# r2 neg v. james madison bm

## 1nc

### 1nc topicality

#### The aff’s not topical – authority pertains to the physical ACT of detention

GLAZIER 06 Associate Professor at Loyola Law School in Los Angeles, California [David Glazier, ARTICLE: FULL AND FAIR BY WHAT MEASURE?: IDENTIFYING THE INTERNATIONAL LAW REGULATING MILITARY COMMISSION PROCEDURE, Boston University International Law Journal, Spring, 2006, 24 B.U. Int'l L.J. 55]

President Bush's decision to consider the terrorist attacks of September 11, 2001, as an act of war has significant legal ramifications. Endorsed by Congress in the Authorization for the Use of Military Force ("AUMF"), n1 this paradigm shift away from treating terrorism as a crime to treating terrorism as an armed conflict allows the United States to exercise "fundamental incidents of waging war." n2 Among these fundamental war powers are the authorities to detain enemy personnel for the duration of hostilities, to subject law of war violators to trials in military tribunals, and to exercise subject matter jurisdiction over the full scope of the law of war, rather than over only those offenses defined in U.S. criminal statutes. n3

#### Restriction is a prohibition on an ACTION – the aff must prohibit indefinite detention

Northglenn 11 (City of Northglenn Zoning Ordinance, “Rules of Construction – Definitions”, http://www.northglenn.org/municode/ch11/content\_11-5.html)

Section 11-5-3. Restrictions. As used in this Chapter 11 of the Municipal Code, the **term "restriction**" shall mean a prohibitive regulation. Any use, activity, operation, building, structure or thing which is the subject of a restriction is prohibited, and no such use, activity, operation, building, structure or thing shall be authorized by any permit or license.

#### Violation:

#### First, the plan pertains to civilian trials, which isn’t a prohibition - extra topicality is an independent voting issue – artificially inflates aff ground and forces us to read counterplans to get back to square one.

#### Second, the release portion is based on immigration authority which is preclusive power of the Executive or it proves they don’t solve – vote neg on presumption

Chow 11 (Samuel, JD Benjamin N. Cardozo School of Law, “THE KIYEMBA PARADOX: CREATING A JUDICIAL FRAMEWORK TO ERADICATE INDEFINITE, UNLAWFUL EXECUTIVE DETENTIONS”, 19 Cardozo J. Int'l & Comp. L. 775 2011)

The facts that legitimized the Court's holding in Munaf are substantially different from the facts in Kiyemba. In Kiyemba, the D.C. Circuit Court also held that it did not have the authority to order the petitioners' release into the United States, but for different reasons from those espoused in Munaf. There, the circuit court determined that such release would violate the traditional distribution of immigration authority-a problem that did not exist with the American petitioners in Munaf.2 z As in Munaf, the government concluded that the Kiyemba petitioners' request amounted to a request for "release-plus. ' 23 Unlike Munaf, however, a troubling paradox is raised under the Kiyemba facts as it now stands, the Executive has determined that certain detainees being held unlawfully may, nonetheless, remain indefinitely detained.24 There are three primary elements that contributed to the Uighur 25 plaintiffs' dilemma. First, because of the high risk of torture, the Uighurs could not return to their home country of China.26 Second, diplomatic solutions had failed and no third-party country had been willing to accept them.27 Third, the D.C. Circuit Court determined that release into the United States would violate immigration laws and undermine the Executive's ability to administer those laws. 28 Lacking refuge and possibility of asylum, the Uighurs were forced to remain, indefinitely, as prisoners at Guantanamo Bay.

#### Vote neg for limits – It’s also not an authority of the president which explodes limits – they can talk about anything related to the 4 topic areas which makes research impossible.

### 1nc politics da

#### Patent reform will pass, but PC’s key and it’s a fight

**Meyers, 3/5/14** (Jessica, “Lawmakers: Patent reform will advance” Politico, <http://www.politico.com/story/2014/03/patent-reform-104278.html>)

Two lawmakers immersed in patent reform efforts suggested Wednesday that the president could see a bill on his desk in coming months.

“It’s a pretty good bet you could see something on this, this year,” Sen. Mike Lee (R-Utah), who is co-sponsoring the Senate’s main patent reform bill with Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.), said at a POLITICO event. The committee plans to mark up the bill by mid-April. Rep. Jared Polis (D-Colo.), a champion of patent reform in the House, pointed to broad support in the lower chamber but warned that Congress should “make sure it is a substantial bill that actually deals with patent trolls.” The issue has drawn the attention of numerous industries, from tech to retail, who say they face frivolous litigation from trolls. Benjamin Berman, the deputy general counsel at KAYAK.com, likened such firms to “today’s mafia “ and “extortion at its finest.” Congress needs to pass legislation “that addresses the need to make money off patents,” he said at the event. Other companies, along with some universities, argue reforms could go too far and weaken legitimate intellectual property rights. Anything too broad “will cripple the system and we will pay a heavy price,” said John Vaughn, executive vice president of the Association of American Universities. The House passed a patent reform bill, known as the Innovation Act, in December. The Senate has held four briefings on Leahy’s bill, but reform advocates want to speed up the pace. The White House has pushed hard on the issue, announcing a series of executive actions and urging lawmakers to work through legislation this year. Polis applauded the administration’s focus and said it gave momentum to a wonky topic. “When it comes to a patent bill, people say, ‘OK, the president likes it so I’m going to give it a look,’” he said. “It opened the bill on the Democratic side.” The Leahy-Lee bill is expected to serve as the Senate’s main patent vehicle, and currently does not include controversial proposals such as expanding a review program for “business method” patents. Leahy said Tuesday that he is “working closely with members of the Committee to incorporate their ideas into a bipartisan compromise.” Lee said he and Leahy want to find a way to incorporate an amendment from Sen. John Cornyn (R-Tex.) that would force the loser to pay the winner’s fees in patent lawsuits. This “could produce something that ends up being pretty close to what passed in the House,” he said. Not everyone wants it that way. Russ Merbeth, chief policy council for Intellectual Ventures, said such fee shifting could “chill” the ability of businesses to enforce their patent rights. “It’s one of the tougher nuts to crack in this whole debate,” he said. The company, which holds a vast array of patents, is often criticized as one of the biggest trolls. KAYAK’s Berman, attacked Intellectual Ventures as the real problem. “It’s about him,” he said. The last patent overhaul, the America Invents Act, took place only three years ago. But supporters of reform don’t believe it resolved the troll issue. Even if a new bill moves forward in the Senate, the two chambers must settle on a compromise in the midst of an election year. That timing, Berman said, “concerns me greatly.”

#### **Plan kills capital**

Loomis 7 Dr. Andrew J. Loomis is a Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University, “Leveraging legitimacy in the crafting of U.S. foreign policy”, March 2, 2007, pg 36-37, <http://citation.allacademic.com//meta/p_mla_apa_research_citation/1/7/9/4/8/pages179487/p179487-36.php>

Declining political authority encourages defection. American political analyst Norman Ornstein writes of the domestic context, In a system where a President has limited formal power, perception matters. The reputation for success—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—is the most valuable resource a chief executive can have. Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms, winners win and losers lose more often than not. Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals. As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies. The central point of this review of the presidential literature is that the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.

#### That closes the window and alienates Dems

**Wild, 14** (2/23, Joff, “Concerns in Senate and approaching election could stymie patent litigation reform moves” Intellectual Asset Management Magazine, <http://www.iam-magazine.com/Blog/Detail.aspx?g=0fe92d4e-915d-4f15-925e-60b452f2e093>)

The window of opportunity for the passing of a federal patent litigation reform law in the US is slowly **beginning to close** and could soon be shut tight, according to sources that IAM has spoken to over the last few days. The head of steam for change that culminated in the House of Representatives’ overwhelming, bipartisan approval of the Goodlatte Innovation Act has now begun to dissipate in the face of growing concerns among some senators that there is not enough evidence to justify wide-ranging reforms and that the potential for unintended harms has not been properly explored. What’s more, in what is an election year, plans for much wider application of loser pays are beginning to cause significant concerns among Democrat lawmakers, who have traditionally raised significant amounts of campaign money from trial lawyers, a constituency that is overwhelmingly opposed to the move. If the legislation is not agreed during the 113th Congress, the whole process will have to start from scratch during the 114th Congress, which begins sitting in January 2015. Over the last week, IAM has had a number of conversations with very well-informed individuals about where things stand. While not everyone agrees that getting a new law before the mid-term elections is out of the question, there is a widespread recognition that the clock is ticking. All seats in the House of Representatives are up for grabs on 4th November, as well as 33 of the 100 Senate seats. At some stage pretty soon, that is going to become everyone’s primary focus on Capitol Hill.

