## 1nc

### 1

#### Authority means “authorization” – topical affirmatives must remove the permission to act, not just regulate the President

**Hohfeld,** Yale Law,19**19** (Wesley, <http://www.hku.hk/philodep/courses/law/HohfeldRights.htm>)

Many examples of legal powers may readily be given. Thus, X, the owner of ordinary personal property "in a tangible object" has the power to extinguish his own legal interest (rights, powers, immunities, etc.) through that totality of operative facts known as abandonment; and-simultaneously and correlatively-to create in other persons privileges and powers relating to the abandoned object,-e. g., the power to acquire title to the latter by appropriating it. Similarly, X has the power to transfer his interest to Y, that is to extinguish his own interest and concomitantly create in Y a new and corresponding interest. So also X has the power to create contractual obligations of various kinds. Agency cases are likewise instructive. By the use of some metaphorical expression such as the Latin, qui facit per alium, facit per se\* the true nature of agency relations is only too frequently obscured. The creation of an agency relation involves, inter alia, the grant of legal powers to the so-called agent, and the creation of correlative liabilities in the principal. That is to say, one party, P, has the power to create agency powers in another party, A,-for example, the power to convey P's property, the power to impose (so called) contractual obligations on P, the power to discharge a debt owing to P, the power to "receive" title to property so that it shall vest in P, and so forth. In passing, it may be well to observe that the term "authority," so frequently used in agency cases, is very ambiguous and slippery in its connotation. Properly employed in the present connection, the word seems to be an abstract or qualitative term corresponding to the concrete "authorization," the latter consisting of a particular group of operative facts taking place between the principal and the agent. All too often, however, the term in question is so used as to blend and confuse these operative facts with the powers and privileges thereby created in the agent. A careful discrimination in these particulars would, it is submitted, go far toward clearing up certain problems in the law of agency.

#### Restriction on authority must reduce permission to act

**Lobel, 8** - Professor of Law, University of Pittsburgh Law School (Jules, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War” 392 OHIO STATE LAW JOURNAL [Vol. 69:391, <http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel_.pdf>)

So  too, the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war—“limited in place, in objects, and in time.” 63 When Congress places such restrictions on the President’s authority to wage war, it limits the President’s discretion to conduct battlefield operations. For example, Congress authorized President George H. W. Bush to attack Iraq in response to Iraq’s 1990 invasion of Kuwait, but it confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions directed to force Iraqi troops to leave Kuwait. That restriction would not have permitted the President to march into Baghdad after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64

#### Increase does not mean to decrease

Websters Dictionary. 1913 ("Increase." <http://machaut.uchicago.edu/cgi-bin/WEBSTER.sh?WORD=increase>.)

**In\*crease"** (?), v. i.

To become greater or more in size, quantity, number, degree, value, intensity, power, authority, reputation, wealth; to grow; to augment; to advance; -- opposed to decrease.

#### Violation – the plan reviews Obama’s detention policy and rules that some people should be released – he still retains the authority to indefinitely detain, it’s just now subject to new enforcement mechanisms.

#### Prefer our interp –

#### Limits – infinite ways to regulate presidential actions – explodes number of affs by allowing for small changes to reporting mechanisms.

#### It skirts core topic discussions about the presidential authority because the aff focuses on corrections to specific instances of presidential authority without changing the legal structure for that authority – that’s key to every process CP and DAs.

### 2

#### the aff allows the government to deploy victimhood of 9/11 to wage wars and erases agency

**Faulkner, ‘8** professor at the University of New South Wales (Joanne Faulkner, Spring/Autumn 2008, “The Innocence of Victimhood Versus the “Innocence of Becoming”: Nietzsche, 9/11, and the “Falling Man,”” The Journal of Nietzsche Studies, Iss. 35/36)//CC

It would seem that there is very little about the events of the September 11, 2001, that has not already been said or imagined. Our understanding of these events, and especially the attacks on the Twin Towers, has been overdetermined by the seemingly endless repetition of (by now) iconic images: of planes perforating the clear, tranquil surface of those seemingly impenetrable buildings and thus opening a rupture in the Western consciousness, the reparation of which is not yet in sight. Other images also populate the post-9/11 memory: images of disbelief, of grief, and of bravery—especially with respect to the members of the New York Fire Department, who rose to the occasion of providing a sense of American resilience and fortitude, thus representing a possible future after the catastrophe. These images played a major role in enabling certain mainstream media groups in the United States to reconstruct a narrative concerning their particular place in the world and with respect to each other: a narrative about national character and identity, hope, fear, and desire. The images drawn on to illustrate this narrative were therefore of critical importance; what was needed was a strong and coherent picture of innocence: the innocence of those killed in the attacks, to be sure, but also of the American people more generally—who, after a brief period of tending to their wounds, would need to collect themselves and return to the everyday commerce of existence, secure in the belief that evil is radically external to their “way of life” and that their government will ultimately protect them.1 Such a narrative, however, also served to exclude images that could not support the specific requirements of its coherence: equivocal images that jar against our [End Page 67] sense of propriety, certainly now after the effects of repetition have etched within us a certain understanding of the experience of 9/11. But also, interestingly, just after the attacks and before the grooves of this understanding had been consolidated, spontaneous and diffuse acts of censorship regulated the kinds of experiences, fears, and decisions that the victims of the attacks could enact. This article addresses one such image, which proved to be disruptive of the limits of identity asserted immediately following 9/11: Richard Drew’s “Falling Man,” depicting an unknown victim of the attacks in midflight from the North Tower of the World Trade Center. This image complicates the very culturally specific notion of innocence that was invoked during the reconstruction of national identity following the terrorist attacks against America. In particular, it will be argued that the “falling man” compromised the vision of an innocence that solicits protection precisely because it is outside the sphere of action. The image represents a decision—a wild and hopeless decision but a decision nonetheless—that, from the perspective of a claim to innocence, conceived as passive and guiltless, is difficult to comprehend or acknowledge as a “proper” comportment of an innocent. The falling man reveals and embodies a traumatic horror, difficult to encounter: the horror of choosing the means of one’s own particular death in the face of a less certain but more protracted demise at the hands of another. This article argues for a reconsideration of “innocence” that might emphasize agency and creativity above morality and victimhood and in so doing hopes to promote an understanding of those who found themselves preferring to jump than to burn on that fateful morning. Conceptual development along these lines will also affect the concept of agency in accordance with Nietzsche’s critique of morality and metaphysics. The broader project to which this essay contributes is concerned with the manner in which the application of innocence to a group can serve to erode their political agency: governments thus soothe our civic conscience while also establishing a mandate of protection in relation to their citizens. The events of 9/11 precipitated a shift from innocence to victimhood and, finally, to a loss of civil liberties for populations across the “West,” not only in the United States. It is therefore imperative to disrupt this equation of innocence with helplessness and to restore agency to the victims of terrorism and citizens alike. In response to antidemocratic policies enacted by governments after 9/11, much political theory has orbited about the constellation of Giorgio Agamben and Carl Schmitt, with Nietzsche lurking in the background as a conceptual precursor to Schmitt’s friend/enemy motif (Z:1 “Of the Friend”).2 We have therefore latterly seen an emphasis placed on the sovereign decision of the executive, the state of exception, and this in turn enlarges the sense that citizens of democracies are politically disempowered. In this context, the falling man is emblematic of the manner in which we might rework the concept of agency [End Page 68] to empower victims and those whose range of choices is limited. This kind of move is necessary, I contend, if the sense of hopelessness and futility that increasingly accompanies political subjectivity in Western democracies might be alleviated and a space for civil creativity might be opened. The essay will proceed by providing an account of the juridical or moral (Judeo-Christian) understanding of innocence and interrogating its conceptual relation to agency and belongingness to the political community. An alternative account of innocence—drawn from an interpretation of Nietzsche’s concept of the “innocence of becoming”—is then considered, through which the memory of the falling man might perhaps be redeemed. The article’s primary question thus concerns how this latter account might assist us in a revaluation of the falling man as innocent and of the “innocent” as capable of moral decision making and political participation.

#### the only way to achieve meaningful existence is to accept that violence and chaos are inevitable.

**Scott—90** (Charles E., professor of Philosophy at Pennsylvania State University, “The Question of Ethics: Nietzsche, Foucault, Heidegger,” Ed. John Sallis, p. 173-174)

One pathogenic aspect of our Western ethos that we have followed is the ascetic ideal. It is characterized by many types of refusal and denial regarding the manner in which human life occurs, and on Nietzsche's account the ascetic ideal reinforces this denial with a habitual insistence on the continuous presence of meaning in all dimensions of life and being. In our ascetic withdrawal from life we join forces with hopelessness, suffering, death, and helplessness by giving them meaning, in our appropriation of them, that far exceeds their occurrence and that subordinates them within a scheme of meaning and hope. The rule governing the ascetic ideal is found in its incorporation and blind expression of the hopelessness and meaninglessness that it is designed to overcome. This incorporation of what it is constitutes the ideal's nihilism for Nietzsche: the affirmations within the ascetic ideal project their opposites and produce a spiral of unwitting and inevitable violence in the spirituality that they create. The denial of life within the boundaries of the ascetic ideal continuously reestablishes the power of the ideal. But when this movement is broken by a self-overcoming like that in Nietzsche's genealogy of the ascetic ideal, the rule of the ascetic ideal is interrupted and a possibility is opened for life-affirmations that do not suppress the most fearful occurrences involved in being alive. The joyousness of life without the illusion of continuous meaning, the joyousness that Nietzsche found in early Greek culture, was lost, according to his reading, in the course of the increasing cultural dominance of those whose nerve has failed before the disheartening flow of life. The ascetic ideal expresses this failure in its insistence on meaning and in its persistent manufacture of hope out of illusions bred of the failure. Heidegger is perhaps at his most non-Nietzschean point when in his Rector's address he turns to the Greek division between the everyday and the question of being. This is an ironic moment in Heidegger's thought: he traces the origins of his own move to separate the future of the German university from the German Volkstum, (that is, from dominant popular culture) to the emergence of the separation of thought from everyday life in Greek culture. But this move is not associated with the joyousness that Nietzsche uses as his reference in delimiting the ascetic ideal. According to Nietzsche's genealogy we have lost an earthly affirmation of life in the midst of the specific suffering of everyday existence. Nietzsche countenances fully the brutality, the fateful shattering of hope, the disappointments that break people's lives, the individual and social tragedies. The debilitation of minds and bodies is juxtaposed to people's savoring food and drink, enjoying sexual pleasure. It is juxtaposed to friendship, the energy of ambition, the struggle between competitors, the mixture of desperation and exhilaration in efforts of accomplishment. Nietzsche's move is toward affirmation in the midst of chaotic living when he speaks of what is lost in the blind and self-deceived chaos of asceticism that is ordered by the illusion of continuous meaning. In this affirmation one has an awareness, presumably a full awareness, of the otherness to human interest that radically distresses us. People's attention is delimited by it. Rather than escape or turn away from it, people are delimited by it in their relations with things. Rather than appropriate the suffering of life in ascetic self-denial, human beings stand over against its otherness, its unthinkableness, its density. They need not attempt to embody it in forms that seem to shape it to human and thinkable dimensions. They live in the inappropriable, meaningless dark vacuity, with it and other to it, out of it and in it. They are angel and animal, Nietzsche said. Not to be lost, not to be redeemed, not to be overcome, it is juxtaposed to a will to live, an affirmation with, and not in spite of, the chaos.

#### choose death in the face of inevitability – your ballot allows you to reclaim agency

**Faulkner, ‘8** professor at the University of New South Wales (Joanne Faulkner, Spring/Autumn 2008, “The Innocence of Victimhood Versus the “Innocence of Becoming”: Nietzsche, 9/11, and the “Falling Man,”” The Journal of Nietzsche Studies, Iss. 35/36)//CC

Most significantly, for the purposes of this essay, we can perhaps see now how for Nietzsche agency is compatible with innocence. Indeed, innocence—regarded as what is unsullied by moral thinking—is integral to the skillful exercise of agency. Understood in these terms, innocence is neither a precious ideal to be protected from the forces of chance nor a moralistic instrument for the meting of punishment to those who threaten society. Rather, innocence is conceived as a style of existence that becomes active by claiming to itself what chance throws up before it. Innocence would here suggest a resistance to passivity and victimhood and a choice to take part in the inevitability of the moment—even if this agency ultimately extinguishes the subject through which it is performed. Perhaps at this point, then, we might attempt a return to the acts of the 9/11 jumpers, who in the light of the above can be understood as agents of their own demise but in a manner that nonetheless does not compromise their innocence.

The visions of falling bodies from the Twin Towers do not sit well with orthodox imagery surrounding 9/11 because they invoke an uncomfortable ambiguity with respect to their victim status. In their final moments of animation and on the precipice of death, these bodies occupy a middle space between life and death that renders us uncomfortable in our own mortality. But they also mark a cleavage between innocence and guilt: their decision to seize the opportunity to escape confinement within their smoky “tombs” signals a confusing complicity with the terrorists who had perpetrated the attacks. In the terms that Nietzsche (and Spinoza) set out above, the jumpers took an active part in the causes that led to their deaths—causes that originate in a terrorist plot against America. And in the eyes of some, this exposed them as irresolute, and even disloyal, in the face of what later emerged to be a monumental national threat.

In theological terms also—and keeping in mind the religious frame through which many in the United States view global politics—Drew’s photograph, especially, resonates with a near-godly defiance of death: the subject’s fall can be read as the taking of a liberty against God, who claims a privilege with respect to determining who lives or dies. The image may thus evoke to the viewing public humanity’s primal scene and the original sin that it demonstrates: the [End Page 80] taking of the fruit of knowledge that marks a new beginning for humanity. Even the photograph’s title would seem to suggest a proximity to the guilt through which humanity is engendered, by means of its irreparable separation from innocence. Likewise, its subject is separated from the other victims of the attacks who (more appropriately) awaited divine sanction on their lives and have thus continued to be redeemed (drawn back into the community’s fold) by means of the various ceremonies and purification rites since performed at Ground Zero. The resigned posture of the subject of “The Falling Man” surely gives the viewer pause: it looks like a suicide attempt, and the suicide cannot be connected to a redemptive innocence. Yet, according to Nietzsche’s refiguring of agency, the decision to die can be reconciled with innocence: and moreover, innocence comes to be the very condition of an agency—as opposed to (fictitious) free will—an agency that, rather, refuses the moralizing economy of guilt and punishment.

The decision to jump hundreds of meters to one’s death from a burning building might seem a limited, and somewhat undesirable, instance of agency. Clearly, it is a choice these people would not have made on any other morning and in any other circumstance. In the light of Nietzsche’s account of agency as conditioned by context and circumstance, however, it is possible to count the jumpers among the innocents lost to 9/11—and to do so in full recognition of their specific choice to take their lives into their own hands. In the context of Nietzsche’s innocence of becoming, we may understand innocence as a suspension of moral judgment rather than as prior to (and separate from) social existence. Nietzschean innocence emerges from within existence and gives rise to an agency that responds to the chance necessities life occasions. Likewise, the innocence of becoming is not grounded in opposition to guilt but, rather, undercuts the understanding of social relations in terms of guilt and debt. For this reason, Nietzsche’s innocence of becoming furnishes the jumpers’ decision with a sense that would be otherwise unavailable, at least within the narrow parameters according to which moral action and worth are conventionally adjudged.

In the absence of an acknowledgment of the jumpers’ choice (and of the possibility of making a decision to die in one’s own way, where the choice to live is unavailable), we will continue to misunderstand their relationship to these events and thus to limit their political agency. In the context of the 9/11 attacks, the innocent—understood through the vista of Judeo-Christian moral tradition—has become an eternally aggrieved icon of national identity: a perennially threatened and victimized creature of ressentiment who “in order to exist first needs a hostile external world” (GM I:10).32 Although it is important to acknowledge the suffering of those affected, and this may indeed include the nation as a whole, what Nietzsche’s innocence of becoming reveals is that the relationship to one’s suffering is far from straightforward. If we subscribe too readily to the status of innocent-to-be-protected—thus recoiling from suffering and requiring that the [End Page 81] debts of enemies be paid in full—then we also deny the possibility of freedom opened by the affirmation of becoming. And such a predicament is all too well reflected in the erosion of civil liberties that is ongoing since the end of 2001 in the United States and elsewhere.

But were we to allow ourselves to imagine being trapped within those buildings and to contemplate the possibility that one might still make a choice, perhaps identification with the falling man might open the citizen to a new kind of agency in relation to government and nationhood. Remembering that the imagination furnishes us with knowledge of our situation—by means of the traces of interactions impressed upon memory—then we are able to develop a capacity for agency by using our imaginations to understand the decisions of those who have lived through what we have not. Through the rubric offered by the jumper’s predicament, we might then imagine a mode of resistance against attack, wherein strength is reappropriated from the enemy—even in death. Our reinterpretation of the falling man as innocent thus allows for a conception of freedom with respect to the chance events that constrain action. But moreover, it also allows us to develop a resistance to governments’ attempts to render us passive subjects by means of the moral mantle of innocence by which we are both idealized and contained. Such a modest and situated exercise of agency would involve attentiveness to the diffuse and unexpected opportunities that arise in one’s locality, to actively participate in the causes of change. For instance, one could organize a demonstration, write letters to political representatives and newspapers, meet with others who share one’s values, walk to work, or recycle.

