## \*\*\*1NC

## 1NC Offcase

### 1

#### TOPICALITY

#### 1. Interpretation – “USFG should” means the debate is solely about a policy established by governmental means – this is the only predictable standard since its rooted in the resolution

**Ericson, California Polytechnic dean emeritus, 2003**

(Jon, The Debater’s Guide, Third Edition, pg 4)

The Proposition of Policy: Urging Future Action In policy propositions, each topic contains certain key elements, although they have slightly different functions from comparable elements of value-oriented propositions. 1. An agent doing the acting ---“The United States” in “The United States should adopt a policy of free trade.” Like the object of evaluation in a proposition of value, the agent is the subject of the sentence. 2. The verb should—the first part of a verb phrase that urges action. 3. An action verb to follow *should* in the *should*-verb combination. For example, should adopt here **means to put a** program or **policy into action though governmental means**. 4. A specification of directions or a limitation of the action desired. The phrase *free trade*, for example, gives direction and limits to the topic, which would, for example, eliminate consideration of increasing tariffs, discussing diplomatic recognition, or discussing interstate commerce. Propositions of policy deal with future action. Nothing has yet occurred. The entire debate is about whether something ought to occur. What you agree to do, then, when you accept the affirmative side in such a debate is to offer sufficient and compelling reasons for an audience to perform the future action that you propose.

#### 2. Prefer our interpretation – A. Predictable Limits – personal advocacy injects a multitude of mechanisms into the debate round which are impossible to predict and expand the research burden

#### B. Ground – the federal government action is the core of all link ground which facilitates the negative’s preparedness for all debates

#### 3. Argumentative stasis is critical to decisionmaking skills

**Steinberg and Freeley, Miami communication studies lecturer and Boston based attorney, 2008**

(David and Austin, Argumentation and Debate: Critical Thinking for Reasoned Decision Making, pg 45)

Debate is a means of settling differences, so there must be a difference of opinion or a conflict of interest before there can be a debate. If everyone is in agreement on a tact or value or policy, there is no need for debate: the matter can be settled by unanimous consent. Thus, for example, it would be pointless to attempt to debate "Resolved: That two plus two equals four," because there is simply no controversy about this statement. (Controversy is an essential prerequisite of debate. Where there is no clash of ideas, proposals, interests, or expressed positions on issues, there is no debate. In addition, debate cannot produce effective decisions without clear identification of a question or questions to be answered. For example, general argument may occur about the **broad topic** of illegal immigration. How many illegal immigrants are in the United States? What is the impact of illegal immigration and immigrants on our economy? What is their impact on our communities? Do they commit crimes? Do they take jobs from American workers? Do they pay taxes? Do they require social services? Is it a problem that some do not speak English? Is it the responsibility of employers to discourage illegal immigration by not hiring undocumented workers? Should they have the opportunity- to gain citizenship? Docs illegal immigration pose a security threat to our country? Do illegal immigrants do work that American workers are unwilling to do? Are their rights as workers and as human beings at risk due to their status? Are they abused by employers, law enforcement, housing, and businesses? I low are their families impacted by their status? What is the moral and philosophical obligation of a nation state to maintain its borders? Should we build a wall on the Mexican border, establish a national identification can!, or enforce existing laws against employers? Should we invite immigrants to become U.S. citizens? Surely you can think of many more concerns to be addressed by a conversation about the topic area of illegal immigration. Participation in this "debate" is likely to be emotional and intense. However, it is not likely to be productive or useful without focus on a particular question and identification of a line demarcating sides in the controversy. To be discussed and resolved effectively, controversies must be stated clearly. **Vague understanding** results in unfocused deliberation and poor decisions, frustration, and emotional distress, as evidenced by the failure of the United States Congress to make progress on the immigration debate during the summer of 2007. Someone disturbed by the problem of the growing underclass of poorly educated, socially disenfranchised youths might observe, "Public schools are doing a terrible job! They are overcrowded, and many teachers are poorly qualified in their subject areas. Even the best teachers can do little more than struggle to maintain order in their classrooms." That same concerned citizen, facing a complex range of issues, might arrive at an unhelpful decision, such as "We ought to do something about this" or. worse. "It's too complicated a problem to deal with." Groups of concerned citizens worried about the state of public education could join together to express their frustrations, anger, disillusionment, and emotions regarding the schools, but without a focus for their discussions, they could easily agree about the sorry state of education **without** finding points of clarity or potential solutions. A gripe session would follow. But if a precise question is posed—such as "What can be done to improve public education?"—then a more profitable area of discussion is opened up simply by placing a focus on the search for a concrete solution step. One or more judgments can be phrased in the form of debate propositions, motions for parliamentary debate, or bills for legislative assemblies. The statements "Resolved: That the federal government should implement a program of charter schools in at-risk communities" and "Resolved: That the state of Florida should adopt a school voucher program" more clearly identify specific ways of dealing with educational problems in a manageable form, suitable for debate. They provide specific policies to be investigated and aid discussants in identifying points of difference. To have a productive debate, which facilitates effective decision making by directing and placing limits on the decision to be made, the basis for argument should be clearly defined. If we merely talk about "homelessness" or "abortion" or "crime'\* or "global warming" we are likely to have an interesting discussion but not to establish profitable basis for argument. For example, the statement "Resolved: That the pen is mightier than the sword" is debatable, yet fails to provide much basis for clear argumentation. If we take this statement to mean that the written word is more effective than physical force for some purposes, we can identify a problem area: the comparative effectiveness of writing or physical force for a specific purpose. Although we now have a general subject, we have not yet stated a problem. It is still too broad, too loosely worded to promote well-organized argument. What sort of writing are we concerned with—poems, novels, government documents, website development, advertising, or what? What does "effectiveness" mean in this context? What kind of physical force is being compared—fists, dueling swords, bazookas, nuclear weapons, or what? A more specific question might be. "Would a mutual defense treaty or a visit by our fleet be more effective in assuring Liurania of our support in a certain crisis?" The basis for argument could be phrased in a debate proposition such as "Resolved: That the United States should enter into a mutual defense treatv with Laurania." Negative advocates might oppose this proposition by arguing that fleet maneuvers would be a better solution. This is not to say that debates should completely avoid creative interpretation of the controversy by advocates, or that good debates cannot occur over competing interpretations of the controversy; in fact, these sorts of debates may be very engaging. The point is that debate is best facilitated by the guidance provided by **focus on a particular point of difference**, which will be outlined in the following discussion.

### 2

#### CONGRESS PIC

#### The United States federal government should not indefinitely detain anyone under the President’s executive war powers authority. We will defend banning indefinite detention using statutory restrictions. Enforcement should include the utilization of appropriations restrictions.

#### CP is plan minus---doesn’t use judicial restrictions. Presumption shifts negative because its less change, the counterplan is conditional which is most logical since you can always defer to the status quo considering they have to justify change.

#### Courts cant check Executive---multiple obstacles-Congress action key

Menitove-JD Harvard-10 43 U. Mich. J.L. Reform 773

NOTE: ONCE MORE UNTO THE BREACH: AMERICAN WAR POWER AND A SECOND LEGISLATIVE ATTEMPT TO ENSURE CONGRESSIONAL INPUT

III. Mixed Messages: How the Judiciary Has Addressed War Power Notwithstanding a few early Supreme Court decisions defending Congress's predominance over the president in exercising war power, the judiciary has been largely unhelpful in restoring the constitutional Framers' original vision. Initial decisions arising out [\*786] of the Quasi-War with France affirmed Congress's authority, but subsequent holdings - most especially the Supreme Court's decisions in The Prize Cases 61 and United States v. Curtiss-Wright 62 - seemed to imbue the president with extra-constitutional war power authority. 63 By the time litigation arose during the Vietnam and Persian Gulf Wars, the courts timidly refused to decide the issue, claiming the issue to be a nonjusticiable political question. 64 As such, the judiciary does not represent a viable means for mandating the constitutionally required congressional input in war-making decisions. A. The Earliest Supreme Court Cases Pertaining to War Power Affirmed Congress's Authority The earliest Supreme Court cases pertaining to war power arose out of the Quasi-War with France between 1798 and 1800, which, although authorized by congressional statute, was undeclared. Writing in 1800, the Supreme Court noted in Bas v. Tingy, 65 that regardless of whether hostilities were declared or undeclared, the conflict still constituted "war" in the constitutional sense, with the declared war being "perfect" and "general" war and the undeclared war constituting "imperfect" and "limited" war. 66 While the Court did not expressly identify Congress to be the dominant player in war-making decisions, the Court strongly implied this message: Congress is empowered to declare a general war, or congress may wage a limited war; limited in place, in objects, and in time. If a general war is declared, its extent and operations are only restricted and regulated by the jus belli, forming a part of the law of nations; but if a partial war is waged, its extent and operation depend on our municipal laws [as passed by Congress]. 67 [\*787] The Court was far more explicit in Talbot v. Seeman, 68 an 1801 case also with origins in the Quasi-War with France. In Talbot, the newly-sworn Chief Justice John Marshall confronted a dispute between Captain Silas Talbot, whose American warship (the U.S.S. Constitution) libeled the Amelia, a Hamburgh vessel that had been captured by the French. 69 In finding Captain Talbot's seizure of the Amelia lawful, Justice Marshall held that although war had not been declared against France, Congress had authorized the U.S. Navy to capture French vessels, and since the Amelia was carrying eight carriage guns and in possession of the French, there was sufficient probable cause for Captain Talbot to capture the ship. 70 Most notable is Justice Marshall's explicit statement regarding Congress's war power: The whole powers of war being, by the constitution of the United States, vested in congress, the acts of that body can alone be resorted to as our guides in this enquiry. It is not denied, nor in the course of the argument has it been denied, that congress may authorize general hostilities, in which case the general laws of war apply to our situation; or partial hostilities, in which case the laws of war, so far as they actually apply to our situation, must be noticed. To determine the real situation of America in regard to France, the acts of congress are to be inspected. 71 Justice Marshall more precisely defined his views regarding the balance of war power between the legislative and executive branches in Little v. Barreme, 72 an 1804 case also arising out of the Quasi-War. In Little, Justice Marshall held that in authorizing war, Congress may place limits on the president's conduct. The facts of Little relay the story of Congress authorizing President Adams to seize ships sailing to French ports, with President Adams - contrary to Congress's wishes - issuing an order to capture vessels sailing to or from French ports. 73 Captain George Little seized a Danish ship sailing from a French port, and was subsequently sued for damages. Marshall, in deciding the case, held that Captain Little could [\*788] be held liable for damages, 74 thus ruling that orders issued by the Commander-in-Chief during wartime are still subject to Congress's restrictions. 75 Such a ruling clearly indicates Justice Marshall's belief that, on war-making decisions, Congress reigned supreme over the president. The Court affirmed the notion of congressional war power supremacy in Martin v. Mott, 76 a controversy arising in 1827 in the aftermath of the War of 1812. While some cite this case as support for broad presidential war power, the Court actually imposed limits on the president's authority. 77 In the decision, Justice Story sustained the delegation by Congress to the president of the authority to call up the militia, but the Court carefully constricted the circumstances in which the president could act, noting the president's power to be "a limited power, confined to cases of actual invasion, or of imminent danger of invasion." 78 Furthermore, the Court confirmed that the president did not hold any inherent war power authority; he could only exercise war power when such power was "confided by Congress to the President." 79 These four decisions illustrate early Supreme Court recognition of Congress's dominant role, thus fulfilling the Framers' original vision for the balance of war power. B. Subsequent Decisions Imbued the President with Extra-constitutional War Power Authority In two decisions - one rendered in 1862 pertaining to President Lincoln's conduct at the start of the Civil War, the other decided in 1936 discussing the president's role in foreign affairs - the Supreme Court expanded presidential war power. The Supreme Court addressed Lincoln's order to blockade southern ports and seize ships without Congress's authorization in The Prize Cases, 80 splitting five to four, with the majority sustaining the Union seizures. 81 According to the Court's opinion, the president's inherent authority as Commander-in-Chief justified his action 82 and, even if [\*789] he lacked the constitutional authority to issue the blockade, Congress ratified the blockade via subsequent legislation, thus rendering this military action without Congress's consent a valid exercise of the war power. 83 The Supreme Court further weakened Congress's ability to intervene on the president's foreign affairs activity in United States v. Curtiss-Wright Export Corp. 84 in 1936. Upholding the president's declaration of an arms embargo, the Court noted, "the powers of external sovereignty did not depend upon the affirmative grants of the Constitution" 85 and that "participation [by Congress] in the exercise of the power is significantly limited." 86 Citing "this vast external realm, with its important, complicated, delicate and manifold problems" 87 Justice Sutherland, writing the majority opinion, argued that the president has an inherent power to be "the sole organ of the federal government in the field of international relations." 88 Justice Sutherland further elaborated on this view of presidential supremacy in foreign affairs, focusing specifically on war: He, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war. He has his confidential sources of information. He has his agents in the form of diplomatic, consular and other officials. Secrecy in respect of information gathered by them may be highly necessary, and the premature disclosure of it productive of harmful results. 89 Thus, according to Justice Sutherland's constitutional interpretation, it is the president - and not Congress - who is predominant in exercising war power. In both The Prize Cases and Curtiss-Wright, the Supreme Court has undermined its previous commitment to congressional war power, and provided support to those who support broad presidential war-making authority. [\*790] C. Modern Courts Refuse to Rule on War Power, Declaring the Issue a Nonjusticiable Political Question In more recent decisions, the courts have adopted a different approach, refusing to decide cases concerning war power on grounds that the issue is a nonjusticiable political question. During the Vietnam War, Members of Congress sought assistance from the courts in reasserting their constitutionally-provided war power. However, rather than hear these cases, the judiciary sidestepped the issue, declining to hear cases concerning the constitutionality of the continuation of the war on grounds that the political question doctrine prevented the courts from deciding the issue. 90 During the Reagan and Bush Administrations, courts declined to reach the merits in war powers cases relying on other excuses including mootness, 91 ripeness, 92 standing, 93 the doctrines on judicial prudence and equitable discretion, 94 and the notion that Congress would be a better fact-finder than the courts on this issue. 95 Unlike the early Supreme Court cases, or the subsequent Prize Cases and Curtiss-Wright decisions, the judicial branch over the last thirty years has steered clear of the war powers issue. While the Supreme Court once served as a bulwark in defense of Congress's predominance over the president in administering the war power, subsequent Supreme Court decisions undermined Congress's constitutional authority. The courts have thus revealed themselves as unable to restore the balance of war power to the Framers' original vision. The judiciary's more recent strategy of treating war power as a nonjusticiable political question has unequivocally established that the courts cannot be trusted to protect [\*791] Congress. For this reason, Congress must seek to help itself, acting to pass a legislative war power reform act to ensure that its input is considered when the United States goes to war.

#### The court is avoiding warpower rulings because they are sensitive to the institutional costs---the plan crushes court legitimacy

Deeks 10/11/13 (Associate Professor of Law, University of Virginia Law School, “THE OBSERVER EFFECT: NATIONAL SECURITY LITIGATION, EXECUTIVE POLICY CHANGES, AND JUDICIAL DEFERENCE,” http://fordhamlawreview.org/assets/pdfs/Vol\_82/Deeks\_November.pdf)

Another goal in separating powers—and in placing all of the power to execute the laws in a single entity—is to promote the accountability of the decisionmakers to the people they represent.283 Those who favor national security deference emphasize that the president (and Congress, when it chooses to get involved in national security decisions) are far more politically accountable to the people than the courts. The executive in particular is best positioned to make the difficult decisions that protect individuals from or expose individuals to danger during times of crises. At the same time, the public may and will hold the president accountable for those decisions. Courts are less directly accountable to the people, and, according to this argument, should therefore tread carefully when invalidating executive policies established to protect the citizenry. Courts are sensitive to the reputational costs of deciding controversial cases—and cases involving wartime or emergency policies are particularly likely to be controversial. Many scholars have highlighted the institutional costs of deciding such cases.284 Judicial decisions on the merits force courts to bear certain reputational costs. The operation of the observer effect means that courts need to decide fewer such cases (or decide them in a more modest manner) than they may think in order to preserve separation of- powers values. This approach allows courts largely (though not entirely) to avoid making politically controversial decisions that might cast questions on their institutional competence, while allowing the courts on limited occasions to stake out their more popular role as defender of rights.285 At the same time, there are ways in which courts can distance themselves from the policies in question, thus ensuring that political accountability for the policy falls squarely on the executive.

#### Presidents will never comply with a direct court refutation of war time policy-he’ll always use extenuating justifications-this wrecks the Court’s institutional strength

**Pushaw, Pepperdine law professor, 2004**

(Robert, Defending Deference: A Response to Professors Epstein and Wells,” Missouri Law Review, lexis, ldg)

Civil libertarians have urged the Court to exercise the same sort of judicial review over war powers as it does in purely domestic cases—i.e., independently interpreting and applying the law of the Constitution, despite the contrary view of the political branches and regardless of the political repercussions.54 This proposed solution ignores the institutional differences, embedded in the Constitution, that have always led federal judges to review warmaking under special standards. Most obviously, the President can act with a speed, decisiveness, and access to information (often highly confidential) that cannot be matched by Congress, which must garner a majority of hundreds of legislators representing multiple interests.55 Moreover, the judiciary by design acts far more slowly than either political branch. A court must wait for parties to initiate a suit, oversee the litigation process, and render a deliberative judgment that applies the law to the pertinent facts.56 Hence, by the time federal judges (particularly those on the Supreme Court) decide a case, the action taken by the executive is several years old. Sometimes, this delay is long enough that the crisis has passed and the Court’s detached perspective has been restored.57 At other times, however, the war rages, the President’s action is set in stone, and he will ignore any judicial orders that he conform his conduct to constitutional norms.58 In such critical situations, issuing a judgment simply weakens the Court as an institution, as Chief Justice Taney learned the hard way.59 Professor Wells understands the foregoing institutional differences and thus does not naively demand that the Court exercise regular judicial review to safeguard individual constitutional rights, come hell or high water. Nonetheless, she remains troubled by cases in which the Court’s examination of executive action is so cursory as to amount to an abdication of its responsibilities—and a stamp of constitutional approval for the President’s actions.60 Therefore, she proposes a compromise: requiring the President to establish a reasonable basis for the measures he has taken in response to a genuine risk to national security.61 In this way, federal judges would ensure accountability not by substituting their judgments for those of executive officials (as hap-pens with normal judicial review), but rather by forcing them to adequately justify their decisions.62 This proposal intelligently blends a concern for individual rights with pragmatism. Civil libertarians often overlook the basic point that constitutional rights are not absolute, but rather may be infringed if the government has a compelling reason for doing so and employs the least restrictive means to achieve that interest.63 Obviously, national security is a compelling governmental interest.64 Professor Wells’s crucial insight is that courts should not allow the President simply to assert that “national security” necessitated his actions; rather, he must concretely demonstrate that his policies were a reasonable and narrowly tailored response to a particular risk that had been assessed accurately.65 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 dis-close.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 Japanese-Americans 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. Pg. 968-970

#### Weakening the court prevents sustainable development

**Stein, New South Wales Court of Appeal former judge, 2005**

(Paul Stein, “Why judges are essential to the rule of law and environmental protection”, IUCN Environmental Policy and Law Paper No. 60, online, ldg)