#### The impact is clean tech and innovation

**Gerschel-Clarke, 13** – independent design strategist specialising in the societal aspects of design and a contributing writer at Sustainable Brands (Adam, The Guardian, “Are patent trolls strangling sustainable innovation?” 11/14, <http://www.theguardian.com/sustainable-business/patent-trolls-sustainable-innovation>)

Disputes over intellectual property have risen dramatically over the last few years and, despite the global advantage green technologies offer, they have not been immune from these battles over ownership. According to the latest figures published by the World Intellectual Property Organisation, applications to patent greentech have risen by over 6% since 2011, making it one of the leading growth areas for IP. Over the same period we've seen increasingly urgent global efforts to preserve the environment and avert lasting impact on society. So how is the **volatile IP climate** affecting the development of green technologies and the pace of progress towards a sustainable future? Patents were originally conceived as temporary defensive measures to protect and promote innovation. They grant the holder exclusive rights to make, use or sell an invention for up to 20 years. The aim was to ensure businesses investing time and effort into developing technology have the opportunity to commercialise it without competition from firms that haven't made the same commitment. Trolling However, the ability to sell or licence patents for a fee has led to a slow proliferation of patent 'trolling' which is now threatening the creation of new sustainable systems and products. Patent trolls are non-manufacturing companies which acquire and exploit libraries of patents to extract licensing fees from creative firms. Small entities, such as entrepreneurs, are particularly at risk from trolling, as their limited budgets often prevent them from contesting spurious claims. Although multi-million pound battles between wealthy technology firms may dominate media coverage, recent figures suggest that 60% of patent litigation is now brought by patent trolls mostly against firms with low annual incomes. For sustainable development, the danger is that trolling replaces the financial protection that patents offer with financial encumbrance. This reduces the incentive to turn green ideas into green technology and impairs the creativity that is at the core of sustainable progress. Stifling green growth But there are even greater risks with the patent system. By using patents on essential components and concepts, established manufacturers can keep a tight grip on emerging new technology as well as on creative talent in the field. Potential innovators and entrepreneurs – the driving force behind economic progress - are faced with the choice of either starting a business at the risk of being crushed by patent litigation, or going to work for one of the same companies that would have sued them. And to add insult to injury, the price of choosing the latter often includes complete surrender of those ideas - Matt Stanford, 2012 Often it is not in the interests of incumbent firms to develop new technology. This is especially true of sustainable development, where progress can involve the retirement of serviceable and profitable technology, in favour of alternatives that may threaten existing revenue streams or that cannot yet offer the same economies of scale. This conflict of interest between progress and profit can mean that socially and environmentally beneficial technology is shelved. Worse, it can also provide a temptation to strategically purchase sustainable innovation **purely to obstruct** its development. In 1989, for example, innovator Stanford Ovshinsky invented a new nickel-based battery that was cheaper, safer and more powerful than contemporary battery technology. In 1994 he sold the patent to General Motors, to help develop the world's first mass-produced electric car, the EV1. After testing the technology GM opted to stick with their conventionally powered vehicles and sold the battery patent to Texaco, an oil retailer. Ovshinsky's battery technology has since been licensed by a succession of petrochemical companies. The licence conditions for his batteries limit their application in hybrid vehicles and effectively prohibit use in fully electric vehicles. The effect of this restriction can be seen in the pace of EV development today. Lithium-based batteries, used in contemporary vehicles such as the Nissan Leaf and Mitsubishi i-MiEV, are only just approaching the range and performance of the original EV1 technology and they cost considerably more to produce. Even though it seems the patents are failing to promote and protect sustainable innovation, arguably sustainable development would be worse off without them. The system includes an obligation to publish details of protected technology. Without patents, manufacturers may keep valuable scientific and technological knowledge secret, starving the global community of the building blocks of future innovation. Future of sustainable technology We need to update the existing patent system to reflect the changing face of innovation. The process of finding solutions and meeting societal needs has become a community undertaking, increasingly motivated by concerns over human and environmental welfare, alongside potential profit. The traditional influence of financiers on the innovation process is diminishing as crowdfunding platforms enable communities to develop products and services without banks and loans. Similarly in business, social enterprises have grown in strength and look set to play a significant role in our future economy. An effective system to promote and protect innovation must recognise the complete spectrum of stakeholders in technological development, valuing innovation for environmental and social benefit as highly as for financial gain. We need a better regulation of the patent system, to restore the protection and incentives that patents were intended to offer all innovation. This means **reducing the influence** of incumbent manufacturers and trolls on emerging green technologies by limiting the breadth of patents and regulating licences on basic technologies.

#### Extinction

**Klarevas 9** – Professor of Global Affairs

Louis, Professor at the Center for Global Affairs – New York University, “[Securing American Primacy While Tackling Climate Change: Toward a National Strategy of Greengemony](http://www.huffingtonpost.com/louis-klarevas/securing-american-primacy_b_393223.html)”, Huffington Post, 12-15, <http://www.huffingtonpost.com/louis-klarevas/securing-american-primacy_b_393223.html>

By not addressing climate change more aggressively and creatively, the United States is squandering an opportunity to **secure its global primacy** for the next few generations to come. To do this, though, the U.S. must rely on innovation to help the world escape the coming environmental meltdown. Developing the key technologies that will save the planet from global warming will allow the U.S. to **outmaneuver potential great power rivals** seeking to replace it as the international system's hegemon. But the greening of American strategy must occur soon. The U.S., however, seems to be stuck in time, unable to move beyond oil-centric geo-politics in any meaningful way. Often, the gridlock is portrayed as a partisan difference, with Republicans resisting action and Democrats pleading for action. This, though, is an unfair characterization as there are numerous proactive Republicans and quite a few reticent Democrats. The real divide is instead one between realists and liberals. Students of realpolitik, which still heavily guides American foreign policy, largely discount environmental issues as they are not seen as advancing national interests in a way that generates relative power advantages vis-à-vis the other major powers in the system: Russia, China, Japan, India, and the European Union. Liberals, on the other hand, have recognized that global warming might very well become the greatest challenge ever faced by mankind. As such, their thinking often eschews narrowly defined national interests for the greater global good. This, though, ruffles elected officials whose sworn obligation is, above all, to protect and promote American national interests. What both sides need to understand is that by becoming a lean, mean, green fighting machine, the U.S. can actually bring together liberals and realists to advance a collective interest which benefits every nation, while at the same time, securing America's global primacy well into the future. To do so, the U.S. must re-invent itself as not just your traditional hegemon, but as history's first ever green hegemon. Hegemons are countries that dominate the international system - bailing out other countries in times of global crisis, establishing and maintaining the most important international institutions, and covering the costs that result from free-riding and cheating global obligations. Since 1945, that role has been the purview of the United States. Immediately after World War II, Europe and Asia laid in ruin, the global economy required resuscitation, the countries of the free world needed security guarantees, and the entire system longed for a multilateral forum where global concerns could be addressed. The U.S., emerging the least scathed by the systemic crisis of fascism's rise, stepped up to the challenge and established the postwar (and current) liberal order. But don't let the world "liberal" fool you. While many nations benefited from America's new-found hegemony, the U.S. was driven largely by "realist" selfish national interests. The liberal order first and foremost benefited the U.S. With the U.S. becoming bogged down in places like Afghanistan and Iraq, running a record national debt, and failing to shore up the dollar, the future of American hegemony now seems to be facing a serious contest: potential rivals - acting like sharks smelling blood in the water - wish to challenge the U.S. on a variety of fronts. This has led numerous commentators to forecast the U.S.'s imminent fall from grace. Not all hope is lost however. With the impending systemic crisis of global warming on the horizon, the U.S. again finds itself in a position to address a transnational problem in a way that will benefit both the international community collectively and the U.S. selfishly. The current problem is two-fold. First, the competition for oil is fueling animosities between the major powers. The geopolitics of oil has already emboldened Russia in its 'near abroad' and China in far-off places like Africa and Latin America. As oil is a limited natural resource, a nasty zero-sum contest could be looming on the horizon for the U.S. and its major power rivals - a contest which threatens American primacy and **global stability**. Second, converting fossil fuels like oil to run national economies is producing irreversible harm in the form of carbon dioxide emissions. So long as the global economy remains oil-dependent, greenhouse gases will continue to rise. Experts are predicting as much as a 60% increase in carbon dioxide emissions in the next twenty-five years. That likely means more devastating water shortages, droughts, forest fires, floods, and storms. In other words, if global competition for access to energy resources does not undermine international security, global warming will. And in either case, oil will be a culprit for the instability. Oil arguably has been the most precious energy resource of the last half-century. But "black gold" is so 20th century. The key resource for this century will be green gold - clean, environmentally-friendly energy like wind, solar, and hydrogen power. Climate change leaves no alternative. And the sooner we realize this, the better off we will be. What Washington must do in order to avoid the traps of petropolitics is to convert the U.S. into the world's first-ever green hegemon. For starters, the federal government must drastically increase investment in energy and environmental research and development (E&E R&D). This will require a serious sacrifice, committing upwards of $40 billion annually to E&E R&D - a far cry from the few billion dollars currently being spent. By promoting a new national project, the U.S. could develop new technologies that will assure it does not drown in a pool of oil. Some solutions are already well known, such as raising fuel standards for automobiles; improving public transportation networks; and expanding nuclear and wind power sources. Others, however, have not progressed much beyond the drawing board: batteries that can store massive amounts of solar (and possibly even wind) power; efficient and cost-effective photovoltaic cells, crop-fuels, and hydrogen-based fuels; and even fusion. Such innovations will not only provide alternatives to oil, they will also give the U.S. an edge in the global competition for hegemony. If the U.S. is able to produce technologies that allow modern, globalized societies to escape the oil trap, those nations will eventually have no choice but to adopt such technologies. And this will give the U.S. a tremendous economic boom, while simultaneously **providing it with** means of **leverage that can** be employed to **keep potential foes in check.**

