial Law In The United States”; Air Force Law Review, 2000]

**In analyzing relevant Supreme Court decisions in the area of** executive emergency authority, **political and social conditions existing at the time of** congressional and **presidential action must be considered** as well. The cases arising from the internment of the Japanese during World War II aptly illustrate this point.Even though martial law was not declared on the mainland of the United States during the war, **the U**nited **S**tates **government took extreme actions to intern and relocate thousands of civilians of Japanese ancestry** living within its borders.

In two cases, **the Supreme Court considered the legality of those governmental actions**. n183 In both of these cases, the defendants were charged with violations of orders excluding them from certain areas or imposed curfews. n184 These rules applied to persons of Japanese ancestry regardless of [\*104] their citizenship status or evidence of their loyalty to the United States. In both cases, the Court upheld the government's actions.

Fundamental to the Court's analysis in both cases was its view that in the arena of war making, theCourt should not substitute its judgment **for those who have been authorized by the Constitution to make such decisions**. In Hirabayashi, t**he Court stated that,**

**“where,** as they did 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.”** n185

**The Court went on to emphasize the** great amount of discretion **it afforded the** constitutionally appointed decision-makers in the area of war powers **by noting that,**

“our investigation here does not go beyond the inquiry whether, in the light of all the relevant circumstances preceding and attending their promulgation, the challenged orders and statue afforded a reasonable basis for the action taken in imposing the curfew. In this case **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.**” n186

[\*105] **Despite** widespread violations **of citizens' most basic constitutional rights, the Court** refused to interject itself **into an area that it believed was beyond its authority**. n187

Korematsu and Hirabayashi are not martial law cases, but while both are instructive, Korematsu is particularly useful for determining how the Court might view similar actions under a declaration of martial law. n188 **In Korematsu, the Court first implicitly recognized the** principle of necessity**, and permitted otherwise unacceptable actions because, in its estimation, the conditions warranted them.** **Second, the Court recognized that the severity of the actions must relate to the level of the threat, stating 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**."** n189 Finally, the Court judged the case in the context of the executive and legislative branches operating together, and did not elaborate on the outcome if the President had taken the actions in the absence of congressional authorization. Once again, the Court validated the significance of Youngstown's three-tier template.

Additionally, **even though the case did not involve a** declaration of martial law**, Justice Murphy's dissent in Korematsu does offer an**other **indication that the Court might, under proper circumstances,** approve a regime of martial law**. The dissent stated that excluding persons of Japanese ancestry from the Pacific Coast, "on a plea of military necessity in the absence of martial law ought not to be approved." n190 By implication, then, Justice Murphy would approve similar actions when** necessity dictated and martial law had been properly declared.

Spills over and guts broader executive war powers.

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

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.

## at syria

Only constrains humanitarian operations

Goldsmith 8/31/13

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Peter Spiro at OJ, and David Rothkopf of FP whom he cites, both say that President Obama’s request for congressional authorization for Syria will allow Congress to hamstring future Presidents from using military force. Rothkopf exaggerates when he says that President Obama reversed “decades of precedent regarding the nature of presidential war powers” by going to Congress here, and Spiro exaggerates when he says that this is “a huge development with broad implications . . . for separation of powers.” What would have been unprecedented, and a huge development for separation of powers, is a unilateral strike in Syria. Seeking congressional authorization here in no way sets a precedent against President using force in national self-defense, or to protect U.S. persons or property, or even (as in Libya) to engage in humanitarian interventions (like Libya) with Security Council support. Moreover, the President and his subordinates have been implying for a while now that they will rely on Article II to use force without congressional authorization against extra-AUMF terrorist threats (and for all we know they already are). There is no reason to think that unilateral presidential military powers for national self-defense are in any way affected by the President’s decision today. That is as it should be. To the extent that Spiro is suggesting that **pure humanitarian interventions** might be harder for presidents to do unilaterally after today (I think this is what he is suggesting, but I am not sure), I agree. Kosovo is the only other real precedent here, and the Clinton administration never explained why it was lawful as an original matter. The constitutional problem with pure humanitarian interventions – and especially ones (like Kosovo and Syria) that lack Security Council cover, and thus that do not implicate the supportive Korean War precedent – is that Presidents cannot easily articulate a national interest to trigger the Commander in Chief’s authority that is not at the same time boundless. President Obama, like President Clinton before him in Kosovo, had a hard time making that legal argument because it is in fact a hard argument to make. That is one reason (among many others) why I think it was a good idea, from a domestic constitutional perspective, for the President in this context to seek congressional approval.