The Johannesburg Principles state: “We emphasize that the fragile state of the global environment requires the judiciary, as the guardian of the Rule of Law, to boldly and fearlessly implement and enforce applicable international and national laws, which in the field of environment and sustainable development will assist in alleviating poverty and sustaining an enduring civilization, and ensuring that the present generation will enjoy and improve the quality of life of all peoples, while also ensuring that the inherent rights and interests of succeeding generations are not compromised.” There can be no argument that environmental law, and sustainable development law in particular, are vibrant and dynamic areas, both internationally and domestically. Judge Weeramantry (of the ICJ) has reminded us that we judges, as custodians of the law, have a major obligation to contribute to its development. Much of sustainable development law is presently making the journey from soft law into hard law. This is happening internationally but also it is occurring in many national legislatures and courts. Fundamental environmental laws relating to water, air, our soils and energy are critical to narrowing the widening gap between the rich and poor of the world. Development may be seen as the bridge to narrow that gap but it is one that is riddled with dangers and contradictions. We cannot bridge the gap with materials stolen from future generations. Truly sustainable development can only take place in harmony with the environment. Importantly we must not allow sustainable development to be duchessed and bastardized. A role for judges? It is in striking the balance between development and the environment that the courts have a role. Of course, this role imposes on judges a significant trust. The balancing of the rights and needs of citizens, present and future, with development, is a delicate one. It is a balance often between powerful interests (private and public) and the voiceless poor. In a way judges are the meat in the sandwich but, difficult as it is, we must not shirk our duty. Pg. 53-54

#### Extinction

**Barry, Wisconsin land resources PhD, 2013**

(Glen, “ECOLOGY SCIENCE: Terrestrial Ecosystem Loss and Biosphere Collapse”, 2-4, <http://forests.org/blog/2013/02/ecology-science-terrestrial-ec.asp>, ldg)

Blunt, Biocentric Discussion on Avoiding Global Ecosystem Collapse and Achieving Global Ecological Sustainability Science needs to do a better job of considering worst-case scenarios regarding continental- and global-scale ecological collapse. The loss of biodiversity, ecosystems, and landscape connectivity reviewed here shows clearly that ecological collapse is occurring at spatially extensive scales. The collapse of the biosphere and complex life, or eventually even all life, is a possibility that needs to be better understood and mitigated against. A tentative case has been presented here that terrestrial ecosystem loss is at or near a planetary boundary. It is suggested that a 66% of Earth's land mass must be maintained in terrestrial ecosystems, to maintain critical connectivity necessary for ecosystem services across scales to continue, including the biosphere. Yet various indicators show that around 50% of Earth's terrestrial ecosystems have been lost and their services usurped by humans. Humanity may have already destroyed more terrestrial ecosystems than the biosphere can bear. There exists a major need for further research into how much land must be maintained in a natural and agroecological state to meet landscape and bioregional sustainable development goals while maintaining an operable biosphere. It is proposed that a critical element in determining the threshold where terrestrial ecosystem loss becomes problematic is where landscape connectivity of intact terrestrial ecosystems erodes to the point where habitat patches exist only in a human context. Based upon an understanding of how landscapes percolate across scale, it is recommended that 66% of Earth's surface be maintained as ecosystems; 44% as natural intact ecosystems (2/3 of 2/3) and 22% as agroecological buffer zones. Thus nearly half of Earth must remain as large, connected, intact, and naturally evolving ecosystems, including old-growth forests, to provide the context and top-down ecological regulation of both human agroecological, and reduced impact and appropriately scaled industrial activities. Given the stakes, it is proper for political ecologists and other Earth scientists to willingly speak bluntly if we are to have any chance of averting global ecosystem collapse. A case has been presented that Earth is already well beyond carrying capacity in terms of amount of natural ecosystem habitat that can be lost before the continued existence of healthy regional ecosystems and the global biosphere itself may not be possible. Cautious and justifiably conservative science must still be able to rise to the occasion of global ecological emergencies that may threaten our very survival as a species and planet. Those knowledgeable about planetary boundaries—and abrupt climate change and terrestrial ecosystem loss in particular—must be more bold and insistent in conveying the range and possible severity of threats of global ecosystem collapse, while proposing sufficient solutions. It is not possible to do controlled experiments on the Earth system; all we have is observation based upon science and trained intuition to diagnose the state of Earth's biosphere and suggest sufficient ecological science–based remedies. If Gaia is alive, she can die. Given the strength of life-reducing trends across biological systems and scales, there is a need for a rigorous research agenda to understand at what point the biosphere may perish and Earth die, and to learn what configuration of ecosystems and other boundary conditions may prevent her from doing so. We see death of cells, organisms, plant communities, wildlife populations, and whole ecosystems all the time in nature—extreme cases being desertification and ocean dead zones. There is no reason to dismiss out of hand that the Earth System could die if critical thresholds are crossed. We need as Earth scientists to better understand how this may occur and bring knowledge to bear to avoid global ecosystem and biosphere collapse or more extreme outcomes such as biological homogenization and the loss of most or even all life. To what extent can a homogenized Earth of dandelions, rats, and extremophiles be said to be alive, can it ever recover, and how long can it last? The risks of global ecosystem collapse and the need for strong response to achieve global ecological sustainability have been understated for decades. If indeed there is some possibility that our shared biosphere could be collapsing, there needs to be further investigation of what sorts of sociopolitical responses are valid in such a situation. Dry, unemotional scientific inquiry into such matters is necessary—yet more proactive and evocative political ecological language may be justified as well. We must remember we are speaking of the potential for a period of great dying in species, ecosystems, humans, and perhaps all being. It is not clear whether this global ecological emergency is avoidable or recoverable. It may not be. But we must follow and seek truth wherever it leads us. Planetary boundaries have been quite anthropocentric, focusing upon human safety and giving relatively little attention to other species and the biosphere's needs other than serving humans. Planetary boundaries need to be set that, while including human needs, go beyond them to meet the needs of ecosystems and all their constituent species and their aggregation into a living biosphere. Planetary boundary thinking needs to be more biocentric. I concur with Williams (2000) that what is needed is an Earth System–based conservation ethic—based upon an "Earth narrative" of natural and human history—which seeks as its objective the "complete preservation of the Earth's biotic inheritance." Humans are in no position to be indicating which species and ecosystems can be lost without harm to their own intrinsic right to exist, as well as the needs of the biosphere. For us to survive as a species, logic and reason must prevail (Williams 2000). Those who deny limits to growth are unaware of biological realities (Vitousek 1986). There are strong indications humanity may undergo societal collapse and pull down the biosphere with it. The longer dramatic reductions in fossil fuel emissions and a halt to old-growth logging are put off, the worse the risk of abrupt and irreversible climate change becomes, and the less likely we are to survive and thrive as a species. Human survival—entirely dependent upon the natural world—depends critically upon both keeping carbon emissions below 350 ppm and maintaining at least 66% of the landscape as natural ecological core areas and agroecological transitions and buffers. Much of the world has already fallen below this proportion, and in sum the biosphere's terrestrial ecosystem loss almost certainly has been surpassed, yet it must be the goal for habitat transition in remaining relatively wild lands undergoing development such as the Amazon, and for habitat restoration and protection in severely fragmented natural habitat areas such as the Western Ghats. The human family faces an unprecedented global ecological emergency as reckless growth destroys the ecosystems and the biosphere on which all life depends. Where is the sense of urgency, and what are proper scientific responses if in fact Earth is dying? Not speaking of worst-case scenarios—the collapse of the biosphere and loss of a living Earth, and mass ecosystem collapse and death in places like Kerala—is intellectually dishonest. We must consider the real possibility that we are pulling the biosphere down with us, setting back or eliminating complex life. The 66% / 44% / 22% threshold of terrestrial ecosystems in total, natural core areas, and agroecological buffers gets at the critical need to maintain large and expansive ecosystems across at least 50% of the land so as to keep nature connected and fully functional. We need an approach to planetary boundaries that is more sensitive to deep ecology to ensure that habitable conditions for all life and natural evolutionary change continue. A terrestrial ecosystem boundary which protects primary forests and seeks to recover old-growth forests elsewhere is critical in this regard. In old forests and all their life lie both the history of Earth's life, and the hope for its future. The end of their industrial destruction is a global ecological imperative. Much-needed dialogue is beginning to focus on how humanity may face systematic social and ecological collapse and what sort of community resilience is possible. There have been ecologically mediated periods of societal collapse from human damage to ecosystems in the past (Kuecker and Hall 2011). What makes it different this time is that the human species may have the scale and prowess to pull down the biosphere with them. It is fitting at this juncture for political ecologists to concern themselves with both legal regulatory measures, as well as revolutionary processes of social change, which may bring about the social norms necessary to maintain the biosphere. Rockström and colleagues (2009b) refer to the need for "novel and adaptive governance" without using the word revolution. Scientists need to take greater latitude in proposing solutions that lie outside the current political paradigms and sovereign powers. Even the Blue Planet Laureates' remarkable analysis (Brundtland et al. 2012), which notes the potential for climate change, ecosystem loss, and inequitable development patterns neither directly states nor investigates in depth the potential for global ecosystem collapse, or discusses revolutionary responses. UNEP (2012) notes abrupt and irreversible ecological change, which they say may impact life-support systems, but are not more explicit regarding the profound human and ecological implications of biosphere collapse, or the full range of sociopolitical responses to such predictions. More scientific investigations are needed regarding alternative governing structures optimal for pursuit and achievement of bioregional, continental, and global sustainability if we are maintain a fully operable biosphere forever. An economic system based upon endless growth that views ecosystems necessary for planetary habitability primarily as resources to be consumed cannot exist for long. Planetary boundaries offer a profoundly difficult challenge for global governance, particularly as increased scientific salience does not appear to be sufficient to trigger international action to sustain ecosystems (Galaz et al. 2012). If indeed the safe operating space for humanity is closing, or the biosphere even collapsing and dying, might not discussion of revolutionary social change be acceptable? Particularly, if there is a lack of consensus by atomized actors, who are unable to legislate the required social change within the current socioeconomic system. By not even speaking of revolutionary action, we dismiss any means outside the dominant growth-based oligarchies. In the author's opinion, it is shockingly irresponsible for Earth System scientists to speak of geoengineering a climate without being willing to academically investigate revolutionary social and economic change as well. It is desirable that the current political and economic systems should reform themselves to be ecologically sustainable, establishing laws and institutions for doing so. Yet there is nothing sacrosanct about current political economy arrangements, particularly if they are collapsing the biosphere. Earth requires all enlightened and knowledgeable voices to consider the full range of possible responses now more than ever. One possible solution to the critical issues of terrestrial ecosystem loss and abrupt climate change is a massive and global, natural ecosystem protection and restoration program—funded by a carbon tax—to further establish protected large and connected core ecological sustainability areas, buffers, and agro-ecological transition zones throughout all of Earth's bioregions. Fossil fuel emission reductions must also be a priority. It is critical that humanity both stop burning fossil fuels and destroying natural ecosystems, as fast as possible, to avoid surpassing nearly all the planetary boundaries. In summation, we are witnessing the collective dismantling of the biosphere and its constituent ecosystems which can be described as ecocidal. The loss of a species is tragic, of an ecosystem widely impactful, yet with the loss of the biosphere all life may be gone. Global ecosystems when connected for life's material flows provide the all-encompassing context within which life is possible. The miracle of life is that life begets life, and the tragedy is that across scales when enough life is lost beyond thresholds, living systems die.

### 3

#### WARFIGHTING DA

#### Interrogation is key to combat terrorism-non-criminal detention is key

**Blum, DHS attorney advisor, 2008**

(Stephanie, The Necessary Evil of Preventive Detention in the War on Terror: A Plan for a More Moderate and Sustainable Solution, 54-5, ldg)

According to the Bush administration, individuals may be significant intelligence assets, and criminal charges with the ensuing rights to counsel and right to exculpatory material would greatly halt and disrupt interrogation. Under the criminal justice system, once in custody, a defendant must be warned of his rights to counsel and against self-incrimination.10 Furthermore, a defendant in a criminal proceeding is constitutionally entitled to obtain potentially exculpatory information in the possession of the government.11 As Yoo explains, introducing a lawyer immediately after capture of an enemy combatant would disrupt interrogation as any competent defense counsel would tell his client to remain silent.12 According to former White House counsel Alberto Gonzales (later the attorney general), "[t]he stream of intelligence would quickly dry up if the enemy combatants were allowed contact with outsiders during the course of an ongoing debriefing."13 He added that such a result would be "an intolerable cost" and not required by the Con¬stitution.14 Rosenzweig and Carafano discuss how "isolation" is one of the "most successful means of productive interrogation."15 Judge Posner describes how a "detainee who feels isolated and has no access to a lawyer can more easily be pressured to provide information sought by the government."16 In fact, Khalid Sheikh Mohammed (KSM), the mastermind behind 9/11, initially demanded an attorney upon arrest and stated that he would see his captors in court.17 As explained subsequently, KSM was not provided an attorney and, according to the administration, has provided substantial intelligence that has stopped specific terrorist plots. Therefore, one purpose for a preventive-detention regime is to interrogate a terrorist suspect in isolation who may prove to be a valuable intelligence asset before criminal charges and the ensuing rights to counsel accrue. This concern about Miranda protections interfering with needed inter-rogation is not just theoretical. As explained by FBI agent Coleen Rowley, Zacarias Moussaoui (the twentieth hijacker) was in custody on 9/11 due to an immigration violation. Because he had requested a lawyer, however, the FBI was prevented from questioning him when in theory he could have possessed further information about coconspirators or a second wave of attacks.18 The situation of Padilla is particularly enlightening on this issue of interrogation as a rationale for preventive detention. Yoo describes Padilla as "an intelligence prize."19 Based on information from other captured al Qaeda operatives (discussed subsequently), the administration had intelligence that Padilla, who was arrested at O'Hare International Airport in 2002, had just come from Pakistan where he had met with high-level al Qaeda operatives with plans to detonate a radioactive bomb in a large U.S. city. Yet, upon arrest, while he had approximately $10,000 and a cell phone with al Qaeda operatives' phone numbers on it, he did not have any of the bomb-making equipment or plans on him, and he did not have the expertise to construct such a weapon himself. There were obvious questions that needed to be answered: Where would Padilla, who had an extensive violent criminal record as a juvenile, get the money, supplies, and expertise to build such a bomb? Where would he get the radioactive material? Were there sleeper al Qaeda cells in the United States?20 Although Padilla's attorney argues that Padilla could have been charged with conspiracy or levying war,21 the Justice Department did not think that it could detain Padilla very long in the criminal justice system based on the amount of evidence it had, or that Padilla would likely reveal his al Qaeda contacts if he knew he was going to be released in a matter of months.22 In a June 2004 press release, former deputy attorney general James Comey stated, Had we tried to make a case against Jose Padilla through our criminal justice system, something that I as the United States attorney in New York could not do at that time without jeopardizing intelligence sources, he would very likely have followed his lawyer's advice and said nothing, which would have been his constitutional right. He would likely have ended up a free man, with our only hope being to try to follow him 24 hours a day, seven days a week and hope—pray,—that we didn't lose him.23

#### Plan leads to other countries taking the intel lead-damages speed and accuracy of intelligence

**Anderson, American University law professor, 2009**

(Kenneth, “Security Issues Like Squeezing Jello? Reversion to the Mean? Jack Goldsmith on the Effects of Security Alternatives”, 5-31,http://opiniojuris.org/2009/05/31/security-issues-like-squeezing-jello-reversion-to-the-mean-jack-goldsmith-on-the-effects-of-security-alternatives/, ldg)

I think Jack is right that the administration – any administration – tends to strive for a certain equilibrium, as it is confronted with a flow of threats that the public discounts to near-zero but which it does not see itself quite so able to do, however much it might want to. However, as the op-ed also notes, and I agree, these methods are not completely equivalent or compensating. That is so not just with regards to third party costs, but also with respect to security as such. Intelligence gathering, by all accounts not very effective to begin with, has become much more difficult. This is not compensation, it is a seemingly permanent downward shift in the security mean. Besides the consequences that Jack identifies, I would add that the current move to semi-compensating policies means two things. First, intelligence is likely to be increasingly outsourced to foreign intelligence services. That can provide valuable information, but it will be increasingly uncorroborated and subject to filtering by those services. That is not good. Second, in a somewhat unrelated matter, I would guess that future conflicts, where not fought by Predator, will be increasingly outsourced to proxy forces. In the focus on intelligence and security, I think this second point has not received sufficient attention. The United States has a long familiarity with proxy forces as a form of deniability, among other things – Ronald Reagan, for example, faced with many limitations placed by Congress on his uses of force, found proxy forces an essential element of his foreign policy, in Central America particularly. The domestic risks that policy can entail are illustrated by the Iran-Contra contra-temps; on the other hand, Reagan was reasonably successful in pursuing his administration’s anti-Communist and anti-Soviet policy aims in Salvador and Nicaragua, among other places, by proxy forces. But I would be quite surprised if proxy war were not today under active discussion for places like Somalia (where we have already undertaken measures close to it) and other places. More precisely, I would surprised if it were not an active discussion among the New Liberal Realists of the Obama administration, whatever the transnationalists say or think. In any case, whether those last two speculations prove true or not, the tendency of the administration to seek compensating policies seems likely at a minimum to complicate the issues of Guantanamo, Bagram, and other matters besides.

#### Plan sends a signal of weakness that galvanizes terrorism

**McCarthy et al., FDD Center for Law and Counterterrorism director, 2009**

(Andrew, “We Need a National Security Court”, <http://www.defenddemocracy.org/stuff/uploads/documents/national_security_court.pdf>, ldg)

3. Terrorism prosecutions create the conditions for more terrorism. The treatment of a national security problem as a criminal justice issue has consequences that imperil Americans. To begin with, there are the obvious numerical and motivational results. As noted above, the justice system is simply incapable, given its finite resources, of meaningfully countering the threat posed by international terrorism. Of equal salience, prosecution in the justice system actually increases the threat because of what it conveys to our enemies. Nothing galvanizes an opposition, nothing spurs its recruiting, like the combination of successful attacks and a conceit that the adversary will react weakly. (Hence, bin Laden’s well-known allusion to people’s instinctive attraction to the “strong horse” rather than the “weak horse,” and his frequent citation to the U.S. military pullout from Lebanon after Hezbollah’s 1983 attack on the marine barracks, and from Somalia after the 1993 “Black Hawk Down” incident). For militants willing to immolate themselves in suicide-bombing and hijacking operations, mere prosecution is a provocatively weak response. Put succinctly, where they are the sole or principal response to terrorism, trials in the criminal justice system inevitably cause more terrorism: they leave too many militants in place and they encourage the notion that the nation may be attacked with relative impunity.