### 1nc counterplan

#### COUNTERPLAN: The President of the United States should issue an Executive Order committing the executive branch to Solicitor General Representation and advance consultation with the Office of Legal Counsel over decisions regarding indefinitely detained persons.

#### The Department of Justice officials involved should counsel against indefinite detention without civilian trial and call for a mandate that mandate persons detained indefinitely receive either civilian trials or be released.

#### The Executive Order should also require written publication of Office of Legal Counsel opinions.

#### The CP is binding and solves the whole aff

Graham Dodds, Ph.D., Concordia professor of political science, 2013, Take Up Your Pen: Unilateral Presidential Directives in American Politics, p. 10

If executive orders, proclamations, memoranda, and other unilateral presidential directives merely expressed the president's view, then they would be important but not necessarily determinative. **However, these directives are not mere statements of presidential preferences; rather, they establish** binding policies and have the force of law**, ultimately** backed by the full coercive power of the state. In Armstrong v. United States, 80 U.S. (13 Wall.) 154 (1871), the Supreme Court considered the legal status of a proclamation and decided that such directives are public acts to which courts must “give effect.” In other words, in the eyes of the judiciary, unilateral presidential directives are just as binding as laws. In 1960, Senator Robert Byrd (D-WV) advised his colleagues, “Keep in mind that an executive order is not statutory law.” 46 Politically, that may be true, as unilateral presidential directives represent the will only of the chief executive and lack the direct endorsement of congressional majorities. But constitutionally and legally**, a unilateral presidential directive is** as authoritative and compulsory as a regular law, at least until such time as it is done away with by Congress, courts, or by a future unilateral presidential directive.

#### Executive pre-commitment to DOJ advice key

**Pillard 2005** – JD from Harvard, Faculty Director of Supreme Court Institute at Georgetown University Law Center, former Deputy Assistant Attorney General in the DOJ (February, Cornelia T., Michigan Law Review, 103.4, “The Unfulfilled Promise of the Constitution in Executive Hands”, 103 Mich. L. Rev. 676-758, http://scholarship.law.georgetown.edu/facpub/189/)

V. ENABLING EXECUTIVE CONSTITUTIONALISM

The courts indisputably do not and cannot fully assure our enjoyment of our constitutional rights, and it is equally clear that the federal executive has an independent constitutional duty to fulfill the Constitution's promise. Executive constitutionalism seems ripe with promise. Yet, it is striking how limited and court-centered the executive's normative and institutional approaches to constitutional questions remain.

One conceivable way to avoid the pitfalls of court-centric executive lawyering on one hand and constitutional decisions warped by political expedience on the other would be to make the Solicitor General and Office of Legal Counsel - or perhaps the entire Department of Justice - as structurally independent as an independent counsel or independent agency.207 Making the SG and OLC independent in order to insulate them from politics presumably would alleviate the "majoritarian difficulty" resulting from their service to elected clients. Promoting fuller independence in that sense does not, however, appear to be clearly normatively attractive, constitutionally permissible, nor particularly feasible. In all the criticism of our current constitutionalism, there is little call for an SG or OLC that would act, in effect, as a fully insulated and jurisprudentially autonomous constitutional court within the executive branch, operating with even less transparency and accountability than the Supreme Court. Moreover, as a practical matter it would be complex and problematic to increase the independence of the SG and OLC. The federal government faces Article II obstacles to formally insulating executive lawyers from politics and institutional pressures, and the president and his administration likely would be less amenable to guidance from such unaccountable lawyers.208

The challenge, rather, is to draw forth from the executive a constitutional consciousness and practice that helps the government actively to seek to fulfill the commitments of the Constitution and its Bill of Rights, interpreted by the executive as guiding principles for government. Adjustments to executive branch constitutional process and culture should be favored if they encourage the executive to use its experience and capacities to fulfill its distinctive role in effectuating constitutional guarantees. There is transformative potential in measures that break ingrained executive branch habits of looking to the Constitution only as it is mediated through the courts, and of reflexively seeking, where there is no clear doctrinal answer, to minimize constitutional constraint. It is difficult fully to imagine what kinds of changes would best prompt executive lawyers and officials to pick up constitutional analysis where the courts leave off, and to rely on the Constitution as an affirmative, guiding mandate for government action; what follows are not worked-out proposals, but are meant to be merely suggestive.

A. Correcting the Bias Against Constitutional Constraint

As we have seen, the SG's and OLC's default interpretive approach to individual rights and other forms of constitutional constraints on government is to follow what clear judicial precedents there are and, where precedents are not squarely to the contrary, to favor interpretations that minimize constitutional rights or other constitutional obligations on federal actors. Those court-centered and narrowly self-serving executive traditions produce a systematic skew against individual rights.

1. Encourage Express Presidential Articulation of Commitment to Constitutional Rights

To the extent that a president articulates his own rights-protective constitutional vision with any specificity, he ameliorates the tension his constitutional lawyers otherwise face between advancing individual rights and serving their boss's presumed interest in maximum governing flexibility. Case or controversy requirements and restrictions against courts issuing advisory opinions do not, of course, apply to the executive's internal constitutional decisionmaking, and presidents can better serve individual rights to the extent that they expressly stake out their constitutional commitments in general and in advance of any concrete controversy."° When the president takes a stand for advancing abortion rights, property rights, disability rights, "charitable choice," a right to bear arms, or full remediation of race and sex discrimination, he signals to his lawyers that they should, in those areas, set aside their default bias in favor of preserving executive prerogative, even if it requires extra executive effort or restraint to do so.

If presented in a concrete setting with a choice between interpreting and applying the Constitution in fully rights-protective ways or sparing themselves the effort where Supreme Court precedent can be read not to require it, government officials typically default to the latter course without considering whether they might thereby be giving short shrift to a constitutional duty. A president's stated commitment to protection of particular rights, however, flips the default position with respect to those rights, acting as a spur to executive-branch lawyers and other personnel to work to give effect to constitutional rights even where, for a range of institutional reasons, the courts would not. A president is thus uniquely situated to facilitate full executive-branch constitutional compliance by precommitting himself to a rights-protective constitutional vision, and thereby making clear that respect for constitutional rights is part of the executive's interest, not counter to it.