## 2nc—defunct

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

# 1NR

Turns solvency – wrecks judicial independence and the credibility of the courts – the are reduced to mere politicians

**Burbank 7** (2007, Stephen B., “Judicial Independence, Judicial Accountability, and Interbranch Relations,” http://georgetownlawjournal.org/files/pdf/95-4/burbank.pdf)JCP

Recent scholarship has also brought sharply into focus the fact that formal protections of federal judicial independence pale in comparison with formal powers that might be deployed to control the federal courts and make them “accountable.” This scholarship, in particular the work of Charles Geyh,8 has thus made it clear that the traditional equilibrium between the federal judiciary and the other branches—what the organizers of this Conference have called “our nation’s tradition of judicial independence”—owes its existence primarily to informal norms and customs. One such norm or custom is to eschew use of the impeachment process in response to judicial decisions that are unpopular. Another is to eschew court packing as a means of ensuring decisions in accord with the preferences of the dominant coalition.

However difﬁcult it may be to amend constitutions, and however much we may like to refer to a “constitutional law” of custom and practice, we know that customs, norms, and traditions can change. Neither the fact that periods of friction between the judiciary and the other branches have recurred throughout our history nor the fact that they have been succeeded by a return to normalcy is adequate grounds for conﬁdence that the pattern will hold. Similarly, optimism that norms of interdependence between the Executive and Legislative branches can be restored provides little comfort. For, if I am correct about the dynamics leading to our current malaise, **there is reason to fear a tipping point, a point of no return to the traditional equilibrium in interbranch relations affecting the judiciary.**

The current poisonous condition of interbranch relations affecting the judiciary is in one sense unremarkable. For that condition reﬂects the state of contemporary politics in general, a deﬁning characteristic of which has been a breakdown of traditional norms of interdependence.9 It is, however, remarkably dangerous for reasons that have to do not so much with the basic and enduring fragility of judicial independence as with its vulnerability to another deﬁning characteristic of contemporary politics—namely, the debased notion of judicial accountability implicit in a view of judges as policy agents: if judges are policy agents, they should be “accountable” for their decisions in individual cases (or at least those involving issues of high salience).

One need not (and I do not) believe that elected politicians seek to maximize only their prospects for reelection to accept that, **if those on the front lines of the current war on courts** (that is, some interest groups, politicians, and journalists) **succeeded in persuading the public to view judges as policy agents and courts as part of ordinary politics, it might be impossible to return to the status quo ante**. For the informal norms and customs enabling the equilibrium we have enjoyed—a “tradition of judicial independence”—were forged and maintained in the shadow of the public’s support of the courts, support that was offered even in the face of unpopular decisions.

Richard Arnold was a distinguished appellate judge and master of federal judicial administration in part because he was also a thoughtful student of politics in general and of judicial politics. Judge Arnold did not write about judicial independence often, but his extrajudicial writings are ﬁlled with expressions of concern about judicial accountability. That is not because he thought that everyone understands what judicial independence is and accepts that, deﬁned as a judge might like to deﬁne it, it is an unalloyed good. He knew that if the federal judiciary is in fact, or is **perceived** to be, insufﬁciently accountable, it will lose the independence necessary for it to accomplish, if not what the architects of our system intended, what developing American constitutionalism requires.

Judge Arnold often stated that the judiciary must have the “continuing consent of the governed”10 in order to do its job. He also believed that, once a court has observed all jurisdictional limitations on its power, it must render and accept responsibility for a decision, however unpopular, that the law requires. From this perspective, his repeated expressions of concern about judicial accountability represented underlying anxiety about the prospects of judicial independence—namely, the continuing willingness or ability of the courts not, as he put it, to “pull [their] punches”11 when the law requires an unpopular decision.

Thus, I believe that Judge Arnold would have been relieved by the decisions of the federal courts in the Schiavo litigation,12 whether or not he would have agreed with those decisions on the merits. And to the doyen of direct mailing, Richard Viguerie’s complaint that the decisions of those courts are “very dramatic proof of what we have been saying: that the judiciary is out of control,”13 I imagine Judge Arnold responding, “I certainly hope so.” I also imagine him wondering how long that will be true.