#### And, Nuclear terrorism attacks escalate and cause extinction.

**Morgan, Hankuk University of Foreign Studies, 2009**

(Dennis, World on fire: two scenarios of the destruction of human civilization and possible extinction of the human race Futures, Volume 41, Issue 10, December, ldg)

In a remarkable website on nuclear war, Carol Moore asks the question “Is Nuclear War Inevitable??” In Section , Moore points out what most terrorists obviously already know about the nuclear tensions between powerful countries. No doubt, they’ve figured out that the best way to escalate these tensions into nuclear war is to set off a nuclear exchange. As Moore points out, all that militant terrorists would have to do is get their hands on one small nuclear bomb and explode it on either Moscow or Israel. Because of the Russian “dead hand” system, “where regional nuclear commanders would be given full powers should Moscow be destroyed,” it is likely that any attack would be blamed on the United States” Israeli leaders and Zionist supporters have, likewise, stated for years that if Israel were to suffer a nuclear attack, whether from terrorists or a nation state, it would retaliate with the suicidal “Samson option” against all major Muslim cities in the Middle East. Furthermore, the Israeli Samson option would also include attacks on Russia and even “anti-Semitic” European cities In that case, of course, Russia would retaliate, and the U.S. would then retaliate against Russia. China would probably be involved as well, as thousands, if not tens of thousands, of nuclear warheads, many of them much more powerful than those used at Hiroshima and Nagasaki, would rain upon most of the major cities in the Northern Hemisphere. Afterwards, for years to come, massive radioactive clouds would drift throughout the Earth in the nuclear fallout, bringing death or else radiation disease that would be genetically transmitted to future generations in a nuclear winter that could last as long as a 100 years, taking a savage toll upon the environment and fragile ecosphere as well. And what many people fail to realize is what a precarious, hair-trigger basis the nuclear web rests on. Any accident, mistaken communication, false signal or “lone wolf’ act of sabotage or treason could, in a matter of a few minutes, unleash the use of nuclear weapons, and once a weapon is used, then the likelihood of a rapid escalation of nuclear attacks is quite high while the likelihood of a limited nuclear war is actually less probable since each country would act under the “use them or lose them” strategy and psychology; restraint by one power would be interpreted as a weakness by the other, which could be exploited as a window of opportunity to “win” the war. In other words, once Pandora's Box is opened, it will spread quickly, as it will be the signal for permission for anyone to use them. Moore compares swift nuclear escalation to a room full of people embarrassed to cough. Once one does, however, “everyone else feels free to do so. The bottom line is that as long as large nation states use internal and external war to keep their disparate factions glued together and to satisfy elites’ needs for power and plunder, these nations will attempt to obtain, keep, and inevitably use nuclear weapons. And as long as large nations oppress groups who seek self-determination, some of those groups will look for any means to fight their oppressors” In other words, as long as war and aggression are backed up by the implicit threat of nuclear arms, it is only a matter of time before the escalation of violent conflict leads to the actual use of nuclear weapons, and once even just one is used, it is very likely that many, if not all, will be used, leading to horrific scenarios of global death and the destruction of much of human civilization while condemning a mutant human remnant, if there is such a remnant, to a life of unimaginable misery and suffering in a nuclear winter. In “Scenarios,” Moore summarizes the various ways a nuclear war could begin: Such a war could start through a reaction to terrorist attacks, or through the need to protect against overwhelming military opposition, or through the use of small battle field tactical nuclear weapons meant to destroy hardened targets. It might quickly move on to the use of strategic nuclear weapons delivered by short-range or inter-continental missiles or long-range bombers. These could deliver high altitude bursts whose electromagnetic pulse knocks out electrical circuits for hundreds of square miles. Or they could deliver nuclear bombs to destroy nuclear and/or non-nuclear military facilities, nuclear power plants, important industrial sites and cities. Or it could skip all those steps and start through the accidental or reckless use of strategic weapons

#### Terrorists have means and motive now-expertise and materials are widespread and multiple attempts prove.

**Jaspal, Quaid-i-Azam University IR professor, 2012**

(Zafar, “Nuclear/Radiological Terrorism: Myth or Reality?”, Journal of Political Studies, <http://pu.edu.pk/images/journal/pols/pdf-files/Nuclear%20Radiological%20terrorism%20Jaspa_Vol_19_Issue_1_2012.pdf>, ldg)

The misperception, miscalculation and above all ignorance of the ruling elite about security puzzles are perilous for the national security of a state. Indeed, in an age of transnational terrorism and unprecedented dissemination of dual-use nuclear technology, ignoring nuclear terrorism threat is an imprudent policy choice. The incapability of terrorist organizations to engineer fissile material does not eliminate completely the possibility of nuclear terrorism. At the same time, the absence of an example or precedent of a nuclear/ radiological terrorism does not qualify the assertion that the nuclear/radiological terrorism ought to be remained a myth.x Farsighted rationality obligates that one should not miscalculate transnational terrorist groups — whose behavior suggests that they have a death wish — of acquiring nuclear, radiological, chemical and biological material producing capabilities. In addition, one could be sensible about the published information that huge amount of nuclear material is spread around the globe. According to estimate it is enough to build more than 120,000 Hiroshima-sized nuclear bombs (Fissile Material Working Group, 2010, April 1). The alarming fact is that a few storage sites of nuclear/radiological materials are inadequately secured and continue to be accumulated in unstable regions (Sambaiew, 2010, February). Attempts at stealing fissile material had already been discovered (Din & Zhiwei, 2003: 18). Numerous evidences confirm that terrorist groups had aspired to acquire fissile material for their terrorist acts. Late Osama bin Laden, the founder of al Qaeda stated that acquiring nuclear weapons was a“religious duty” (Yusufzai, 1999, January 11). The IAEA also reported that “al-Qaeda was actively seeking an atomic bomb.” Jamal Ahmad al-Fadl, a dissenter of Al Qaeda, in his trial testimony had “revealed his extensive but unsuccessful efforts to acquire enriched uranium for al-Qaeda” (Allison, 2010, January: 11). On November 9, 2001, Osama bin Laden claimed that “we have chemical and nuclear weapons as a deterrent and if America used them against us we reserve the right to use them (Mir, 2001, November 10).” On May 28, 2010, Sultan Bashiruddin Mahmood, a Pakistani nuclear scientist confessed that he met Osama bin Laden. He claimed that “I met Osama bin Laden before 9/11 not to give him nuclear know-how, but to seek funds for establishing a technical college in Kabul (Syed, 2010, May 29).” He was arrested in 2003 and after extensive interrogation by American and Pakistani intelligence agencies he was released (Syed, 2010, May 29). Agreed, Mr. Mahmood did not share nuclear know-how with Al Qaeda, but his meeting with Osama establishes the fact that the terrorist organization was in contact with nuclear scientists. Second, the terrorist group has sympathizers in the nuclear scientific bureaucracies. It also authenticates bin Laden’s Deputy Ayman Zawahiri’s claim which he made in December 2001: “If you have $30 million, go to the black market in the central Asia, contact any disgruntled Soviet scientist and a lot of dozens of smart briefcase bombs are available (Allison, 2010, January: 2).” The covert meetings between nuclear scientists and al Qaeda members could not be interpreted as idle threats and thereby the threat of nuclear/radiological terrorism is real. The 33Defense Secretary Robert Gates admitted in 2008 that “what keeps every senior government leader awake at night is the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear (Mueller, 2011, August 2).” Indeed, the nuclear deterrence strategy cannot deter the transnational terrorist syndicate from nuclear/radiological terrorist attacks. Daniel Whiteneck pointed out: “Evidence suggests, for example, that al Qaeda might not only use WMD simply to demonstrate the magnitude of its capability but that it might actually welcome the escalation of a strong U.S. response, especially if it included catalytic effects on governments and societies in the Muslim world. An adversary that prefers escalation regardless of the consequences cannot be deterred” (Whiteneck, 2005, Summer: 187)

### 4

#### DRONE SHIFT DA

#### Restricting detention policies means we massively ramp up targeted killings and extradite prisoners- turns case

**Goldsmith, Harvard law professor, 2009**

(Jack, “The Shell Game on Detainees and Interrogation”, 5-31, <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/29/AR2009052902989.html>, ldg)

The cat-and-mouse game does not end there. As detentions at Bagram and traditional renditions have come under increasing legal and political scrutiny, the Bush and Obama administrations have relied more on other tactics. They have secured foreign intelligence services to do all the work -- capture, incarceration and interrogation -- for all but the highest-level detainees. And they have increasingly employed targeted killings, a tactic that eliminates the need to interrogate or incarcerate terrorists but at the cost of killing or maiming suspected terrorists and innocent civilians alike without notice or due process. There are at least two problems with this general approach to incapacitating terrorists. First, it is not ideal for security. Sometimes it would be more useful for the United States to capture and interrogate a terrorist (if possible) than to kill him with a Predator drone. Often the United States could get better information if it, rather than another country, detained and interrogated a terrorist suspect. Detentions at Guantanamo are more secure than detentions in Bagram or in third countries. The second problem is that terrorist suspects often end up in less favorable places. Detainees in Bagram have fewer rights than prisoners at Guantanamo, and many in Middle East and South Asian prisons have fewer yet. Likewise, most detainees would rather be in one of these detention facilities than be killed by a Predator drone. We congratulate ourselves when we raise legal standards for detainees, but in many respects all we are really doing is driving the terrorist incapacitation problem out of sight, to a place where terrorist suspects are treated worse. It is tempting to say that we should end this pattern and raise standards everywhere. Perhaps we should extend habeas corpus globally, eliminate targeted killing and cease cooperating with intelligence services from countries that have poor human rights records. This sentiment, however, is unrealistic. The imperative to stop the terrorists is not going away. The government will find and exploit legal loopholes to ensure it can keep up our defenses. This approach to detention policy reflects a sharp disjunction between the public's view of the terrorist threat and the government's. After nearly eight years without a follow-up attack, the public (or at least an influential sliver) is growing doubtful about the threat of terrorism and skeptical about using the lower-than-normal standards of wartime justice. The government, however, sees the terrorist threat every day and is under enormous pressure to keep the country safe. When one of its approaches to terrorist incapacitation becomes too costly legally or politically, it shifts to others that raise fewer legal and political problems. This doesn't increase our safety or help the terrorists. But it does make us feel better about ourselves.

#### Increased drone use sets a precedent that causes South China Sea conflict

**Roberts, National Journal news editor, 2013**

(Kristen, “When the Whole World Has Drones”, 3-22, <http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321>, ldg)

And that’s a NATO ally seeking the capability to conduct missions that would run afoul of U.S. interests in Iraq and the broader Middle East. Already, Beijing says it considered a strike in Myanmar to kill a drug lord wanted in the deaths of Chinese sailors. What happens if China arms one of its remote-piloted planes and strikes Philippine or Indian trawlers in the South China Sea? Or if India uses the aircraft to strike Lashkar-e-Taiba militants near Kashmir? “We don’t like other states using lethal force outside their borders. It’s destabilizing. It can lead to a sort of wider escalation of violence between two states,” said Micah Zenko, a security policy and drone expert at the Council on Foreign Relations. “So the proliferation of drones is not just about the protection of the United States. It’s primarily about the likelihood that other states will increasingly use lethal force outside of their borders.” LOWERING THE BAR Governments have covertly killed for ages, whether they maintained an official hit list or not. Before the Obama administration’s “disposition matrix,” Israel was among the best-known examples of a state that engaged, and continues to engage, in strikes to eliminate people identified by its intelligence as plotting attacks against it. But Israel certainly is not alone. Turkey has killed Kurds in Northern Iraq. Some American security experts point to Russia as well, although Moscow disputes this. In the 1960s, the U.S. government was involved to differing levels in plots to assassinate leaders in Congo and the Dominican Republic, and, famously, Fidel Castro in Cuba. The Church Committee’s investigation and subsequent 1975 report on those and other suspected plots led to the standing U.S. ban on assassination. So, from 1976 until the start of President George W. Bush’s “war on terror,” the United States did not conduct targeted killings, because it was considered anathema to American foreign policy. (In fact, until as late as 2001, Washington’s stated policy was to oppose Israel’s targeted killings.) When America adopted targeted killing again—first under the Bush administration after the September 11 attacks and then expanded by President Obama—the tools of the trade had changed. No longer was the CIA sending poison, pistols, and toxic cigars to assets overseas to kill enemy leaders. Now it could target people throughout al-Qaida’s hierarchy with accuracy, deliver lethal ordnance literally around the world, and watch the mission’s completion in real time. The United States is smartly using technology to improve combat efficacy, and to make war-fighting more efficient, both in money and manpower. It has been able to conduct more than 400 lethal strikes, killing more than 3,500 people, in Afghanistan, Pakistan, Yemen, Somalia, and North Africa using drones; reducing risk to U.S. personnel; and giving the Pentagon flexibility to use special-forces units elsewhere. And, no matter what human-rights groups say, it’s clear that drone use has reduced the number of civilians killed in combat relative to earlier conflicts. Washington would be foolish not to exploit unmanned aircraft in its long fight against terrorism. In fact, defense hawks and spendthrifts alike would criticize it if it did not. “If you believe that these folks are legitimate terrorists who are committing acts of aggressive, potential violent acts against the United States or our allies or our citizens overseas, should it matter how we choose to engage in the self-defense of the United States?” asked Rep. Mike Rogers, R-Mich., chairman of the House Intelligence Committee. “Do we have that debate when a special-forces team goes in? Do we have that debate if a tank round does it? Do we have the debate if an aircraft pilot drops a particular bomb?” But defense analysts argue—and military officials concede—there is a qualitative difference between dropping a team of men into Yemen and green-lighting a Predator flight from Nevada. Drones lower the threshold for military action. That’s why, according to the Council on Foreign Relations, unmanned aircraft have conducted 95 percent of all U.S. targeted killings. Almost certainly, if drones were unavailable, the United States would not have pursued an equivalent number of manned strikes in Pakistan. And what’s true for the United States will be true as well for other countries that own and arm remote piloted aircraft. “The drones—the responsiveness, the persistence, and without putting your personnel at risk—is what makes it a different technology,” Zenko said. “When other states have this technology, if they follow U.S. practice, it will lower the threshold for their uses of lethal force outside their borders. So they will be more likely to conduct targeted killings than they have in the past.” The Obama administration appears to be aware of and concerned about setting precedents through its targeted-strike program. When the development of a disposition matrix to catalog both targets and resources marshaled against the United States was first reported in 2012, officials spoke about it in part as an effort to create a standardized process that would live beyond the current administration, underscoring the long duration of the counterterrorism challenge. Indeed, the president’s legal and security advisers have put considerable effort into establishing rules to govern the program. Most members of the House and Senate Intelligence committees say they are confident the defense and intelligence communities have set an adequate evidentiary bar for determining when a member of al-Qaida or an affiliated group may be added to the target list, for example, and say that the rigor of the process gives them comfort in the level of program oversight within the executive branch. “They’re not drawing names out of a hat here,” Rogers said. “It is very specific intel-gathering and other things that would lead somebody to be subject for an engagement by the United States government.”

#### South China Sea conflicts cause extinction

**Wittner, State university of New York history professor, 2011**

(Lawrence, “Is a Nuclear War With China Possible?”, 11-28, [www.huntingtonnews.net/14446](http://www.huntingtonnews.net/14446), ldg)

While nuclear weapons exist, there remains a danger that they will be used. After all, for centuries national conflicts have led to wars, with nations employing their deadliest weapons. The current deterioration of U.S. relations with China might end up providing us with yet another example of this phenomenon. The gathering tension between the United States and China is clear enough. Disturbed by China’s growing economic and military strength, the U.S. government recently challenged China’s claims in the South China Sea, increased the U.S. military presence in Australia, and deepened U.S. military ties with other nations in the Pacific region. According to Secretary of State Hillary Clinton, the United States was “asserting our own position as a Pacific power.” But need this lead to nuclear war? Not necessarily. And yet, there are signs that it could. After all, both the United States and China possess large numbers of nuclear weapons. The U.S. government threatened to attack China with nuclear weapons during the Korean War and, later, during the conflict over the future of China’s offshore islands, Quemoy and Matsu. In the midst of the latter confrontation, President Dwight Eisenhower declared publicly, and chillingly, that U.S. nuclear weapons would “be used just exactly as you would use a bullet or anything else.” Of course, China didn’t have nuclear weapons then. Now that it does, perhaps the behavior of national leaders will be more temperate. But the loose nuclear threats of U.S. and Soviet government officials during the Cold War, when both nations had vast nuclear arsenals, should convince us that, even as the military ante is raised, nuclear saber-rattling persists. Some pundits argue that nuclear weapons prevent wars between nuclear-armed nations; and, admittedly, there haven’t been very many—at least not yet. But the Kargil War of 1999, between nuclear-armed India and nuclear-armed Pakistan, should convince us that such wars can occur. Indeed, in that case, the conflict almost slipped into a nuclear war. Pakistan’s foreign secretary threatened that, if the war escalated, his country felt free to use “any weapon” in its arsenal. During the conflict, Pakistan did move nuclear weapons toward its border, while India, it is claimed, readied its own nuclear missiles for an attack on Pakistan. At the least, though, don’t nuclear weapons deter a nuclear attack? Do they? Obviously, NATO leaders didn’t feel deterred, for, throughout the Cold War, NATO’s strategy was to respond to a Soviet conventional military attack on Western Europe by launching a Western nuclear attack on the nuclear-armed Soviet Union. Furthermore, if U.S. government officials really believed that nuclear deterrence worked, they would not have resorted to championing “Star Wars” and its modern variant, national missile defense. Why are these vastly expensive—and probably unworkable—military defense systems needed if other nuclear powers are deterred from attacking by U.S. nuclear might? Of course, the bottom line for those Americans convinced that nuclear weapons safeguard them from a Chinese nuclear attack might be that the U.S. nuclear arsenal is far greater than its Chinese counterpart. Today, it is estimated that the U.S. government possesses over five thousand nuclear warheads, while the Chinese government has a total inventory of roughly three hundred. Moreover, only about forty of these Chinese nuclear weapons can reach the United States. Surely the United States would “win” any nuclear war with China. But what would that “victory” entail? A nuclear attack by China would immediately slaughter at least 10 million Americans in a great storm of blast and fire, while leaving many more dying horribly of sickness and radiation poisoning. The Chinese death toll in a nuclear war would be far higher. Both nations would be reduced to smoldering, radioactive wastelands. Also, radioactive debris sent aloft by the nuclear explosions would blot out the sun and bring on a “nuclear winter” around the globe—destroying agriculture, creating worldwide famine, and generating chaos and destruction.