#### President is the sole organ of communication in foreign affaris—sends the clearest signal possible

Nzelibe 6 (Jide, Assistant Professor of Law – Northwestern University Law School, “Positive Theory of the War-Powers Constitution,” Iowa Law Review, March, 91 Iowa L. Rev. 993, Lexis)

The notion that the President is the sole organ of communication in foreign affairs is so uncontroversial that it has almost become a truism of American constitutional law. n35 The textual basis for this authority is not explicit, but courts and commentators have assumed that it derives in large part from the President's power to appoint and receive ambassadors. n36 Nonetheless, in the same breath that courts and commentators often mention the "sole organ" role, they are quick to point out that the President [\*1007] does not have the exclusive authority to conduct foreign policy. n37 There is not much analysis, however, as to how the President's role as the organ of foreign communications influences his ability to shape the national-security agenda.

One can view the President's role in an international crisis as that of an agent reacting to events that have been thrust upon him. Interestingly, however, his role as the nation's spokesman actually puts the President in a position to create or escalate an international crisis. By issuing threats against a foreign adversary, the President is able to create an international crisis that might eventually require a military response. n38 Because foreign states frequently rely on the President's statements as representing the United States' position on an issue, a presidential threat also carries extra weight in creating or amplifying an international crisis. In addition, the domestic audience also takes its cue as to the existence and nature of an international crisis from the President's statements.

The President's agenda-setting power gives him the unique ability to shape domestic-audience preferences for the use of force abroad. In periods of international crisis, such as when the nation faces a foreign threat, the public tends to rally behind a singular authority who symbolizes national unity. n39 As commander in chief, the President serves as a "focal point of action" and embodies a united front against what the public perceives is a common menace. The public turns to him for reassurance and protection, and they expect - indeed, they demand - that he respond by taking appropriate and decisive action against the perceived threat. In these times, the public expects Congress to give the President free rein to tackle the foreign menace as he sees fit.

#### Solves public engagement

**Pillard, 5 –** professor of law at Georgetown (Cornelia, “Unitariness and Myopia: The Executive Branch, Legal Process, and Torture” 81 Ind. L.J. 1297, lexis)

This article identifies four processes or structures that can contribute towards healthy dissensus. The first is transparency. When the executive makes public the fact that an important legal issue is under consideration, it permits input, analysis, and critique from the media, the electorate, lobbyists, nongovernmental organizations, Congress, and the academy. Second, intra-branch consultation can tap into the internal diversity of components and personnel within the executive branch. Even when decision making remains nonpublic so external critiques are absent, intra-executive consultation can be a source of healthy skepticism of proposed executive legal decisions. Third, and relatedly, consulting civil service employees, and not only political appointees, can add to diversity and dissensus, because in many ways the political and institutional perspectives, knowledge base, and culture of the civil service differ from those of political appointees. Finally, designated boards, commissions, and officers within or overseeing the executive should be charged with taking an arms-length view to help to forestall and to respond to any executive action that might be unwise, unlawful, or even corrupt.

### 1nc icj

#### The President of the United States should submit its policy on indefinitely detaining persons without release or civilian trial for binding and sole compulsory adjudication by the International Court of Justice. The President should ask that the case take priority.

#### The Counterplan Solves – ruling against U.S. policy boosts ICJ Cred

**MURPHY ‘9** (Sean D.; Patricia Roberts Harris Research Professor of Law – George Washington University, “The United States and the International Court of Justice: Coping with Antinomies,” in The Sword and the Scales: The United States and International Courts and Tribunals, edited by Cesare P.R. Romano) ww

The formal means for mediating antimonies have been largely unchanged since the inception of the Court: the Court has jurisdiction over many disputes, but that jurisdiction is circumscribed (as recognized in Yugoslavia’s Legality of Use of Force cases), the judges reflect the global community but also the major powers, and so on. Yet the Court may have entered a phase in which it is more likely to resist the constraints on its power contained within those formal means and less likely to attempt to reconcile antinomies. Although only states may appear before the Court, the Court now finds that a nonstate entity (Palestine) may do so if a dispute is submitted in the guise of an advisory opinion. Although its jurisdiction is circumscribed, the Court is comfortable engaging in an extended review of the legality of the use of military force by the United States based on a treaty that the Court has found was not violated. The Vienna Convention on Consular Relations and other relevant treaties contain no provisions regarding the effect of violations of the Convention on national court proceedings, but the Court sees no difficulty in determining that U.S. courts must engage in further judicial review of criminal convictions and sentences, trumping local procedural rules. One gets the impression that the Court – fifty years after its creation – is tired of some of the formal constraints that applied earlier in its life and, looking around at the robustness of dispute resolution in other international fora, is ready to expand the reach of its power.

Moreover, it may be that some of the informal means for mediating antimonies have been lost in the past twenty years. Whereas the Court’s concern with its reputation and legitimacy in the first thirty years of its existence served as an important political constraint in the Court’s relationship with all states, including the United States, over the past twenty years that same concern has led to several clashes with the United States foremost but also the United Kingdom and France. Having stood up to the United States in the Nicaragua case, the Court became a hero to the states of the developing world and ushered in a period of increased activity on its docket. Of the cases filed before the ICJ since its inception, approximately 40 percent were filed since the early 1990s.170 Thus, whereas from 1947 to 1989 the Court received on its docket approximately two cases per year, after 1990 the Court received on average more than three cases per year. The U.S. withdrawal from the Court’s compulsory jurisdiction has far from crippled the Court; arguably, it has enhanced the Court’s stature as a place of authority in interstate relations unbeholden to the major powers. For the Court, the lesson may be not to tread lightly with respect to the United States but, rather, to tread heavily unless doing so would be viewed generally as bias.

In its foreign policies, contemporary America appears to be going a different route from much of the world, even its former close allies in Europe. The consequence is that the judges of the ICJ now reflect predominantly the views of states with which the United States often disagrees. Perhaps this reflects success in the prescription for the Court made by Richard Falk in his 1986 book Reviving the World Court.171 Falk argued for the Court to turn away from what he viewed as Anglo-American and West European ways of thinking and move more toward reflecting the viewpoints associated with non-Western legal traditions (including, at that time, Marxist outlooks on law). Arguably, this is now what has happened, **which has strengthened the Court’s position among most states of the world** but seriously alienated the United States.

The antinomies identified in Part A are unlikely to be resolved through the further development of formal or informal techniques for mediation. Although the United States is not happy with the decisions being rendered by the Court, there is no support in the global community for altering the formal mechanisms by which the Court operates. If the United States saw concrete benefits in being more closely associated with the Court, it might look for ways to improve relationships, but for the world’s premier superpower, the benefits appear slim and the costs quite high. Consequently, the United States may take steps to remove itself further from the reach of the ICJ’s jurisdiction by terminating some or all of the outstanding treaties that provide for the Court’s jurisdiction. In the near term, U.S. policy makers will seek to avoid any involvement in matters before the ICJ, and the Court may well welcome opportunities to speak to the legality of U.S. actions.

#### ICJ cred solves Southeast Asian territorial disputes and Asian regionalism

**STRACHAN ‘9** (Anna Louise; Research Intern – Institute of Peace and Conflict Studies, “Resolving Southeast Asian Territorial Disputes: A Role for the ICJ,” IPCS Issue Brief No. 133, October, <http://www.ipcs.org/pdf_file/issue/IB133-SEARP-AnnaICJ_%28Read-Only%29.pdf>)

Southeast Asia has turned to the International Court of Justice (ICJ) on three occasions. The first case was Cambodia v. Thailand in 1959 and concerned the Preah Vihear Temple. Indonesia and Malaysia turned to the ICJ in 1998, in order to resolve an ongoing dispute over sovereignty over Pulau Ligitan and Pulau Sipadan, two islands in the Celebes Sea. In 2003, Malaysia and Singapore turned to the ICJ in a bid to resolve territorial disputes regarding Pedra Branca (known as Pulau Batu Puteh in Malaysia), Middle Rocks and South Ledge.