Specifically – this leads to more situations like korematsu and means the aff doesn’t remove the loaded gun at all

Pushaw ‘4

Robert, James Wilson Endowed Professor, Pepperdine University School of Law, “Defending Deference: A Response to Professors Epstein and Wells,” http://law.missouri.edu/lawreview/files/2012/11/Pushaw.pdf

Although this approach is plausible in theory, I am not sure it would work well in practice. Presumably, the President almost always will be able to set forth plausible justifications for his actions, often based on a wide array of factors—including highly sensitive intelligence that he does not wish to disclose.66 Moreover, if the President’s response seems unduly harsh, he will likely cite the wisdom of erring on the side of caution. If the Court disagrees, it will have to find that those proffered reasons are pretextual and that the President overreacted emotionally instead of rationally evaluating and responding to the true risks involved. But are judges competent to make such determinations? And even if they are, would they be willing to impugn the President’s integrity and judgment? If so, what effect might such a judicial decision have on America’s foreign relations? These questions are worth pondering before concluding that “hard look” review would be an improvement over the Court’s established approach. Moreover, such searching scrutiny will be useless in situations where the President has made a wartime decision that he will not change, even if judicially ordered to do so. For instance, assume that the Court in Korematsu had applied “hard look” review and found that President Roosevelt had wildly exaggerated the sabotage and espionage risks posed by JapaneseAmericans and had imprisoned them based on unfounded fears and prejudice (as appears to have been the case). If the Court accordingly had struck down FDR’s order to relocate them, he would likely have disobeyed it. Professor Wells could reply that this result would have been better than what happened, which was that the Court engaged in “pretend” review and stained its reputation by upholding the constitutionality of the President’s odious and unwarranted racial discrimination. I would agree. But I submit that the solution in such unique situations (i.e., where a politically strong President has made a final decision and will defy any contrary court judgment) is not judicial review in any form—ordinary, deferential, or hard look. Rather, the Court should simply declare the matter to be a political question and dismiss the case. Although such Bickelian manipulation of the political question doctrine might be legally unprincipled and morally craven,67 at least it would avoid giving the President political cover by blessing his unconstitutional conduct and instead would force him to shoulder full responsibility.

War turns structural violence

Bulloch 8

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But the idea that poverty and peace are directly related presupposes that wealth inequalities are – in and of themselves – unjust, and that the solution to the problem of war is to alleviate the injustice that inspires conflict, namely poverty. However, it also suggests that poverty is a legitimate inspiration for violence, otherwise there would be no reason to alleviate it in the interests of peace. It has become such a commonplace to suggest that poverty and conflict are linked that it rarely suffers any examination. To suggest that war causes poverty is to utter an obvious truth, but to suggest the opposite is – on reflection – quite hard to believe. War is an expensive business in the twenty-first century, even asymmetrically. And just to examine Bangladesh for a moment is enough at least to raise the question concerning the actual connection between peace and poverty. The government of Bangladesh is a threat only to itself, and despite 30 years of the Grameen Bank, Bangladesh remains in a state of incipient civil strife. So although Muhammad Yunus should be applauded for his work in demonstrating the efficacy of micro-credit strategies in a context of development, it is not at all clear that this has anything to do with resolving the social and political crisis in Bangladesh, nor is it clear that this has anything to do with resolving the problem of peace and war in our times. It does speak to the Western liberal mindset – as Geir Lundestad acknowledges – but then perhaps this exposes the extent to which the Peace Prize itself has simply become an award that reflects a degree of Western liberal wish-fulfilment. It is perhaps comforting to believe that poverty causes violence, as it serves to endorse a particular kind of concern for the developing world that in turn regards all problems as fundamentally economic rather than deeply – and potentially radically – political.

Korematsu was PQD in every substantive way

Fisher 5 [LOUIS FISHER (Senior specialist in Seperation of Powers w/ the Congressional Research Service); “Judicial Review of the War Power”; *Presidential Studies Quarterly*: Volume 35, Issue 3, pages 466–495, September 2005]

**In** 1943 and **1944, the Supreme Court upheld** first the curfew and later **the internment of 120,000 Japanese Americans** living **on the West Coast**, about two thirds of them natural-born U.S. citizens.87 **In accepting and deciding these war power cases, the Court's** deference to political and military authorities **persuaded** some **scholars that the Court was** effectively **exercising** a variant of **the** p**olitical** q**uestion** d**octrine.** While **the Court in these cases** “has, as a technical matter, affirmatively exercised its power of judicial review, as a practical matter [it] **has effectively engaged in the** prudential surrender of its review power **to the political branches. . . . [These cases were] exercises of the** p**olitical** q**uestion** d**octrine in** everything but name**”** (Redish 1984-85, 1032-33, 1037, 1039).