## 1NC Case

### 1NC-Util

#### Utilitarian consequences first

**Issac 2**—Professor of Political Science at Indiana-Bloomington, Director of the Center for the Study of Democracy and Public Life, PhD from Yale (Jeffery C., Dissent Magazine, Vol. 49, Iss. 2, “Ends, Means, and Politics,” p. Proquest)

As a result, the most important political questions are simply not asked. It is assumed that U.S. military intervention is an act of "aggression," but no consideration is given to the aggression to which intervention is a response. The status quo ante in Afghanistan is not, as peace activists would have it, peace, but rather terrorist violence abetted by a regime--the Taliban--that rose to power through brutality and repression. This requires us to ask a question that most "peace" activists would prefer not to ask: What should be done to respond to the violence of a Saddam Hussein, or a Milosevic, or a Taliban regime? What means are likely to stop violence and bring criminals to justice? Calls for diplomacy and international law are well intended and important; they implicate a decent and civilized ethic of global order. But they are also vague and empty, because they are not accompanied by any account of how diplomacy or international law can work effectively to address the problem at hand. The campus left offers no such account. To do so would require it to contemplate tragic choices in which moral goodness is of limited utility. Here what matters is not purity of intention but the intelligent exercise of power. Power is not a dirty word or an unfortunate feature of the world. It is the core of politics. Power is the ability to effect outcomes in the world. Politics, in large part, involves contests over the distribution and use of power. To accomplish anything in the political world, one must attend to the means that are necessary to bring it about. And to develop such means is to develop, and to exercise, power. To say this is not to say that power is beyond morality. It is to say that power is not reducible to morality. As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness **undercuts political responsibility**. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one's intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of **complicity in injustice**. This is why, from the standpoint of politics--as opposed to religion--pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that **politics is as much about unintended consequences as it is about intentions**; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with "good" may engender impotence, it is often the pursuit of "good" that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one's goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

### 1NC-Extinction First

#### Research and debate about existential risks is needed to inform the public – debate is a forum to build awareness of these threats to examine possible political responses

Bostrom 02, Professor of Philosophy at Oxford University and Director of the Future of Humanity Institute, ’2 (Nick, March, “Existential Risks: Analyzing Human Extinction Scenarios and Related Hazards” Journal of Evolution and Technology, Vol 9, http://www.nickbostrom.com/existential/risks.html

9 Implications for policy and ethics Existential risks have a cluster of features that make it useful to identify them as a special category: the extreme magnitude of the harm that would come from an existential disaster; the futility of the trial-and-error approach; the lack of evolved biological and cultural coping methods; the fact that existential risk dilution is a global public good; the shared stakeholdership of all future generations; the international nature of many of the required countermeasures; the necessarily highly speculative and multidisciplinary nature of the topic; the subtle and diverse methodological problems involved in assessing the probability of existential risks; and the comparative neglect of the whole area. From our survey of the most important existential risks and their key attributes, we can extract tentative recommendations for ethics and policy: 9.1 Raise the profile of existential risks We need more research into existential risks – detailed studies of particular aspects of specific risks as well as more general investigations of associated ethical, methodological, security and policy issues. Public awareness should also be built up so that constructive political debate about possible countermeasures becomes possible. Now, it’s a commonplace that researchers always conclude that more research needs to be done in their field. But in this instance it is really true. There is more scholarly work on the life-habits of the dung fly than on existential risks. 9.2 Create a framework for international action Since existential risk reduction is a global public good, there should ideally be an institutional framework such that the cost and responsibility for providing such goods could be shared fairly by all people. Even if the costs can’t be shared fairly, some system that leads to the provision of existential risk reduction in something approaching optimal amounts should be attempted.

### 1NC Terrorists Evil

#### Terrorists goals are ideological; not political; there is no negotiation---only regulated violence in a utilitarian framework can solve

Whitman 7 (Jeffery, Prof of Philosophy, Religion, and Classical Studies Susquehanna University, “Just War Theory and the War on Terrorism A Utilitarian Perspective,” http://www.mesharpe.com/PIN/05Whitman.pdf)

Nonetheless, there was something different about the 9/11 attacks that is troubling, and that difference is the nihilistic nature of the attackers. Most, but not all, terrorist activity has a political or religious goal of some sort as its aim—the liberation of a minority group, the establishment of a new state, the removal of a perceived oppressor. Al-Qaeda professes a political goal, but its actions belie its claims. It claims to be fighting for the cause of Palestinian freedom and for oppressed Muslims everywhere, but it has appropriated the Islamic religion and the concept of jihad in order to recruit suicide bombers with the promise of martyrdom and entry into Paradise. In so doing, the political goal, if it ever existed, has become subservient to eschatological concerns. Political failure has become an irrelevant distraction that is trumped by the reward of eternal life. As Michael Ignatieff notes concerning al-Qaeda, their goals are less political than apocalyptic, securing immortality for themselves while calling down a mighty malediction on the Great Satan. Goals that are political can be engaged politically. Apocalyptic goals, on the other hand, are impossible to negotiate with. They can only be fought by force of arms. (2004, 125–126) This version of Islamic fundamentalist terrorism, represented by such groups as Hamas, Hezbollah, and al-Qaeda, seems particularly intractable. These groups, especially insofar as they employ suicide-bomber tactics, have become death cults (Ignatieff 2004, 126–127). There can be no negotiated settlement, so the only solution seems to be a violent one aimed at the utter destruction of the terrorists. And yet, a purely violent and largely military response runs significant risks, both morally and pragmatically, for the counterterrorist forces. The risks are especially poignant for a liberal democracy like the United States, for the use of purely military means, particularly the brutal military means that may seem necessary to defeat terrorism, may run contrary to the very principles a liberal democracy represents (Ignatieff 2004, 133–136).6 Thus the terrorist threat represented by al-Qaeda–like groups presents a difficult and somewhat unique challenge for the United States. Nonetheless, I remain convinced that a utilitarian conceptualization of just war theory can help us to successfully navigate between the Scylla of losing the fight against terrorism and the Charybdis of abandoning the principles that define our liberal democracy.

### AT: No Objective FoPo

#### Critique isn’t offense Positivism is not violent and just because something is arbitrary constructed does not mean it can be wished away

Jarvis 2000 (Darryl, Senior Lecturer in International Relations – University of Sydney, International Relations and the Challenge of Postmodernism, p. 128-130)

Inculpating modernity, positivism, technical rationality, or realism with violence, racism, war, and countless other crimes not only smacks of anthropomorphism but, as demonstrated by Ashley's torturous prose and reasoning, requires a dubious logic to make such connections in the first place. Are we really to believe that ethereal entities like positivism, mod­ernism, or realism emanate a "violence" that marginalizes dissidents? Indeed, where is this violence, repression, and marginalization? As self- professed dissidents supposedly exiled from the discipline, Ashley and Walker appear remarkably well integrated into the academy—vocal, pub­lished, and at the center of the Third Debate and the forefront of theo­retical research. Likewise, is Ashley seriously suggesting that, on the basis of this largely imagined violence, global transformation (perhaps even rev­olutionary violence) is a necessary, let alone desirable, response? Has the rationale for emancipation or the fight for justice been reduced to such vacuous revolutionary slogans as "Down with positivism and rationality"? The point is surely trite. Apart from members of the academy, who has heard of positivism and who for a moment imagines that they need to be emancipated from it, or from modernity, rationality, or realism for that matter? In an era of unprecedented change and turmoil, of new political and military configurations, of war in the Balkans and ethnic cleansing, is Ashley really suggesting that some of the greatest threats facing humankind or some of the great moments of history rest on such innocu­ous and largely unknown nonrealities like positivism and realism? These are imagined and fictitious enemies, theoretical fabrications that represent arcane, self-serving debates superfluous to the lives of most people and, arguably, to most issues of importance in international relations. More is the pity that such irrational and obviously abstruse debate should so occupy us at a time of great global turmoil. That it does and continues to do so reflects our lack of judicious criteria for evaluating the­ory and, more importantly, the lack of attachment theorists have to the real world. Certainly it is right and proper that we ponder the depths of our theoretical imaginations, engage in epistemological and ontological debate, and analyze the sociology of our knowledge." But to suppose that this is the only task of international theory, let alone the most important one, smacks of intellectual elitism and displays a certain contempt for those who search for guidance in their daily struggles as actors in international politics. What does Ashley's project, his deconstructive efforts, or valiant fight against positivism say to the truly marginalized, oppressed, and des­titute? How does it help solve the plight of the poor, the displaced refugees, the casualties of war, or the emigres of death squads? Does it in any way speak to those whose actions and thoughts comprise the policy and practice of international relations? On all these questions one must answer no. This is not to say, of course, that all theory should be judged by its technical rationality and problem-solving capacity as Ashley forcefully argues. But to suppose that problem-solving technical theory is not necessary—or is in some way bad—is a contemptuous position that abrogates any hope of solving some of the nightmarish realities that millions confront daily. As Holsti argues, we need ask of these theorists and their theories the ultimate question, "So what?" To what purpose do they deconstruct, problematize, destabilize, undermine, ridicule, and belittle modernist and rationalist approaches? Does this get us any further, make the world any better, or enhance the human condition? In what sense can this "debate toward [a] bottomless pit of epistemology and metaphysics" be judged pertinent, relevant, help­ful, or cogent to anyone other than those foolish enough to be scholasti­cally excited by abstract and recondite debate." Contrary to Ashley's assertions, then, a poststructural approach fails to empower the marginalized and, in fact, abandons them. Rather than ana­lyze the political economy of power, wealth, oppression, production, or international relations and render an intelligible understanding of these processes, Ashley succeeds in ostracizing those he portends to represent by delivering an obscure and highly convoluted discourse. If Ashley wishes to chastise structural realism for its abstractness and detachment, he must be prepared also to face similar criticism, especially when he so adamantly intends his work to address the real life plight of those who struggle at marginal places. If the relevance of Ashley's project is questionable, so too is its logic and cogency. First, we might ask to what extent the postmodern "empha­sis on the textual, constructed nature of the world" represents "an unwar­ranted extension of approaches appropriate for literature to other areas of human practice that are more constrained by an objective reality."" All theory is socially constructed and realities like the nation-state, domestic and international politics, regimes, or transnational agencies are obviously social fabrications. But to what extent is this observation of any real use? Just because we acknowledge that the state is a socially fabricated entity, or that the division between domestic and international society is arbitrar­ily inscribed does not make the reality of the state disappear or render invisible international politics. Whether socially constructed or objectively given, the argument over the ontological status of the state is of no par­ticular moment. Does this change our experience of the state or somehow diminish the political-economic-juridical-military functions of the state? To recognize that states are not naturally inscribed but dynamic entities continually in the process of being made and reimposed and are therefore culturally dissimilar, economically different, and politically atypical, while perspicacious to our historical and theoretical understanding of the state, in no way detracts from its reality, practices, and consequences. Similarly, few would object to Ashley's hermeneutic interpretivist understanding of the international sphere as an artificially inscribed demarcation. But, to paraphrase Holsti again, so what? This does not make its effects any less real, diminish its importance in our lives, or excuse us from paying serious attention to it. That international politics and states would not exist with­out subjectivities is a banal tautology. The point, surely, is to move beyond this and study these processes. Thus, while intellectually interesting, con­structivist theory is not an end point as Ashley seems to think, where we all throw up our hands and announce there are no foundations and all real­ity is an arbitrary social construction. Rather, it should be a means of rec­ognizing the structurated nature of our being and the reciprocity between subjects and structures through history. Ashley, however, seems not to want to do this, but only to deconstruct the state, international politics, and international theory on the basis that none of these is objectively given but fictitious entities that arise out of modernist practices of representa­tion. While an interesting theoretical enterprise, it is of no great conse­quence to the study of international politics. Indeed, structuration theory has long taken care of these ontological dilemmas that otherwise seem to preoccupy Ashley."

### No Runaway Prez

#### No risk of endless warfare

**Gray 7**—Director of the Centre for Strategic Studies and Professor of International Relations and Strategic Studies at the University of Reading, graduate of the Universities of Manchester and Oxford, Founder and Senior Associate to the National Institute for Public Policy, formerly with the International Institute for Strategic Studies and the Hudson Institute (Colin, July, “The Implications of Preemptive and Preventive War Doctrines: A Reconsideration”, <http://www.ciaonet.org/wps/ssi10561/ssi10561.pdf>)

7. A policy that favors preventive warfare expresses a futile quest for absolute security. It could do so. Most controversial policies contain within them the possibility of misuse. In the hands of a paranoid or boundlessly ambitious political leader, prevention could be a policy for endless warfare. However, the American political system, with its checks and balances, was designed explicitly for the purpose of constraining the executive from excessive folly. Both the Vietnam and the contemporary Iraqi experiences reveal clearly that although the conduct of war is an executive prerogative, in practice that authority is disciplined by public attitudes. Clausewitz made this point superbly with his designation of the passion, the sentiments, of the people as a vital component of his trinitarian theory of war. 51 It is true to claim that power can be, and indeed is often, abused, both personally and nationally. It is possible that a state could acquire a taste for the apparent swift decisiveness of preventive warfare and overuse the option. One might argue that the easy success achieved against Taliban Afghanistan in 2001, provided fuel for the urge to seek a similarly rapid success against Saddam Hussein’s Iraq. In other words, the delights of military success can be habit forming. On balance, claim seven is not persuasive, though it certainly contains a germ of truth. A country with unmatched wealth and power, unused to physical insecurity at home—notwithstanding 42 years of nuclear danger, and a high level of gun crime—is vulnerable to demands for policies that supposedly can restore security. But we ought not to endorse the argument that the United States should eschew the preventive war option because it could lead to a futile, endless search for absolute security. One might as well argue that the United States should adopt a defense policy and develop capabilities shaped strictly for homeland security approached in a narrowly geographical sense. Since a president might misuse a military instrument that had a global reach, why not deny the White House even the possibility of such misuse? In other words, constrain policy ends by limiting policy’s military means. This argument has circulated for many decades and, it must be admitted, it does have a certain elementary logic. It is the opinion of this enquiry, however, that the claim that a policy which includes the preventive option might lead to a search for total security is **not at all convincing**. Of course, folly in high places is always possible, which is one of the many reasons why popular democracy is the superior form of government. It would be absurd to permit the fear of a futile and dangerous quest for absolute security to preclude prevention as a policy option. Despite its absurdity, this rhetorical charge against prevention is a stock favorite among prevention’s critics. It should be recognized and dismissed for what it is, a debating point with little pragmatic merit. And strategy, though not always policy, **must be nothing if not pragmatic**.

#### Assign minimal risk – paranoia and misperception.

Posner and Vermeule 2009

Eric and Adrian, Professors of Law @ Chicago and Harvard, Tyrannophobia, September 15, 2009

Tyrannophobia is a central element of American political culture, and has been since the founding. We have offered several claims and hypotheses to illuminate its origins and importance. We suggest that tyrannophobia arises from the interaction between history and the quirks of political psychology, or from the differential costs of information about legal and political checks on the executive; that dictatorship, at least in any strong sense, is not a real possibility in the United States today, due to demographic factors; and that tyrannophobia therefore has little social utility in modern circumstances. Whatever its possible utility in the past, a question on which we are agnostic, tyrannophobia today is just another misperception of risk, akin to a fear of genetically modified foods. Indeed, in light of the current evidence on the determinants of democratic stability, tyranny should be at the very bottom of the scale of public concern. The modern entrepreneurs of tyrannophobia – from George Orwell to George Lucas – ought not be lionized as defenders of the liberal state, but instead shunned, as purveyors of political misinformation.

### AT: Disco

#### Discursive othering doesn’t result in ‘uncontrollable violence’

Rodwell 5 (Jonathan Rodwell is a PhD student at Manchester Met. researching the U.S. Foreign Policy of the late 70's / rise of ‘neo-cons’ and Second Cold War, “Trendy But Empty: A Response to Richard Jackson,” http://www.49thparallel.bham.ac.uk/back/issue15/rodwell1.htm)

To be specific if the U.S. and every other nation is continually reproducing identities through ‘othering’ it is a constant and universal phenomenon that fails to help us understand at all why one result of the othering turned out one way and differently at another time. For example, how could one explain how the process resulted in the 2003 invasion of Iraq but didn’t produce a similar invasion of Afghanistan in 1979 when that country (and by the logic of the Regan administrations discourse) the West was threatened by the ‘Evil Empire’. By the logical of discourse analysis in both cases these policies were the result of politicians being able to discipline and control the political agenda to produce the outcomes. So why were the outcomes not the same? To reiterate the point how do we explain that the language of the War on Terror actually managed to result in the eventual Afghan invasion in 2002? Surely it is impossible to explain how George W. Bush was able to convince his people (and incidentally the U.N and Nato) to support a war in Afghanistan without referring to a simple fact outside of the discourse; the fact that a known terrorist in Afghanistan actually admitted to the murder of thousands of people on the 11h of Sepetember 2001. The point is that if the discursive ‘othering’ of an ‘alien’ people or group is what really gave the U.S. the opportunity to persue the war in Afghanistan one must surly wonder why Afghanistan. Why not North Korea? Or Scotland? If the discourse is so powerfully useful in it’s own right why could it not have happened anywhere at any time and more often? Why could the British government not have been able to justify an armed invasion and regime change in Northern Ireland throughout the terrorist violence of the 1980’s? Surely they could have just employed the same discursive trickery as George W. Bush? Jackson is absolutely right when he points out that the actuall threat posed by Afghanistan or Iraq today may have been thoroughly misguided and conflated and that there must be more to explain why those wars were enacted at that time. Unfortunately that explanation cannot simply come from the result of inscripting identity and discourse. On top of this there is the clear problem that the consequences of the discursive othering are not necessarily what Jackson would seem to identify. This is a problem consistent through David Campbell’s original work on which Jackson’s approach is based[iii]. David Campbell argued for a linguistic process that ‘always results in an other being marginalized’ or has the potential for ‘demonisation’[iv]. At the same time Jackson, building upon this, maintains without qualification that the systematic and institutionalised abuse of Iraqi prisoners first exposed in April 2004 “is a direct consequence of the language used by senior administration officials: conceiving of terrorist suspects as ‘evil’, ‘inhuman’ and ‘faceless enemies of freedom creates an atmosphere where abuses become normalised and tolerated”[v]. The only problem is that the process of differentiation does not actually necessarily produce dislike or antagonism. In the 1940’s and 50’s even subjected to the language of the ‘Red Scare’ it’s obvious not all Americans came to see the Soviets as an ‘other’ of their nightmares. And in Iraq the abuses of Iraqi prisoners are isolated cases, it is not the case that the U.S. militarily summarily abuses prisoners as a result of language. Surely the massive protest against the war, even in the U.S. itself, is also a self evident example that the language of ‘evil’ and ‘inhumanity’ does not necessarily produce an outcome that marginalises or demonises an ‘other’. Indeed one of the points of discourse is that we are continually differentiating ourselves from all others around us without this necessarily leading us to hate fear or abuse anyone.[vi] Consequently, the clear fear of the Soviet Union during the height of the Cold War, and the abuses at Abu Ghirab are unusual cases. To understand what is going on we must ask how far can the process of inscripting identity really go towards explaining them? As a result at best all discourse analysis provides us with is a set of universals and a heuristic model

#### Discourse analysis is tautology; if nothing is neutral all of their evidence has the same epistemological bias---linear causality is inevitable and has explanatory power---disads first

Rodwell 5 (Jonathan Rodwell is a PhD student at Manchester Met. researching the U.S. Foreign Policy of the late 70's / rise of ‘neo-cons’ and Second Cold War, “Trendy But Empty: A Response to Richard Jackson,” http://www.49thparallel.bham.ac.uk/back/issue15/rodwell1.htm)

Next, discourse analysis as practiced exists within an enormous logical cul-de-sac. Born of the original premise that each discourse and explanation has it’s own realities, what results is a theoretical approach in which a critique is actually impossible because by post-structural logic a critique can only operate within it’s own discursive structure and on it’s own terms. If things only exist within specific languages and discourse you must share the basic premises of that discourse to be able to say anything about it. But what useful criticisms can you make if you share fundamental assumptions? Moreover remembering the much argued for normative purposes of Jackson’s case he talks about the effects of naturalizing language and without blushing criticises the dangerous anti-terror rhetoric of George W. Bush. The only problem is Jackson has attempted to illustrate that what is moral or immoral depends on the values and structures of each discourse. Therefore why should a reader believe Richard Jackson’s idea of right and wrong any more than George W. Bush’s? Fundamentally if he wishes to maintain that each discourse is specific to each intellectual framework Jackson cannot criticise at all. By his own epistemological rules if he is inside those discourses he shares their assumptions, outside they make no sense What actually occurs then is an aporia - a logical contraction where a works own stated epistemological premises rob it of the ability to contain any critical force. Such arguments are caught between the desire to maintain that all discursive practices construct their own truths, in which case critiques are not possible as they are merely one of countless possible discursive truths with no actually reason to take then seriously, or an appeal to material reality, but again the entire premises of post structural linguistics rejects the idea of a material reality.[vii] In starting from a premise that it is not possible to neutrally describe the real world, the result is that without that real world, discourse analysis actually has nothing to say. The issue of the material real world, or ‘evidence’ is actually the issue at the heart of the weakness of post-structural discourse analysis, though it does hold the potential to at least rescue some of it’s usefulness. The problem is simple, in that the only way Jackson or any post-structuralist can operationalise their argument is with an appeal to material evidence. But by the logic of discourse analysis there is no such thing as neutral ‘evidence’. To square this circle many post-struturalist writers do seem to hint at complexity and what post-structural culturalists might call ‘intertextuality’, arguing for ‘favouring a complexity of interactions’ rather than ‘linear causality’[viii]. The implication is that language is just one of an endless web of factors and surely this prompts one to pursue an understanding of these links. However, to do so would dangerously undermine the entire post-structural project as again, if there are discoverable links between factors, then there are material facts that are identifiable regardless of language. Consequently, rather than seeking to understand the links between factors what seems to happen is hands are thrown up in despair as the search for complexity is dropped as quickly as it is picked up. The result is one-dimensional arguments that again can say little. This is evident in Jackson’s approach as he details how words have histories and moreover are part of a dialectic process in which ‘they not only shape social structures but are also shaped by them’.[ix] However we do not then see any discussion of whether, therefore, it is not discourse that is the powerful tool but the effect of the history and the social structure itself. Throughout Jackson’s argument it is a top down process in which discourse disciplines society to follow the desire of the dominant, but here is an instance of a dialectic process where society may actually be the originating force, allowing the discourse in turn to actually to be more powerful. However we simply see no exploration of this potential dialectic process, merely the suggestion it exists.