This essay will consider these cases in greater detail in an attempt to establish the effectiveness of the ICJ as a means of resolving territorial disputes in the Southeast Asia region. The ICJ, one of the six principal organs of the United Nations, serves as its main judicial organ. It acts as a world court and has a dual jurisdiction, deciding disputes that are brought to it by states and giving advisory opinions on legal questions at the request of organizations like the UN. The 15 judges of the ICJ are elected by the UN General Assembly and the Security Council for a period of nine years. The election process was designed with the aim of restricting political pressures in the selection of judges. However, one of the criticisms of the Court is that in practice politicization does occur.

Southeast Asia is currently embroiled in a number of territorial disputes, the resolution of which would greatly increase progress towards regional integration. This essay argues that the ICJ has the **potential to play a much greater role** in resolving these disputes and that action should be taken to increase the court’s credibility among Southeast Asian nations. It is import ant to note that China is involved in a number of territorial disputes with countries in Southeast Asia. The Spratly Islands is the most notable of these, although there are also issues relating to the land borders between China and Vietnam and China and Laos.

I ROLE OF THE ICJ: A CRITIQUE

In 2002, sovereignty over both Pulau Ligitan and Pulau Sipadan was awarded to Malaysia by the ICJ. The dispute over the territories was brought before the ICJ in 1998 by the governments of both parties to the dispute. However, the ICJ did not determine the maritime boundaries between Malaysia and Indonesia in the area around the two islands. As a result one could argue that the dispute has not been settled completely. It is important to note that the sole reason for this was that the ICJ was not requested to resolve that particular issue by the parties involved in the dispute.

In May 2008, sovereignty over Pedra Branca was awarded to Singapore, Middle Rock was awarded to Malaysia and South Ledge was split between both countries according to their territorial waters. Both Malaysia and Singapore accepted the ICJ’s ruling, with the Singaporea n Deputy Prime Minister S. Jayakumar stating that Singapore was pleased with the judgment and the Malaysian Foreign Minister Rais Yatim describing the outcome as a “win-win” judgment. This was to be expected as the two countries had jointly submitted the request for the ICJ to resolve the dispute in 2003. It is however important to note that despite this ruling, outstanding issues remain. Singapore and Malaysia have yet to decide how the territorial waters around Pedra Branca and Middle Rocks will be delimited. A joint technical committee will be responsible for this.

In both the cases mentioned above, the ICJ has only resolved half the issue. This is certainly a step in the right direction, but years of negotiation remain to fully resolve the disputes, even after the outcome of the lengthy ICJ hearings. It is however important to note that the ICJ fulfilled its remit in both the aforementioned cases as it was not asked to determine maritime boundaries in either case. The time-consuming process of starting fresh negotiations after the ICJ has presented its ruling does however suggest that alternative means of conflict resolution, preferably in the form of bilateral negotiations, may be more effective in resolving territorial disputes than referring cases to the ICJ.

In 2003, Singapore and Malaysia also referred a territorial dispute to the International Tribunal for the Law of the Sea (ITLOS) in Hamburg for arbitration. The dispute related to Singapore’s land reclamation projects which Malaysia alleged encroached on Malaysian territorial waters. Once again the Tribunal, as arbitrator, only played a partial role in the resolution of the conflict. Several rounds of negotiations took place before the dispute was finally resolved by the signing of the Settlement Agreement on 26 April 2005.

The majority of territorial disputes in Southeast Asia have not been resolved this way, confirming that for the majority of nations in the region, the ICJ and other international courts like the ITLOS remain something of a **last resort**. Bilateral dispute resolution is more common. Brunei and Malaysia, for example, reached ag reements to resolve a number of territorial disp utes regarding both land and sea boundaries in August 2008.

II UNRESOLVED DISPUTES

The Preah Vihear Temple dispute between Thailand and Cambodia has shown signs of escalation despite a period of calm since the latter half of 2008. On 19 September 2009, a mob raised by the People’s Alliance for Democracy (PAD) clashed with riot police and local villagers who were blocking their way to the temple, on the Cambodian side of the Thai-Cambodian border.

The conflict was initially thought to have been resolved in 1962, when the temple was awarded to Cambodia by the ICJ. However the problem with the 1962 ruling was that much of the territory surrounding the temple remained a part of Thailand. The way in which the territory was divided has arguably facilitated the recent rise in hostilities between the two parties to the dispute.

The territorial dispute over Sabah also remains unresolved. The Philippines claims Sabah on the basis that all land on the Northeastern part of Borneo was once subject to the Sultanate of Sulu, which is part of the Philippines. The Philippines first staked their claim to the te rritory in 1962, when the Malaysian Federation was being formed. Bilateral relations between Malaysia and the Philippines were restored in 1969, but the Philippines has yet to officially renounce its claim to Sabah. Bilateral relations between the two countries have improved dramatically in recent years and it is hoped that the Philippines’ dormant claim to the territory will eventually be renounced completely.

According to the 2008 issue of the Heidelberg Conflict Barometer, there are outstanding territorial disputes between Cambodia and Vietnam, Singapore and Malaysia, and Thailand and Myanmar. Other sources list many more regional territorial disputes. According to Amer , Vietnam alone was embroiled in five different territorial disputes with other Southeast Asian nations in 2005. These include disputes with Cambodia, Thailand, Malaysia, the Philippines and Brunei. Differences in dispute classification are one of the factors responsible for this data diversity. Regardless of the exact figures there can be no doubt that a significant number of territorial disputes in Southeast Asia remain unresolved.

One of the reasons behind the plethora of territorial disputes in Southeast Asia relates to the fact that land borders have yet to be demarcated in many parts of the region. Cambodia and Laos have taken steps in this regard and Thailand has suggested that it is interested in taking steps to demarcate its border with Cambodia in order to prevent an escalation in hostilities between the two countries. Indonesia and Timor-Leste also took steps to demarcate their joint border in 2004. All these initiatives are a step towards eliminating territorial disputes within the region.

III A GREATER ROLE FOR THE ICJ?

The ICJ appears, at first glance, to have great potential for resolving the many outstanding territorial disputes in Southeast Asia. The cases referred to the court by Indonesia and Malaysia and Singapore and Malaysia respectively were resolved and the judgments were accepted by the parties involved. This suggests that the ICJ is an effective mediator. Moreover, the ICJ, as an international court, is in theory impartial and thus ideally placed to resolve territorial disputes in a non-partisan manner. The court has however been widely criticized by nations and scholars alike. These criticisms include arguments that the Court’s rulings are not binding, that the Court is biased and that some states choose not to accept the Court’s jurisdiction. These criticisms must therefore be considered in more detail when assessing the ICJ’s role in resolving Southeast Asian territorial disputes.

While it is true, that the ICJ has failed in bringing about a lasting resolution to the Preah Vihear Temple dispute, the original ruling took place in 1962. The situation therefore remained stable for a period of over 40 years. Dismissing the ICJ’s role in the resolution of this dispute as a failure is thus overly simplistic.

Questions about the courts partiality have however also been raised. In their assessment of the court’s partiality Posner and de Figueirado conclude that judges vote for their home states 90 per cent of the time. They also find that in cases when their home states are not involved judges vote for states that are similar to their home states in terms of wealth, culture and political regime.

There is also evidence to suggest that judges vote in favour of the strategic partners of their home states. The evidence for th is tendency is however relatively weak. These conclusions are not as damming as they appear. While the findings raise questions about th e integrity of individual judges, they do not prove that the ICJ as an institution is biased. With a total of 15 judges, some of whom will almost certainly be from countries with no connection to the parties in a particular case, it seems unlikely that the above findings will have a significant influence on the Court’s final rulings. Supporting this argument is the fact that Posner and de Figueirado themselves point out that the evidence that the Court is biased is not overwhelming.

According to Knight, although the ICJ “has become an important element in peacekeeping not all UN member states accept its jurisdiction and those that do can hold out reservations on any of its judgments.” This severely impedes the credibility of the court and its judgments. Both parties must accept the court’s jurisdiction if it is to be successful in dispute resolution. Despite the fact that 64 states have accepted the compulsory jurisdiction of the court and numerous multilateral treaties provide for ICJ adjudication there have been a number of cases, including the Preah Vihear Temple case, where one of the parties has disputed the court’s jurisdiction over the issue concerned. While that particular situation was resolved when it transpired that Thailand had undertaken to accept the court’s jurisdiction prior to the Preah Vihear Temple case being referred to the ICJ these issues only serve to postpone hearings and to lengthen the time it takes for the court to reach a satisfactory conclusion.