They make predictions too – like that korematsu will boil up in the future because it’s a loaded gun – this doesn’t follow the same falsifiable chain that ours does making it worse

**Benson and Stangroom 06** Ophelia and Jeremy, authors of many philosophy books, Why truth matters, 63-64

Science and other forms of empirical enquiry such as history and forensic investigation do have legitimate authority because the truth-claims they make are based on evidence (and are subject to change if new evidence is discovered). Other systems of ideas that make truth-claims that are not based on evidence, that rely instead on revelation, sacred books, dreams, visions, myths, subjective inner experience, and the like, lack legitimate authority because over many centuries it has gradually become understood that those are not reliable sources. They can be useful starting-points for theory-formation, as has often been pointed out. Theories can begin anywhere, even in dreams. But when it comes to justification, more reliable evidence is required. This is quite a large difference between science and pseudoscience, genuine enquiry and fake enquiry, but it is one that Ross does not take into account. The implication seems to be that for the sake of a 'more democratic culture' it is worth deciding that the wrong answer ought to have as much authority as the right one. And yet of course it is unlikely that Ross really believes that. Surely if he did, he would not have written this book - he would not be able to claim that a more democratic culture is preferable to a less democratic one, or anything else that he claims in his work. However playful or quasi-ironic Strange Weather may be, it does lapse into seriousness at times, it does make claims that Ross clearly wants us to accept - because he thinks they are right as opposed to wrong. The intention of Strange Weather is to correct mistaken views of science and pseudoscience, to replace them with other, truer views. Ross cannot very well argue that his views are wrong and therefore we should believe them. He is in fact claiming authority for his own views, he is attempting to seek the higher part of a truth-hierarchy. The self-refuting problem we always see in epistemic relativism is here in its most obvious form. And Ross ought to realize that if such claims could succeed they would eliminate all possibility for making the kinds of claims that the Left needs to make just as much as anyone else does. Truth-claims, evidence, reason, logic, warrant, are not some fiefdom or gated community or exclusive club. On the contrary. They are the property of everyone, and the only way to refute lies and mistakes. The Left has no more reason to want to live by lies and mistakes than anyone else has.

Predictions and scenario building are valuable for decision-making, even if they’re not perfect

**Garrett 12**

Banning, In Search of Sand Piles and Butterflies, director of the Asia Program and Strategic Foresight Initiative at the Atlantic Council.