### 1NC Predictions-epistec threshold

#### Specificity and empirics of our scenario mean you prefer it.

Dipert 6 (Randall, PhD, Professor of Philosophy, University at Buffalo, Buffalo, “Preventive War and the Epistemological Dimension of the Morality of War,” https://www.law.upenn.edu/live/files/1291-dipert-preventive-war)

We have seen a number of reasons why some preventive wars are morally justified. Nevertheless, this justification hinges on what I have called an epistemic threshold. This threshold is the minimum amount of ‘objective certainty’ about the enemy’s intentions, bellicosity, and present and future military resources necessary to justify preemptive or preventive war. It is not merely a subjective certainty in feeling strongly about the extent of evidence for these factors. To be morally justified, one must have, and appreciate, extensive evidence for these factors and the other usual criteria for Just War except Just Cause; one must lack substantial evidence that goes against one of these factors, after a reasonable effort to acquire such evidence. A ‘second order’ objective certainty is also necessary: one must be justified in believing that one’s past record of judging intentions, resources and so on, from the information sources one is now using (e.g., satellite imagery), has usually been correct. It may be instructive here to reflect on the 2003 Iraq War.27 The fact that Iraq turned out not to have weapons of mass destruction, and did not even have quickly constructable facilities to produce them, shows that the Bush administration did not have knowledge of the weapons or facilities. It does not, however, alone entail that it was not objectively certain to the extent required by the epistemic threshold criterion for preventive war. In fact I believe that it was highly rational to believe, and in Grotius’ words was ‘morally certain’, that Iraq had chemical weapons despite what would prove to be its falsehood. (This is a consequence of permitting defeasible or nonabsolutely-certain justification or warrant for knowledge that is now almost universally accepted by epistemologists.) This is debatable, to be sure. However, I am not totally convinced that having chemical weapons of the kind Iraq was reasonably believed to possess alone posed a sufficient threat to justify preventive war. The case for morally justifying preventive war with regard to biological or nuclear weapons almost certainly did not meet the epistemic threshold. This is not to suggest that there were not other morally sufficient reasons, or that there might be some accumulative effect of arguments that are separately, in various respects, weak. Grotius, for one, diminishes the importance of intent, and allows one to change intents in midwar, while retaining its morally justified character. Especially in the recent 2003 Iraq War, there was a constant refrain about the need to acquire international moral approval of the coalition efforts.28 Intuitively, some international assent, especially by sympathetic nations if not the Security Council of the UN, is desirable. Yet it is very difficult to see how this fits into the moral theory of the permissibility of war. However, this reasoning, contrary to our intuitions, seems to leave no place at all for ‘internationalism’ in the moral justification of war (at least as regards its moral permissibility). I would propose that considering the epistemological dimension of morally justified war does give a proper place to our internationalistic inclinations. As is now all too well known, political discussions of the conditions of just war are prone to being blinded by already firm geopolitical worldviews, as well as by past political rhetoric that tend to chain politicians to certain views for the sake of ‘consistency’. The facts of the case, such as intelligence on WMDs, are likewise prone to a certain institutional conformist tendencies\*/and this tendency was well known long before the supposed influences of neoconservatives on the US, and apparently also on foreign intelligence services. For example, when critical policy decisions rest on intelligence, the legendary Sherman Kent,29 proposes that we critically examine existing intelligence, and apply in my terminology ‘second order’ principles, explicitly attaching the probability that various truths are mistaken, based on past incidents of the type of information from such sources. International approval, plays a role in the moral justification of war primarily in this epistemological dimension. I do not think approval of the oddly chosen UN Security Council30 is necessary for a morally justified war, even if it is desirable and should often be sought (for various prudential reasons). The moral criteria must be independent of the Security Council, since they have to reason by some principles and presumably these are the pure moral principles\*/they cannot appeal to a still higher authority. But now suppose that these pure moral principles that the Security Council should use, applied to a single nation’s situation, permits it to go to war. However, the Security Council does not agree to this (perhaps because of a veto) or even prohibits the nation’s action. Rather, the underlying principle is something like this: a failure to persuade numerous like-minded nations of both the relevant facts (e.g., the existence of WMDs), when these nations preferably have some independent intelligence capability, or failure to persuade them of the relevant moral principle embodied in a policy (e.g., that if a nation is as chronically belligerent as Iraq, and has such a WMD capacity, then it can be attacked in advance of its attack), is strong evidence against one’s having met the epistemological threshold for anticipatory war. In the recent situation, the opposition of Russia and France, especially Germany and Mexico, and the unenthusiastic acquiescence of China gave prima facie evidence against having met this threshold; the support of the UK, Italy, Spain, and Poland were, however, probably sufficient to meet my condition. In any case, it is in this epistemological dimension of the philosophy of war, and not anywhere else, that international or international-organization approval plays a role in moral justification.31 It might appear difficult to say much about what precisely this epistemic threshold is. It need not be ‘warrant’ as it is used by epistemologists when discussing conditions for knowledge. 32 Roughly, I think that the evidence at hand both for bellicosity and for the enemy’s possession of military resources constituting, or soon to constitute, a threat (and of their probable offensive nature) must be overwhelming and ‘all but certain’. I do not think that ‘manifest preparations’ for an attack (in Walzer’s terms) are necessary, whatever this means.33 Additionally, our second-order assessment of this evidence must be such that we have good reason to believe that it constitutes good evidence: this source has not mislead us in the past, etc. A second-order assessment is our reasonable estimate of the probability of evidence for our first-order assessment of harm, bellicosity, etc., being correct. The military resources must be such that they are likely, if used in a first-strike, to endanger our nation itself or to pose a severe threat of incapacitating our own military resources. It seems to me\*/although I have not studied this matter at all thoroughly\*/that chemical and biological weapons are indeed terrifying, but are unlikely to be serious in this precise sense. Their dispersal problems as well as the existence of countermeasures tend to lessen their military danger. Nuclear weapons, including dirty bombs, are almost certainly in the ‘severe threat’ category. Several factors raise and lower this threshold. One is the seriousness of the threat. Another is the amount of time until these military resources pose this threat. Still another is a kind of proportionality: minimizing civilian and even military deaths. The epistemic threshold never gets so low that, for example, one may launch a preventive war based on evidence of a nation’s bellicosity or resources that is ‘somewhat likely’.

## 2nc

## drones da

### Turns Case – Terrorism

#### Turns WOT-hurts intelligence and alienates allies

**McGill, Norwich School of Graduate and Continuing Studies in Diplomacy, 2012**

(Anna-Katherine, “Challenges to International Counterterrorism Intelligence Sharing”, Summer, <http://globalsecuritystudies.com/McGill%20Intel%20Share.pdf>, ldg)

In his article “Old Allies and New Friends: Intelligence-Sharing in the War on Terror”, Derek Reveron states “the war on terror requires high levels of intelligence to identify a threat relative to the amount of force required to neutralize it” as opposed to the Cold War where the opposite was true (455). As a result, intelligence is the cornerstone of effective counterterrorism operations in the post 9/11 world. Though the United States has the most robust intelligence community in the world with immense capability, skills, and technology, its efficiency in counterterrorism issues depends on coalitions of both traditional allies and new allies. Traditional allies offer a certain degree of dependability through a tried and tested relationship based on similar values; however, newly cultivated allies in the war on terrorism offer invaluable insight into groups operating in their own back yard. The US can not act unilaterally in the global fight against terrorism. It doesn’t have the resources to monitor every potential terrorist hide-out nor does it have the time or capability to cultivate the cultural, linguistic, and CT knowledge that its new allies have readily available. The Department of Defense’s 2005 Quadrennial Review clearly states that the United States "cannot meet today's complex challenges alone. Success requires unified statecraft: the ability of the U.S. government to bring to, bear all elements of national power at home and to work in close cooperation with allies and partners abroad" (qtd in Reveron, 467). The importance of coalition building for the war on terrorism is not lost on US decision-makers as seen by efforts made in the post 9/11 climate to strengthen old relationships and build new ones; however, as seen in the following sections, the possible hindrances to effective, long term CT alliances must also be addressed in order to sustain current operations.

### Uniqueness – 2NC

#### Obama is prioritizing capture over drone strikes now

**Corn, Mother Jones Washington Bureau Chief, 2013**

(David, “Obama's Counterterrorism Speech: A Pivot Point on Drones and More?”, 5-23, <http://www.motherjones.com/mojo/2013/05/obama-speech-drones-civil-liberties>, ldg)

So Obama's speech Thursday on counterterrorism policies—which follows his administration's acknowledgment yesterday that it had killed four Americans (including Anwar al-Awlaki, an Al Qaeda leader in Yemen)—is a big deal, for with this address, Obama is self-restricting his use of drones and shifting control of them from the CIA to the military. And the president has approved making public the rules governing drone strikes. The New York Times received the customary pre-speech leak and reported: A new classified policy guidance signed by Mr. Obama will sharply curtail the instances when unmanned aircraft can be used to attack in places that are not overt war zones, countries like Pakistan, Yemen and Somalia. The rules will impose the same standard for strikes on foreign enemies now used only for American citizens deemed to be terrorists. Lethal force will be used only against targets who pose "a continuing, imminent threat to Americans" and cannot feasibly be captured, Attorney General Eric H. Holder Jr. said in a letter to Congress, suggesting that threats to a partner like Afghanistan or Yemen alone would not be enough to justify being targeted. These moves may not satisfy civil-liberties-minded critics on sthe right and the left. Obama is not declaring an end to indefinite detention or announcing the closing of Gitmo—though he is echoing his State of the Union vow to revive efforts to shut down that prison. Still, these moves would be unimaginable in the Bush years. Bush and Cheney essentially believed the commander in chief had unchallenged power during wartime, and the United States, as they saw it, remained at war against terrorism. Yet here is Obama subjecting the drone program to a more restrictive set of rules—and doing so publicly. This is very un-Cheney-like. (How soon before the ex-veep arises from his undisclosed location to accuse Obama of placing the nation at risk yet again?) Despite Obama's embrace of certain Bush-Cheney practices and his robust use of drones, the president has tried since taking office to shift US foreign policy from a fixation on terrorism. During his first days in office, he shied away from using the "war on terrorism" phrase. And his national security advisers have long talked of Obama's desire to reorient US foreign policy toward challenges in the Pacific region. By handing responsibility for drone strikes to the military, Obama is helping CIA chief John Brennan, who would like to see his agency move out of the paramilitary business and devote more resources to its traditional tasks of intelligence gathering and analysis. With this speech, Obama is not renouncing his administration's claim that it possesses the authority to kill an American overseas without full due process. The target, as Holder noted in that letter to Congress, must be a senior operational leader of Al Qaeda or an associated group who poses an "imminent threat of violent attack against the United States" and who cannot be captured, and Holder stated that foreign suspects now can only be targeted if they pose "a continuing, imminent threat to Americans." (Certainly, there will be debates over the meaning of "imminent," especially given that the Obama administration has previously used an elastic definition of imminence.) And Obama is not declaring an end to the dicey practice of indefinite detention or a conclusion to the fight against terrorism. But the speech may well mark a pivot point. Not shockingly, Obama is attempting to find middle ground, where there is more oversight and more restraint regarding activities that pose serious civil liberties and policy challenges. The McCainiacs of the world are likely to howl about any effort to place the effort to counter terrorism into a more balanced perspective. The civil libertarians will scoff at half measures. But Obama, at the least, is showing that he does ponder these difficult issues in a deliberative manner and is still attempting to steer the nation into a post-9/11 period. That journey, though, may be a long one.

### Link – 2NC

#### The detention-drones tradeoff is empirically true

**Goldsmith, Harvard law professor, 2012**

(Jack, “Proxy Detention in Somalia, and the Detention-Drone Tradeoff”, June, <http://www.lawfareblog.com/2012/06/proxy-detention-in-somalia-and-the-detention-drone-tradeoff/>, ldg)

There has been speculation about the effect of the Obama administration’s pinched detention policy – i.e. no new detainees brought to GTMO, and no new detainees to Parwan (Afghanistan) from outside Afghanistan – on its other counterterrorism policies. I have long believed there must be some tradeoff between narrowing U.S. detention capabilities and other counterterrorism options, at least implicitly, and not necessarily for the better. As I wrote three years ago, in response to news reports that the Obama administration’s cutback on USG detentions resulted in more USG drone strikes and more outsourcing of rendition, detention, and interrogation: There are at least two problems with this general approach to incapacitating terrorists. First, it is not ideal for security. Sometimes it would be more useful for the United States to capture and interrogate a terrorist (if possible) than to kill him with a Predator drone. Often the United States could get better information if it, rather than another country, detained and interrogated a terrorist suspect. Detentions at Guantanamo are more secure than detentions in Bagram or in third countries. The second problem is that terrorist suspects often end up in less favorable places. Detainees in Bagram have fewer rights than prisoners at Guantanamo, and many in Middle East and South Asian prisons have fewer yet. Likewise, most detainees would rather be in one of these detention facilities than be killed by a Predator drone. We congratulate ourselves when we raise legal standards for detainees, but in many respects all we are really doing is driving the terrorist incapacitation problem out of sight, to a place where terrorist suspects are treated worse. The main response to this argument – especially as it applies to the detention-drone tradeoff – has been to deny any such tradeoff on the ground that there are no terrorists outside of Afghanistan (a) whom the United States is in a position to capture on the ground (as opposed to kill from the sky), and (b) whom the USG would like to detain and interrogate. Dan Klaidman’s book provides some counter-evidence, but I will save my analysis of that for a review I am writing. Here I would like to point to an important story by Eli Lake that reveals that the “United States soldiers have been hunting down al Qaeda affiliates in Somalia”; that U.S. military and CIA advisers work closely with the Puntland Security Force in Somalia, in part to redress piracy threats but mainly to redress threats from al-Shabab; that the Americans have since 2009 captured and brought to the Bosaso Central Prison sixteen people (unclear how many are pirates and how many are al-Shabab); and that American interrogators are involved in questioning al-Shabab suspects. The thrust of Lake’s story is that the conditions of detention at the Bosaso Central Prison are atrocious. But the story is also important for showing that that the United States is involved outside of Afghanistan in capturing members of terrorists organizations that threaten the United States, and does have a national security need to incapacitate and interrogate them. It does not follow, of course, that the USG can or should be in the business of detaining every al-Shabab suspect currently detained in the Bosaso Central Prison. But the Lake story does show that the alternatives to U.S. detention are invariably worse from a human rights perspective. It portends (along with last month’s WPR Report and related DOD press release) that our creeping involvement on the ground in places like Somalia and Yemen mean that the USG will in fact be in a position to capture higher-level terrorists in al Qaeda affiliates. And that in turn suggests that the factual premise underlying the denial of a detention-drone tradeoff will become harder and harder to defend.

#### Restricted detention leads to increased drone use

**Chesney, Texas law professor, 2011**

(Robert, “Article: Who May Be Held? Military Detention Through The Habeas Lens”, 52 B.C. L. Rev 769, lexis, ldg)

The convergence thesis describes one manner in which law might respond to the cross-cutting pressures associated with the asymmetric warfare phenomenon--i.e., the pressure to reduce false positives (targeting, capture, or detention of the wrong individual) while also ensuring an adequate capacity to neutralize the non-state actors in question. One must bear in mind, however, that detention itself is not the only system of government action that can satisfy that latter interest. Other options exist, including the use of lethal force; the use of rendition to [\*804] place individuals in detention at the hands of some other state; the use of persuasion to induce some other state to take custody of an individual through its own means; and perhaps also the use of various forms of surveillance to establish a sort of constructive, loose control over a person (though for persons located outside the United States it is unlikely that surveillance could be much more than episodic, and thus any resulting element of "control" may be quite weak). n210 From the point of view of the individual involved, all but the last of these options are likely to be far worse experiences than U.S.-administered detention. In addition, all but the last are also likely to be far less useful for purposes of intelligence-gathering from the point of view of the U.S. government. n211 Nonetheless, these alternatives may grow attractive to the government in circumstances where the detention alternative becomes unduly restricted, yet the pressure for intervention remains. The situation is rather like squeezing a balloon: the result is not to shrink the balloon, but instead to displace the pressure from one side to another, causing the balloon to distend along the unconstrained side. So too here: when one of these coercive powers becomes constrained in new, more restrictive ways, the displaced pressure to incapacitate may simply find expression through one of the alternative mechanisms. On this view it is no surprise that lethal drone strikes have increased dramatically over the past two years, that the Obama administration has refused to foreswear rendition, that in Iraq we have largely (though not entirely) outsourced our detention operations to the Iraqis, and that we now are progressing along the same path in Afghanistan. n212

## wf da

### OV

#### Quick timeframe of our impacts justifies intervention

Dipert 6 (Randall, PhD, Professor of Philosophy, University at Buffalo, Buffalo, “Preventive War and the Epistemological Dimension of the Morality of War,” https://www.law.upenn.edu/live/files/1291-dipert-preventive-war)

Human beings typically lack extensive, justified knowledge about the future. As we wait to act, new information can arrive or old information can be revised; we can even make new inferences from the information we had, or discover the fallaciousness of our old inferences. This is ultimately the source of the Urgency Condition and the desirability of ‘present [immediate]’ condition in the phrase ‘clear and present [danger]’: our fallibility almost always decreases with time, we have more rather than less information, and can make more leisurely and careful inferences. Our human fallibility entails that the threshold for preventive attack increases with the amount of time in advance of the expected aggression against us, since the risk of wrong assessment of such calculations as Just Cause and Chance of Success is typically proportional to the amount of time we have to gather more information or correct earlier factual or judgment errors. We should realize, however, that requirements of ‘imminence’ or ‘clear and present danger’ are wise rules of thumb, but are themselves grounded in more detailed epistemological considerations (Walzer 2004: 147). In establishing the moral justifiability of going to war in a consequentialist framework, the only factor that diminishes this effect of time-increased fallibility is the amount of harm that will befall us if we wait. Observe however that Urgency is ultimately not a separate condition, but a factor that is dependent on the epistemological status of our beliefs, combined with the general likelihood of generally decreasing fallibility. Very high levels of objective certainty of a future attack on us would require only small amounts of harm in waiting (for God, no harm to waiting is necessary), in order to justify an anticipatory attack by us, while small objective uncertainty in our judgments of future attack would require comparatively greater amounts of harm in waiting to attack in order to justify a preventive attack. In the calculus of justified war, there may be other interactions as well: the likelihood of our total destruction in an enemy first-strike would require slightly less objective certainty than would the likelihood of at worst losing a city.19 Very roughly, the justifiability in going to war, J, is positively proportion to the probability of harm of an enemy surprise attack, P, the amount of this harm, H, and the danger in waiting, W, crudely, J8/P/H/ W\*/although to be ‘minimally reasonably justifiable’ each of P, H, and W must be above a certain threshold.