Another criticism of the court is that it should not be necessary for Southeast Asian nations to turn to an international legal body to resolve regional disputes. There is widespread feeling that the Association of Southeast Asian Nations (ASEAN) should be playing a greater role in settling intra- regional disputes. However, ASEAN member states continue to support a poli cy of non-interference.

In 2008, the ASEAN Charter was adopted by all the member states. An entire chapter deals with issues pertaining to the settlement of disputes. Article 22 of the Charter states that a dispute settlement mechanism will be established and maintained and Article 23 states that parties to a dispute may request “the Chairman or Secretary- General of ASEAN, acting in an ex-officio capacity, to provide good offices, conciliation or mediation.” The blueprint for an ASEAN Political Security Community was unveiled at the ASEAN Summit in Thailand in March 2009. It declares “more efforts are needed in strengthening the existing modes of pacific settlement of disputes to avoid or settle future disput es.” This is undoubtedly a step in the right direction but nothing concrete has been settled, suggesting that a change in ASEAN’s stance on the issue of intervention remains a long way off. There has also been a tendency to favour bilateral conflict resolution in Southeast Asia. In the case of the Preah Vihear Temple dispute both Thailand and Cambodia rejected the idea of referring the case to the ICJ. They also dismissed the idea of third-party mediation proposed by Indonesia. Yet bilateral efforts to resolve the dispute have thus far failed as demonstrated by recent events on the Thai-Cambodian border. Moreover, Koh and Lin argue that third-party processes are a useful tool in bringing about amicable dispute resolution. They state that such processes are often the only way to break impasses. Singapore has turned to international bodies on a number of occasions and has suggested that third-party resolution methods could also be used to resolve Singapore’s dispute with Malaysia regarding the Malayan Railway. This indicates that Singapore has a lot of confidence in the international legal bodies that it has turned to in the past. It is necessary to instill this level of confidence in the other Southeast Asian nations if the ICJ is to play a greater role in resolving te rritorial disputes in the region.

IV CONCLUSIONS: TOWARDS REGIONAL INTEGRATION

The ICJ has the potential to play a key role in resolving territorial disputes where other forms of mediation have failed. Bilateral negotiations, as the least involved method of resolving conflicts, are undoubtedly the preferred means of dispute settlement but they are not always successful. Regional mediation is also preferable to international involvement but is not always viable due to fears that regional actors may have vested interests in certain cases. Moreover, ASEAN’s current stance on intervention in regional disputes renders a greater regional role in the resolution of territorial disputes unlikely in the impending future.

If the ICJ is to assume a greater role in resolving the outstanding territorial disputes in Southeast Asia, the Court must gain greater credibility in the eyes of Southeast Asian nations. Faith in the Court’s ability to settle disputes must extend beyond Singapore, Malaysia and Indonesia. Moreover, the ICJ must seek to reaffirm its non-partisan status in order to convince countries that any rulings made by the Court are fair and should be adhered to.

#### Extinction

**RAJARATNAM ’92** (S. Rajaratnam, Former Deputy Prime Minister of Singapore, studied Law at Kings College (London) [www.aseansec.org/13991.htm](http://www.aseansec.org/13991.htm))

Should regionalism collapse, then ASEAN too will go the way of earlier regional attempts like SEATO, ASA and MAPHlLlNDO. All that remains today of these earlier experiments are their bleached bones. Should the new regional efforts collapse, then globalism, the final stage of historical development, will also fall apart. Then we will inevitably enter another Dark Ages and World War III, fought this time not with gun-powder, but with nuclear weapons far more devastating than those exploded in Hiroshima and Nagasaki. Modern technology and science are pushing the world simultaneously in the direction of regionalism and globalism. What is responsible for today's economic disintegration, disorder and violence is the resistance offered by nationalism to the irresistible counter-pressures of regionalism and globalism. As of today, there are only two functioning and highly respected regional organizations in the world. They are, in order of their importance and seniority, the European Community (EC) and the Association of Southeast Asian Nations (ASEAN). The first came into being in 1957 and the second in 1967. A mere ten years separates the two. The population of the European Community as at 1990 was 350 million, and that of ASEAN an estimated 323 million. In terms of population, they are not all that unequal. In terms of political and economic dynamism, though, the gap is qualitatively wider. The economic dynamism and the proven political cohesion of ASEAN is nevertheless slowly but steadily narrowing the gap between the European Community and ASEAN. To compare ASEAN with the so-called Little Dragons of Asia is to compare unrelated political species. The Little Dragons are lone wolves hunting separately. They lack collective strength or awareness. With them it is a case of each wolf for itself. In the case of ASEAN, as integration proceeds, its strength will be the cohesiveness of over 300 million people with far greater resources than any of the lone baby dragons. The most remarkable feature about the two regional organizations is their continuity and coherence despite the persistence and often unmanageable turbulence and tensions that have and still characterize the post-war world. There have been some 100 international, civil, racial and religious conflicts. Far from abating, these are growing in number. By comparison the European Community and ASEAN are the still centres in the eye of the storm. There is apprehension that chaos, not order, is the draft of world politics and economies today. For many, the expectation is that tomorrow will be worse than yesterday and that history has been a descent from the Golden Age to the Dark Ages. To quote the poet Yeats, though the world is seemingly intact: "Things fall apart, the centre cannot hold." Yet the two multi-racial and multi-cultural regional organizations I have mentioned con- tinue to grow in maturity, cohesiveness, and confidence. They believe that regionalism can survive the buffeting winds and storms. The European Community, unlike ASEAN, has had far more experience with regional organization because its founding members, in particular Britain, France, Holland, Belgium and even Germany participated in the creation and management of far-flung complex global empires. Their scientific and technological cultures were many light years ahead of all preceding cultures and civilizations. However eminent and admirable pre-European tradi- tional civilizations were, the 19th and 20th century culture created by the West cannot be surpassed or displaced by invoking ancient creeds. Only Japan has so far demonstrated that the gap between medieval and modern cultures can be narrowed and possibly over taken. Moreover, only Western nations and Japan have demonstrated a capacity for con- structing massive modern empires, though unfortunately, they demonstrated this by their ability to organize and unleash modern wars. No Asian nation, however, has fought, let alone won, wars of comparable magnitude. Saddam Hussein's chest-thumping has the resonance of hollow drums. Western Europeans have over a period of 500 years built a chain of multi-racial and multi-national empires that at their peak stretched from Portugal and Spain to the Pacific shores of Russia, and parts of Asia and Africa. So reconstituting a West European regional community should be child's play for them. But creating and managing, within a brief period of only 25 years, an ASEAN community of six economically and industrially under-developed peoples who had no experience of administering a modern, complex multi-racial regional organization verges, in my view, on the miraculous. The reach of the ancient empires of Greece, Rome, China, India, Persia and Babylon, ruled by allegedly Divine emperors, was ludicrously short and their claims of being rulers of World empires were fanciful exaggerations. The effective extent of their empires did not go beyond the palace and surrounding villages. Modern nationalism, regionalism and globalism are of a different order politically, economically and even psychologically. Nationalism is a 19th century concept. Earlier forms of nationalism were, in fact, imperialism. It united petty principalities, states and clans into nations. These have now outlived their usefulness. But regionalism is based on concepts and aspirations of a higher order. Asian regionalism was first launched on 25 April 1955 at Bandung. It was initially a comprehensive Afro-Asian Conference presided over by Heads of Government. It included legendary figures like Sukarno. Nehru, Zhou Enlai, Kotalawela of what was then Ceylon, Sihanouk and Mohammed Ali, the Prime Minister of Pakistan. However, this regional effort did not last long. Asian and African nationalisms which helped speed up the collapse of Western, and later Japanese imperialisms, did not last long. Within a few years after its founding, not only Afro-Asian solidarity but also the solidarity of individual Asian and African nation states was in disarray. The destruction of nationalism is today being brought about, not by Western imperialism, which had already grown weary. thanks to two world wars, of holding sway over palm and pine, but by Third World nationalism. The economic and political underpinnings of European nationalisms were in fact, even before the start of the 20th century, beginning to crack. In fact, Lord Acton. towards the end of the 19th century, predicted the inevitable collapse of nationalism. I quote his judgement- "Nationality does not aim either at liberty or prosperity, both of which it sacrifices to the imperative necessity of making the nation the mould and measure of the state. It will be marked by material and moral ruin." This prophecy is as accurate today as it was when Lord Acton made it in 1862. So was Karl Marx's prophecy about the inevitable collapse of nationalism but for different reasons. He predicted the overthrow of nationalism and capitalism by an international proletariat. So did Lenin and so did Mao with their clarion call of: "Workers of the World unite." Internationalism has a long history. Chinese, Christians, Greeks, Romans and Muslims were never tired of announcing themselves as "World Rulers", However, after World War II, empires went out of fashion. It is today being gradually replaced by a more rational form of political and economic organization. The early years of the 20th century witnessed, for example, experiments with a novel form of regionalism -continental regionalism. It was formed by simply prefixing the word "Pan" to the continents of Europe, Asia and America -Pan-Europa, Pan-America and Pan-Asia, of which Japan, after having in 1905 defeated the Russian fleet in one of the most decisive naval battles ever fought in the Tsushima Straits, became Asia's most persistent publicist. After World War II, Pan-African and Pan-Arab movements were added to the list. However, these early "Pan" movements have since then either collapsed totally or are in the process of violent disintegration because of dissension on grounds of race, religion, language or nation. However, the word "Pan" has recently been revived in East Europe. It is called "Pan-Slavism" and is today being revived with bloody vengeance. The multi-racial and multi-cultural Yugoslav nation that President Tito created during World War 11 and which is today being torn apart is a grim warning of what can happen to nations possessed by racial and religious demons. The new regionalism that is now emerging out of the ruins of post-World War II nationalism appears to have learnt from the errors of the past. A more sophisticated and realistic form of regionalism is being constructed, not as an end in itself but as the means towards a higher level of political, social and economic organization. I propose to do no more than list the names of some of the new regionalisms now taking shape. Basic to this approach is that there is not going to be any sudden great leap forward from regionalism to globalism. However, none of the new regionalisms now taking shape are as bold as either the European Community or ASEAN. The latter two are more rationally focussed regionalism. But a word of caution is necessary. We must know how to handle these new regionalisms intelligently. They could be steps towards global peace, progress and cultural development or they could be fuel for World War III. Foremost among the new regional approaches is the North American Free Trade Area (NAFTA) and the Asia-Pacific Economic Co-operation forum. Among the many other regional concepts waiting in the wings are: the Organisation of Economic Co-operation and Development (OECD); the Group of Seven (G7); East Asian Economic Caucus (EAEC); Pacific Economic Co-operation Conference (PECC); the amiable Little Dragons of South Korea, Singapore, Hong Kong and Taiwan for which no acronym has yet been announced. There are also the distant rumbles of the possible emergence of Big Dragons but as a Chinese saying goes: "There is a lot of noise in the stairways, but nobody has so far entered the room." One fervently hopes that when a Big Dragon turns up, it would be an amiable Great Dragon and one which would know its way around the Spratly and Paracel Islands but without being a Dragon in a China shop. World War II started, it must be remembered, simply because the German and Japanese Dragons got their maps all wrong. Real regionalism requires a world-view if it is not to lose its way in the global world of modern technology and science. It must also have a rational and deep understanding of the new history which is being shaped not by heroic individuals, but through the co-operative inter-action of some 5 billion people who today live in a vastly shrunken planet and who, thanks to growing literacy and fast-as-light electronic communication, are better informed about the world we live in than earlier generations. Nobody, not even super-computers can predict what will happen when each day the flow of history is cumulatively determined by individual decisions made by 5 billion human beings who are asserting their right to a decent and just society. Fewer and fewer people today believe that oppression, hunger and injustice is God's will to which they must meekly submit. People today know the difference between "Let us pray" and "Let us prey". The end of the Cold War and the collapse of communism has, in no way, made for a more peaceful world. Wars have ended in the Western world but not so elsewhere. World War III, should it ever be unleashed, would be the last war mankind will ever fight.