Each of these activities, however humble or ambitious, contributes to the determination of life and prevents one being the mere passive object of external causes—disempowered and separated from agency. Such attunement to one’s situation, however, requires above all engaging one’s imagination: the site of ethical understanding—of what empowers the body and what the body should avoid. In this vein, we might reimagine the falling man as a figure of the active resistance that Nietzsche’s innocence of becoming teaches. And we can understand his final act of agency as such, without casting him out of the sanctum of human virtue. With respect to this reinterpretation of innocence, as a sensitivity to the specific opportunities that life grants, I will leave the last word to one who, mourning the loss of his wife, finds it within himself to understand her final decision: “Whether she jumped, I don’t know. I hoped that she had succumbed to the smoke but it doesn’t seem likely. In some ways it might just be the last element of control, that everything around you is happening and you can’t stop it, but this is something you can do. To be out of the smoke and the heat, to be out in the air … it must have felt like flying.”33 [End Page 82]

### 3

Congress should propose and three fourths of the states should ratify an amendment to the United States Constitution that orders the release of individuals in military detention who have won their habeas corpus hearing.

#### Solves – it establishes clear and credible war powers authority

Goldstein 88 (Yonkel, J.D. – Stanford Law School and Has the Sweetest of Names, “The Failure of Constitutional Controls over War Powers in the Nuclear Age: The Argument for a Constitutional Amendment,” Stanford Law Review, July, 40 Stan. L. Rev. 1543, Lexis)

The scope of the **war-making powers** of the executive and legislative branches of the United States government, in the context of the nuclear age, is unclear. The tremendous destructive power of modern arsenals, especially that of atomic weapons, makes this issue one of paramount importance. As the dangers of war have increased exponentially since the time when the Constitution was ratified, the efficacy of the constitutional safeguards which were intended to limit the likelihood of war has dwindled dramatically. The lack of a major nuclear war, so far, may suggest to some that the legal system of controls over United States war powers is operating well. As Professor Spanier states, however, in discussing the principle of civilian control of the military, factors which are extrinsic to the legal system have been primarily responsible for the American military's subservience to civilians. n1 My argument is an analogous one, namely that the system of checks and balances, designed to ensure that entry into war either be in response to an emergency thrust upon the nation or the result of a thorough examination of policy alternatives and considerations, is no longer functioning. Consequently, credit for the lack of nuclear war since World War II belongs more to factors extrinsic to the legal system designed to control American war power than it does to [\*1544] any workable system intended to regulate that power. The constitutional war-making provisions have now been tested; under modern-day pressures they have been found wanting. As a result, it is time to **amend the Constitution** for both practical and symbolic reasons. A constitutional amendment would have a consciousness-raising effect on the American people. It would signal a clear change from immediate past precedent and, simultaneously, legitimate that change in the most authoritative way possible under our system. The proposed amendment would both (1) clearly establish congressional authority to set policy in all matters relating to the preparation and execution of war, hostilities, aggression, or defense of the United States, American citizens, and American interests, and (2) establish a private right of action against Congress for its failure to make diligent efforts to ascertain the relevant facts, to debate, and to set policy in this area. The first part of this amendment would help to settle any lingering debate over the proper congressional role in defense matters, yet allow the system to retain the flexibility necessary to execute a sound and responsive defense policy; Congress would be able to delegate responsibility and authority however it sees fit. The second part recognizes the appropriateness of a mechanism to allow United States citizens to stimulate congressional and judicial action in order to protect against the risks of nuclear war; courts would not be empowered to judge substantive legislative decisions, but would be able to ensure that Congress, in reaching those decisions, adhere to constitutional principles. Thus, the courts would function similarly to how they have operated in the due process area.

#### Amendments avoid the link – prior, congressional guidance is key to resolve issues of justiciability – the plan and perm violate SOP by ruling on a political question

Miksha 3 (Andre, Chief Deputy Prosecuting Attorney – Hamilton County Prosecutor's Office (24th Judicial Circuit), “Declaring War on the War Powers Resolution,” Valparaiso University Law Review, 37 Val. U. L. Rev. 651, <http://scholar.valpo.edu/cgi/viewcontent.cgi?article=1264&context=vulr>)

III. THE INFIRMITIES OF THE WAR POWERS RESOLUTION

Given almost thirty years of history, the War Powers Resolution has been criticized as a dead letter and a total failure. n120 Not only has the Resolution been a total failure in fulfilling its stated purposes, but the [\*676] Resolution also suffers from inherent constitutional failings. n121 This Note argues that these ills result from several factors.

First, the Resolution fails to meet the demands of the Constitution because it designs a new system of war powers inconsistent with principles of separation of powers and accountability. n122 Second, the Resolution has been a total failure due to its weak construction of enforcement mechanisms. n123 Third, the necessities of military command and execution require a more strict and swift system. n124 This Note further argues that the solution to the Resolution's ills and to the necessities of American civilian-military decision-making is a **constitutional amendment**. n125

A. Constitutional Concerns

Although the Resolution began with genuine and virtuous aspirations, it created a system of powers inconsistent with the Constitution in several ways. The Resolution sought to rearrange the separation of the powers held by two major institutions of American government in which the third branch of government has remained reticent regarding this breach of constitutional principles. n126 The Resolution also defies the constitutional value of discourse and accountability by allowing the President to act unilaterally. n127

1. Separation of Powers and Delegation

The Constitution is the document that established the separation of powers and the structure of the federal government. n128 The Resolution reconceived one part of the separation of powers through a simple act of [\*677] Congress. n129 The reconception was improper because it was inconsistent with principles set forth explicitly in the document and with the principle of delegation of power. On the other hand, a constitutional amendment is appropriate because its subject is **the determination** of the separation of powers, and it sets the rights and responsibilities of the branches in relation to each other. An amendment would help to solidify the limits and responsibilities of the branches of government in a manner consistent with the Constitution itself.

a. General Constitutional Construction

The Constitution gives to Congress the enumerated power to declare war and to the President the power and responsibility to conduct those operations as Commander in Chief. n130 The Framers' make/declare debate shows that they wished Congress to hold the power to initiate hostilities. n131 The early courts were also clear that the President's role was the prosecution of war. n132

The Resolution allows the President to initiate hostilities in some circumstances, but the Resolution's permission is too broad to be considered a declaration because it does not contemplate an actual situation facing the United States. n133 Thus, by granting the President this power, the Resolution rewrites the separation of powers as conceived by the Constitution. Such a rewrite may not be conducted in violation of the principles laid forth in the Constitution because the Supremacy [\*678] Clause states that federal laws must be made in accordance with the Constitution. n134

Some commentators, however, argue that the Framers purposely left the war powers in a cloudy, uncertain arrangement. n135 It is hard to think that the Framers left this great potential for tyranny and abuse to a purely political process without guidance as to how the balance was to be stricken. n136 Some scholars also argue that the power of the purse was a sufficient check on the President; however, this contention is not valid today. n137 Congressional implied consent, which is argued to flow from the unused power of the purse, cannot be constitutionally sufficient either, although it may be supported by recent history. n138 The Supreme Court has only upheld a claim of implied consent in cases involving a proper delegation of power, and the Resolution does not represent a proper delegation. n139

[\*679] b. Improper Delegation of Power

Congress may delegate limited powers that it has been given by the Constitution. n140 The courts have become increasingly willing to uphold delegation against constitutional attack, especially when foreign affairs issues are involved. n141 In accordance with the Star-kist Foods test for proper delegation of power, Congress must provide (1) an "intelligible principle" for the executive to follow, (2) a specific policy or objective, and (3) limits circumscribing that power. n142 One may argue that the War Powers Resolution fit these requirements fully and represented a proper delegation of power. However, based on the historical and political developments, a closer legal analysis reveals that the Resolution was not a proper delegation.

The War Powers Resolution states a purpose and policy but does not provide any guidance as to when the President may introduce forces into hostilities. n143 Section 2(a) of the Resolution states the purpose as an effort to "fulfill the intent of the Framers of the Constitution" and "insure that the collective judgment of both Congress and the President will apply to the introduction of United States Armed Forces into hostilities." n144 Although the purpose is allegedly to guarantee the collective judgment of both the Congress and the President, the provisions of the War Powers Resolution are very weak. n145

Section 2(b) states that Congress has the power to make all laws necessary and proper for carrying into execution its own powers and all other constitutional powers. n146 However, Congress may not wholly delegate legislative powers. n147 The courts have allowed Congress some [\*680] leeway in this area, but only where Congress has provided sufficient guidance that the President is not working in a vacuum.

Section 2(c) states that the President may only act pursuant to a declaration of war, specific statutory authorization, or a national emergency created by an attack upon the United States. n148 This section approaches the sort of guidance that **the courts have contemplated**; however, **this construction relies on** specific congressional action in two situations and an attack upon the United States in the third. n149 Given the post-Resolution activities of the President, this paragraph seems to have had no import to the Executive. n150 Thus, through the Resolution's application, presidents have failed to comply with this section by claiming a general unilateral right to take action.

Through these provisions, the Resolution does not create an "intelligible principle" by which the President is guided to decide whether to introduce forces. The President has unbridled discretion. In addition, apart from the three specific situations described in section 2(c), the statute lacks a policy for when the President may act. The only prong of the Star-kist Foods test that may actually be satisfied by the Resolution is the limit on the power delegated because the President is allowed to act only within certain but broad circumstances. However, the Resolution does not suggest to the President how he or she must make the determination to introduce armed forces into hostilities. A proper delegation of power requires no less.

c. Impossible Delegation of Legislative Power

Nevertheless, Congress generally lacks the constitutional ability to delegate legislative powers. n151 Article I of the Constitution makes it clear that all enumerated legislative powers are vested in Congress. n152 In 1892, the Supreme Court recognized the principle that Congress cannot [\*681] constitutionally delegate legislative power to the President. n153 As recently as 1989, the Court reaffirmed that mandate. n154 The war powers are indeed legislative powers and may not be delegated in whole. n155 However, the courts have allowed Congress to delegate purely legislative powers under some circumstances, such as the Federal Sentencing Guidelines, but those delegations involved only a part of the legislative power as Congress merely used the agencies to work out the minute details. n156 This is not the case with the Resolution because Congress neither provided clear guidance nor limited the actual role of the subordinate.

d. The Courts

The courts have been very reserved in foreign affairs matters, but an amendment may make the interpretation of war powers a clear constitutional issue requiring the Supreme Court's analysis. The courts have avoided adjudication of disputes arising under the War Powers Resolution because of the justiciability doctrines of impasse, ripeness, standing, and political question. n157

### 4

#### Accepting the plan as a legitimate subject of debate eviscerates sovereignty—the 1ac affirms the ability exploit fundamental flaws in the legal system and continue the global biopolitical war—the ballot should side with the global countermovement against such violence

Gulli 13. Bruno Gulli, professor of history, philosophy, and political science at Kingsborough College in New York, “For the critique of sovereignty and violence,” <http://academia.edu/2527260/For_the_Critique_of_Sovereignty_and_Violence>, pg. 1

We live in an unprecedented time of crisis. The violence that characterized the twentieth century, and virtually all known human history before that, seems to have entered the twenty-first century with exceptional force and singularity. True, this century opened with the terrible events of September 11. However, September 11 is not the beginning of history. Nor are the histories of more forgotten places and people, the events that shape those histories, less terrible and violent – though they may often be less spectacular. The singularity of this violence, this paradigm of terror, does not even simply lie in its globality, for that is something that our century shares with the whole history of capitalism and empire, of which it is a part. Rather, it must be seen in the fact that terror as a global phenomenon has now become self-conscious. Today, the struggle is for global dominance in a singularly new way, and war –regardless of where it happens—is also always global. Moreover, in its self-awareness, terror has become, more than it has ever been, an instrument of racism. Indeed, what is new in the singularity of this violent struggle, this racist and terrifying war, is that in the usual attempt to neutralize the enemy, there is a cleansing of immense proportion going on. To use a word which has become popular since Michel Foucault, it is a biopolitical cleansing. This is not the traditional ethnic cleansing, where one ethnic group is targeted by a state power – though that is also part of the general paradigm of racism and violence. It is rather a global cleansing, where the sovereign elites, the global sovereigns in the political and financial arenas (capital and the political institutions), in all kinds of ways target those who do not belong with them on account of their race, class, gender, and so on, but above all, on account of their way of life and way of thinking. These are the multitudes of people who, for one reason or the other, are liable for scrutiny and surveillance, extortion (typically, in the form of over- taxation and fines) and arrest, brutality, torture, and violent death. The sovereigns target anyone who, as Giorgio Agamben (1998) shows with the figure of homo sacer, can be killed without being sacrificed – anyone who can be reduced to the paradoxical and ultimately impossible condition of bare life, whose only horizon is death itself. In this sense, the biopolitical cleansing is also immediately a thanatopolitical instrument.

The biopolitical struggle for dominance is a fight to the death. Those who wage the struggle to begin with, those who want to dominate, will not rest until they have prevailed. Their fanatical and self-serving drive is also very much the source of the crisis investing all others. The point of this essay is to show that the present crisis, which is systemic and permanent and thus something more than a mere crisis, cannot be solved unless the struggle for dominance is eliminated. The elimination of such struggle implies the demise of the global sovereigns, the global elites – and this will not happen without a global revolution, a “restructuring of the world” (Fanon 1967: 82). This must be a revolution against the paradigm of violence and terror typical of the global sovereigns. It is not a movement that uses violence and terror, but rather one that counters the primordial terror and violence of the sovereign elites by living up to the vision of a new world already worked out and cherished by multitudes of people. This is the nature of counter-violence: not to use violence in one’s own turn, but to deactivate and destroy its mechanism. At the beginning of the modern era, Niccolò Machiavelli saw the main distinction is society in terms of dominance, the will to dominate, or the lack thereof. Freedom, Machiavelli says, is obviously on the side of those who reject the paradigm of domination:

[A]nd doubtless, if we consider the objects of the nobles and of the people, we must see that the first have a great desire to dominate, whilst the latter have only the wish not to be dominated, and consequently a greater desire to live in the enjoyment of liberty (Discourses, I, V).

Who can resist applying this amazing insight to the many situations of resistance and revolt that have been happening in the world for the last two years? From Tahrir Square to Bahrain, from Syntagma Square and Plaza Mayor to the streets of New York and Oakland, ‘the people’ speak with one voice against ‘the nobles;’ the 99% all face the same enemy: the same 1%; courage and freedom face the same police and military machine of cowardice and deceit, brutality and repression. Those who do not want to be dominated, and do not need to be governed, are ontologically on the terrain of freedom, always-already turned toward a poetic desire for the common good, the ethics of a just world. The point here is not to distinguish between good and evil, but rather to understand the twofold nature of power – as domination or as care.

The biopolitical (and thanatopolitical) struggle for dominance is unilateral, for there is only one side that wants to dominate. The other side –ontologically, if not circumstantially, free and certainly wiser—does not want to dominate; rather, it wants not to be dominated. This means that it rejects domination as such. The rejection of domination also implies the rejection of violence, and I have already spoken above of the meaning of counter-violence in this sense. To put it another way, with Melville’s (2012) Bartleby, this other side “would prefer not to” be dominated, and it “would prefer not to” be forced into the paradigm of violence. Yet, for this preference, this desire, to pass from potentiality into actuality, action must be taken – an action which is a return and a going under, an uprising and a hurricane. Revolution is to turn oneself away from the terror and violence of the sovereign elites toward the horizon of freedom and care, which is the pre- existing ontological ground of the difference mentioned by Machiavelli between the nobles and the people, the 1% (to use a terminology different from Machiavelli’s) and the 99%. What is important is that the sovereign elite and its war machine, its police apparatuses, its false sense of the law, be done with. It is important that the sovereigns be shown, as Agamben says, in “their original proximity to the criminal” (2000: 107) and that they be dealt with accordingly. For this to happen, a true sense of the law must be recuperated, one whereby the law is also immediately ethics. The sovereigns will be brought to justice. The process is long, but it is in many ways already underway. The recent news that a human rights lawyer will lead a UN investigation into the question of drone strikes and other forms of targeted killing (The New York Times, January 24, 2013) is an indication of the fact that the movement of those who do not want to be dominated is not without effect. An initiative such as this is perhaps necessarily timid at the outset and it may be sidetracked in many ways by powerful interests in its course. Yet, even positing, at that institutional level, the possibility that drone strikes be a form of unlawful killing and war crime is a clear indication of what common reason (one is tempted to say, the General Intellect) already understands and knows. The hope of those who “would prefer not to” be involved in a violent practice such as this, is that those responsible for it be held accountable and that the horizon of terror be canceled and overcome. Indeed, the earth needs care. And when instead of caring for it, resources are dangerously wasted and abused, it is imperative that those who know and understand revolt –and what they must revolt against is the squandering and irresponsible elites, the sovereign discourse, whose authority, beyond all nice rhetoric, ultimately rests on the threat of military violence and police brutality.