#### War turns structural violence but not the other way around

Joshua Goldstein, Int’l Rel Prof @ American U, 2001, War and Gender, p. 412

First, peace activists face a dilemma in thinking about causes of war and working for peace. Many peace scholars and activists support the approach, “if you want peace, work for justice.” Then, if one believes that sexism contributes to war one can work for gender justice specifically (perhaps among others) in order to pursue peace. This approach brings strategic allies to the peace movement (women, labor, minorities), but rests on the assumption that injustices cause war. The evidence in this book suggests that causality runs at least as strongly the other way. War is not a product of capitalism, imperialism, gender, innate aggression, or any other single cause, although all of these influence wars’ outbreaks and outcomes. Rather, war has in part fueled and sustained these and other injustices.9 So,”if you want peace, work for peace.” Indeed, if you want justice (gender and others), work for peace. Causality does not run just upward through the levels of analysis, from types of individuals, societies, and governments up to war. It runs downward too. Enloe suggests that changes in attitudes towards war and the military may be the most important way to “reverse women’s oppression.” The dilemma is that peace work focused on justice brings to the peace movement energy, allies, and moral grounding, yet, in light of this book’s evidence, the emphasis on injustice as the main cause of war seems to be empirically inadequate.

#### Reducing existential risk is desirable in every framework—our argument doesn’t require extreme utilitarianism.

Nick Bostrom, Professor in the Faculty of Philosophy & Oxford Martin School, Director of the Future of Humanity Institute, and Director of the Programme on the Impacts of Future Technology at the University of Oxford, recipient of the 2009 Eugene R. Gannon Award for the Continued Pursuit of Human Advancement, holds a Ph.D. in Philosophy from the London School of Economics, 2011 (“The Concept of Existential Risk,” Draft of a Paper published on ExistentialRisk.com, Available Online at <http://www.existentialrisk.com/concept.html>, Accessed 07-04-2011) We have thus far considered existential risk from the perspective of utilitarianism (combined with several simplifying assumptions). We may briefly consider how the issue might appear when viewed through the lenses of some other ethical outlooks. For example, the philosopher Robert Adams outlines a different view on these matters: I believe a better basis for ethical theory in this area can be found in quite a different direction—in a commitment to the future of humanity as a vast project, or network of overlapping projects, that is generally shared by the human race. The aspiration for a better society—more just, more rewarding, and more peaceful—is a part of this project. So are the potentially endless quests for scientific knowledge and philosophical understanding, and the development of artistic and other cultural traditions. This includes the particular cultural traditions to which we belong, in all their accidental historic and ethnic diversity. It also includes our interest in the lives of our children and grandchildren, and the hope that they will be able, in turn, to have the lives of their children and grandchildren as projects. To the extent that a policy or practice seems likely to be favorable or unfavorable to the carrying out of this complex of projects in the nearer or further future, we have reason to pursue or avoid it. … Continuity is as important to our commitment to the project of the future of humanity as it is to our commitment to the projects of our own personal futures. Just as the shape of my whole life, and its connection with my present and past, have an interest that goes beyond that of any isolated experience, so too the shape of human history over an extended period of the future, and its connection with the human present and past, have an interest that goes beyond that of the (total or average) quality of life of a population-at-a-time, considered in isolation from how it got that way. We owe, I think, some loyalty to this project of the human future. We also owe it a respect that we would owe it even if we were not of the human race ourselves, but beings from another planet who had some understanding of it. (28: 472-473) Since an existential catastrophe would either put an end to the project of the future of humanity or drastically curtail its scope for development, we would seem to have a strong prima facie reason to avoid it, in Adams’ view. We also note that an existential catastrophe would entail the frustration of many strong preferences, suggesting that from a preference-satisfactionist perspective it would be a bad thing. In a similar vein, an ethical view emphasizing that public policy should be determined through informed democratic deliberation by all stakeholders would favor existential-risk mitigation if we suppose, as is plausible, that a majority of the world’s population would come to favor such policies upon reasonable deliberation (even if hypothetical future people are not included as stakeholders). We might also have custodial duties to preserve the inheritance of humanity passed on to us by our ancestors and convey it safely to our descendants.[24] We do not want to be the failing link in the chain of generations, and we ought not to delete or abandon the great epic of human civilization that humankind has been working on for thousands of years, when it is clear that the narrative is far from having reached a natural terminus. Further, many theological perspectives deplore naturalistic existential catastrophes, especially ones induced by human activities: If God created the world and the human species, one would imagine that He might be displeased if we took it upon ourselves to smash His masterpiece (or if, through our negligence or hubris, we allowed it to come to irreparable harm).[25] We might also consider the issue from a less theoretical standpoint and try to form an evaluation instead by considering analogous cases about which we have definite moral intuitions. Thus, for example, if we feel confident that committing a small genocide is wrong, and that committing a large genocide is no less wrong, we might conjecture that committing omnicide is also wrong.[26] And if we believe we have some moral reason to prevent natural catastrophes that would kill a small number of people, and a stronger moral reason to prevent natural catastrophes that would kill a larger number of people, we might conjecture that we have an even stronger moral reason to prevent catastrophes that would kill the entire human population.

### Interrogation – 2NC

3 links

-interrogation

-info leap frogging

-signals weakness, emboldens more

#### Interrogation is the foundation of all counter terror operations.

**Thiessen, AEI visiting fellow, 2011**

(Marc, Confronting Terror: 9/11 and the Future of American National Security, 137-8, ldg)

The fact is that the government cannot protect the homeland unless it is able to interrogate captured terrorists. Why is terrorist interrogation so essential? Without it, we cannot obtain an accurate picture of the capability and intent of our enemies. Former CIA Director Michael Hayden explained it to me this way: intelligence is like putting together a large puzzle. You have all the pieces laid out on the table in front of you—and you must put them all together. But you must do so without being allowed to see the picture on the cover of the box. That is the challenge facing our intelligence officers. They have lots of puzzle pieces from different sources: tips, signals intercepts, and sources that they have recruited inside al-Qaeda. But they don't know how the pieces all fit together, or what the final picture looks like. There is only one way to obtain that final picture: by capturing the terrorist leaders who know what the picture on the cover of the box looks like. When we interrogate a terrorist mastermind like KSM, he is not simply giving us more puzzle pieces that we could find another way; he is providing information that is available in no other place—how the various pieces that we already have fit together. He is giving us the pic-ture on the cover of the box. That is what we have lost by eliminating the CIAs capability to detain and interrogate terrorist leaders. According to senior intelligence officials, well over half of the information our government learned about al-Qaeda after 9/11—how it operates, moves money, communicates, recruits operatives, picks targets, plans and carries out attacks—came from the interrogation of terrorists in CIA custody. Consider for a moment that without this capability, more than half of what we knew about the enemy would have disappeared. To this day, we are still using the information that the CIA obtained from KSM and other high-value terrorists to help disrupt terrorist plots and keep our country safe from new attacks. But with each passing year, that information becomes increasingly dated. New leaders rise through the ranks; new terrorists operatives are recruited; and new methods are used to communicate, move money, recruit operatives, and plan new attacks. We are no longer replenishing information about al-Qaeda's inner workings because we are no longer capturing and detaining the terrorist leaders who could refresh our knowledge about al-Qaeda's operations.

#### Preventive detention is key to maintain actionable intelligence

**Carafano et al., Georgetown adjunct professor, 2004**

(James, “Preventive Detention and Actionable Intelligence”, 9-16, <http://www.heritage.org/research/reports/2004/09/preventive-detention-and-actionable-intelligence>, ldg)

As those involved in intelligence collection know, much intelligence information--even the best and most accurate information that is directly actionable--is not suitable for use in our existing criminal justice system. Consider just a few of the possibilities:4 Highly accurate information may have been provided by a foreign government, but only on the condition that the information never be publicly disclosed, or indeed, that the fact of the government's cooperation with us never be disclosed. Using this information, even in the controlled setting of a criminal trial governed by the procedures of the Classified Information Procedures Act (CIPA)5, would dry up the source of information and end its utility for all future events. Information of unquestioned veracity might have been gathered through sources and methods that are not known to the public or to foreign powers and terrorists. Public disclosure that the information is in the possession of the United States would compromise the source or method and render it useless.6 There is some anecdotal evidence that this has already occurred. During the first World Trade Center bombing trial, the government disclosed that it had the capacity to intercept Osama bin Laden's satellite phone calls. It is reported that, naturally, he ceased using satellite phones.7 Evidentiary rules requiring disclosure of evidence can conflict with national security needs. One need only look at the difficulties created by the trial of Zacarias Moussaoui to recognize this problem. Criminal trial rules require that he have access to al-Qaeda operatives (reported to be Khalid Sheikh Mohammed and Ramsi Binalshibh) as a potential witnesses with allegedly favorable evidence.8 Yet allowing Moussaoui (or his lawyers) access to Mohammed and Binalshibh while they are still being interrogated would be a foolhardy compromise of vital intelligence assets. The rules of evidence in a court of law strictly limit the admissibility of information. Documents and photographs must be authenticated. Hearsay is not allowed.9 Yet often the best, most useful intelligence information cannot meet these legal requirements. A stolen document (or one intercepted by electronic means) often cannot be authenticated. The individual who surreptitiously took a photograph might not be available in an American court to authenticate it. And sometimes the best oral intelligence ("At a meeting last week, Osama said . . .") is rankest hearsay. Finally, one must confront the new reality posed by the "problem" of interrogation. Virtually every practitioner of interrogation maintains that one of the most successful means of productive interrogation is isolation. As the Fourth Circuit has acknowledged, there is substantial force to the general argument that interruption of the interrogation process could "have devastating effects on the ability to gather information" from those who have been captured.10 Of course, the inability to gather information of this sort could well result in the failure to prevent future terrorist attacks. However, isolation of a terrorist suspect--that is the denial of access to him by anyone--is inconsistent with existing practices, including rules relating to the provision of counsel. These are but a few examples of the ways in which the intelligence-gathering function does not mesh with our conception of law enforcement and the legal system. One can readily imagine any other number of conflicts (disclosure of witness identities would endanger them; premature disclosure of the penetration of a terrorist network would cause the network to evaporate; etc.) in which the methods of intelligence, though perfectly adequate and acceptable in their own sphere, are unacceptable in the traditional criminal legal realm.

### Yes Terrorism

#### High risk of terrorism-current safety is an incomplete patchwork.

**Luongo et al., Partnership for Global Security president, 2012**

(Kenneth, “Nuclear Terrorism: A Clear Danger”, 3-15, <http://www.nytimes.com/2012/03/16/opinion/nuclear-terrorism-a-clear-danger.html?_r=1&>, ldg)

Terrorists exploit gaps in security. The current global regime for protecting the nuclear materials that terrorists desire for their ultimate weapon is far from seamless. It is based largely on unaccountable, voluntary arrangements that are inconsistent across borders. Its weak links make it dangerous and inadequate to prevent nuclear terrorism. Later this month in Seoul, the more than 50 world leaders who will gather for the second Nuclear Security Summit need to seize the opportunity to start developing an accountable regime to prevent nuclear terrorism. There is a consensus among international leaders that the threat of nuclear terrorism is real, not a Hollywood confection. President Obama, the leaders of 46 other nations, the heads of the International Atomic Energy Agency and the United Nations, and numerous experts have called nuclear terrorism one of the most serious threats to global security and stability. It is also preventable with more aggressive action. At least four terrorist groups, including Al Qaeda, have demonstrated interest in using a nuclear device. These groups operate in or near states with histories of questionable nuclear security practices. Terrorists do not need to steal a nuclear weapon. It is quite possible to make an improvised nuclear device from highly enriched uranium or plutonium being used for civilian purposes. And there is a black market in such material. There have been 18 confirmed thefts or loss of weapons-usable nuclear material. In 2011, the Moldovan police broke up part of a smuggling ring attempting to sell highly enriched uranium; one member is thought to remain at large with a kilogram of this material. A terrorist nuclear explosion could kill hundreds of thousands, create billions of dollars in damages and undermine the global economy. Former Secretary General Kofi Annan of the United Nations said that an act of nuclear terrorism “would thrust tens of millions of people into dire poverty” and create “a second death toll throughout the developing world.” Surely after such an event, global leaders would produce a strong global system to ensure nuclear security. There is no reason to wait for a catastrophe to build such a system. The conventional wisdom is that domestic regulations, U.N. Security Council resolutions, G-8 initiatives, I.A.E.A. activities and other voluntary efforts will prevent nuclear terrorism. But existing global arrangements for nuclear security lack uniformity and coherence. There are no globally agreed standards for effectively securing nuclear material. There is no obligation to follow the voluntary standards that do exist and no institution, not even the I.A.E.A., with a mandate to evaluate nuclear security performance. This patchwork approach provides the appearance of dealing with nuclear security; the reality is there are gaps through which a determined terrorist group could drive one or more nuclear devices.

**Their evidence is all just like “there are a lot of steps” --- ya obviously, and our authors considered all of them --- the risk is real**

Peter **Beinart 8**, associate professor of journalism and political science at CUNY, The Good Fight; Why Liberals – and only Liberals – Can Win the War on Terror and Make America Great Again, 106-7

For all these reasons, jihadists seem less intent on acquiring a finished nuclear weapon than on acquiring weapons- grade uranium and building the bomb themselves. In the early 1990s, Al Qaeda bought a 3- foot- long cylinder from a Sudanese military officer who said it contained South African highly enriched uranium. It turned out to be a hoax. Jihadists have reportedly made other failed attempts as well. Eventually, however, they could succeed. Moscow may adequately protect its nuclear weapons, but the National Academy of Sciences has warned that “large inventories of SNM [fissile material] are stored at many sites that apparently lack inventory controls.” And the Russians reportedly experience one or two attempted thefts of that material a year—that they know of. ¶ If Al Qaeda obtained 50 kilograms of weapons-g rade uranium, the hardest part would be over. The simplest nuke to build is the kind the United States dropped on Hiroshima, a “gun- type,” in which a mass of highly enriched uranium is fired down a large gun barrel into a second uranium mass. Instructions for how to make one are widely available. Just how widely available became clear to an elderly nuclear physicist named Theodore Taylor in 2002, when he looked up “atomic bomb” in the World Book Encyclopedia in his upstate New York nursing home, and found much of the information you’d need. ¶ Even with directions, building a nuclear bomb would still be a monumental task. According to a New York Times Magazine article by Bill Keller, in 1986 five Los Alamos nuke builders wrote a paper called “Can Terrorists Build Nuclear Weapons?” They concluded that it would require people who understood “the physical, chemical and metallurgical proper-¶ 107¶ ties of the various materials to be used, as well as characteristics affecting their fabrication; neutronic properties; radiation effects, both nuclear and biological; technology concerning high explosives and/or chemical pro- pellants; some hydrodynamics; electrical circuitry.” That sounds daunting. **Yet, at the end of the paper, the scientists answered their question: “Yes, they can.”** ¶Finally, once terrorists built a nuclear weapon, they’d still have to smuggle it into the United States. The best way might be to put it in a shipping container, on one of the many supertankers that bring oil into American ports every day. The containers are huge, more than big enough to fit a gun-t ype nuke, which could be as small as 6 feet in length and 6 inches in diameter. Highly enriched uranium emits much less radiation than plutonium, and inside a supertanker’s thick double-steel hull it would be hard for sensors to detect. What’s more, a single ship can carry several thousand containers, most of which are never searched. On September 11, 2002, ABC News smuggled a 15- pound cylinder of depleted uranium in a cargo container past U.S. customs. On September 11, 2003, they performed the same exercise—and got the uranium past customs again.

## Case

### Util Solves

#### Rule utilitarianism solves a war of ideology which is the only time when conflict devolves into atrocity, limits imperialism and solves blowback

Whitman 7 (Jeffery, Prof of Philosophy, Religion, and Classical Studies Susquehanna University, “Just War Theory and the War on Terrorism A Utilitarian Perspective,” http://www.mesharpe.com/PIN/05Whitman.pdf)

How might the rule-utilitarian perspective for just war theory helpfully inform the war on terrorism? Several potential benefits seem especially salient. The first major advantage that such a perspective lends to the fight against terrorism is that it avoids the temptation to turn the fight into a utopian crusade against evil.27 While it is true that some of the perpetrators of the current terrorism have taken on the nihilistic perspective described earlier (and therefore represent a kind of evil beyond compromise), most of the people who seem to sympathize with their attacks against U.S. and Western interests are not evil people. Many of them have genuine grievances with the polices of Western nations, and their support for terrorism can be weakened or even eliminated if some of those grievances are addressed. Casting the war against global terrorism as a struggle between good and evil would seem to invoke a fight-to-the-death struggle, but seeing the struggle in this way defies the reality of the situation, a reality better addressed in utilitarian terms. While there can be no compromise between good and evil, a more nuanced understanding of what motivates support for Islamic terrorism (e.g., the real or perceived bias of U.S. policy against Arab and Muslim interests) would show that not all of our foes are part of some undifferentiated evil. Recognizing this fact would enable us to recognize that moral considerations place limits on the use of military force—in terms of both means and ends—in prosecuting this war. And these limits can be best applied through the tenets of just war theory supported by a ruleutilitarian foundation. The struggle against terrorism will be a long struggle, and it will require the kind of balancing of means to ends that the utilitarian calculus promotes. The proper goal in the end is not the complete destruction of all terrorist groups and their supporters (as if such a goal were even possible). Instead, the goal must be more moderate, though no less challenging. Quoting Joseph Boyle. The state of affairs in which the prospect of terrorist activity is not a serious threat to people’s conduct of their lives but part of the disagreeable but acceptable risks of modern life is a reasonable public goal in relationship to terrorism generally, as it is in relationship to criminal activity more generally. (2003, 168)

### Kurasawa

#### ---Discussions of the future dictate our response to the present --- Even if traditional paradigms of prediction are flawed, there’s value to discussing our da.