http://www.acus.org/disruptive\_change/search-sand-piles-and-butterflies

“Disruptive change” that produces “strategic shocks” has become an increasing concern for policymakers, shaken by momentous events of the last couple of decades that were not on their radar screens – from the fall of the Berlin Wall and the 9/11 terrorist attacks to the 2008 financial crisis and the “Arab Spring.” These were all shocks to the international system, predictable perhaps in retrospect but predicted by very few experts or officials on the eve of their occurrence. This “failure” to predict specific strategic shocks does not mean we should abandon efforts to foresee disruptive change or look at all possible shocks as equally plausible. Most strategic shocks do not “come out of the blue.” We can understand and project long-term global trends and foresee at least some of their potential effects, including potential shocks and disruptive change. We can construct alternative futures scenarios to envision potential change, including strategic shocks. Based on trends and scenarios, we can take actions to avert possible undesirable outcomes or limit the damage should they occur. We can also identify potential opportunities or at least more desirable futures that we seek to seize through policy course corrections. We should distinguish “strategic shocks” that are developments that could happen at any time and yet may never occur. This would include such plausible possibilities as use of a nuclear device by terrorists or the emergence of an airborne human-to-human virus that could kill millions. Such possible but not inevitable developments would not necessarily be the result of worsening long-term trends. Like possible terrorist attacks, governments need to try to prepare for such possible catastrophes though they may never happen. But there are other potential disruptive changes, including those that create strategic shocks to the international system, that can result from identifiable trends that make them more likely in the future—for example, growing demand for food, water, energy and other resources with supplies failing to keep pace. We need to look for the “sand piles” that the trends are building and are subject to collapse at some point with an additional but indeterminable additional “grain of sand” and identify the potential for the sudden appearance of “butterflies” that might flap their wings and set off hurricanes. Mohamed Bouazizi, who immolated himself December 17, 2010 in Sidi Bouzid, Tunisia, was the butterfly who flapped his wings and (with the “force multiplier” of social media) set off a hurricane that is still blowing throughout the Middle East. Perhaps the metaphors are mixed, but the butterfly’s delicate flapping destabilized the sand piles (of rising food prices, unemployed students, corrupt government, etc.) that had been building in Tunisia, Egypt, and much of the region. The result was a sudden collapse and disruptive change that has created a strategic shock that is still producing tremors throughout the region. But the collapse was due to cumulative effects of identifiable and converging trends. When and what form change will take may be difficult if not impossible to foresee, but the likelihood of a tipping point being reached—that linear continuation of the present into the future is increasingly unlikely—can be foreseen. Foreseeing the direction of change and the likelihood of discontinuities, both sudden and protracted, is thus not beyond our capabilities. While efforts to understand and project long-term global trends cannot provide accurate predictions, for example, of the GDPs of China, India, and the United States in 2030, looking at economic and GDP growth trends, can provide insights into a wide range of possible outcomes. For example, it is a useful to assess the implications if the GDPs of these three countries each grew at currently projected average rates – even if one understands that there are many factors that can and likely will alter their trajectories. The projected growth trends of the three countries suggest that at some point in the next few decades, perhaps between 2015 and 2030, China’s GDP will surpass that of the United States. And by adding consideration of the economic impact of demographic trends (China’s aging and India’s youth bulge), there is a possibility that India will surpass both China and the US, perhaps by 2040 or 2050, to become the world’s largest economy. These potential shifts of economic power from the United States to China then to India would likely prove strategically disruptive on a global scale. Although slowly developing, such disruptive change would likely have an even greater strategic impact than the Arab Spring. The “rise” of China has already proved strategically disruptive, creating a potential China-United States regional rivalry in Asia two decades after Americans fretted about an emerging US conflict with a then-rising Japan challenging American economic supremacy. Despite uncertainty surrounding projections, foreseeing the possibility (some would say high likelihood) that China and then India will replace the United States as the largest global economy has near-term policy implications for the US and Europe. The potential long-term shift in economic clout and concomitant shift in political power and strategic position away from the US and the West and toward the East has implications for near-term policy choices. Policymakers could conclude, for example, that the West should make greater efforts to bring the emerging (or re-emerging) great powers into close consultation on the “rules of the game” and global governance as the West’s influence in shaping institutions and behavior is likely to significantly diminish over the next few decades. The alternative to finding such a near-term accommodation could be increasing mutual suspicions and hostility rather than trust and growing cooperation between rising and established powers—especially between China and the United States—leading to a fragmented, zero-sum world in which major global challenges like climate change and resource scarcities are not addressed and conflict over dwindling resources and markets intensifies and even bleeds into the military realm among the major actors. Neither of these scenarios may play out, of course. Other global trends suggest that sometime in the next several decades, the world could encounter a “hard ceiling” on resources availability and that climate change could throw the global economy into a tailspin, harming China and India even more than the United States. In this case, perhaps India and China would falter economically leading to internal instability and crises of governance, significantly reducing their rates of economic growth and their ability to project power and play a significant international role than might otherwise have been expected. But this scenario has other implications for policymakers, including dangers posed to Western interests from “failure” of China and/or India, which could produce huge strategic shocks to the global system, including a prolonged economic downturn in the West as well as the East. Thus, looking at relatively slowly developing trends can provide foresight for necessary course corrections now to avert catastrophic disruptive change or prepare to be more resilient if foreseeable but unavoidable shocks occur. Policymakers and the public will press for predictions and criticize government officials and intelligence agencies when momentous events “catch us by surprise.” But unfortunately, as both Yogi Berra and Neils Bohr are credited with saying, “prediction is very hard, especially about the future.” One can predict with great accuracy many natural events such as sunrise and the boiling point of water at sea level. We can rely on the infallible predictability of the laws of physics to build airplanes and automobiles and iPhones. And we can calculate with great precision the destruction footprint of a given nuclear weapon. Yet even physical systems like the weather as they become more complex, become increasingly difficult and even inherently impossible to predict with precision. With human behavior, specific predictions are not just hard, but impossible as uncertainty is inherent in the human universe. As futurist Paul Saffo wrote in the Harvard Business Review in 2007, “prediction is possible only in a world in which events are preordained and no amount of actions in the present can influence the future outcome.” One cannot know for certain what actions he or she will take in the future much less the actions of another person, a group of people or a nation state. This obvious point is made to dismiss any idea of trying to “predict” what will occur in the future with accuracy, especially the outcomes of the interplay of many complex factors, including the interaction of human and natural systems. More broadly, the human future is not predetermined but rather depends on human choices at every turning point, cumulatively leading to different alternative outcomes. This uncertainty about the future also means the future is amenable to human choice and leadership. Trends analyses—including foreseeing trends leading to disruptive change—are thus essential to provide individuals, organizations and political leaders with the strategic foresight to take steps mitigate the dangers ahead and seize the opportunities for shaping the human destiny. Peter Schwartz nearly a decade ago characterized the convergence of trends and disruptive change as “inevitable surprises.” He wrote in Inevitable Surprises that “in the coming decades we face many more inevitable surprises: major discontinuities in the economic, political and social spheres of our world, each one changing the ‘rules of the game’ as its played today. If anything, there will be more, no fewer, surprises in the future, and they will all be interconnected. Together, they will lead us into a world, ten to fifteen years hence, that is fundamentally different from the one we know today. Understanding these inevitable surprises in our future is critical for the decisions we have to make today …. We may not be able to prevent catastrophe (although sometimes we can), but we can certainly increase our ability to respond, and our ability to see opportunities that we would otherwise miss.