#### Refuse attempts to reform the legal system and doom it to its own nihilistic destruction—we must refuse all conceptual apparatuses of capture

Prozorov 10. Sergei Prozorov, professor of political and economic studies at the University of Helsinki, “Why Giorgio Agamben is an optimist,” Philosophy Social Criticism 2010 36: pg. 1057

The second principle of Agamben’s optimism is best summed up by Ho ̈lderlin’s phrase, made famous by Heidegger: ‘where danger grows, grows saving power also’.20 Accord- ing to Agamben, radical global transformation is actually made possible by nothing other than the unfolding of biopolitical nihilism itself to its extreme point of vacuity. On a number of occasions in different contexts, Agamben has asserted the possibility of a radi- cally different form-of-life on the basis of precisely the same things that he initially set out to criticize. Agamben paints a convincingly gloomy picture of the present state of things only to undertake a majestic reversal at the end, finding hope and conviction in the very despair that engulfs us.21 Our very destitution thereby turns out be the condition for the possibility of a completely different life, whose description is in turn entirely devoid of fantastic mirages. Instead, as Agamben repeatedly emphasizes, in the redeemed world ‘everything will be as is now, just a little different’,22 no momentous transformation will take place aside from a ‘small displacement’ that will nonetheless make all the difference. While we shall deal with this ‘small displacement’ in the follow- ing section, let us now elaborate the logic of redemption through the traversal of ‘danger’ in more detail.

It is evident that the danger at issue in Agamben’s work is nihilism in its dual form of the sovereign ban and the capitalist spectacle. If, as we have shown in the previous sec- tion, the reign of nihilism is general and complete, we may be optimistic about the pos- sibility of jamming its entire apparatus since there is nothing in it that offers an alternative to the present ‘double subjection’. Yet, where are we to draw resources for such a global transformation? It would be easy to misread Agamben as an utterly utopian thinker, whose intentions may be good and whose criticism of the present may be valid if exaggerated, but whose solutions are completely implausible if not outright embarras- sing.23 Nonetheless, we must rigorously distinguish Agamben’s approach from utopian- ism. As Foucault has argued, utopias derive their attraction from their discursive structure of a fabula, which makes it possible to describe in great detail a better way of life, precisely because it is manifestly impossible.24 While utopian thought easily pro- vides us with elaborate visions of a better future, it cannot really lead us there, since its site is by definition a non-place. In contrast, Agamben’s works tell us quite little about life in a community of happy life that has done away with the state form, but are remark- ably concrete about the practices that are constitutive of this community, precisely because these practices require nothing that would be extrinsic to the contemporary condition of biopolitical nihilism. Thus, Agamben’s coming politics is manifestly anti-utopian and draws all its resources from the condition of contemporary nihilism.

Moreover, this nihilism is the only possible resource for this politics, which would otherwise be doomed to continuing the work of negation, vainly applying it to nihilism itself. Given the totality of contemporary biopolitical nihilism, any ‘positive’ project of transformation would come down to the negation of negativity itself. Yet, as Agamben demonstrates conclusively in Language and Death, nothing is more nihilistic than a negation of nihilism.25 Any project that remains oblivious to the extent to which its valorized positive forms have already been devalued and their content evacuated would only succeed in plunging us deeper into nihilism. As Heidegger adds in his commentary on Ho ̈lderlin, ‘It may be that any other salvation than that, which comes from where the danger is, is still within non-safety’.26 Moreover, as Roberto Esposito’s work on the par- adox of immunity in biopolitics demonstrates, any attempt to combat danger through ‘negative protection’ (immunization) that seeks to mediate the immediacy of life through extrinsic principles (sovereignty, liberty, property) necessarily introjects within the social realm the very negativity that it claims to battle, so that biopolitics is always at risk of collapsing into thanatopolitics.27 In contrast, Agamben’s coming politics does not attempt to introduce anything new or ‘positive’ into the condition of nihilism but to use this condition itself in order to reappropriate human existence from its biopolitical confinement.28

Thus, while the aporia of the negation of negativity might lead other thinkers to res- ignation about the possibilities of political praxis, it actually enhances Agamben’s opti- mism. Renouncing any project of reconstructing social life on the basis of positive principles, his work illuminates the way the unfolding of biopolitical nihilism itself pro- duces the conditions of possibility for radical transformation. We can now see that the state of total crisis that Agamben has diagnosed must be understood in the strict medical sense. In pre-modern medicine, the crisis of the disease is its kairos, the moment in which the disease truly manifests itself and allows for the doctor’s intervention that might finally defeat it.29 For this reason, the crisis is not something to be feared and avoided but an opportunity that must be seized. Similarly, insofar as the sovereign state of excep- tion and the absolutization of exchange-value completely empty out any content of pos- itive forms-of-life, the contemporary biopolitical apparatus prepares its self-destruction by fully manifesting its own vacuity.

### deference

#### DEMOCRACY

#### No impact to democracy, it just happens to coincide with other measure of progress

Robert Kaplan, influential journalist and author, 1998, At the End of the American Century, p. 95

What does democracy do? It does not create middle classes. The record of history suggests that middle classes, which are in fact the pre­requisite for stability in modern and postmodern societies, tend to emerge more easily under various kinds of authoritarian regimes— whether in East Asia or elsewhere. The values brought to America were often middle-class values or petty bourgeois values that were generated in Europe under some form of authoritarian regime. **Democracy emerges best when it emerges last—after all the other prerequisites of order are in place**. In other words, it is difficult for ethnically or region­ally based parties to debate issues like budgets and gun control until they have settled more explosive topics. The situation in Central and Eastern Europe bodes well for democ­racy because of a sufficient prewar tradition of bourgeois values and other strong indicators of social stability—including literacy rates of 99 percent and low birthrates. Yet in places such as Pakistan and sub­Saharan Africa, democracy will not be enough to guarantee a stable gov­ernment: literacy is relatively low; parties, when they are formed, are often just masks for various regions or ethnic groups; and there is often no significant middle class and very little industrialization. One there­fore should not place too much hope in the mere fact that elections are being held in many parts of the Third World.

#### RUSSIA RELS

#### Relations fail—fundamental suspicion

**Blank, 11** (Dr. Stephen J. Blank has served as an expert on the Soviet bloc and the post-Soviet world at the Strategic Studies Institute at the United States Army War College since 1989. Prior to that he was Associate Professor of Soviet Studies at the Center for Aerospace Doctrine, Research, and Education, Maxwell Air Force Base, and taught at the University of Texas, San Antonio, and at the University of California, Riverside. November 2011. “Arms Control and Proliferation Challenges to the Reset Policy,” pg 7-8. <http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?pubID=1085>, Callahan)

Another way of articulating this problem is to note that it is the **fundamental nature** of the Russian domestic political system, and a fact heightened by its juxtaposition to the U.S. and European systems, that drives the dynamic of hostility in East-West relations and fosters a situation where Russian thinking about security takes its cognitive and policy points of departure from what the German philosopher Carl Schmitt called the presupposition of conflict.19 On a regular basis, the glaring asymmetries in the two sides’ domestic political systems engender long-lasting perceptions based on mutual or reciprocal suspicion among powerful domestic constituencies that then try to **obstruct meaningful progress** in arms control or in overcoming 8 outstanding differences on regional security issues in Eurasia. Consequently, any effort to determine not just Russia’s posture but its evolving perspectives must take into account both the competing security orientations of the two states and the so-called values gap that fuels the mistrust, in order to understand Russian thinking to determine where accords can be reached or differences bridged and where they cannot be so resolved.

#### No impact

**Cohen, 12** [2/28, Professor, Russian Studies at New York University, America's Failed (Bi-Partisan) Russia Policy, <http://www.huffingtonpost.com/stephen-f-cohen/us-russia-policy_b_1307727.html?ref=politics&ir=Politics>]

In short, the United States is farther from a partnership with Russia today than it was more than twenty years ago. Third: Who, it must be asked, is to blame for this historic failure to establish a partnership between America and post-Soviet Russia? In the United States, Moscow alone is almost universally blamed. The facts are different. There have been three compelling opportunities to establish such a partnership. All three were lost, or are being lost, in Washington, not in Moscow. - The first opportunity was following the end of the Soviet Union, in the 1990s. Instead, the Clinton administration adopted an aggressive triumphalist approach to Moscow. That administration tried to dictate Russia's post-Communist development and to turn it into a U.S. client state. It moved the U.S.-led military alliance, NATO, into Russia's former security zone. It bombed Moscow's remaining European ally, Serbia. And along the way, the Clinton administration broke strategic promises made to Moscow. - The second opportunity for partnership was after 9/11, when the Bush administration repaid Russian President Vladimir Putin's extraordinary assistance in the U.S. war against the Taliban in Afghanistan by further expanding NATO to Russia's borders and by unilaterally withdrawing from the 1972 Anti-Ballistic Missile Treaty, which Moscow regarded as the linchpin of its nuclear security. - Now, since 2008, the Obama administration is squandering the third opportunity, its own "re-set," by refusing to respond to Moscow's concessions on Afghanistan and Iran with reciprocal agreements on Russia's top priorities, NATO expansion and missile defense. In short, **every opportunity** for a U.S.-Russian partnership during the past twenty years was lost, or is being lost, in Washington, not in Moscow. Fourth: How to explain, we must also ask, such unwise U.S. policies over such a long period? The primary explanation is a policy-making outlook, or ideology, that has combined the worst legacy of the Cold War with the worst American reaction to the end of the Soviet Union. - Washington's two most consequential (and detrimental) decisions regarding post-Soviet Russia have **continued the militarized approach** of the Cold War: to move NATO eastward; and to build missile defense installations near Russia's borders. - At the same time, Washington's triumphalist reaction to the end of the Soviet state produced a winner-take-all diplomatic approach that has been almost as aggressive. Consider the three primary components of this so-called diplomacy: 1. Presumably on the assumption that Russia's interests abroad are less legitimate than America's, Washington has acted on a double-standard in relations with Moscow. The unmistakable example is that while creating a vast U.S.-NATO sphere of military and political influence around Russia, Washington adamantly denounces Moscow's quest for any zone of security, even on its own borders. 2. Similarly, U.S. negotiations on vital issues have been based on the premise (called "selective cooperation") that Moscow should make all major concessions while Washington makes none. And on rare occasions when Washington did promise major concessions, it reneged on them, NATO's eastward expansion being only the first instance. (Can anyone who doubts this generalization cite a single meaningful concession -- any substantive reciprocity -- that Moscow has actually gotten from the United States since 1992?) 3. Meanwhile, presumably on the assumption that Russia's political sovereignty at home is less than our own, Washington has pursued intrusive "democracy-promotion" measures that flagrantly trespass on Moscow's internal affairs. This practice began in the 1990s with actual directives from Washington to Moscow ministries and with legions of onsite U.S. "advisers" and it continues today -- recently, for example, with the American vice president lobbying in Moscow against Putin's return to the Russian presidency and with the new U.S. ambassador's profoundly ill-timed meeting with leaders of Moscow's street protests. In short, blaming Putin for anti-Americanism in Russia, as the U.S. State Department and media do, ignores the real cause: Twenty years of American military and diplomatic policies have convinced a large part of **Russia's political class** (and intelligentsia) that Washington's intentions are aggressive, aggrandizing and deceitful -- anything but those of a partner. (In that context, part of the Russian elite has criticized Putin for being "pro-American.")

#### OTHER

#### Judicial deference is high – there’s strict adherence to the political question doctrine

Bradley 9-2 (Curtis A., William Van Alstyne Professor of Law – Duke Law School, “War Powers, Syria, and Non-Judicial Precedent,” Lawfare Blog, 2013, http://www.lawfareblog.com/2013/09/war-powers-syria-and-non-judicial-precedent/)

As an initial matter, we need to bracket the issue of whether Obama’s action will weaken his own power as a political matter. This is a complicated issue: on the one hand, it may signal weakness both to Congress and to other nations; on the other hand, if he obtains congressional authorization, he may be in an ultimately stronger political position, as Jack Goldsmith has pointed out. As I understand it, the claim being made by Spiro, Rothkopf, and others is that the power of the presidency more generally is being weakened. How might this happen? **Not through an influence on judicial doctrine**: Although courts sometimes take account of historic governmental practices when assessing the scope of presidential authority, they have consistently invoked limitations on standing and ripeness, as well as the political question doctrine, to avoid **addressing constitutional issues relating to war powers**. In the absence of judicial review, what is the causal mechanism by which the “precedent” of Obama seeking congressional authorization for the action in Syria could constrain future presidential action? When judicial review is unavailable, the most obvious way in which the President is constrained is through the political process—pressure from Congress, the public, his party, etc. In an extreme case, this pressure could take the form of impeachment proceedings, but it does not take such an extreme case for the pressure to have a significant effect on presidential decisionmaking. Indeed, it is easy to think of political considerations that might have motivated Obama to go to Congress with respect to Syria.

#### Reducing court deference breaks the political question doctrine

Lederman 11 (Martin, Professor of Law – Georgetown University Law Center, “War, Terror, and the Federal Courts, Ten Years After 9/11: Conference\*: Association of American Law Schools' Section on Federal Courts Program at the 2012 AALS Annual Meeting in Washington, D.C.,” American University Law Review, June, 61 Am. U.L. Rev. 1253, Lexis)

Number two: Numerous very important, contested, hotly debated topics have arisen in the last ten years, many of them in the Bush Administration, **involving** for example interrogation techniques, **the scope of detention** authority, habeas review, military commissions, **targeted killings, and the use of force more broadly**. On some of these questions, the federal courts - and the Supreme Court in particular - have had quite a lot to say; and on others, not so much, at least in part because of several different federal courts doctrines that prevent the courts from speaking too much about those. You're all familiar with standing limits, **political questions**, state secrets, etc. We're going to focus particularly on a couple of them, which are immunity doctrines and the weakening of the Bivens n2 and state court sorts of causes of action.

We will also discuss the fact that there are many people who think the federal courts have become too involved at supervising and resolving substantive questions involving the political branches, including some of Judge Kavanaugh's colleagues, who have been particularly vocal about that, engaging in what appears to be a form of resistance to the Supreme Court's Boumediene n3 decision. By contrast, many other people think the courts have not been nearly involved enough at resolving some of the unresolved questions about the scope of interrogation and detention and military commissions and the like, that might be lingering from the last administration, or occurring now in the new administration, such as with respect to use of force. So that's the second broad topic - whether the federal courts have been too timid or too aggressive in this area.

#### This makes war powers a justiciable issue – this case-specific exception causes a slippery slope that breaks the entire doctrine

Miller 10 (Mathew Edwin, JD – University of Michigan Law School, Associate – Latham & Watkins LLP, “The Right Issue, the Wrong Branch: Arguments against Adjudicating Climate Change Nuisance Claims,” Michigan Law Review, November, 109 Mich. L. Rev. 257, Lexis)

However, to say that cases like American Electric Power are justiciable just because plaintiffs allege a public nuisance begs the question: Why should such claims **automatically be justiciable?** It contravenes the **purpose and articulation of the political question doctrine** to suggest that nuisances are categorically justiciable because political questions have historically excluded torts between private parties and have focused instead on governmental issues like gerrymandering, foreign policy, and federal employment. n70 Again, Baker demanded "discriminating" case-by-case inquiries, rejecting "resolution by any semantic cataloguing." n71 Similarly, the fact that other public nuisance claims have not presented political questions in the past should not preclude such a finding in the climate context. n72 Indeed, the argument for nonjusticiability rests on the notion that climate suits are unique and therefore defy classification among tort precedent. n73

[\*271] Extending the political question doctrine to a public nuisance allegation would surpass precedent in terms of claim-category application. Yet with respect to the theory behind the doctrine, **such an extension is proper** because cases like American Electric Power would push existing nuisance law to embrace a complex, qualitatively unique phenomenon **that cannot be prudentially adjudicated**. n74 The Supreme Court has never held that torts cannot present political questions, so prudential constitutional principles should similarly apply to them. This Note simply argues that the facts, claims, parties, and relief demanded in this particular mode of litigation should fall under the nonjusticiability umbrella, wherever its limits may lie. n75 The following analysis of Baker invokes the American Electric Power situation specifically for the sake of convenience, but the arguments therein should be read to apply to injunctive climate nuisance claims generally.

[Continues to Footnore]

n75. This Note does not purport to suggest exactly where the line ought to be drawn in applying the political question doctrine to tort claims. A consideration of the potential doctrinal "slippery slope" - where courts might improperly refuse to adjudicate claims solely on the basis of complexity - is beyond the scope of the present discussion.

#### That’s key to operational success in Afghanistan

Schwartz 9 (Moshe, Specialist in Defense Acquisition – Congressional Research Service, “Department of Defense Contractors in Iraq and Afghanistan: Background and Analysis,” Congressional Research Service, 8-23, http://fpc.state.gov/documents/organization/128824.pdf)

The Department of Defense (DOD) increasingly relies upon contractors to support operations in Iraq and Afghanistan, which has resulted in a DOD workforce in those countries comprising approximately an equal number of contractors (200,000) as uniformed personnel (194,000). The critical role contractors play in supporting such military operations and the billions of dollars spent by DOD on these services requires operational forces to effectively manage contractors during contingency operations. Lack of sufficient contract management can delay or even prevent troops from receiving needed support and can also result in wasteful spending. Some analysts believe that poor contract management has also played a role in abuses and crimes committed by certain contractors against local nationals, which likely has undermined U.S. counterinsurgency efforts in Iraq and Afghanistan.