Kurasawa 2004

Fuyuki, Constellation, v. 11, no. 4, “Cautionary Tales,” Blackwell

When engaging in the labor of preventive foresight, the first obstacle that one is likely to encounter from some intellectual circles is a deep-seated skepticism about the very value of the exercise. A radically postmodern line of thinking, for instance, would lead us to believe that it is pointless, perhaps even harmful, to strive for farsightedness in light of the aforementioned crisis of conventional paradigms of historical analysis. If, contra teleological models, history has no intrinsic meaning, direction, or endpoint to be discovered through human reason, and if, contra scientistic futurism, prospective trends cannot be predicted without error, then the abyss of chronological inscrutability supposedly opens up at our feet. The future appears to be unknowable, an outcome of chance. Therefore, rather than embarking upon grandiose speculation about what may occur, we should adopt a pragmatism that abandons itself to the twists and turns of history; let us be content to formulate ad hoc responses to emergencies as they arise. While this argument has the merit of underscoring the fallibilistic nature of all predictive schemes, it conflates the necessary recognition of the contingency of history with unwarranted assertions about the latter’s total opacity and indeterminacy. Acknowledging the fact that the future cannot be known with absolute certainty does not imply abandoning the task of trying to understand what is brewing on the horizon and to prepare for crises already coming into their own. In fact, the incorporationy0 of the principle of fallibility into the work of prevention means that we must be ever more vigilant for warning signs of disaster and for responses that provoke unintended or unexpected consequences (a point to which I will return in the final section of this paper). In addition, from a normative point of view, the acceptance of historical contingency and of the self-limiting character of farsightedness places the duty of preventing catastrophe squarely on the shoulders of present generations. The future no longer appears to be a metaphysical creature of destiny or of the cunning of reason, nor can it be sloughed off to pure randomness. It becomes, instead, a result of human action shaped by decisions in the present – including, of course, trying to anticipate and prepare for possible and avoidable sources of harm to our successors.

### No Endless War

#### You have it backwards – elites cant manipulate democratic structures to justify violence – citizens always check decisions to engage in and escalate war

Laron K. **Williams** (Department of Political Science Texas Tech University) David J. **Brulé** (Department of Political Science University of Tennessee) **and** Michael **Koch** (Department of Political Science Texas A&M University) **2009** “WAR VOTING: INTERSTATE DISPUTES, THE ECONOMY, AND ELECTORAL OUTCOMES” http://people.tamu.edu/~mtkoch/War%20and%20Voting.pdf

Elite leadership arguments are based on the premise that political elites lead public opinion such that it is in line with the elites‘ policy preferences (e.g., Foyle 2004). When faced with a dramatic foreign policy event, leaders choose a course of action and marshal sufficient public support for the effort. According to these arguments, a leader‘s competence in handling foreign policy crises yields increased approval ratings, which translate into electoral rewards at the polls – the ―rally ‗round the flag effect‖ (MacKuen 1983; Mueller 1973). The rally effect provides leaders with incentives to use force in an effort to reverse declining approval ratings (e.g., DeRouen 1995; Morgan and Bickers 1992) or to divert attention from deteriorating economic conditions (e.g., Hess and Orphanides 1995) – the diversionary use of force. Diversionary theory suggests that democratic leaders make trade-offs between economic performance and foreign policy in their quest for votes (e.g., Miller 1995; Brulé and Williams 2009). When the economy is performing poorly, leaders expect electoral punishment; but using force abroad may reverse the leader‘s dire prospects if voters reward the leadership for competence in foreign affairs (e.g., Richards, et al. 1993). But the ability of leaders to capitalize on foreign policy exploits is uncertain for a number of reasons. First, boosts in leader approval following crises tend to be small and short-lived, if they occur at all (Lian and Oneal 1993). Second, it is not clear whether increases in approval ratings translate into improved electoral prospects. As Baum (2004: 192) observes, ―short-term support is an unreliable predictor of the eventual political ramifications of a policy, because many of today‘s supporters are likely to become tomorrow‘s opponents should the policy be perceived as failing.‖It is also unclear whether leaders can successfully shape public opinion and take advantage of potentially beneficial events. Indeed, the relationship may flow in the opposite direction: democratic citizens may constrain decisions on the use of military force (Sobel 2001). Efforts to emphasize foreign policy over the economy may backfire. In his analysis of US intervention in Somalia, Baum (2004) suggests that military intervention increased when the public paid the least attention toward foreign policy. George H.W. Bush realized that an attentive public would be unimpressed with any dramatic foreign policy attempts as the economy slowed. Consequently, Bush chose not to send ground troops into Somalia during the summer and fall of 1992 (Baum 2004). Conventional wisdom suggests that sending ground troops was a reasonable option. Foreign policy was considered Bush‘s strength vis-à-vis Clinton, and the public and Congress largely supported the intervention. Ultimately, Bush did not want to escalate the conflict when the economy was performing poorly. He was already fighting the perception that he cared more about foreign policy than domestic policy. For example, his campaign advisors were ― ‗fearful of accusations that all the President cared about was foreign policy‘ and had urged him to take a low public profile on all foreign policy issues until after the election‖ (Oberdorfer 1992, quoted in Baum 2004: 203).

## 1nr

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### 1NR Solvency

#### And even if they think that judicial restrictions are key – Congress can create courts too but it doesn’t link to the net benefit because Congress is the starting point so the courts will be able to maintain legitimacy

Fuchs-General Cousel, National Security Archive-7/31/8

http://judiciary.house.gov/hearings/pdf/Fuchs080731.pdf

Hearing on H.R. 5607, State Secrets Protection Act of 2008 United States House of Representatives

Committee on the Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties

Under the FOIA, members of the public may exercise a right to records without any showing of need. In that area, to counter excessive government secrecy that could interfere with public accountability, Congress directed courts to conduct de novo review of national security claims and empowered courts to conduct in camera review of classified materials. By directing de novo review, Congress signaled that it wanted a new review of the facts and law that did not rely on the agency’s administrative decision to deny requested records. Thus, Congress plainly intended that the courts would review procedural and substantive issues and would permit a full airing of the factual and legal issues. Indeed courts in FOIA cases have used many of the tools that are included in the State Secrets Protection Act of 2008, including indices of allegedly secret records,14 special masters,15 and in camera review.16 There even have been instances of courts directing agencies to orally describe the characteristics of withheld records in a proceeding involving opposing counsel, a so-called “oral Vaughn index.”

Congress can increase judicial restrictions

Mortenson 11 (Julian Davis Assistant Professor, University of Michigan Law School, “Review: Executive Power and the Discipline of History Crisis and Command: The History of Executive Power from George Washington to George W. Bush John Yoo. Kaplan, 2009. Pp vii, 524,” Winter 2011, University of Chicago Law Review 78 U. Chi. L. Rev. 377)

At least two of Yoo's main examples of presidential power are actually instances of presidential deference to statutory restrictions during times of great national peril. The earliest is Washington's military suppression of the Whiskey Rebellion (III, pp 66-72), a domestic disturbance that Americans viewed as implicating adventurism by European powers and threatening to dismember the new nation. n60 The Calling Forth Act of 1792 n61 allowed the President to mobilize state militias under federal control, but included a series of mandatory procedural checks--including judicial [\*399] approval--that restricted his ability to do so. n62

#### Congress can expand judicial jurisdiction-Medicare amendments

Teva Pharmaceuticals v Pfizer 5

395 F.3d 1324 TEVA PHARMACEUTICALS USA, INC., Plaintiff-Appellant, v. PFIZER, INC., Defendant-Appellee. No. 04-1186. United States Court of Appeals, Federal Circuit.

<https://bulk.resource.org/courts.gov/c/F3/395/395.F3d.1324.04-1186.html>

Teva argues that, in view of the Medicare Amendments, its declaratory judgment suit presents a justiciable controversy under Article III. In making this argument, Teva starts from the premise that, in its words, the reasonable apprehension test serves "primarily prudential not constitutional concerns." (Br. for Teva at 52.) It then posits that, in the Medicare Amendments, Congress directed courts to exercise jurisdiction over declaratory judgment actions such as this to the limits of Article III. Joined by Amicus Curiae the Federal Trade Commission ("FTC"), Teva urges that it has suffered injury independent of the threat of an infringement suit because the 180-day exclusivity period itself has major economic consequences in the case of a drug such as Zoloft(R). Teva and the FTC argue that there is a clear connection between this injury and actions already taken by Pfizer. They contend that if Pfizer had not obtained the '699 patent and listed it in the Orange Book, settled its litigation with Ivax, declined to sue Teva, and refused Teva's request for a covenant not to sue, Teva would have the opportunity to gain access to the Zoloft(R) market during the 180-day period that will follow the expiration of the '518 patent.

They’ve conceded that Congress will use appropriations to restrain the executive – that solves alone just as much as judicial review

Stith-prof law Yale-88 97 Yale L.J. 1343

ARTICLE: Congress' Power of the Purse.

E. The Power To Deny Appropriations The genius of regulating executive branch activities by limitations on appropriations is that these limitations can be bureaucratically 79 and contemporaneously enforced without the need for litigation or after-the-fact congressional investigations in every case. 80 Appropriations limitations constrain every government action and activity and, assuming general compliance with legislative prescriptions, constitute a low-cost vehicle for effective legislative control over executive activity. Should the Executive choose to ignore congressional declarations of policy, Congress may enact purse-string limitations. 81 Historically, however, Congress has been reluctant to use appropriations control to limit federal activities in certain sensitive areas. 82 Only since World War II has Congress consistently enacted appropriations limitations as a means of controlling some aspects of foreign policy. 83 During [\*1361] the Vietnam War, Congress cut off funds for Cambodian operations 84 only after a statutory "declaration of policy" -- not tied to continued funding -- had failed to achieve that end. 85 The "object" limitation used in the Cambodian situation (and used a decade later to constrain United States involvement in support of the armed Nicaraguan opposition, or contras) is especially powerful: the denial of any appropriated funds for a specific purpose. 86 Generally, a complete denial provides that no appropriated funds may be used for an activity that otherwise would be a proper object of expenditure from a lump-sum appropriation for the agency. 87 Where Congress thus denies appropriations, the denial is not merely a determination that the public fisc cannot afford spending any money on that activity. By such appropriations legislation, Congress decides that, under our constitutional scheme, for the duration of the appropriations denial, the specific activity is no longer within the realm of authorized government actions. This legislative action denies the Executive all means of engaging in the prohibited activity because employee salaries and other overhead costs are almost invariably paid out of appropriated funds. 88 When government employees act on behalf of the United States, they are subject to every limitation that applies to appropriated funds. In principle, a government employee acting in an official capacity -- including the President -- may not spend one minute to make one phone call to solicit private funds (for use [\*1362] of the government or directly for a third party) for an activity explicitly denied appropriated funds. 89 Even where Congress grants authority to an agency to spend donations or other receipts not deposited first in the Treasury, 90 that authority is not sufficient to permit continuation of an activity which has been denied all appropriated funds. Pursuant to the terms of the congressional action denying appropriations, an agency may not use donated funds to engage in a prohibited activity if any appropriated funds (including funds for employee salaries) would be expended in administering the donated funds. 91 Quite simply, the letter of the appropriation limitation applies to every penny of appropriations. Unless Congress clearly intends to permit continued use of gift funds for an activity explicitly denied "appropriated" funds, an agency has no authority to invoke its gift authority to avoid such object restrictions on its appropriations. This is not an exaltation of form over substance; the form (an appropriations limitation) and the substance (a limitation on executive authority) are entirely congruent. Suppose, for instance, that Congress enacts an appropriation for the Department of Health and Human Services (HHS) which provides that "no funds appropriated herein" may be used for family planning programs or activities. This provision would prohibit HHS employees from administering or otherwise supporting the now-unauthorized family planning activity. 92 Although an employee of HHS perhaps could raise private funds for family planning programs by making a few phone calls, the employee is prohibited from doing these things while acting in his or her official capacity. 93 In sum, there is no de minimis exception to appropriation limitations, just as there is no de minimis exception to the constitutional appropriations requirement. Appropriations for federal agencies, like conditions in [\*1363] spending programs for nonfederal entities, 94 are important sources of regulatory authority because the expenditure of any and all monies is conditioned upon compliance with prescribed policy. Where Congress prohibits use of any appropriated funds for an activity, 95 the Executive simply has no authority to finance the prohibited activity with either private or public funds. 96 By placing the power of the purse in Congress, the Constitution makes Congress accountable for the actions of the operating branch of the federal government.

### 1NR Trauma DA

#### And trials are unethical for guantanimo detainees – they revictimize them

Koss-Public Health University of Arizona-2K

Blame, Shame, and Community: Justice Responses to Violence Against Women

http://www.mincava.umn.edu/documents/koss/koss.html

Inherent traumatizing features of adversarial justice

Women whose rapes and assaults are adjudicated learn that even successful convictions or civil damage awards exact a psychic price. Partner violence victims whose cases are prosecuted face stressors not present in other crimes, including being forced to testify about intimate details of their relationships, fear of losing their children and vice versa, and fear of having to raise the children alone without child support ( [Goodman et al., 1999](http://www.mincava.umn.edu/documents/koss/koss.html#goodman1999) ). Rape survivors may be dismayed that their identity is a matter of public record, that they are expected to testify about graphic details of sexual assault in open court, and that even rape shield laws fail to protect them from questions about their social and sexual history as they pertain to consent issues. Victims may be further shocked when a plea bargain to which they were not party to and do not agree with ends their recourse for justice, precluding any face-to-face encounter with the perpetrator

#### Trials and testimony cause trauma for detainees

Koss-Public Health University of Arizona-2K

Blame, Shame, and Community: Justice Responses to Violence Against Women

http://www.mincava.umn.edu/documents/koss/koss.html

Increased occurrence of nightmares, decreased participation in social activities, more dissatisfaction with heterosexual relationships, loss of appetite, recurrence of phobias, and greater psychological distress have been documented among victims whose cases went to trial ( [Holmstrom & Burgess, 1975](http://www.mincava.umn.edu/documents/koss/koss.html#holm1975) ). Insensitive attempts to obtain the testimony of Bosnian rape survivors resulted in severe traumatization of the victims, leading to feelings of shame, lack of trust, fear of reliving bad memories, fear of reprisals, and suicide attempts ( [Allen, 1996](http://www.mincava.umn.edu/documents/koss/koss.html#allen1996) ).

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### 1NR Overview

Losing legitimacy collapses the effectiveness of the courts

Jackson 11 (Lester, state Senator from Chatham County,“The Threat Of Liberal Judicial Activism Reaches New Heights,” http://www.americanthinker.com/2011/08/the\_threat\_of\_liberal\_judicial\_activism\_reaches\_new\_heights.html)

From time to time, there are calls for making Supreme Court nominations a major issue in presidential elections. These calls have never been really met. This time, the presidential candidates should wake up. They should be talking seriously and often about justices who have contempt for the law, so that the American people will also wake up to the danger. If they don't wake up in 2012, they surely will wake up in 2013 to a Supreme Court that a majority of Americans do not respect because the majority of the Court lacks respect for them. In turn, that will call into question the very legitimacy of judicial review for which Chief Justice Marshall so eloquently laid the groundwork.

Turn outweighs solvency-without support, judicial activism collapses -legitimacy is a pre-requisite

Hirsch 4 (Ran Hirsch is an Associate Professor of Political Science and Law at the University of Toronto, “'Juristocracy' - Political, not Juridical,” Project Muse)

In sum, the existence of an active, non-deferential constitutional court is a necessary, but not a sufficient condition, for persistent judicial activism and the judicialization of mega politics. Assertion of judicial supremacy cannot take place, let alone be sustained, without the tacit or explicit support of influential political stakeholders. It is unrealistic, and indeed utterly naïve, to assume that core political questions such as the struggle over the nature of Canada as a confederation of two founding peoples, Israel's wrestling with the question of "who is a Jew?" and its status as a Jewish and democratic state, the struggle over the status of Islamic law in predominantly Muslim countries, or the transition to democracy in South Africa could have been transferred to courts without at least the tacit support of pertinent political stakeholders in these countries. And we have not yet said a word about the contribution of ineffective political institutions, the spread of litigation oriented NGOs, or opposition and interest group use of the courts to the judicialization of mega-politics. A political sphere conducive to judicial activism is at least as significant to its emergence and sustainability as the contribution of courts and judges. In short, judicial power does not fall from the sky. It is politically constructed. The portrayal of constitutional courts and judges as the major culprits in the all-encompassing judicialization of politics worldwide is simply too simple a tale.

#### Activism turns the ability for courts to constrain the executive

O’Scannlain 6 (diarmuind, Judge, US Court of Appeals for the Ninth Circuit, “On Judicial Activism,” Open Spaces 3:1 <http://open-spaces.com/article-v3n1-oscannlain.php>)

Judicial activism generates a vicious cycle: it triggers a lack of confidence in judicial decisions which triggers political meddling which reinforces a lack of confidence in judicial decisions. A politician in robes is no judge at all. Once a judge imposes his will as legislator, he loses his democratic legitimacy. No one person in a democratic society of 270 million citizens should wield legislative power if only fifty-two people have approved of him. A judge who wields power like a politician enters the political process. Having forsaken neutrality, he will soon lose his independence. The people will allow a judge to be independent only for as long as they perceive him as truly neutral-forsaking decisions based upon his own interests and biases. Thus, judicial activism encourages political interference both in the process of judging and selection of judges. One need look no further than the current battle between the White House and the Senate over judicial nominees for a glimpse of the extent to which the judicial appointments process has become politicized. Nor does the threat of political interference end after the judge is selected. A multitude of proposals have been offered in Congress to weaken the independence of the judiciary. Some take the form of constitutional amendments to impose term limits on judges; others have been nothing more sophisticated than calls for the impeachment of particular judges who have rendered unpopular decisions. These may be only harbingers of what is to come. Fortunately, judges retain-at least for now-their independence to apply the law neutrally and faithfully. But so long as one judge indulges his own sympathies rather than following the text of the law before him, he will only make it harder for his colleagues to retain the courage to decide cases in faithful, predictable, and uniform ways.