Survival fixation good

**Beres** 19**96** [Louis Rene, Professor of Political Science and International Law at Purdue University, Feb., The Freeman http://www.freeman.org/m\_online/ feb96/ beresn.htm]

Fear of death, the ultimate source of anxiety, is **essential to human survival**. This is true not only for individuals, but also for states. Without such fear, states will exhibit an **incapacity** to confront nonbeing that can hasten their disappearance. So it is today with the State of Israel. Israel suffers acutely from insufficient existential dread. Refusing to tremble before the growing prospect of collective disintegration - a forseeable prospect connected with both genocide and war - this state is now unable to take the necessary steps toward collective survival. What is more, because death is the one fact of life which is not relative but absolute, Israel's blithe unawareness of its national mortality deprives its still living days of essential absoluteness and growth. For states, just as for individuals, confronting death can give the most **positive reality to life itself**. In this respect, a cultivated awareness of nonbeing is central to each state's pattern of potentialities as well as to its very existence. When a state chooses to block off such an awareness, a choice currently made by the State of Israel, it loses, possibly forever, the altogether critical benefits of "anxiety."

Their arguments assume history is static—rapid changes over the next couple decades ensure war

**Miami Herald 2008** – quoting Global Trends 2025 (11/20, http://www.miamiherald.com/news/politics/AP/story/780918.html)

The risks of nuclear weapons being used and wars being fought over dwindling resources will grow during the next 20 years as diminishing U.S. power, a shift of wealth from West to East, the rise of India and China, and climate change reshape the world, a new U.S. intelligence study warned Thursday.  "The international system - as constructed following the Second World War - will be almost unrecognizable by 2025 owing to the rise of emerging powers, a globalizing economy, an historic transfer of relative wealth and economic power from West to East, and the growing influence of non-state actors," the report said.  The U.S. "will remain the single most important actor but will be less dominant," in part due to its military power and also because many nations will continue looking to U.S. leadership on issues such as climate change and non-proliferation, the report said.  The current economic upheaval could hasten those trends, but it's unlikely to trigger "a complete breakdown" in the international financial and political order, said the report, "Global Trends 2025: A World Transformed."  "However, the next 20 years of transition toward a new international system are fraught with risks," the study said. "The rapidly changing international order at a time of growing geopolitical challenges increases the likelihood of discontinuities, shocks and surprises. No single outcome seems pre-ordained.  "History tells us that rapid change brings many dangers," it said.

Life is a prerequisite to value to life and it’s inevitable

Lisa **Schwartz** [et al.], Medical Ethicist, **‘2** ([www.fleshandbones.com/readingroom/pdf/399.pdf](http://www.fleshandbones.com/readingroom/pdf/399.pdf))

The first criterion that springs to mind regarding the value of life is usually the quality of the life or lives in question: The quality of life ethic puts the emphasis on the type of life being lived, not upon the fact of life. Lives are not all of one kind; some lives are of great value to the person himself and to others while others are not. What the life means to someone is what is important. Keeping this in mind it is not inappropriate to say that some lives are of greater value than others, that the condition or meaning of life does have much to do with the justification for terminating that life.1 Those who choose to reason on this basis hope that if the quality of a life can be measured then the answer to whether that life has value to the individual can be determined easily. This raises special problems, however, because the idea of quality involves a value judgment, and value judgments are, by their essence, subject to indeterminate relative factors such as preferences and dislikes. Hence, quality of life is difficult to measure and will vary according to individual tastes, preferences and aspirations.

As a result, **no general rules or principles can be asserted that would simplify decisions about the value of a life based on its quality.**