DOD officials have stated that the military’s experience in Iraq and Afghanistan, coupled with Congressional attention and legislation, has focused DOD’s attention on the importance of contractors to operational success. DOD has taken steps to improve how it manages and oversees contractors in Iraq and Afghanistan. These steps include tracking contracting data, implementing contracting training for uniformed personnel, increasing the size of the acquisition workforce in Iraq and Afghanistan, and updating DOD doctrine to incorporate the role of contractors. However, these efforts are still in progress and could take three years or more to effectively implement.

#### Violating the political question doctrine on issues of war power causes a wave of litigation – that destroys the effectiveness of US defense contractors

Isenberg 10 (David, Research Fellow – Independent Institute, “Contractor Legal Immunity and the ‘Political Questions’ Doctrine,” CATO Institute, 1-19, <http://www.cato.org/publications/commentary/contractor-legal-immunity-political-questions-doctrine>)

One can easily see why most defense contractors, including private military and security firms working under U.S. government contract, would like to prevent such suits from proceeding. The sheer number of injuries alone gives them reason to want to avoid possible suits. According to ProPublica as of last September 30 the number of private contractors injured in Iraq and Afghanistan totaled 37,652. Of course, not all those injuries are the result of something done wrong. But even a small fraction of them would **entail considerable legal costs for a contractor** so it is easy to understand why they would want to preventing such suits from being filed in the first place.

As I am not a lawyer the following is derived from Maj. Carter’s article.

Traditionally, the reason given for this is that such cases may involve “political questions” that the Judicial Branch is ill-equipped to decide. Thus defense contractor advocates claim these actions must be dismissed, else there be grim consequences for Government contingency contracting.

But according to Maj. Carter, “the recent developments in political question doctrine case law are significant to the future of Government contingency contracting. However, they are not catastrophic — although portrayed as such by some defense contractor advocates. There will not be an explosion of contracting costs passed on to the Government. There will not be a mass refusal of defense contractors to accept contingency contracts. There will not be chaos on the battlefield. Such predictions are nothing more than “bellowing bungle.”

Carter wrote:

What is the political question doctrine? According to Chief Justice John Marshall, “[q]uestions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in [the U.S. Supreme Court].” In 2004, the Court held “[s]ometimes .. . the law is that the judicial department has no business entertaining [a] claim of unlawfulness — because the question is entrusted to one of the political branches or involves no judicially enforceable rights. Such questions are said to be ‘nonjusticiable,’ or ‘political questions.’”

What this means is that traditionally courts have deferred to the political branches in matters of foreign policy and military affairs. Policy decisions regarding **the employment of U.S. military forces** in combat belong to the political branches, not the courts. The Supreme Court has held that, due to their “complex, subtle, and professional” nature, decisions as to the “composition, training, equipping, and control of a military force” are “subject always” to the control of the political branches.

Tort suits that challenge the internal operations of these areas of the military are likely to be dismissed as political questions. Yet, notwithstanding the foregoing prohibitions on judicial conduct, the Supreme Court has cautioned, “it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance.” As mentioned earlier, vast precedent exists for judicial involvement in foreign and military affairs. Case law establishes that military decisions are reviewable by federal courts. An assertion of military necessity, standing alone, is not a bar to judicial action. Merely because a dispute can be tied in some way to combat activities does not prevent a court from reviewing it. Although an action arises in a contingency environment, if a case is essentially “an ordinary tort suit” it is well within the competence of the courts to entertain. Courts have underscored the point: no litmus test exists that prohibits judicial action merely because an issue involves the military in some fashion.

Where plaintiffs seek only damages and not injunctive relief, such cases are “particularly judicially manageable.” When such a damages-only lawsuit concerns only a defense contractor (as opposed to the Federal Government), courts have held that such actions do not involve “overseeing the conduct of foreign policy or the use and disposition of military power.” Thus, those actions are less likely to raise political questions than suits against the Government, suits seeking injunctive relief, or both.

Given the enormous amount of money involved in Government contingency contracting and the correspondingly large number of contractors and contractor employees performing GWOT (Global War on Terror) contingency contracts, the number of plaintiffs seeking redress for tortious conduct was certain to rise — and it did. Universally, defendant defense contractors invoked the political question doctrine in order to shield themselves from liability in their performance of GWOT contracts, some with more success than others. The first significant case centered around the tragic events at the Abu Ghraib prison in Iraq.

In Ibrahim v. Titan Corp., Iraqi plaintiffs alleged they were tortured, raped, humiliated, beaten, and starved while in U.S. custody. Apparently fearing a dismissal on sovereign immunity grounds if they sued the U.S. Government, the plaintiffs instead chose to name as defendants the contractors who provided interpreters and interrogators for the prison. The defendants filed a motion to dismiss, alleging the matter involved political questions. The court held the case should not be dismissed at such an early stage on political question grounds, especially because the United States was not a party to the case. Ibrahim is significant because it was the first GWOT case to underscore the need for full factual development of a case prior to an assessment of justiciability.

One particularly interesting point in Carter’s article is this:

Judges and scholars openly speculate about the possible consequences of defense contractor tort liability on the federal procurement process. In Boyle, the Supreme Court warned that “[t]he financial burden of judgments against [] contractors would ultimately be passed through, substantially if not totally, to the United States itself, since defense contractors will predictably raise their prices to cover, or to insure against, contingent liability … .”

Since private military contracting advocates claim that their firms are more cost effective than the government one might reasonably believe that they can be so only by preventing tort suits against them. If the cost of such suits were factored in, the presumed cost effectiveness could conceivably be significantly less, **or perhaps not exist at all**.

Carter asks “is the situation really this dire? Are contractors at a point where, because of increased litigation risks, they will be forced to charge the Government more for their services or elect to not provide services altogether?”

The answers may not be far away. In November 2008, Joshua Eller filed suit in the U.S. District Court for the Southern District of Texas, as a result of injuries he suffered at Balad Air Base, Iraq, while deployed as a contractor employee of KBR from February to November of 2006. The complaint alleges defendants KBR and Halliburton “intentionally and negligently exposed thousands of soldiers, contract employees and other persons to unsafe water, unsafe food, and contamination due to faulty waste disposal systems … .” The complaint also includes allegations of injury from toxic smoke which emanated from an open air burn pit at Balad. The complaint alleges approximately 1,000 other individuals suffered similar injuries and it seeks to combine all of those actions into a single class action lawsuit. More significantly, this action is only one of several suits currently pending that relate to similar KBR activities in Iraq.

**The political question doctrine will be a** major factor in this coming storm of litigation. With the large number of potential plaintiffs compounded by the seriousness of the conduct and injuries alleged, these suits have the potential to dwarf the damages awards previously sought in earlier GWOT cases. Undoubtedly, KBR will seek to raise the political question doctrine as an absolute bar to these and any similar suits.

Defense contractor advocates warn of “deleterious effects” to the mission and the contractor-military relationship if tort suits against war zone defense contractors are allowed to proceed. They argue such tort claims “frustrate” and “conflict with” the Government’s ability to control contingency operations and would result in compromised logistical support and mission jeopardy. Furthermore, many companies, especially smaller ones, could be deterred from seeking contingency contracts. For those contractors who do elect to proceed, they will seek to insulate themselves from liability by either self-insuring or obtaining insurance coverage, if it is available. The argument continues that such costs will then be passed onto the Government in the form of higher contract prices. But, most alarmingly, some defense contractor advocates claim the impact of such suits “would be far more profound than financial” and defense contractors may, out of a fear of being sued, refuse to follow the military’s instructions altogether.

#### Afghan conflict causes global nuclear war

Morgan 7 (Stephen J., Political Writer and Former Member of the British Labour Party Executive Committee, “Better another Taliban Afghanistan, than a Taliban NUCLEAR Pakistan!?”, 9-23, http://www.freearticlesarchive.com/article/\_Better\_another\_Taliban\_Afghanistan\_\_than\_a\_Taliban\_NUCLEAR\_Pakistan\_\_\_/99961/0/)

As the war intensifies, he has no guarantees that the current autonomy may yet burgeon into a separatist movement. Appetite comes with eating, as they say. Moreover, should the Taliban fail to re-conquer al of Afghanistan, as looks likely, but captures at least half of the country, then a Taliban Pashtun caliphate could be established which would act as a magnet to separatist Pashtuns in Pakistan. Then, the likely break up of Afghanistan along ethnic lines, could, indeed, lead the way to the break up of Pakistan, as well. Strong centrifugal forces have always bedevilled the stability and unity of Pakistan, and, in the context of the new world situation, the country could be faced with civil wars and popular fundamentalist uprisings, probably including a military-fundamentalist coup d’état. Fundamentalism is deeply rooted in Pakistan society. The fact that in the year following 9/11, the most popular name given to male children born that year was “Osama” (not a Pakistani name) is a small indication of the mood. Given the weakening base of the traditional, secular opposition parties, conditions would be ripe for a coup d’état by the fundamentalist wing of the Army and ISI, leaning on the radicalised masses to take power. Some form of radical, military Islamic regime, where legal powers would shift to Islamic courts and forms of shira law would be likely. Although, even then, this might not take place outside of a protracted crisis of upheaval and civil war conditions, mixing fundamentalist movements with nationalist uprisings and sectarian violence between the Sunni and minority Shia populations. The nightmare that is now Iraq would take on gothic proportions across the continent. The prophesy of **an arc of** civil war over Lebanon, Palestine and Iraq would spread to south Asia, stretching from Pakistan to Palestine, through Afghanistan into Iraq and up to the Mediterranean coast. Undoubtedly, this would also spill over into India both with regards to the Muslim community and Kashmir. Border clashes, terrorist attacks, sectarian pogroms and insurgency would break out. A new war, and possibly **nuclear war,** between Pakistan and India could no be ruled out. Atomic Al Qaeda Should Pakistan break down completely, a Taliban-style government with strong Al Qaeda influence is a real possibility. Such deep chaos would, of course, open a “Pandora's box” for the region and the world. With the possibility of unstable clerical and military fundamentalist elements being in control of the Pakistan nuclear arsenal, not only their use against India, but Israel becomes a possibility, as well as the acquisition of nuclear and other deadly weapons secrets by Al Qaeda. Invading Pakistan would not be an option for America. Therefore a nuclear war would now again become a real strategic possibility. This would bring a shift in the tectonic plates of global relations. It could usher in a new Cold War with China and Russia pitted against the US.

#### U.S. Constitutional norms not modeled anymore

Versteeg 13

(Mila, Associate Professor at the University of Virginia School of Law, “Model, Resource, or Outlier? What Effect Has the U.S. Constitution Had on the Recently Adopted Constitutions of Other Nations?” 5-29-13, <http://www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations>)

For some time, both scholars and the public have considered the U.S. Constitution the world’s dominant model. Those beliefs are not without foundation: Fundamental structures like judicial review, as well as the very notion of a written constitution, are American inventions which have long shaped global constitution-making. But a growing number of voices are questioning this notion of American constitutional hegemony, with much of this attention focusing on the reportedly declining importance of U.S. Supreme Court precedent in foreign judicial decisions and others, like Justice Ginsburg, suggesting that the Constitution itself is flagging as a model for foreign constitutional drafters.¶ Methodology¶ In this article,[10] David Law and I seek to reconcile these viewpoints empirically. One of the article’s primary goals is to document the similarity between the American Constitution and evolving global constitutional practices over the past 60 years. As I describe in more detail below, we find evidence that the U.S. Constitution’s typicality in the world and, it seems, its sway as a global model are dwindling.¶ The basis for this analysis was a data set of world constitutions that I compiled between 2007 and 2008. The data set quantifies the rights-related provisions of all of the world’s constitutions from 1946 to 2006—729 constitutional versions of 188 countries—on 237 variables. From these 237 variables, my co-author and I aggregated and condensed them into 60 variables that we believe capture the full substantive range of global constitutional rights. We also included two provisions that are not strictly rights-related: judicial review and a national ombudsman.¶ Using this data, we compared each constitution in the data set to every other constitution, yielding a similarity index that ranges from 1 (perfect similarity) to –1 (perfect dissimilarity) between any two documents.¶ Globally Generic Rights¶ Before describing the results of the analysis with regard to the U.S. Constitution, it is worthwhile to explore one of the notions that underlies the question we attempt to answer. That is, how similar are the constitutional rights provisions among the world’s constitutions? And if there exists a high degree of similarity—i.e., an international template of rights (as has been previously documented)—what specific rights does it include?¶ To answer those questions, we created a table ranking all of the 60 identified rights by their world popularity in 2006. At the top of that ranking are rights such as freedom of religion, freedom of expression, the right to private property, equality guarantees, and the right to privacy, each of which appeared in at least 95 percent of constitutions in 2006. At the bottom of the list were provisions such as protection of fetus rights and the right to bear arms, which in 2006 appeared in just 8 percent and 2 percent of constitutions, respectively.¶ Other themes emerged from the data. For instance, almost all of the 60 constitutional components are increasing in similarity; even most of the unpopular ones (such as protection of fetuses) are becoming more popular. In fact, only two provisions, the right to bear arms and the recognition of an official state religion, are less popular now than they were just after World War II.¶ Having assembled the world’s most popular constitutional provisions, we engaged in a thought experiment. It so happens that the 25 most popular rights in 2006 appeared in at least 70 percent of constitutions. By coincidence, the average constitution over the entire 61-year period contained exactly 25 rights. We therefore compiled a theoretical “generic bill of rights” containing those 25 most popular rights. We then compared all of the world’s constitutions over time to the generic bill of rights, finding that similarity has been increasing steadily since 1946 (an unsurprising finding, given that the generic bill of rights is crafted from rights popular in 2006).¶ We also found that although constitutions are becoming more generic, not all constitutions are equally so. On one end of the spectrum, the constitutions of Djibouti, St. Lucia, Botswana, and Grenada are the world’s most generic, with similarity indexes to the generic bill of rights above 0.70. On the other end, constitutions with very few rights, such as those of Saudi Arabia, Brunei, and Australia, are the most unusual, with similarity indexes at or below 0.12.¶ The United States Constitution’s Declining Similarity¶ The existence of this generic set of rights begs the question of whether certain countries have led the way in adopting these generic rights and, if so, to what extent these rights pioneers have impacted the subsequent constitutional practices of other countries. As the article’s title suggests, we focused first and foremost on the U.S. Constitution and whether the conventional wisdom of its status as a constitutional pioneer was supported by the data.[11]¶ Unsurprisingly, attempting to gauge one constitution’s “influence” on another involves various conceptual and methodological challenges. To illustrate, a highly generic constitution may be generic because others have followed its lead, because it has modeled others, or simply by coincidence. That said, if two constitutions are becoming increasingly dissimilar, by definition, one cannot be following the other. That is, neither is exerting influence on the other (at least not in a positive way).¶ This is the phenomenon we observed in comparing the U.S. Constitution to the rest of the world; based on the rights index, the U.S. has become less similar to the world since 1946 and, with a current index of 0.30, is less similar now than at any point during the studied period. This phenomenon has occurred even among current American allies; among countries in regions with close cultural and historic ties to the U.S. (namely, Latin America and Western Europe); and among democracies. Only among common law countries is constitutional similarity higher than it was after World War II, but even that similarity has decreased since the 1960s.¶ Rights provisions are not the only constitutional elements that have lost favor with the rest of the world; structural provisions pioneered by American constitutionalism—such as federalism, presidentialism, and judicial review—have also been losing their global appeal.¶ For instance, in the early 20th century, 22 percent of constitutions provided for federalistic systems, while today, just 12 percent do.¶ A similar trend has occurred for presidentialism, another American innovation. Since the end of World War II, the percentage of countries employing purely presidential systems has declined, mainly in favor of mixed systems, which were a favorite of former Soviet bloc countries.¶ Finally, though judicial review is not mentioned in the U.S. Constitution, it has proved the most popular American structural innovation. But though the popularity of judicial review in general has exploded over the past six decades, most countries have opted for the European style of review (which designates a single, constitutional court which alone has the power to nullify laws inconsistent with the constitution) over the American model (in which all courts are empowered to strike unconstitutional laws). In 1946, over 80 percent of countries exercised American-style constitutional review; today, fewer than half do.¶ Reasons for the Decline¶ It appears that several factors are driving the U.S. Constitution’s increasing atypicality. First, while in 2006 the average national constitutions contained 34 rights (of the 60 we identify), the U.S. Constitution contains relatively few—just 21—and the rights it does contain are often themselves atypical.¶ Just one-third of constitutions provide for church and state separation, as does the U.S. Establishment Clause, and only 2 percent of constitutions (including, e.g., Mexico and Guatemala) contain a “right to bear arms.” Conversely, the U.S. Constitution omits some of the most globally popular rights, such as women’s rights, the right to social security, the right to food, and the right to health care.¶ These peculiarities, together with the fact that the U.S. Constitution is both old and particularly hard to amend, have led some to characterize the Constitution as simply antiquated or obsolete.¶ Thus, one reason why the Constitution is increasingly atypical may be that modern drafters in other countries prefer to look to modern legal innovations in crafting their own governing documents, and though American law may offer some such innovations, the U.S. Constitution cannot. In fact, foreign drafters may be attracted to provisions recognized in comparably modern U.S. statutory law, or even U.S. constitutional law—but not in the Constitution itself. Examples include the statutory innovations in the Civil Rights Act of 1964 and the Social Security Act, as well as the constitutional doctrines of substantive due process and judicial review.