### 1NR A2: Controversy K/2 Legitimacy

#### The Court’s pursuing an incremental strategy in regards to War Powers now-the plan causes massive backlash and executive non-acquiescence

**Devins, William & Mary government professor, 2010**

(Neavl, “Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants”, 12 U. Pa. J. Const. L. 491, lexis, ldg)

Congress, the President, and the Court. Throughout the enemy combatant litigation, Congress signaled to the Court that it would go along with whatever ruling the Court made in these cases. In other words, contrary to the portrayal by academics and the news media of the Supreme Court's willingness to stand up to Congress and the executive branch, lawmakers repeatedly stood behind Court rulings limiting elected branch power. At the same time, as I will detail in the next Part, the Court pursued an incremental strategy - declining to test the boundaries of lawmaker acquiescence and, instead, issuing decisions that it knew would be acceptable to lawmakers. n85 The 2004 rulings in Hamdi and Rasul triggered anything but a backlash. In the days following the decisions, no lawmaker spoke on the House or Senate floor about the decision, and only a handful issued [\*508] press releases about the cases. n86 And while eight members of Congress signed onto amicus briefs backing administration policy, n87 Congress did not seriously pursue legislative reform on this issue until the Supreme Court had agreed to hear the Hamdan case. n88 When Congress enacted the Detainee Treatment Act (DTA) in December 2005, "lawmakers made clear that they did not see the DTA as an attack on either the Court or an independent judiciary." n89 Most significant, even though the DTA placed limits on federal court consideration of enemy combatant habeas petitions, lawmakers nevertheless anticipated that the Supreme Court would decide the fate of the President's military tribunal initiative. Lawmakers deleted language in the original bill precluding federal court review of Hamdan and other pending cases. n90 Lawmakers, moreover, depicted themselves as working collegially with the Court; several Senators, for example, contended that the "Supreme Court has been shouting to us in Congress: Get involved," n91 and thereby depicted Rasul as a challenge [\*509] to Congress, n92 "asking the Senate and the House, do you intend for ... enemy combatants ... to challenge their detention [in federal courts] as if they were American citizens?" n93 Lawmakers also spoke of detainee habeas petitions as an "abuse[]" n94 of the federal courts, and warned that such petitions might unduly clog the courts, n95 thus "swamping the system" n96 with frivolous complaints. n97 Under this view, the DTA's cabining of federal court jurisdiction "respects" the Court's independence and its role in the detainee process. n98 Following Hamdan, lawmakers likewise did not challenge the Court's conclusions that the DTA did not retrospectively bar the Hamdan litigation and that the President could not unilaterally pursue his military tribunal policy. n99 Even though the Military Commissions Act (MCA) eliminates federal court jurisdiction over enemy combatant habeas petitions, lawmakers depicted themselves as working in tandem with the Court. Representative Duncan Hunter (R. Cal.), who introduced the legislation on the House floor, said during the debates that the bill was a response to the "mandate of the Supreme Court that Congress involve itself in producing this new structure to prosecute terrorists." n100 And DTA sponsor Lindsey Graham stated: "The Supreme Court has set the rules of the road and the [\*510] Congress and the president can drive to the destination together." n101 Even lawmakers who expressed disappointment in the Court's ruling did not criticize the Court. Senator Sessions (R. Ala.), for example, blamed Hamdan's lawyers for misleading the Court about the legislative history of the DTA. n102 Debates over the MCA habeas provision, moreover, reveal that lawmakers thought that the Supreme Court was responsible for assessing the reach of habeas protections. Fifty-one Senators (fifty Republicans and one Democrat) voted against a proposed amendment to provide habeas protections to Guantanamo detainees. Arguing that enemy combatants possessed no constitutional habeas rights, n103 these lawmakers contended that they could eliminate habeas claims without undermining judicial authority. One of the principal architects of the MCA, Senator Lindsey Graham, put it this way: Enemy combatants have "a statutory right of habeas ... . And if [the Supreme Court finds] there is a constitutional right of habeas corpus given to enemy combatants, that is ... totally different ... and it would change in many ways what I have said." n104 Forty-eight Senators (forty-three Democrats, four Republicans, and one Independent) argued that the habeas-stripping provision was unconstitutional, that the courts would "clean it up," n105 and that Congress therefore should fulfill its responsibility to protect "that great writ." n106 When the Supreme Court agreed to rule on the constitutionality of the MCA, the Congress no longer supported the MCA's habeas-stripping provisions. Democrats had gained control of both Houses of Congress. Not surprisingly, there was next-to-no lawmaker criticism of Boumediene. In the week following the decision, no member [\*511] of the House, and only two Senators, made critical comments about the decision on the House or the Senate floor. n107 \* \* \* Supreme Court enemy combatant decisions were not out-of-step with prevailing social and political forces. Academics (including prominent conservatives), the media (again including conservative newspapers), former judges, and bar groups had all lined up against the administration. Interest groups too opposed the administration (including some conservative groups). Over the course of the enemy combatant litigation, the American people increasingly opposed the Bush administration. This opposition, in part, was tied to policy missteps (some of which implicated enemy combatant policy-making). These missteps were highly visible and contributed to widespread opposition to the Bush administration. For its part, Congress did not question the Court's role in policing the administration's enemy combatant initiative. By the time the Court decided Boumediene, voter disapproval of the President had translated into widespread opposition to the administration's enemy combatant initiative; a Democratic Congress supported habeas protections for enemy combatants and presidential candidates John McCain and Barack Obama called for the closing of Guantanamo Bay. In the next part of this Essay, I will discuss the incremental nature of the Court's decision making. This discussion will provide additional support for the claims made in this section. Specifically, I will show that each of the Court's decisions was in sync with changing attitudes towards the Bush administration. More than that, Part II will belie the myth that Court enemy combatant decisions were especially consequential. Unlike newspaper and academic commentary about these cases, Court decision making had only a modest impact. Correspondingly, the Court never issued a decision that risked its institutional capital; the Court knew that its decisions would be followed by elected officials and that its decisions would not ask elected officials to take actions that posed some national security risk. [\*512] II. Judicial Modesty or Judicial Hubris: Making Sense of the Enemy Combatant Cases From 1952 (when the Supreme Court slapped down President Truman's war-time seizure of the steel mills) n108 until 2004 (when the Court reasserted itself in the first wave of enemy combatant cases), the judiciary largely steered clear of war powers disputes. n109 In part, the Court deferred to presidential desires and expertise. The President sees the "rights of governance in the foreign affairs and war powers areas" as core executive powers. n110 Correspondingly, the President has strong incentives to expand his war-making prerogatives. n111 For its part, the Court has limited expertise in this area, and, as such, is extremely reluctant to stake out positions that may pose significant national security risks. n112 The Court, moreover, is extremely reluctant to risk elected branch opprobrium. Lacking the powers of purse and sword, the Court cannot ignore the risks of elected branch non-acquiescence. n113 Against this backdrop, the Court's repudiation of the Bush administration's enemy combatant initiative appears a dramatic break from past practice. Academic and newspaper commentary back up this claim - with these decisions being labeled "stunning" (Harold [\*513] Koh), n114 "unprecedented" (John Yoo), n115 "breathtaking" (Charles Krauthammer), n116 "astounding" (Neal Katyal), n117 "sweeping and categorical" (New York Times), n118 and "historic" (Washington Post and Wall Street Journal). n119 Upon closer inspection, however, the Court's decisions are anything but a dramatic break from past practice. Part I detailed how Court rulings tracked larger social and political forces. In this Part, I will show how the Court risked neither the nation's security nor elected branch non-acquiescence. n120 The Court's initial rulings placed few meaningful checks on the executive; over time, the Court - reflecting increasing public disapproval of the President - imposed additional constraints but never issued a ruling that was out-of-sync with elected government preferences. Separate and apart from reflecting growing public and elected government disapproval of Bush administration policies, the Court had strong incentives to intervene in these cases. The Bush administration had challenged the Court's authority to play any role in national security matters. n121 This frontal assault on judicial power prompted the Court to stand up for its authority to "say what the law is." In Part III, I will talk about the Court's interest in protecting its turf - especially in cases implicating individual rights. [\*514] Small Steps: Hamdi and Rasul. These decisions were a minimalist opening volley in Court efforts to place judicial limits on the Bush administration. While rejecting claims of executive branch unilateralism in national security matters, the Court said next-to-nothing about how it would police the President's enemy combatant initiative. Rasul simply held that Guantanamo Bay was a "territory over which the United States exercises exclusive jurisdiction and control," and, consequently, that the President's enemy combatant initiative is subject to existing habeas corpus legislation. n122 This ruling "avoided any constitutional judgment" and offered no guidance on "what further proceedings may become necessary" after enemy combatants filed habeas corpus petitions. n123 Hamdi, although ruling that United States citizens have a constitutional right to challenge their detention as an enemy combatant, placed few meaningful limits on executive branch detentions. Noting that "enemy-combatant proceedings may be tailored to alleviate their uncommon potential to burden the Executive," the Court ruled both that hearsay evidence was admissible, and that "the Constitution would not be offended by a presumption in favor of the Government's evidence." n124 The Bush administration, as John Yoo put it, saw the limited reach of Hamdi and Rasul as creating an "opportunity" for the administration to regain control over its detention policy. n125 In particular, the administration asked Congress to enact legislation that would limit federal court review of enemy combatant claims. The administration also launched Combatant Status Review Tribunals (CSRT) as a more formal substitute for unilateral executive determinations of a detainee's enemy combatant status. n126 Capitalizing on Rasul's failure to consider the constitutional dimensions of enemy combatant claims, CSRTs largely operated as a rubber stamp of administration determinations. In 2006, ninety-nine out of 102 detainees brought before CSRTs were designated as enemy combatants. n127 The Justice Department reconvened CSRTs to reconsider the remaining three cases [\*515] and, ultimately, the remaining three were determined to be enemy combatants. n128 Hamdi and Rasul were both "narrow, incompletely theorized [minimalist] decisions." n129 And while newspapers and academics focused their attention on the Court's open-ended declaration that "a state of war is not a blank check for the President," n130 the decisions did not meaningfully limit the executive. Well aware that Congress and the American people supported the President's military commission initiative, n131 the Court understood that a sweeping denunciation of administration policies might trigger a fierce backlash. n132 Moreover, by ruling that Congress had authorized the President's power to detain enemy combatants (through its post-9/11 Authorization for the Use of Military Force Resolution), and by suggesting that the Court would make use of pro-government presumptions when reviewing military commission decision making, the Court formally took national security interests into account. n133 Actions taken by the executive in response to these rulings underscore that the Court's de minimis demands neither risked national security nor executive branch non-acquiescence. None of this is to say that the 2004 decisions were without impact. Following Rasul, for example, the administration understood that it needed to make use of some type of military court review - a requirement that may have impacted the military's handling of enemy combatants. At the same time, the Court did not issue a potentially debilitating blow to the Bush administration by decisively and resoundingly rejecting key elements of the administration's legal policy. n134 Instead, the Court simply carved out space for itself to review administration policy-making - without setting meaningful boundaries on what the administration could or could not do.

#### Obama will disregard the Court if they don’t conform to his strategy

**Pyle, Mount Holyoke College constitutional law professor, 2012**

(Christopher, “Barack Obama and Civil Liberties”, Presidential Studies Quarterly, 42.4, ebsco, ldg)

But this is not the only double standard that Obama's attorney general has endorsed. Like his predecessors, Holder has chosen to deny some prisoners any trials at all, either because the government lacks sufficient evidence to guarantee their convictions or because what “evidence” it does have is fatally tainted by torture and would deeply embarrass the United States if revealed in open court. At one point, the president considered asking Congress to pass a preventive detention law. Then he decided to institute the policy himself and defy the courts to overrule him, thereby forcing judges to assume primary blame for any crimes against the United States committed by prisoners following a court-ordered release (Serwer 2009). According to Holder, courts and commissions are “essential tools in our fight against terrorism” (Holder 2009). If they will not serve that end, the administration will disregard them. The attorney general also assured senators that if any of the defendants are acquitted, the administration will still keep them behind bars. It is difficult to imagine a greater contempt for the rule of law than this refusal to abide by the judgment of a court. Indeed, it is grounds for Holder's disbarment. As a senator, Barack Obama denounced President Bush's detentions on the ground that a “perfectly innocent individual could be held and could not rebut the Government's case and has no way of proving his innocence” (Greenwald 2012). But, three years into his presidency, Obama signed just such a law. The National Defense Authorization Act of 2012 authorized the military to round up and detain, indefinitely and without trial, American citizens suspected of giving “material support” to alleged terrorists. The law was patently unconstitutional, and has been so ruled by a court (Hedges v. Obama 2012), but President Obama's only objection was that its detention provisions were unnecessary, because he already had such powers as commander in chief. He even said, when signing the law, that “my administration will not authorize the indefinite military detention without trial of American citizens,” but again, that remains policy, not law (Obama 2011). At the moment, the administration is detaining 40 innocent foreign citizens at Guantanamo whom the Bush administration cleared for release five years ago (Worthington 2012b). Thus, Obama's “accomplishments” in the administration of justice “are slight,” as the president admitted in Oslo, and not deserving of a Nobel Prize. What little he has done has more to do with appearances than substance. Torture was an embarrassment, so he ordered it stopped, at least for the moment. Guantanamo remains an embarrassment, so he ordered it closed. He failed in that endeavor, but that was essentially a cosmetic directive to begin with, because a new and larger offshore prison was being built at Bagram Air Base in Afghanistan—one where habeas petitions could be more easily resisted. The president also decided that kidnapping can continue, if not in Europe, then in Ethiopia, Somalia, and Kenya, where it is less visible, and therefore less embarrassing (Scahill 2011). Meanwhile, his lawyers have labored mightily to shield kidnappers and torturers from civil suits and to run out the statute of limitations on criminal prosecutions. Most importantly, kidnapping and torture remain options, should al-Qaeda strike again. By talking out of both sides of his mouth simultaneously, Obama keeps hope alive for liberals and libertarians who believe in equal justice under law, while reassuring conservatives that America's justice will continue to be laced with revenge. It is probably naïve to expect much more of an elected official. Few presidents willingly give up power or seek to leave their office “weaker” than they found it. Few now have what it takes to stand up to the national security state or to those in Congress and the corporations that profit from it. Moreover, were the president to revive the torture policy, there would be insufficient opposition in Congress to stop him. The Democrats are too busy stimulating the economies of their constituents and too timid to defend the rule of law. The Republicans are similarly preoccupied, but actually favor torture, provided it can be camouflaged with euphemisms like “enhanced interrogation techniques” (Editorial 2011b).

### 1NR A2: No spillover

AND---Restricting powers risks endangering prestige and legitimacy – the courts will think so

McGinnis 93 (JOHN 0. MCGINNIs is an Assistant Professor, Benjamin N. Cardozo School of Law, “CONSTITUTIONAL REVIEW BY THE EXECUTIVE IN FOREIGN AFFAIRS AND WAR POWERS: A CONSEQUENCE OF RATIONAL CHOICE IN THE SEPARATION OF POWERS,” http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4213&context=lcp)

The Court has the least interest of all in exercising rights of governance in the foreign affairs and war powers areas. The Court does not have the institutional capacity to make assessments in these areas. Any inept decision about war and peace may have dramatic and readily understood real world consequences that may erode the Court's prestige and endanger its public respect. Thus, decisions in this area stand in contrast with decisions elaborating individual rights, a role in which it may appear as the tribune of the people.66 The latter decisions, even when controversial, are likely to have some group of supporters, and their real world consequences are less immediate and dramatic than issues of war and peace. Resistance, if encountered, can be tempered by incremental implementation. 67

#### War powers are a political question---the plan is an earth shattering change

Nzelibe 4 (Jide Nzelibe is a Bigelow Fellow and Lecturer in Law, University of Chicago Law School, “THE UNIQUENESS OF FOREIGN AFFAIRS,” PUBLIC LAW AND LEGAL THEORY WORKING PAPER NO. 68, http://www.law.uchicago.edu/files/files/68.jn\_.foreign.pdf)

Even some of the most outspoken opponents of the political question doctrine, such as Professor Franck, have recognized the “political risks” posed by judicial intervention in war powers disputes.233 Paraphrasing Bickel, Franck characterizes the problem with issuing injunctive relief as involving “the prospect that such raises the specter not only that such an order will not be obeyed but, perhaps an even darker prospect, that it might be, with potentially disastrous consequences for American military personnel . . ., as well as the court’s legitimacy.”234 Franck suggests as an alternative that the courts issue declaratory judgments rather than injunctions in cases where a war may already be in progress.235 The problem with Franck’s intermediate solution is that it does little to address the problems of institutional legitimacy and compliance that he links with injunctive relief. Indeed, one might expect greater instances of non-compliance with judicial determinations where the proposed judicial remedy is half-hearted and the consequences for violation are relatively insignificant.

### 1NR A2: Support Durable

#### It won’t be durable – interbranch conflict will occur which kills the support of the courts

Entin 12 (Jonathan L. Entin Associate Dean for Academic Affairs (School of Law), David L. Brennan Professor of Law, and Professor of Political Science, Case Western Reserve University. “War Powers, Foreign Affairs, and the Courts: Some Institutional Considerations,” http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1&2.21.Article.Entin.pdf)

Whatever the merits of the decisions discussed in the previous section, those rulings should give pause to those who might rely on the judiciary as a check on what they regard as executive overreaching. When combined with the procedural and jurisdictional obstacles discussed in Part I, a more general lesson emerges: the judiciary cannot resolve all the questions that might arise in connection with war powers and foreign affairs. Nonetheless, the substantive and procedural limitations of judicial review provide an opportunity for greater civic and political engagement in decisions that can have profound consequences for our nation and the world. If the courts cannot resolve these matters, questions of war and diplomacy, it should come as no surprise that they are getting worked out largely through political accommodation and negotiation. These accommodations and negotiations necessarily reflect the differing constitutional views of the legislative and executive branches as well as of the persons and groups that engage on these issues. Although many lament the quality of current political discourse, excessive reliance on the judicial process has undesirable consequences. The Supreme Court has had difficulty rendering consistent or principled decisions about legislative-executive relationships.110 Sometimes the Court has taken a formalistic approach that emphasizes the need to maintain clear lines between the branches.111 At other times, the Court has used a functional approach that emphasizes the importance of checks and balances to prevent the accumulation of excessive power in any particular branch.112 In other words, judicial review does not always provide clear answers to complex questions. The complexity of those questions is particularly evident in the military and diplomatic arenas. Reliance on the political process recognizes the uncertainties and contingencies involved in many of these matters.113 Moreover, interbranch negotiation rather than litigation recognizes that an effective government requires a degree of comity that is inconsistent with frequent reliance on the judiciary.114 Our system rests on a rich set of subtle understandings and an implicit sense of political limits.115 As a result, structural and institutional factors often dampen the inevitable conflicts that arise between Congress and the president. Excessive reliance on the judiciary tends to raise the stakes of conflict by clearly identifying winners and losers and by encouraging the assertion of extreme positions for short-term litigation advantage that might complicate the resolution of future disagreements.116 In addition, the litigation process takes time. Of course, the Pentagon Papers case was resolved in less than three weeks after the New York Times published its first article on the subject.117 Ordinarily, however, the judicial process proceeds at a much statelier pace. Consider another landmark case, albeit one that dealt with domestic issues. Cooper v. Aaron118 was decided approximately one year after President Eisenhower dispatched federal troops to enforce the desegregation of Little Rock Central High School in the face of massive resistance encouraged by Arkansas Governor Orval Faubus.119 Often, disputes over military and diplomatic matters are timesensitive. Expedited judicial review might help, but events on the ground might well frustrate orderly judicial disposition.

#### And this interbranch conflict over foreign policy causes great power war

Haass 13 (Richard N. Haass, President, Council on Foreign Relations, “What is the effect of U.S. domestic political gridlock on international relations?” http://www.cfr.org/us-strategy-and-politics/effect-us-domestic-political-gridlock-international-relations/p30725)

There is a well-known adage that politics stops at the water's edge, but this tends to be more hope than reality. American history is filled with examples in which political disagreement at home has made it difficult for the United States to act, much less lead, abroad. Division within Congress or between the legislative and executive branches can make it impossible for individuals to be placed in senior positions. Such divisions can also make it impossible to conclude treaties, appropriate funds for foreign assistance, or pass specific reforms, such as the current proposed reform for immigration policy. A lack of consensus also can undermine investment in the foundations of American power, from resources for defense and diplomacy to education and infrastructure. Gridlock at home can also work against the ability of the United States to set an example that other societies will want to emulate. And it makes the United States less predictable, something that can unnerve allies and others who depend on this country, and embolden adversaries. All this tends to contribute to global disorder—one reason I titled my new book Foreign Policy Begins at Home.