### Case

#### The aff just results in court ordered psychiatric treatment – turns the case

Reuters, 13 [Actress Amanda Bynes leaves facility after psychiatric treatment, <http://www.reuters.com/article/2013/12/05/us-amandabynes-idUSBRE9B410Y20131205>]

(Reuters) - Troubled former teenage star Amanda Bynes has left a California facility after court-ordered psychiatric treatment **and is recovering at her parents' home** in Los Angeles, People magazine said on Thursday. The 27-year-old actress was receiving psychiatric care at a Malibu facility after she was alleged to have started a small fire in the front of a home in Thousand Oaks, a Los Angeles suburb, in July. "Amanda has completed her inpatient rehabilitation and she's feeling better every day," lawyer Tamar Arminak said in a statement released to the magazine. "Despite the fact Amanda is no longer in a facility, her outpatient treatment is continuing," he added.

#### Obama circumvents the plan – he’ll use creative lawyering to IGNORE court-ordered release

Hafetz 13 (Jonathan, Law Professor – Seton Hall University School of Law, “Outrage Fatigue: The Danger of Getting Used to Gitmo,” World Politics Review, <http://www.worldpoliticsreview.com/articles/13311/outrage-fatigue-the-danger-of-getting-used-to-gitmo>)

The congressional transfer restrictions have, to be sure, made it more difficult to close Guantanamo. But it would be a mistake simply to blame Congress for the political logjam. Obama not only repeatedly signed the annual military appropriations bills that created the transfer restrictions, despite periodic veto threats, but he also retains considerable latitude to operate notwithstanding the restrictions.

In addition to barring detainee transfers to the United States, Congress previously prohibited the use of funds to transfer detainees to other countries unless the defense secretary personally certified that the detainee in question would never engage in terrorist activity—a virtually impossible standard to meet. Congress, however, has since amended the National Defense Authorization Act (NDAA) to loosen the transfer restriction. The secretary may now waive that certification requirement and transfer detainees to other countries if he finds that the receiving country will take steps to “substantially mitigate” the risk that the detainee will engage in terrorist activity, and that the transfer is in the national security interests of the United States.

While the current certification requirement undoubtedly complicates the transfer process, it still gives Obama latitude to maneuver. As Carl Levin, chairman of the Senate Armed Services Committee, noted, the modified certification requirement affords “a clear route for the transfer of detainees to third countries.”

Additionally, the NDAA exempts detainees transferred by a court order from the certification requirement. The Obama administration has administratively cleared more than half of the remaining detainees for release. If it conceded their detention was no longer lawful and agreed to court orders for their release, the administration could transfer them outside the existing congressional restrictions. So far, however, the administration has agreed to a court-ordered release in only one case, and that case involved a prisoner suffering from significant mental and physical illness.

The Obama administration has shown no shortage of creative lawyering in justifying U.S. military involvement in Libya and Syria as well as in expanding America’s use of targeted drone strikes. In those instances, the administration has interpreted presidential authority robustly, while narrowly construing congressional attempts to cabin that authority, as in the War Powers Resolution. Yet, when it comes to releasing Guantanamo detainees, the administration remains sheepish. It has failed to apply the same interpretive approach to congressional transfer restrictions despite what the president has described as the clear national security interests in closing the prison. Only external events, such as the hunger strike, now seem to prompt any action. And even there, the urgency tends to dissipate once the public pressure and media attention fades.