#### Plan doesn’t effect human rights in other countries

**Williams, 08** – Daniel R., Associate Professor, Northeaster University School of Law (“A DISCUSSION OF BOUMEDIENE V. BUSH: WHO GOT GAME? BOUMEDIENE V. BUSH AND THE JUDICIAL GAMESMANSHIP OF ENEMY-COMBATANT DETENTION,” New England Law Review, Fall 2008, Lexis //Red)

The government pressed the point that Guantanamo detainees are outside the reach of the Constitution because they are being held in Cuba, and Cuba has "sovereignty" over Guantanamo Bay, with the United States as a mere leaseholder. This argument was pigeonholed into a highly formalistic deployment of the Eisentrager three-factor test, with the government essentially arguing that a prison site in post-War Germany is constitutionally indistinguishable from a post-9/11 prison site in Guantanamo Bay. The Court expended some analytical energy in dissecting that claim, finding the historical record and judicial precedent inconclusive. But once we grasp that the Court's holding is, more than anything else, about the judiciary staying in the War-on-Terror game, the government's "sovereignty" argument becomes a side issue, and its importance is only revealed by the fact that it "raises troubling separation-of-powers concerns." n61 Kennedy knows the "sovereignty" argument is part of the War-on-Terror game. Placing captured suspected terrorists in Guantanamo detention camps opened up possibilities for all sorts of power-enhancing arguments for the executive branch - most crucially and disturbingly, arguments about the inapplicability of the Geneva Conventions and the discretion to torture, which is defined away so that the interrogation techniques are no longer "torture." n62 What the executive branch is doing with the "sovereignty" argument, Kennedy recognizes, is seeking license to "switch the Constitution on or off at will," simply by relocating the site of unconstitutional activity off the shores of the United States. n63 That on-off switch that Guantanamo represents has to be ripped from the circuitry of government, the Court essentially holds, because "the writ of habeas corpus is itself an indispensable mechanism for monitoring the separation of [\*14] powers." n64 The government's maneuver in placing detainees at Guantanamo, where it has unfettered control and authority, and then using the "sovereignty" argument to suggest that those detainees are beyond the territorial boundaries where fundamental constitutional rights are recognized, is, as a matter of gamesmanship, both obvious and crude - defensible nonetheless, the dissent says - and Boumediene likely put an end to it. n65 As noted earlier, the majority opinion is a big target for the shots delivered by the two dissents precisely because it confirms the picture that has already emerged from the Court's War-on-Terror jurisprudence - namely, that it **is concerned with process and allocation of power and not so much with substantive rights.** But the problem here is not the substance-process distinction. The Boumediene dissents can score devastating points once we buy into the "war" locution and imagery. It is indeed difficult to avoid, seeming absurdly out of touch when the goal of expanding constitutional rights is being adjudicated on behalf of highly dangerous enemy combatants in an ongoing war where the battlefield is everywhere. Process arguments should be made in such a discursive environment. The real problem here emanates from the lack of a vocabulary to capture what is in fact happening in this War on Terror. How else to explain the complete absence of a single reference to the disturbing fact that it has been quite easy to be deemed an enemy combatant? n66 The vocabulary of war and combat leads the dissent to speak misleadingly of capturing individuals "on the battlefield," with U.S. soldiers striving to triumph over obvious combatants allied with a transparent enemy while military commanders are too burdened with the task of warehousing these obvious enemy combatants to be bothered with legalistic concerns. These concerns would absurdly arise from giving captured individuals habeas rights. Soldiers have to fight, not serve subpoenas, Roberts snickers. n67 But what of the fact that many, if not most, of these captured "detainees" are deemed to be [\*15] "enemy combatants" because some bounty-seeking villager looks to get heftily rewarded by doing the Afghani-equivalent of "dropping a dime" on someone they dislike. If there has been reckless indifference in the way people have been detained within the United States, in the wake of 9/11, imagine the magnitude of that reckless indifference in "war zones" like Afghanistan and Pakistan. Given that unstated reality, the Boumediene majority exhibits justifiable concern over the inability of detainees to present exculpatory evidence, and the Boumediene dissent exhibits either willful blindness or inexcusable bad faith in diminishing the problems detainees encounter in countering the government's often feeble evidence. But the dissent can accomplish its argumentative game-playing precisely because the majority seems incapable of articulating the on-the-ground realities as to why such exculpatory evidence - or at least, strong doubt-creating evidence - would routinely exist in this so-called War on Terror where reckless indifference seems to characterize appropriately much of the executive-branch's policymaking. The impoverished discourse that characterizes the jurisprudence of our War on Terror ineluctably leads to what I have elsewhere called a mere "**veil of administrative decency**" on what is shamefully indecent. n68 Unless we discover some other way to talk and theorize about the so-called War on Terror, n69 **we will not just relive, but will magnify, the folly, the outrages, and the paralysis of the War on Drugs, with deadlier and more tragic consequences.**

### legitimacy

**Hegemony fails at resolving conflicts.**

**Maher 11—PhD candidate in Political Science @ Brown**

Richard, Ph.D. candidate in the Political Science department at Brown University, The Paradox of American Unipolarity: Why the United States Will Be Better Off in a Post-Unipolar World, 11/12/2010 Orbis, ScienceDirect

And yet, despite this material preeminence, the United States sees its political and strategic influence diminishing around the world. It is involved in two costly and destructive wars, in Iraq and Afghanistan, where success has been elusive and the end remains out of sight. China has adopted a new assertiveness recently, on everything from U.S. arms sales to Taiwan, currency convertibility, and America's growing debt (which China largely finances). Pakistan, one of America's closest strategic allies, is facing the threat of social and political collapse. Russia is using its vast energy resources to reassert its dominance in what it views as its historical sphere of influence. Negotiations with North Korea and Iran have gone nowhere in dismantling their nuclear programs. Brazil's growing economic and political influence offer another option for partnership and investment for countries in the Western Hemisphere. And relations with Japan, following the election that brought the opposition Democratic Party into power, are at their frostiest in decades. To many observers, it seems that America's vast power is **not translating into** America's preferred **outcomes**. As the United States has come to learn, raw power does not automatically translate into the realization of one's preferences, nor is it necessarily easy to maintain one's predominant position in world politics. There are many costs that come with predominance – material, political, and reputational. Vast imbalances of power create apprehension and **anxiety in others**, in one's friends just as much as in one's rivals. In this view, it is not necessarily *American* predominance that produces unease but rather American *predominance*. Predominance also makes one a tempting target, and a scapegoat for other countries’ own problems and unrealized ambitions. Many a Third World autocrat has blamed his country's economic and social woes on an ostensible U.S. conspiracy to keep the country fractured, underdeveloped, and subservient to America's own interests. Predominant power likewise breeds envy, resentment, and alienation. How is it possible for one country to be so rich and powerful when so many others are weak, divided, and poor? Legitimacy—the perception that one's role and purpose is acceptable and one's power is used justly—is indispensable for maintaining power and influence in world politics. As we witness the emergence (or re-emergence) of great powers in other parts of the world, we realize that American predominance **cannot last forever**. It is inevitable that the distribution of power and influence will become more balanced in the future, and that the United States will necessarily see its relative power decline. While the United States naturally should avoid hastening the end of this current period of American predominance, it should not look upon the next period of global politics and international history with dread or foreboding. It certainly should not seek to maintain its predominance at any cost, devoting unlimited ambition, resources, and prestige to the cause. In fact, contrary to what many have argued about the importance of maintaining its predominance, America's position in the world—both at home and internationally—could very well be strengthened once its era of preeminence is over. It is, therefore, necessary for the United States to start thinking about how best to position itself in the “post-unipolar” world.

#### No solvency – multiple other steps that would have to be taken to restore cred

**Nossel, 08** – Suzanne, former Deputy Assistant Secretary of State for International Organization Affairs (“Closing Guantanamo Is Just the Beginning,” The Guardian, 11/20/08, http://www.truth-out.org/archive/item/81134-closing-guantanamo-is-just-the-beginning //Red)

Building US credibility on human rights **will be a long-term project** - and closing Guantánamo might just be the easy bit. During his first television interview after winning the White House, president-elect Barack Obama reiterated his long-standing promise to shut Guantánamo Bay. Since the historic vote, legal and policy circles, journalists and human rights activists have hummed about when and how the notorious prison's doors will slam shut once and for all, and what will happen to some 250 detainees still held there. While the incoming president and his team are right to put Guantánamo at the top of their priority list, when it comes to restoring American leadership on human rights, closing the prison is only a first step. Guantánamo has become an emblem of the erosion of US legitimacy on human rights issues over the last eight years. Because it is under direct US control, is near US shores and has been the site of abusive interrogations and years of indefinite detention without charge, the prison has been a focal point for public outrage both at home and abroad. While the incoming administration's commitment is unquestionable, closing Guantánamo may not be as simple as it looks. While human rights and legal groups have argued convincingly that US federal courts are well equipped to try the remaining detainees who have been implicated in criminal offences, some experts continue to argue for a new brand of preventative detention that could continue to deprive Guantánamo prisoners of basic due process rights, effectively moving the prison to the continental US. Realistically it could be months - many months - before the legal disposition of every last detainee is resolved, and the facility shuttered. In the meantime, it is essential that the new administration look **well beyond Guantánamo and begin to confront an array of other issues** that are essential to restoring a leadership role for the US on human rights. The most basic involve ensuring that the abuses with which Guantánamo has become synonymous do not outlast the prison itself. There have been wide calls for an executive order that would apply rules on interrogations set forth in the US army's field manual to all US personnel, including the CIA. The new president should also end renditions - forced transfers - of detainees to countries where they face risk of torture, and close permanently the shadowy network of secret prisons where detainees are effectively "disappeared". Bagram air base in Afghanistan holds some 600 detainees. While many were captured on battlefields in Afghanistan, others were picked up from their homes, far from the main areas of the insurgency, and at least a handful were apparently brought there from elsewhere to be held indefinitely without charge. The prisoners lack access to legal counsel, and because the facility is on Afghan territory, the US justice department has argued that US habeas rights do not apply. Devising a fair process to adjudicate the status of these detainees will be essential to ensuring that Bagram is not the next Guantánamo. While abuses carried out as part of the fight against terrorism cost the US its position of leadership on human rights issues globally, **regaining that status will require more than just bringing counter-terrorism tactics in line with international norms.** While the Bush administration hailed democracy and freedom as centrepieces of its foreign policy, in practice it tended to sideline human rights considerations within its important bilateral relationships. To cite just a few examples, disregard for human rights has contributed to a culture of lawlessness in Pakistan's tribal areas. Despite $10-12bn in mostly military US aid to Pakistan since 2001, civilians affected by the current conflict are left defenceless in squalid, disease-infested camps - some of which the UN refugee agency cannot reach - where their frustration with the US-led war effort only grows. As part of its effort to stabilise this strategically vital region, the US must invest in building institutions that support the rule of law and ensuring that approaches to security uphold human rights. In neighbouring Afghanistan, the US needs to take immediate steps to reduce civilian casualties in military operations, and to press for an end to corruption, which is both fuelling the conflict and undermining popular faith in democratic governance. In contemplating political agreements to end the conflict the US must avoid strengthening the hands of the region's most brutal warlords. While human rights will not be the sole consideration governing multi-faceted relationships with foreign governments, the new administration needs to affirm their place on the agenda and work with like-minded voices to press for progress. The US also has work to do in terms of strengthening the international human rights infrastructure. The Bush administration distanced itself from the international human rights community by failing to ratify key treaties and **absenting itself from new institutions of human rights enforcement.** **The next administration must demonstrate in tangible ways that the US is prepared to cooperate with others in building and strengthening mechanisms to protect and advance human rights** in the 21st century. Its absence from key forums and debates has created space for spoilers who seek to vitiate existing human rights norms and prevent new ones from taking hold. In 2005 the UN adopted a new norm, the "responsibility to protect", affirming the duty of states to protect their own populations, and the obligation of the international community to step in when they won't do so. But the new norm has flunked its first test in Darfur, where the government has suborned rampant human rights abuses and the international community has failed to intervene effectively. Working with allies to build broad-based support for rigorous human rights enforcement is a long-term project that needs to start right away. Necessary steps also include **re-engaging with the international criminal court**, a body that has begun to prove itself as a vital instrument of international accountability for war crimes. Building US credibility on human rights will be a long-term project requiring a steady hand against the buffeting forces of foreign policy reality. Done right, **the wider human rights agenda could make closing Guantánamo look like the easy part.**

**Capability outweighs credibility — US actions appear irrational, so countries don’t interpret our signals**

Steve **Chapman 9/5**/13, columnist and editorial writer for the Chicago Tribune, “War in Syria: The Endless Quest for Credibility,” http://reason.com/archives/2013/09/05/war-in-syria-the-endless-quest-for-credi

The United States boasts the most powerful military on Earth. We have 1.4 million active-duty personnel, thousands of tanks, ships and planes, and 5,000 nuclear warheads. We spend more on defense than the next 13 countries combined. Yet we are told we have to bomb Syria to preserve our credibility in world affairs.¶ Really? You'd think it would be every other country that would need to confirm its seriousness. Since 1991, notes University of Chicago security scholar John Mearsheimer, the U.S. has been at war in two out of every three years. **If we haven't secured our reputation by now, it's hard to imagine we ever could.**¶On the surface, American credibility resembles a mammoth fortress, impervious to anything an enemy could inflict. But to crusading internationalists, both liberal and conservative, it's a house of cards: The tiniest wrong move, and it collapses.¶ In a sense, though, they're right. The U.S. government doesn't have to impress the rest of the world with its willingness to defend against actual attacks or direct threats. But it does have to continually persuade everyone that we will lavish blood and treasure for purposes that are irrelevant to our security.¶ Syria illustrates the problem. Most governments don't fight unless they are attacked or have dreams of conquest and expansion. War is often expensive and debilitating even for the winners, and it's usually catastrophic for losers. Most leaders do their best to avoid it.¶ So even though the Syrian government is a vicious, repressive dictatorship with a serious grudge against Israel, it has mostly steered clear of military conflict. Not since 1982 has it dared to challenge Israel on the battlefield. When Israeli warplanes vaporized a Syrian nuclear reactor in 2007, Bashar al-Assad did nothing. The risks of responding were too dire.¶ But the U.S. never faces such sobering considerations. We are more secure than any country in the history of the world. What almost all of our recent military interventions have in common is that they involved countries that had not attacked us: Libya, Iraq, Serbia, Haiti, Somalia, Panama, Grenada and North Vietnam.¶ With the notable exception of the Afghanistan invasion, we don't fight wars of necessity. We fight wars of choice.¶ That's why we have such an insatiable hunger for credibility. In our case, it connotes an undisputed commitment to go into harm's way even when -- especially when -- we have no compelling need to do so. But it's a sale we can never quite close.¶ Using force in Iraq or Libya provides no guarantee we'll do the same in Syria or Iran or Lower Slobbovia. **Because we always have the option of staying out, there's no way to make everyone totally believe we'll jump into the next crisis.**¶The parallel claim of Washington hawks is that we have to punish Assad for using nerve gas, because otherwise Iran will conclude it can acquire nuclear weapons. Again, our credibility is at stake. But how could the Tehran regime draw any certain conclusions based on what happens in Syria?¶ Two American presidents let a troublesome Saddam Hussein stay in power, but a third one decided to take him out. George W. Bush tolerated Moammar Gadhafi, but Barack Obama didn't. Ronald Reagan let us be chased out of Lebanon, only to turn around and invade Grenada. **If you've seen one U.S. intervention, you've seen one.**¶What should be plain to Iran is that Washington sees nuclear proliferation as a unique threat to its security, which Syria's chemical weapons are not. Just because we might let Assad get away with gassing his people doesn't mean we will let Iran acquire weapons of mass destruction that would be used only against other countries. Heck, we not only let Saddam get away with using chemical weapons against Iran -- we took his side.¶ Figuring out the U.S. government's future impulses is hard even for Americans. There's no real rhyme or reason. But because we're so powerful, **other governments can ill afford to be wrong**. What foreigners have to keep in the front of their minds is not our inclination to act but our capacity to act -- **which remains unparalleled whatever we do in Syria.**¶Credibility is overrated. Sure, it's possible for hostile governments to watch us squabble over Syria and conclude that they can safely do things we regard as dangerous. **But there are graveyards full of people who made that bet.**

#### Putin won’t collapse or become unstable

Roxburgh 3-14-12

Angus, Author of The Strongman, a book about Vladmir Putin

http://www.foreignaffairs.com/features/letters-from/how-the-anti-putin-movement-missed-the-point?page=show#

I could not help but recall the great stirrings of democracy in Russia that I witnessed in the late 1980s and early 1990s, when, without the help of the Internet or Twitter, hundreds of thousands of Russians spilled into the streets to hear Boris Yeltsin, the future president, and Andrei Sakharov, a nuclear physicist and human rights activist, condemn the communist system and the excesses of its rulers. In those days, the crowd waited with mounting excitement for the appearance of the boldfaced speakers, who commanded almost universal respect. Today's opposition lacks the top talent that could perform Yeltsin and Sakharov's unifying and rallying role. Indeed, some of the movement's leaders did not even turn up on Saturday. Nemtsov was at home with a cold. Kasyanov said he was happy to leave the proceedings to the election observers to tell their stories, and Navalny -- perhaps the most promising of the younger generation of opposition heavyweights -- was milling in the crowd but did not appear on the stage. Besides their lack of inspiration, the speeches on Saturday were perhaps chasing the wrong message. Of course, they were right to highlight the alleged impropriety at the polls. There were credible reports of "carousel" voting, in which loyal voters were bussed from polling station to polling station to vote for Putin, and evidence of ballot stuffing and miscounting. But the fraud was much less significant than during the December elections to the State Duma. More important, the ballot tampering was far less damaging than the monumental lopsidedness of the media coverage that preceded the election. The central television stations not only devoted far more time to Putin than to the other candidates (the channels chose to designate coverage of his activities as news about the prime minister rather than as electioneering), but they also aired whole documentaries portraying Putin as a hero who saved Russia from the chaos of the Yeltsin years and from the allegedly meddling hands of the West. Putin's allegations that Western governments were "paying" the protesters and plotting an Orange Revolution like Ukraine's in 2004 went without challenge. Securing access to state television should now be the immediate concern of the opposition. It is the total control of the country's most powerful media -- not vote-rigging -- that makes Putin all but invincible. Nemtsov has claimed that just one hour of live televised debate with Putin would ensure that the latter would never win another election. That may be wishful thinking, but if the main channels were allowed to debate and investigate freely, it would certainly dramatically alter the political scene here. There is another reason, too, why Russia's winter of protests did not develop into an Orange Revolution. In Ukraine in 2004, a rigged election actually changed the result: It handed victory to the loser, the pro-Russian, "official" candidate, Viktor Yanukovych, and robbed the pro-Western Viktor Yushchenko of his rightful victory. Hundreds of thousands protested, forcing the authorities to rerun the election, which Yushchenko won. Not so in Russia. In the March 4 election, no other candidate was robbed of victory. Opposition leaders concede that Putin would have won even if there had been no fraud. True, the election might have gone to a runoff between Putin and his nearest rival. But few imagine that any of the other contenders could have matched Putin's popularity. That is a problem that has dogged Russian politics since the collapse of communism. For more than 20 years, democratically minded politicians have vied against one another rather than work out a common platform. So many new, separate parties have formed and then crumbled that Russia has almost run out of original names for them. Today, a good dozen of Russia's top democrats are scattered across several different parties, whose differences are much less than the similarities that should unite them against Putin. Even when they try to come together -- as Kasyanov, Nemtsov, Vladimir Ryzhkov, and others have in PARNAS -- they cannot agree which of them should be the figurehead. Until they are able to do so, Putin will continue to reign as a giant among squabbling political rivals. Still, it would have been hard to find a single protester on Saturday who felt that the battle was over -- even if it must now change form. An opinion poll conducted by the Ekho Moskvy radio station found that 80 percent of respondents believed the protests were worthwhile. In an interview with the same station, Kasyanov said that the most pressing task was to ensure that some small reforms promised by President Dmitry Medvedev in response to the December protests become a reality. He said that protesters must continue to insist that a new law easing the registration of political parties, for example, should be passed before Putin is inaugurated in May. The next step, he said, would be to achieve a rerun of the flawed parliamentary election that provoked the protests in the first place. It is implausible, though, that Putin, now comfortable in his belief that he has taken the steam out of the opposition, will make such a huge concession. The fact is that Putin's Kremlin has everything under control, and the opposition -- without effective leadership and no access to national television -- faces a long and uphill struggle.

## 2nc

### 2nc framework

#### Their framework makes them extratopical—resolved means to think about things—fiat is extratopical and allows them to claim absurd solvency arguments that we can’t predict, which is a reason to reject the team.

AHD 06. American Heritage Dictionary

resolved v. To cause (a person) to reach a decision.

#### Focus on top down executive regulation solutions reinforces a notion of sovereignty that is unitary that marginalizes alternative political formations—choose the model of Edward Snowden rather than the congressional representative

Buell 13. John Buell, columnist for The Progressive Populist, adjunct professor at Cochise College, “Nationalism, Tech Giants, and Spy States,” The Contemporary Condition August 10, 2013 <http://contemporarycondition.blogspot.com/2013/08/nationalism-tech-giants-and-spy-states.html> accessed September 4, 2013

That's is one reason it is hard today to remain aloof from politics. But for those who seek to do so the message is just as clear. If the Internet has progressive possibilities, their realization will not be automatic. Today a countersubversive culture nurtures and is nurtured by an evolving alliance of high tech giants, government bureaucrats (whom Smith calls securecrats), the older more established military industrial complex and powerful private corporations that benefit from close ties to the state, including especially the oil  and investment banking community.

If the most repressive outcomes are to be avoided, the best course might be an evolving counter-coalition that would emerge from moral and historical critiques of and alternative to the countersubversive tradition. In Emergency Politics, Honig argues that the very focus on the question of the rules that should govern declarations of emergency and the protections that can be revoked in emergencies reinforce a notion of sovereignty as unitary and top down. Thus they "marginalize forms of popular sovereignty in which action in concert rather than institutional governance is the mark of democratic power and legitimacy." Unitary and decisive sovereignty committed to its own invulnerability is "most likely to perceive crisis where there may only be political conflict and to respond...with antipolitical measures."

The best answer lies not merely in challenging the constitutional status of this surveillance state but in building a political coalition that embodies the forms of popular sovereignty of which Honig speaks. This would include labor, consumer and environmentalist critiques of and alternatives to the role of the state and markets in fostering inequality. It would be attentive to the possibilities and risks of the social media and the limits of its own interventions in these.  The coalition might advance more democratic forms of enterprise and media as well as decentralized and more sustainable forms of energy production and transportation.  And in an era where hyper nationalism erodes so many democratic impulses, cross border initiatives in the interest of widespread access to an open Internet with robust privacy protections would be paramount. (Let's hope that) Edward Snowden's travels (in a world dominated by the state passport and surveillance system) helps to highlight the stake citizens of many lands have in a democratic Internet but a more exploratory and democratic polity.

**They can’t access offense – their framework skips all the important parts of policymaking**

**Carpentier 2011** (Nico, asst prof comm @  Vrije Universiteit Brussel “Policy’s Hubris: Power, Fantasy, and the Limits of (Global) Media Policy Interventions” The Handbook of Global Media and Communication Policy, First Edition.)

This discussion on the nature of policy brings us to an encounter with a set of key assumptions which will be theorized here as fantasies, using a Lacanian framework.4 The reason for using this framework is that there are implicit claims embedded within policy debates that are partially (discursive) power strategies but, partially also, fantasies about control and harmony. And within a Lacanian framework, fantasy beholds the promise of the unachievable wholeness and the harmonious resolution of social antagonism. Although this access to the Real is impossible, the fantasy, as such, and the desire for wholeness and harmony that lies behind it remain crucial driving forces and feed into the strategies that the diversity of (policy) actors develop. This also implies that these fantasies become part of our social realities in many different ways, for instance, as utopian driving forces for political activity and as discursive strategies for legitimating policies. A first fantasy has already been mentioned in the discussion about the classic perspective on policy. In the introductory part of his discussion of media policy, which carries the title “Is policy political?,” Freedman (2008: 2) refers to the mechanical perspective of policy-making, which marginalizes “political agency in favour of administrative technique and scientific principles” and becomes “the domain of small thoughts, bureaucratic tidiness and administrative effectiveness.” This fantasy of isolating policy from politics (and from the political) is a protective strategy to generate a harmonious and consensual zone within the social, out side political conflicts and antagonisms, which is believed to be governed by bureaucratic principles and/or legalistic mechanisms. This way of thinking is very much related to the ideology of “endism,” which proclaimed the end of ideology and claimed that this would lead to the replacement of politics by a managerial culture (see, for instance, Burnham (1941) and Bell (1960) ). More contemporary critical frameworks refer to (and critique) the post-political and the post-democratic, where the latter is defined by Rancière (2007: 88) as “the rule of the principle of unification of the multitude under the common law of the One.” Not only does this lead to the conflation of the “pays légal” and the “pays reél” (to use the two marvellous French concepts that allow us to distinguish between legislation and social practice), but it also becomes a form of strategic power that allows for the mobilization of actors (and their minds and bodies), discourses, and objects to legitimize the hegemonization of specific political projects by reverting to the claim that these projects are outside the political. However important this fantasy may be, it is structurally frustrated by the permanent reemergence of antagonisms and conflicts. This brings us to Mouffe’s (2005: 9) argument that the political is structurally defined by “power, conflict and antagonism.” Her work challenges the post-political status quo, which assumes that a societal consensus is reached or reachable. Not surprisingly, the last sentence of her 2005 book On the Political is a plea for “abandoning the dream of a reconciled world that would have overcome power, sovereignty and hegemony” (Mouffe 2005: 130; my emphasis). Through the contingency of the social, any hegemony and social imaginary, however phantasmagorically comforting it may be, remains vulnerable to contestation, and even the most sedimented and takenfor-granted certainties can become unfixed and fluid, as they are permanently vulnerable to rearticulation. In Mouffe’s (2005: 18) words: “What is at a given moment considered as the ‘natural’ order – jointly with the ‘common sense’ which accompanies it – is the result of sedimented practices; it is never the manifestation of a deeper objectivity exterior to the practices that bring it into being.”

### 2nc permutation

#### The only ethical position is to refuse the sovereign fiction of lines between inside and outside—it prefigures util because it prefigures their ability to know the world

Edkins and Pin-Fat 05. Jenny Edkins, professor of international politics at Prifysgol Aberystwyth University (in Wales) and Veronique Pin-Fat, senior lecturer in politics at Manchester Universit, “Through the Wire: Relations of Power and Relations of Violence,” Millennium - Journal of International Studies 2005 34: pg. 14

One potential form of challenge to sovereign power consists of a refusal to draw any lines between zoe- and bios, inside and outside**.**59 As we have shown, sovereign power does not involve a power relation in Foucauldian terms. It is more appropriately considered to have become a form of governance or technique of administration through relationships of violence that reduce political subjects to mere bare or naked life. In asking for a refusal to draw lines as a possibility of challenge, then, we are not asking for the elimination of power relations and consequently, we are not asking for the erasure of the possibility of a mode of political being that is empowered and empowering, is free and that speaks: quite the opposite. Following Agamben, we are suggesting that it is only through a refusal to draw any lines at all between forms of life (and indeed, nothing less will do) that sovereign power as a form of violence can be contested and a properly political power relation (a life of power as potenza) reinstated. We could call this challenging the logic of sovereign power through refusal. Our argument is that we can evade sovereign power and reinstate a form of power relation by contesting sovereign power’s assumption of the right to draw lines, that is, by contesting the sovereign ban. Any other challenge always inevitably remains within this relationship of violence. To move outside it (and return to a power relation) we need not only to contest its right to draw lines in particular places, but also to resist the call to draw any lines of the sort sovereign power demands.

The grammar of sovereign power cannot be resisted by challenging or fighting over where the lines are drawn. Whilst, of course, this is a strategy that can be deployed, it is not a challenge to sovereign power per se as it still tacitly or even explicitly accepts that lines must be drawn somewhere (and preferably more inclusively). Although such strategies contest the violence of sovereign power’s drawing of a particular line, they risk replicating such violence in demanding the line be drawn differently**.** This is because such forms of challenge fail to refuse sovereign power’s line-drawing ‘ethos’, an ethos which, as Agamben points out, renders us all now homines sacri or bare life.

#### The permutation is a red herring—detracts from a systemic critique which is the best way to understand the status quo

Saas 12. William O. Saas, PhD in communications from Penn State University, “Critique of Charismatic Violence,” symploke, Volume 20, Numbers 1-2, 2012, pg. 65

Hidden in plain sight: a sprawling bureaucracy designed to justify and deliver military violence—clothed in the new war lexicon—to the world. How might one critique this massive network of violence that has become so enmeshed in our contemporary geo-socio-political reality? Is there any hope for reversing the expansion of executive violence in the current politi- cal climate, in which the President enjoys minimal resistance to his most egregious uses of violence? How does exceptional violence become routine? Answers to these broad and difficult questions, derived as they are from the disorientingly vast and hyper-accelerated retrenchment of our current politi- cal situation, are best won through the broad strokes of what Slavoj Žižek calls “systemic” critique. For Žižek, looking squarely at interpersonal or subjec- tive violences (e.g., torture, drone strikes), drawn as we may be by their grue- some and immediate appeal, distorts the critic’s broader field of vision. For a fuller picture, one must pull one’s critical focus back several steps to reveal the deep, objective structures that undergird the spectacular manifestations of everyday, subjective violence (Žižek 2008, 1-2). Immediately, however, one confronts the limit question of Žižek’s mandate: how does one productively draw the boundaries of a system without too severely dampening the force of objective critique?

### 2nc heg

**Benevolent hegemony just ideological cover for a project of global control and violent intervention**

**Güney & Gökcan 2010** (Aylın, Fulya profs pol sci @ U Bilkent “The ‘Greater Middle East’ as a ‘Modern’ Geopolitical Imagination in American Foreign Policy” Geopolitics, 15:22–38, 2010

As mentioned above, geopolitical codes such as the war on terrorism, which included extra-territorial power projection, needed to be justified to the global community as a whole. This led the Bush administration to rely on the ideological tenets of the Bush doctrine. Although the influence of neo-conservative ideas on foreign policy can be disputed,28 it was nevertheless an important element, which acted as a link between national myths, missions and foreign policy formation. Berggren and Rae argue that, especially in the aftermath of September 11, the Bush presidency’s discourse started to emphasise ‘democratic evangelism’, and it began to appear as the most important component of the administration’s neo-conservatism. The ideology was backed by several core beliefs: that the USA is an exceptional hegemonic power with a strong adherence to the expansion of democratic values; that the values that the USA promotes are the universal values that would be welcomed by any nation; and that the homeland security and hegemonic position of the USA can be ensured through the spread of US military and political power.29 The Bush administration’s means of justifying the war on terrorism, including the war on Iraq, involved a unilaterally proposed liberal international order grounded in US military and political power. As Jonathan Monten argues, this view appeared to be contingent on the belief that US power is the sole pillar that upholds the liberal world order conducive to the principles that the US believes in.30 That is, the current grand strategy of privileging liberalism and democracy perfectly matches mainstream American political traditions and national myths. Therefore, it can also be regarded as being one of the national beliefs of the country, in the sense that US nationalism has historically been defined in terms of both adherence to a set of liberal, universal political ideals and a perceived obligation to spread those norms internationally.31 The USA’s view of itself as being the nation with a mission to expand democracy and democratic values provided a sophisticated ground for its attempts to justify the unjust war in Iraq and other possible targets. The ideology of the Bush Administration regarding democracy promotion developed from the belief that emerged in the aftermath of the September 11 attacks. The 2002 National Security Strategy Document contended that there was an unparalleled US position of primacy that created “a moment of opportunity to extend the benefits of freedom across globe.” Thus, the USA would actively work “to bring the hope of democracy, development, free markets and free trade to every corner of the world.”32 It was based on the assumption that the root causes of Islamist extremism lay in the repressive nature of Middle Eastern regimes.33 However, this time, the Middle East was conceived of as a wider geography including various ‘rogue’ or ‘failed’ states that posed a danger to US interests. This newly envisioned geography, called the ‘Greater Middle East’ (GME), was put forward in a November 2003 speech by President Bush before the National Endowment for Democracy. In this speech, Bush reiterated his commitment to promoting democracy in Iraq. He likened his ‘forward strategy of freedom’ in the Middle East to earlier US commitments to see democracy spread throughout Eastern Europe. However, the ‘forward strategy of freedom’ enunciated by President Bush appeared to promise something quite different: high-level political emphasis, direct connection to the most fundamental security interests, and a wider geographic scope, which included Afghanistan and Pakistan as well, not only the Arab world and Iran.34 The idea of the Bush administration was that the Greater Middle East Initiative needed to be a reprise of the Helsinki process, which had contributed to bringing post-war Europe together. Bush’s initiative was seemingly intended to be a vital, visionary complement to the war on terrorism.35 In April 2004, approximately a year after the war on Iraq started and seven months after the first release of this idea, the USA presented its ideas again in the form of a set of proposals for a Greater Middle East Initiative (GMEI) to the G-8 states, to be adopted at their June Summit on Sea Island, Georgia, USA. The reasons for the initiation of such a proposal were made explicit in the draft version of the report. It stated that “the Greater Middle East region, which refers to the countries of the Arab world, plus Pakistan, Afghanistan, Iran, Turkey and Israel, poses a unique challenge and opportunity for the international community”.36 The proposal referred to the 2002 and 2003 United Nations Arab Human Development Reports (AHDR), and noted that the Arab authors of these reports pointed to three important conditions that threatened the national interests of all G-8 members: lack of freedom, knowledge and women’s empowerment. The document listed a number of statistics that reflected a region standing at a crossroads, and argued that “so long as the region’s pool of politically and economically disenfranchised individuals grows, we will witness an increase in extremism, terrorism, international crime, and illegal migration, thus a direct threat to the stability of the region, and the common interests of the G-8 members”.37 The document further stated that “demographic changes, the liberation of Afghanistan and Iraq from oppressive regimes, and the emergence of democratic impulses across the region together present the G-8 a historic opportunity . . . G-8 leaders should forge a long-term partnership with the Greater Middle East’s reform leaders and launch a coordinated response to promote political, economic, and social reform in the region.”38 The initiative aimed at promoting democracy and good governance, building a knowledge society, and expanding economic opportunities, thereby diminishing the chances of targeting the US and other Western interests. In this manner, the invasion of Iraq was meant as an attempt to create an example of democracy in the heart of the Middle East. Iraq would become an attractive democratic model that would set an example to the entire Middle East. Thus, the war itself started to be considered as a form of ‘political engineering’, a tool to reshape a country and the entire region of the Greater Middle East and secure the long-term geopolitically imagined political/national interests of the United States. From a critical perspective, it is possible to claim that the GMEI and its missionary claims would legitimise US involvement in the region, and prove that in the context of the GMEI the war on Iraq was a necessary and just war, the pursuit of which was the prime responsibility of civilised nations and common humanity. Combined with these attempts to justify extra-territorial military interventions, the war on Iraq, projected as a component of the new geopolitical code of the war on terror, would be legitimised. The significance of the GMEI for a critical geopolitical analysis is, as Falah and Flint examine, how the war on terrorism was justified and how the USA, as the hegemonic power, constructed its military extra-territoriality in a system of sovereign states. According to them, the project of the Greater Middle East aimed to justify the USA’s presence in the region in both soft and hard power terms, in order to prevent the decline of the USA’s Indeed, the justification of foreign policy stances is a key component of a geopolitical code, so when a more nuanced interpretation of the language of the GMEI is made, it can tease out the way in which references to democracy, etc., are actually the means by which realist practices are justified. In the case of the GMEI, US justifications and methods for its presence were not portrayed in terms of power politics, for that would emphasise material interests. Instead, values were emphasised and the global actions of the world leader were portrayed as benevolent actions that would benefit all.40 That is, the creation of the Greater Middle East region was a new geopolitical imagination based on modern premises, in that the Bush administration was approaching this project with tools drawn from offensive realism. It aimed to prevent, by every possible means, the emergence of any serious rival or combinations of rivals to the US, and oppose even the ability of other states to play the role of great power within their own regions.41 The timing of the increased emphasis on democracy promotion as the ultimate goal of US foreign policy can be attributed to the hegemonic decline that coincided with the decreased legitimacy of its role with the unjust war declared on Iraq. As Flint puts it, this was a time when the world leader faced a challenge symptomatic of the beginning of a period of de-concentration and hegemonic decline.42 The National Security Strategy Document clearly stated that it was time to reaffirm the essential role of American military strength. Monten argues that military actions and ensuing democracy promotion programmes in Afghanistan and Iraq, in addition to their immediate security motivations, were driven in part by the neoconservative desire to restore US strength and credibility. They also aimed at reversing popular reluctance about the use of force, and reversing perceptions of US weakness and failure of will. The language of the NSS balanced an identification of a threat to US society and people, in terms of continued terrorist attacks, with a global commitment to promoting a particular vision of order, including economic relationships.43 Thus, the GMEI appears as a perfect example of American internationalism in this respect. The GMEI was a clear indication of the attempt by the USA to forge its global leadership in this region by integrating these ‘failed states’ into the modern world that it had in mind. This was seen as a way to prevent the spread of terrorism from these countries. The war on Afghanistan and Iraq were thus perceived by the USA to be two opportunities to begin transforming the whole region of the Greater Middle East. It seems therefore that discourse and policy concerns carrying a neo-conservative imprint were coming to be increasingly used as a pretext or justification to shape the geopolitical code and the geopolitical imagination of the USA. The projection of power in newly imagined geographies, such as the Middle East, was one outcome of this new geopolitical code and vision. In short, ‘global social engineering’ became a primary goal of the USA because it had acquired the capability to use military intervention as a means of forcing political change.44 Another influential pretext was the new US strategic vision that can be termed ‘integration’ into a Western and American set of values and modus operandi. Falah and Flint refer to this integrative power of ‘prime modernity’.45

**US hegemony is an attempt to organize the space of the world into an American sphere – we force democratic governments, we force specific economic policies – all in the name of creating stability and regional security – this results in an endless war against those who oppose American power, results in extinction**

**Peet** Graduate School of Geography, Clark University, **2k5** (Richard, “From Eurocentrism to Americentrism” Blackwell Synergy)

All centrisms see the world through the delusions of their own selfimportance. Geo-centrisms see the world through the collective myths created about the central We and the peripheral They. At worst, as with the above list of cliche´s, these myths combine ignorance with hatred, and dominance with fear. Fordist Americentrism takes delusion further into the realm of geo-pathological fantasy. The world is ‘‘understood’’ through headlines and newsleads that titillate prejudice so better to prepare for the main purpose of communication, the stimulation of consumption through the incessant barrage of advertisements. The news is hyped, through a combination of simplification with exaggeration, to keep the attention of those bored by overexposure to a synthetic plenitude of the best and worst of everything, till the next ad break, with this rhythm repeated so many thousands of times that it becomes the eternal cycle of postmodern Western consciousness. As Barnett’s book abundantly shows, contemporary Americentrism ‘‘knows’’ the world only through myths made in the market, under the pressures of the domination of the object over the subject. However, the terrible events of September 11, an attack on the economic and political centers of American power, turned collective delusion into collective derangement. Now we have a geo-centrism that wants to protect itself by forcing the world’s peoples to become our cultural mimics (we are ‘‘connectivity personified’’). The world will be made safe for Americans, **by making the world American**. Instead of trying to understand the cultures of the world’s peoples, America commits to obliterating them. So it is too that a good man, Thomas P M Barnett, who comes to save the world, does his bit to destroy any potential there might still be for a lasting peace. That peace can come only from cultural appreciation, whereas what we have here, from the neoliberal end of the now neo-conservative amilitary–ideological complex, is a symptom of the will **to culturally annihilate** all those who dare to differ from the American dream. Exactly this attitude, culturalizing the willing, bombing the recalcitrant, into a future they must surely want (for everyone is born with ‘‘freedom in their hearts’’), has already killed tens of thousands of largely innocent people in Iraq (and for every episode of ‘‘collateral damage’’ read a hundred angry kids vowing revengeful lives). But if the Barnetts of this world get their way, **Iraq is merely the beginning of a perpetual war to create the conditions of a lasting peace** (a Pax Americana whose next regime change candidates, Iran and North Korea, are already lined up). We will bring them democracy, whether they want it or not. **We will force them to be free**. And we will continue doing so for generations to come. As Barnett (2004b:148) said more recently about the US invasion of Iraq: ‘‘The boys are never coming home. America is not leaving the Middle East until the Middle East joins the world. It’s that simple. No exit means no exit strategy’’. So Barnett tells the younger, progressive officers at the Pentagon, the future leaders of the armed forces who will ‘‘protect’’ Americanism in a future made less certain by the explosions of September 11. With such double-speak, Americentrism shows itself to be the most dangerous ideology the world has ever known, far more dangerous than Eurocentrism essentially because of two things: because even a simple reflexivity allows almost complete immunity from effective self-criticism; and because of **a techno-logical ability to destroy civilizations at will.** Jim’s critique of Eurocentrism needs replicating with an equally compelling critique of Americentrism.

**No impact to the transition**

Ikenberry 08 professor of Politics and International Affairs at Princeton University (John, The Rise of China and the Future of the West Can the Liberal System Survive?, Foreign Affairs, Jan/Feb)

Some observers believe that the American era is coming to an end, as the Western-oriented world order is replaced by one increasingly dominated by the East. The historian Niall Ferguson has written that the bloody twentieth century witnessed "the descent of the West" and "a reorientation of the world" toward the East. Realists go on to note that as China gets more powerful and the United States' position erodes, two things are likely to happen: China will try to use its growing influence to reshape the rules and institutions of the international system to better serve its interests, and other states in the system -- especially the declining hegemon -- will start to see China as a growing security threat. The result of these developments, they predict, will be tension, distrust, and conflict, the typical features of a power transition. In this view, the drama of China's rise will feature an increasingly powerful China and a declining United States locked in an epic battle over the rules and leadership of the international system. And as the world's largest country emerges not from within but outside the established post-World War II international order, it is a drama that will end with the grand ascendance of China and the onset of an Asian-centered world order. That course, however, is not inevitable. The rise of China does not have to trigger a wrenching hegemonic transition. The U.S.-Chinese power transition can be very different from those of the past because China faces an international order that is fundamentally different from those that past rising states confronted. China does not just face the United States; it faces a Western-centered system that is open, integrated, and rule-based, with wide and deep political foundations. The nuclear revolution, meanwhile, has made war among great powers unlikely -- eliminating the major tool that rising powers have used to overturn international systems defended by declining hegemonic states. Today's Western order, in short, is hard to overturn and easy to join. This unusually durable and expansive order is itself the product of farsighted U.S. leadership. After World War II, the United States did not simply establish itself as the leading world power. It led in the creation of universal institutions that not only invited global membership but also brought democracies and market societies closer together. It built an order that facilitated the participation and integration of both established great powers and newly independent states. (It is often forgotten that this postwar order was designed in large part to reintegrate the defeated Axis states and the beleaguered Allied states into a unified international system.) Today, China can gain full access to and thrive within this system. And if it does, China will rise, but the Western order -- if managed properly -- will live on.

### 2nc russia links

#### Depicting Russia as a foreign Other located in a distant Asia apart from the West and incapable of technological transformation encourages violence and constructs an enemy relationship

**ENGERMAN 2003** (David, Engerman is Assistant Professor of History at Brandeis University, Modernization from the Other Shore: American Intellectuals and the Romance of Russian Development, p. 2-4)

These questions redounded around the world in the twentieth century. Under the spell of modernization, American intellectuals endorsed radical forms of social change everywhere except in the United States. They placed at the pinnacle of human achievement a society much like they imagined their own to be: industrial, urban, cosmopolitan, rational, and democratic. Backward nations, they argued, could progress toward modernity only by implementing rapid and violent changes. Modern America, however, would be exempt from such turmoil. With America's expanding global role and intellectuals' increasingly close connections to the centers of power, these ideas shaped nations all over the world. New ideas of social change and national character also shaped notions of American national identity, which itself underwent significant changes after 1870—from scientific racism and assimilationist theory before World War II to celebrations of common humanity in the 1950s and the valorization of cultural differ-ences since the 1980s. The way Americans understood the process of social change shaped the way they envisioned their own nation. Finally, the tensions between accepting cultural differences and promoting modernization underpinned American-Soviet conflict during the Cold War. At the same time that scholars analyzed the conflict as one between two industrial powers with opposing ideologies, American diplomats construed the Cold War enemy as an inherently and irredeemably different nation. These conceptions, supported by America's global reach, made—and continue to make—the American century.

American writings on Russia and the Soviet Union were shaped by three forces, which constitute the three main themes of this book: a longstanding belief that every nation had its own unique character; a growing enthusiasm for modernization; and the appearance of new professional institutions and norms for interpreting other nations. First, American experts used national-character stereotypes to explain Russian and Soviet events. Building on centuries-old notions of Russian peculiarity, western experts enumerated traits that supposedly limited the Russians' ability to function in a modern world. Americans repeated the claims of European commentators who argued that national character emerged from geography and topography: long winters made Russians passive, and endless plains made them melancholy. Russians, in these writings, exhibited instinctual behavior, extreme passivity, and a lethargy shaken only by violence.4 Americans argued that these characteristics—accentuating the negative—affected Russia's economic prospects. Reliance on these notions of national character crossed political boundaries; Russia's avowed enemies and ardent defenders in the United States agreed on what made Russians different.

Herzen himself illustrated the double-edged nature of such characterizations. Living in France and Italy in the 1850s, he gained new perspective on Russian character. He frequently mentioned the "Slavic genius" that set his compatriots apart from Europeans, focusing especially on Russians' soulful and communal natures. Yet he also took for granted that Russians^—especially the peasants who constituted the vast majority of the population—were "improvident and indolent," better at "passive obedience" than political or economic activity.5 Difference did not necessarily mean superiority.

Americans' notions of Russian character often contained within them the idea that Russians were Asian—"Asiatic" in the language of the day. The claim, stated as often in racial as in geographic terms, further legiti-mated violence in Russia. According to an oft-repeated refrain, life meant less to Asians, and therefore to Russians. Personal traits also held political implications. Asians, the argument went, could be ruled only through "Oriental despotism." Writers from Baron Charles de Montesquieu to Karl Marx depicted Asia as an unchanging—even unchangeable—morass of poverty, insularity, and despotism.6 Whether understood as Asian or Slavic, Russians consistently faced claims that they were unready to join the modern world. Particularist views of Russia, which emphasized the nations unique traditions and character traits, dominated American writings until the 1920s.

### 2nc alternative

#### Potential politics: the alternative sufficiently solves if it demonstrates that a life otherwise is POSSIBLE—we cannot know precisely what movements the alternative would take, but SUBTRACTION itself is sufficient to demonstrate that a world otherwise is possible—scripting the forms the alternative would take is a link argument and should be ethically rejected.

Prozorov 10. Sergei Prozorov, professor of political and economic studies at the University of Helsinki, “Why Giorgio Agamben is an optimist,” Philosophy Social Criticism 2010 36: pg. 1069

The contingency of the outcome is certainly not the reason to evade the wager on ‘happy life’ or renounce all dreams of it, which would merely turn the contingent into the necessarily impossible. What we must do with our dreams is simply take the risk of using them without any fear of using them up, of ‘destroying’ and ‘falsifying’ them, of going to the bottom of them and finding nothing but the void. And even if they all amount to nothing, if the potential subjects of whatever being shrug and say ‘whatever’ in response to Agamben’s vision of happy life, this only means that ‘not only this is pos- sible’, that the possibility of a happy life remains a possibility, a possibility to succeed or, in Beckett’s terms, to fail better. This is the ultimate limit of Agamben’s optimism, beyond which his thought cannot venture, having dispensed with both will and necessity and finding its ground in absolute contingency alone. This curious optimism, which is only strengthened with each successive failure, resonates with Wallace Stevens’ famous words in Notes on the Supreme Fiction, ‘It is possible, possible, possible, it must be pos- sible. It must be that in time the real will from its crude compoundings come.’

## 1nr

### heg

#### No transition wars and heg isn’t key

Fordham 12—professor of political science at Binghamton University (Ben, International Economic Institutions and Great Power Peace, 8/12/12, http://gt2030.com/2012/08/15/international-economic-institutions-and-great-power-peace/)

I enjoyed Jack Levy’s comments on how the world would have looked to people writing in 1912. As part of my current research, I’ve been spending a lot of time thinking about the three decades before World War I. As Levy pointed out, this last period of great power peace has some interesting parallels with the present one. Like today, the international economy had become increasingly integrated. For good reason, some even refer to this period as the “first age of globalization.” The period also saw the emergence of several new great powers, including Japan, Germany, and the United States. Like emerging powers today, each of these states sought to carve out its own world role and to find, as the German Foreign Secretary put it, a “place in the sun.” Like Levy, I don’t think these parallels we are doomed to repeat the catastrophe of 1914. I want to highlight the different institutional rules governing the international economic system today. The dangers discussed in the NIC report are real, but there is reason for hope when it comes to avoiding great power war. The rules of the game governing the “first age of globalization” encouraged great powers to pursue foreign policies that made political and military conflict more likely. Declining transportation costs, not more liberal trade policies, drove economic integration. There was no web of international agreements discouraging states from pursuing protectionist trade policies. As Patrick McDonald‘s recent book, The Invisible Hand of Peace, explains nicely, protectionism went hand-in-hand with aggressive foreign policies. Many of the great powers, including the emerging United States, sought to shut foreign competitors out of their home markets even as they sought to expand their own overseas trade and investment. Even though markets and investment opportunities in less developed areas of the world were small, great power policy makers found these areas attractive because they would not export manufactured products. As one American policy maker put it in 1899, they preferred “trade with people who can send you things you ant and cannot produce, and take from you in return things they want and cannot produce; in other words, a trade largely between different zones, and largely with less advanced peoples….” Great powers scrambled to obtain privileged access to these areas through formal or informal imperial control. This zero-sum competition added a political and military component to economic rivalry. Increasing globalization made this dangerous situation worse, not better, in spite of the fact that it also increased the likely cost of a great power war. In large part because of the international economic institutions constructed after World War II, present day great powers do not face a world in which protectionism and political efforts to secure exclusive market access are the norm. Emerging as well as longstanding powers can now obtain greater benefits from peaceful participation

in the international economic system than they could through the predatory foreign policies that were common in the late 19th and early 20th centuries. They do not need a large military force to secure their place in the sun. Economic competition among the great powers continues, but it is not tied to imperialism and military rivalry in the way it was in 1914. These international institutional differences are probably more important for continuing great power peace than is the military dominance of the United States. American military supremacy reduces uncertainty about the cost and outcome of a hegemonic war, making such a war less likely. However, as in the 19th Century, higher growth rates in emerging powers strongly suggest that the current American military edge will not last forever. Efforts to sustain it will be self-defeating if they threaten these emerging powers and set off a spiral of military competition. Similarly, major uses of American military power without the support (or at least the consent) of other great powers also risk leading these states to build up their military capabilities in order to limit American freedom of action. The United States will be better served by policies that enhance the benefits that emerging powers like China receive from upholding the status quo.

**No amount of commitment is sufficient**

Lincoln **Mitchell 12-25**-2011; Arnold A. Saltzman Assistant Professor in the Practice of International Politics at Cornell; Foreign Policy The Sum of Obama’s Foreign Policy Parts http://www.thefastertimes.com/foreignpolicy/2011/12/25/the-sum-of-obamas-foreign-policy-parts/

On the other hand, this unwillingness to set ambitious or creative goals has contributed to the administration’s inability to consider bolder decisions and approaches. The killing of Bin Laden, for example, does not change the situation in Afghanistan where Obama has talked himself, and the country, into a war that continues with no clear end, or even goals, in sight. Similarly, the administration’s commitment to a U.S. position as a global hegemon spending billions of dollars it no longer has in this endeavor reflects a commitment to conventional, and increasingly unsustainable approaches to foreign policy. In this context, the accomplishments of the Obama administration **will never seem satisfactory**, either to opponents of the administration who seek out any opportunity to criticize the president, but more significantly, to observers who cannot help but note the distressing state of international affairs despite several **high profile successes** by the administration.

### limits good

#### Limits outweigh:

#### 1. Participation

**Rowland 84** (Robert C., Baylor U., “Topic Selection in Debate”, American Forensics in Perspective. Ed. Parson, p. 53-4)

The first major problem identified by the work group as relating to topic selection is the decline in participation in the National Debate Tournament (NDT) policy debate. As Boman notes: There is a growing dissatisfaction with academic debate that utilizes a policy proposition. Programs which are oriented toward debating the national policy debate proposition, so-called “NDT” programs, are diminishing in scope and size.4 This decline in policy debate is tied, many in the work group believe, to excessively broad topics. The most obvious characteristic of some recent policy debate topics is extreme breath. A resolution calling for regulation of land use literally and figuratively covers a lot of ground. Naitonal debate topics have not always been so broad. Before the late 1960s the topic often specified a particular policy change.5 The move from narrow to broad topics has had, according to some, the effect of limiting the number of students who participate in policy debate. First, the breadth of the topics has all but destroyed novice debate. Paul Gaske argues that because the stock issues of policy debate are clearly defined, it is superior to value debate as a means of introducing students to the debate process.6 Despite this advantage of policy debate, Gaske belives that NDT debate is not the best vehicle for teaching beginners. The problem is that broad policy topics terrify novice debaters, especially those who lack high school debate experience. They are unable to cope with the breadth of the topic and experience “negophobia,”7 the fear of debating negative. As a consequence, the educational advantages associated with teaching novices through policy debate are lost: “Yet all of these benefits fly out the window as rookies in their formative stage quickly experience humiliation at being caugh without evidence or substantive awareness of the issues that confront them at a tournament.”8 The ultimate result is that fewer novices participate in NDT, thus lessening the educational value of the activity and limiting the number of debaters or eventually participate in more advanced divisions of policy debate. In addition to noting the effect on novices, participants argued that broad topics also discourage experienced debaters from continued participation in policy debate. Here, the claim is that it takes so much times and effort to be competitive on a broad topic that students who are concerned with doing more than just debate are forced out of the activity.9 Gaske notes, that “broad topics discourage participation because of insufficient time to do requisite research.”10 The final effect may be that **entire programs** either **cease functioning** or shift to value debate as a way to avoid unreasonable research burdens. Boman supports this point: “It is this expanding necessity of evidence, and thereby research, which has created a competitive imbalance between institutions that participate in academic debate.”11 In this view, it is the competitive imbalance resulting from the use of broad topics that has led some small schools to cancel their programs.

#### 2. Innovation

Intrator, 10 [David President of The Creative Organization, October 21, “Thinking Inside the Box,” http://www.trainingmag.com/article/thinking-inside-box

One of the most pernicious myths about creativity, one that seriously inhibits creative thinking and innovation, is the belief that one needs to “think outside the box.” As someone who has worked for decades as a professional creative, nothing could be further from the truth. This a is view shared by the vast majority of creatives, expressed famously by the modernist designer Charles Eames when he wrote, “Design depends largely upon constraints.” The myth of thinking outside the box stems from a fundamental misconception of what creativity is, and what it’s not. In the popular imagination, creativity is something weird and wacky. The creative process is magical, or divinely inspired. But, in fact, creativity is not about divine inspiration or magic. It’s about problem-solving, and by definition a problem is a constraint, a limit, a box. One of the best illustrations of this is the work of photographers. They create by excluding the great mass what’s before them, choosing a small frame in which to work. Within that tiny frame, literally a box, they uncover relationships and establish priorities. What makes creative problem-solving uniquely challenging is that you, as the creator, are the one defining the problem. You’re the one choosing the frame. And you alone determine what’s an effective solution. This can be quite demanding, both intellectually and emotionally. Intellectually, you are required to establish limits, set priorities, and cull patterns and relationships from a great deal of material, much of it fragmentary. More often than not, this is the material you generated during brainstorming sessions. At the end of these sessions, you’re usually left with a big mess of ideas, half-ideas, vague notions, and the like. Now, chances are you’ve had a great time making your mess. You might have gone off-site, enjoyed a “brainstorming camp,” played a number of warm-up games. You feel artistic and empowered. But to be truly creative, you have to clean up your mess, organizing those fragments into something real, something useful, something that actually works. That’s the hard part. It takes a lot of energy, time, and willpower to make sense of the mess you’ve just generated. It also can be emotionally difficult. You’ll need to throw out many ideas you originally thought were great, ideas you’ve become attached to, because they simply don’t fit into the rules you’re creating as you build your box.

### 2nc B v B

**Sherman, ‘8**

http://www.webcitation.org/query?url=http%3A%2F%2Fap.google.com%2Farticle%2FALeqM5iS3b8PdQ\_oVlJA2eFtDvhnnTUvFwD918J1QO0&date=2008-06-12

The Supreme Court ruled Thursday that foreign terrorism suspects held at Guantanamo Bay have rights under the Constitution to challenge their detention in U.S. civilian courts.

The justices handed the Bush administration its third setback at the high court since 2004 over its treatment of prisoners who are being held indefinitely and without charges at the U.S. naval base in Cuba. The vote was 5-4, with the court's liberal justices in the majority.

Justice Anthony Kennedy, writing for the court, said, "The laws and Constitution are designed to survive, and remain in force, in extraordinary times."

It was not immediately clear whether this ruling, unlike the first two, would lead to prompt hearings for the detainees, some who have been held more than 6 years. Roughly 270 men remain at the island prison, classified as enemy combatants and held on suspicion of terrorism or links to al-Qaida and the Taliban.

The administration opened the detention facility at Guantanamo Bay shortly after the Sept. 11, 2001, terrorist attacks to hold enemy combatants, people suspected of ties to al-Qaida or the Taliban.

The Guantanamo prison has been harshly criticized at home and abroad for the detentions themselves and the aggressive interrogations that were conducted there.

The court said not only that the detainees have rights under the Constitution, but that the system the administration has put in place to classify them as enemy combatants and review those decisions is inadequate.

The administration had argued first that the detainees have no rights. But it also contended that the classification and review process was a sufficient substitute for the civilian court hearings that the detainees seek.

### 2nc – w/m

#### Topical affirmatives must remove the legal basis for permission

**Hawkins et al, 6 -** professor of law at Brigham Young(Darren, Delegation Under Anarchy: States, International Organizations, and Principal-Agent Theory, p.7)

The relations between a principal and an agent are always governed by a *contract*,1 even if this agreement is implicit (never formally acknowledged) or informal (based on an unwritten agreement). To be a principal, an actor must be able to both grant authority and rescind it. The mere ability to terminate a contract does not make an actor a principal. Congress can impeach a president, and thereby remove him from office, but this power does not make Congress the principal of the president as we define it. Alternatively, Congress can authorize the president to decide policy on its behalf in a specific issue area – for example, to design environmental regulations – and then later revoke that authority if it disapproves of the president’s policies. In this case, the Congress is indeed the principal of the president. To be principals, actors must both grant and have the power to revoke authority.

#### Authority is the permission to act delegated from another agent.

**Hill, 13** - Gerald and Kathleen Hill are co-authors of 25 books, including The People's Law Dictionary. The Hills jointly taught American Government and Politics at the University of British Columbia, as well as courses at University of Victoria, and Sonoma State University. They have been visiting scholars at the Institute of Governmental Studies at the University of California, Berkeley (Law.com, from The People’s Law Dictionary (<http://dictionary.law.com/Default.aspx?selected=2478>)

authority

n. permission, a right coupled with the power to do an act or order others to act. Often one person gives another authority to act, as an employer to an employee, a principal to an agent, a corporation to its officers, or governmental empowerment to perform certain functions. There are different types of authority, including "apparent authority" when a principal gives an agent various signs of authority to make others believe he or she has authority; "express authority" or "limited authority," which spells out exactly what authority is granted (usually a written set of instructions) "implied authority," which flows from the position one holds and "general authority," which is the broad power to act for another.

#### Not every court decision creates a precedent. The plan is a release order – it doesn’t establish a legal rule. Every binding court decision requires a ratio – or a holding or ruling that is expressly binding on future courts

**Lamond, 8** (Grant, "Precedent and Analogy in Legal Reasoning", The Stanford Encyclopedia of Philosophy (Fall 2008 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2008/entries/legal-reas-prec/>.

In favour of this interpretation of precedent is the distinction drawn in legal practice between what is known as the ‘*ratio decidendi’* of a case and ‘obiter dicta’. The *ratio* of a case represents the ‘holding’ or ‘ruling’, i.e., the proposition of law for which the case is authority—it is the aspect of the case which is binding on later courts. Obiter dicta, by contrast, represent other statements and views expressed in the judgment which are not binding on later courts. On this view of precedent, the rule laid down in the earlier case is represented by the ratio.

#### The topical version of their aff would be to issue a release order on a specific legal grounds that deny the executive the authority. Choosing not to identify the ratio means the plan is a results-centered decision, not a legal rule.

**Lamond, 8** (Grant, "Precedent and Analogy in Legal Reasoning", The Stanford Encyclopedia of Philosophy (Fall 2008 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2008/entries/legal-reas-prec/>.

A third way which purports to deal with the problem of distinguishing on the rule model is to argue that the ‘rule’ for which the decision is binding is not the precedent court's ruling, but something narrower—the ‘material facts’ that were ‘necessary’ for the result of the case. (See Goodhart 1930, 1959; and see also Burton 1995, 25–58, 60–5 on ‘case-specific facts’ and Eisenberg 1988, 51–4 on ‘minimalist’ and ‘result-centred’ techniques.) This approach makes use of the fact that decisions do not provide canonical formulations of the *ratio* to argue that the *ratio* is not to be identified with the court's stated ruling on the issue. The effect of such an approach is to narrow what is regarded as binding in the case to those facts which were crucial to the actual outcome, rather than the stated ruling applied to those facts. The difficulties with this approach are three-fold:

(1) it goes against general legal practice, which usually does identify the ratio with the ruling made by the precedent court (see Simpson 1961, 168–9; MacCormick 1978, 82–3, 1987, 157–8; Raz 1979, 184; Eisenberg 1988, 51–61)[9];

(2) if the precedent court's own characterisation of its ruling is abandoned, there is no coherent way to settle on the ‘material facts’ (Stone 1964, 267–80, 1985, 123–9). Take the case of the recipient of trust property transferred in breach of trust. A key aspect of the facts is that the recipient did not pay for the property. But why is this ‘material’? If the court's own reasoning is put to one side, is it because no consideration was given (so had a token been provided that would have been sufficient); or that inadequate consideration was provided (so more than a token would be necessary); or that a reasonable price was not paid; or that the price was not what the beneficiary would have been willing to accept for the transfer; or that the price is not the best which the trustee could have obtained on the open market? All of the preceding descriptions of the facts are true, but which is ‘material’? The requirement for any of them would invalidate the transfer.

(3) Even if there is some way to characterise the ‘material’ facts, it does not eliminate distinguishing. Take later trust case, for example, in which the recipient has paid nothing for the trust property but has acted detrimentally in reliance on the receipt. The recipient is still a ‘volunteer’ who has not transferred anything to the trustee for the property, but there has been reliance upon the receipt. This may well lead a later court to distinguish the earlier case, although the facts are otherwise identical to those in the original case. On the other hand, if the claim is that the precedent case is only binding when both (a) the ‘material facts’ are present, and (b) no other relevant facts are present, then it is no longer a ‘rule-based’ account of precedent—it is simply reasserting the minimal requirement that the decision in the later case must not be inconsistent with the result reached in the precedent case.

### 2nc at: reasonability

**And, their arg makes them violate core meaning of substantial—independent voter**

**Brennan 88** (Justice, Pierce v. Underwood (Supreme Court Decision), 487 U.S. 552, http://socsec.law. cornell.edu/cgi-bin/foliocgi.exe/socsec\_case\_full/query=%5Bjump!3A!27487+u!2Es!2E+552+opinion+n1!2 7%5D/doc/%7B@ 825%7D?)

The underlying problem with the Court's methodology is that it uses words or terms with similar, but not identical, meanings as a substitute standard, rather than as an aid in choosing among the assertedly different meanings of the statutory language. Thus, instead of relying on the legislative history and other tools of interpretation to help resolve the ambiguity in the word "substantial," the Court uses those tools essentially to jettison the phrase crafted by Congress. This point is well illustrated by the Government's position in this case. Not content with the term "substantially justified," the Government asks us to hold that it may avoid fees if its position was "reasonable." Not satisfied even with that substitution, we are asked to hold that a position is "reasonable" if "it has some substance and a fair possibility of success." Brief for Petitioner 13. While each of the Government's successive definitions may not stray too far from the one before, the end product is significantly removed from "substantially justified." I believe that Congress intended the EAJA to do more than award fees where the Government's position was one having no substance, or only a slight possibility of success; I would hope that the Government rarely engages in litigation fitting that definition, and surely not often enough to warrant the $ 100 million in attorney's fees Congress expected to spend over the original EAJA's 5-year life. My view that "substantially justified" means **more than merely reasonable**, aside from conforming to the words Congress actually chose, is bolstered by the EAJA's legislative history. The phrase "substantially justified" was a congressional attempt to fashion a "middle ground" between an earlier, unsuccessful proposal to award fees in all cases in which the Government did not prevail, and the Department of Justice's proposal to award fees only when the Government's position was "arbitrary, frivolous, unreasonable, or groundless." S. Rep., at 2-3. Far from occupying the middle ground, "the test of reasonableness" is firmly encamped near the position espoused by the Justice Department. Moreover, the 1985 House Committee Report pertaining to the EAJA's reenactment expressly states that "substantially justified" means more than "mere reasonableness." H. R. Rep. No. 99-120, p. 9 (1985). Although I agree with the Court that this Report is not dispositive, the Committee's unequivocal rejection of a pure "reasonableness" standard in the course of considering the bill reenacting the EAJA is deserving of some weight. Finally, however lopsided the weight of authority in the lower courts over the meaning of "substantially justified" might once have been, lower court opinions are no longer nearly unanimous. The District of Columbia, Third, Eighth, and Federal Circuits have all adopted a standard higher than mere reasonableness, and the Sixth Circuit is considering the question en banc. See Riddle v. Secretary of Health and Human Services, 817 F.2d 1238 (CA6) (adopting a higher standard), vacated for rehearing en banc, 823 F.2d 164 (1987); Lee v. Johnson, 799 F.2d 31 (CA3 1986); United States v. 1,378.65 Acres of Land, 794 F.2d 1313 (CA8 1986); Gavette v. OPM, 785 F.2d 1568 (CA Fed. 1986) (en banc); Spencer v. NLRB, 229 U. S. App. D. C. 225, 712 F.2d 539 (1983). In sum, the Court's journey from "substantially justified" to "reasonable basis both in law and fact" to "the test of reasonableness" does not crystallize the law, nor is it true to Congress' intent. Instead, it allows the Government to creep the standard towards "having some substance and a fair possibility of success," a position I believe Congress intentionally avoided. In my view, we should hold that the Government can avoid fees only where it makes a clear showing that its position had a solid basis (as opposed to a marginal basis or a not unreasonable basis) in both law and fact. That it may be less "anchored" than "the test of reasonableness," a debatable proposition, is no excuse to abandon the test Congress enacted. n2