#### We’re not the view from nowhere—the dichotomy they’re drawing makes them equally suspect—because it claims a privileged insight on reality

**DISCH ‘93** (Lisa J.; Professor of Political Theory – University of Minnesota, “More Truth Than Fact: Storytelling as Critical Understanding in the Writings of Hannah Arendt,” Political Theory 21:4, November)

What Hannah Arendt called “my old fashioned storytelling”7 is at once the most elusive and the most provocative aspect of her political philosophy. The apologies she sometimes made for it are well known, but few scholars have attempted to discern from these “scattered remarks” as statement of epistemology or method.8 Though Arendt alluded to its importance throughout her writings in comments like the one that prefaces this essay, this offhandedness left an important question about storytelling unanswered: how can thought that is “bound” to experience as its only “guidepost” possibly be critical? I discern an answer to this question in Arendt’s conception of storytelling, which implicitly redefines conventional understandings of objectivity and impartiality. Arendt failed to explain what she herself termed a “rather unusual approach”9 to political theory because she considered methodological discussions to be self-indulgent and irrelevant to real political problems.10 This reticence did her a disservice because by failing to explain how storytelling creates a vantage point that is both critical and experiential she left herself open to charges of subjectivism.11 As Richard Bernstein has argued, however, what makes Hannah Arendt distinctive is that she is neither a subjectivist nor a foundationalist but, rather, attempts to move “beyond objectivism and relativism.”12 I argue that Arendt’s apologies for her storytelling were disingenuous; she regarded it not as an anachronistic or nostalgic way of thinking but as an innovative approach to critical understanding. Arendt’s storytelling proposes an alternative to the model of impartiality defined as detached reasoning. In Arendt’s terms, impartiality involves telling oneself the story of an event or situation form the plurality of perspectives that constitute it as a public phenomenon. This critical vantage point, not from outside but from within a plurality of contesting standpoints, is what I term “situated impartiality.” Situated impartial knowledge is neither objective disinterested nor explicitly identified with a single particularistic interest. Consequently, its validity does not turn on what Donna Haraway calls the “god trick,” the claim to an omnipotent, disembodied vision that is capable of “seeing everything from nowhere.”13 But neither does it turn on a claim to insight premised on the experience of subjugation, which purportedly gives oppressed peoples a privileged understanding of structures of domination and exonerates them of using power to oppress. The two versions of standpoint claims – the privileged claim to disembodied vision and the embodied claim to “antiprivilege” from oppression – are equally suspect because they are simply antithetical. Both define knowledge positionally, in terms of proximity to power; they differ only in that they assign the privilege of “objective” understanding to opposite poles of the knowledge/power axis. Haraway argues that standpoint claims are insufficient as critical theory because they ignore the complex of social relations that mediate the connection between knowledge and power. She counters that any claim to knowledge, whether advanced by the oppressed or their oppressors, is partial. No one can justifiably lay claim to abstract truth, Haraway argues, but only to “embodied objectivity,” which she argues “means quite simply situated knowledges.”14 There is a connection between Arendt’s defense of storytelling and Haraway’s project, in that both define theory as a critical enterprise whose purpose is not to defend abstract principles or objective facts but to tell provocative stories that invite contestation form rival perspectives.15

#### Death outweighs –ontologically destroys the subject and prevents any alternative way of knowing the world

**Paterson, 03** – Department of Philosophy, Providence College, Rhode Island (Craig, “A Life Not Worth Living?”, Studies in Christian Ethics, <http://sce.sagepub.com>)

Contrary to those accounts, I would argue that it is death per se that is really the objective evil for us, not because it deprives us of a prospective future of overall good judged better than the alter- native of non-being. It cannot be about harm to a former person who has ceased to exist, for no person actually suffers from the sub-sequent non-participation. Rather, death in itself is an evil to us because it ontologically destroys the current existent subject — it is the ultimate in metaphysical lightening strikes.80 The evil of death is truly an ontological evil borne by the person who already exists, independently of calculations about better or worse possible lives. Such an evil need not be consciously experienced in order to be an evil for the kind of being a human person is. Death is an evil because of the change in kind it brings about, a change that is destructive of the type of entity that we essentially are. Anything, whether caused naturally or caused by human intervention (intentional or unintentional) that drastically interferes in the process of maintaining the person in existence is an objective evil for the person. What is crucially at stake here, and is dialectically supportive of the self-evidency of the basic good of human life, is that death is a radical interference with the current life process of the kind of being that we are. In consequence, death itself can be credibly thought of as a ‘primitive evil’ for all persons, regardless of the extent to which they are currently or prospectively capable of participating in a full array of the goods of life.81 In conclusion, concerning willed human actions, it is justifiable to state that any intentional rejection of human life itself cannot therefore be warranted since it is an expression of an ultimate disvalue for the subject, namely, the destruction of the present person; a radical ontological good that we cannot begin to weigh objectively against the travails of life in a rational manner. To deal with the sources of disvalue (pain, suffering, etc.) we should not seek to irrationally destroy the person, the very source and condition of all human possibility.82

#### Body counts key—prefer consequentialism

**Greene 2010** – Associate Professor of the Social Sciences Department of Psychology Harvard University (Joshua, Moral Psychology: Historical and Contemporary Readings, “The Secret Joke of Kant’s Soul”, [www.fed.cuhk.edu.hk/~lchang/material/Evolutionary/Developmental/Greene-KantSoul.pdf](http://www.fed.cuhk.edu.hk/~lchang/material/Evolutionary/Developmental/Greene-KantSoul.pdf), WEA)

What turn-of-the-millennium science is telling us is that human moral judgment is not a pristine rational enterprise, that our **moral judgments are driven by a hodgepodge of emotional dispositions**, which themselves were shaped by a hodgepodge of evolutionary forces, both biological and cultural. Because of this, it is exceedingly unlikely that there is any rationally coherentnormativemoral theory that can accommodateourmoral intuitions. Moreover, anyone who claims to have such a theory, or even part of one, almost certainly doesn't. Instead, what that person probably has is a moral rationalization.

It seems then, that we have somehow crossed the infamous "is"-"ought" divide.  How did this happen? Didn't Hume (Hume, 1978) and Moore (Moore, 1966) warn us against trying to derive an "ought" from and "is?" How did we go from descriptive scientific theories concerning moral psychology to skepticism about a whole class of normative moral theories? The answer is that we did not, as Hume and Moore anticipated, attempt to derive an "ought" from and "is." That is, our method has been inductive rather than deductive. We have inferred on the basis of the available evidence that the phenomenon of rationalist deontological philosophy is best explained as a rationalization of evolved emotional intuition (Harman, 1977).

Missing the Deontological Point  
I suspect that rationalist deontologists will remain unmoved by the arguments presented here. Instead, I suspect, they will insist that I have simply misunderstoodwhat Kant and like-minded deontologistsare all about. Deontology, they will say, isn't about this intuition or that intuition. It's not defined by its normative differences with consequentialism. Rather, deontology is about taking humanity seriously. Above all else, it's about respect for persons. It's about treating others as fellow rational creatures rather than as mere objects, about acting for reasons rational beings can share. And so on (Korsgaard, 1996a; Korsgaard, 1996b).This is, no doubt, how many deontologists see deontology. **But this insider's view**, as I've suggested, may be misleading. The problem, more specifically, is that it defines deontology in terms of values that are notdistinctivelydeontological, though they may appear to be from the inside. Consider the following analogy with religion. When one asks a religious person to explain the essence of his religion, one often gets an answer like this: "It's about love, really. It's about looking out for other people, looking beyond oneself. It's about community, being part of something larger than oneself." This sort of answer accurately captures the phenomenology of many people's religion, but it's nevertheless inadequate for distinguishing religion from other things. This is because many, if not most, non-religious people aspire to love deeply, look out for other people, avoid self-absorption, have a sense of a community, and be connected to things larger than themselves. In other words, secular humanists and atheists can assent to most of what many religious people think religion is all about. From a secular humanist's point of view, in contrast, what's distinctive about religion is its commitment to the existence of supernatural entities as well as formal religious institutions and doctrines. And they're right. These things really do distinguish religious from non-religious practices, though they may appear to be secondary to many people operating from within a religious point of view.  
In the same way, I believe that most of the standard deontological/Kantian self-characterizatons fail to distinguish deontology from other approaches to ethics. (See also Kagan (Kagan, 1997, pp. 70-78.) on the difficulty of defining deontology.) It seems to me that consequentialists, as much as anyone else, have respect for persons, are against treating people as mere objects, wish to act for reasons that rational creatures can share, etc. **A consequentialist respects other** person**s, and refrains from treating them as mere objects, by counting every person's well-being**in the decision-making process. Likewise, a consequentialist attempts to act according to reasons that rational creatures can share by acting according to principles that give equal weight to everyone's interests, i.e. that are impartial. This is not to say that consequentialists and deontologists don't differ. They do. It's just that the real differences may not be what deontologists often take them to be.  
What, then, distinguishes deontology from other kinds of moral thought? A good strategy for answering this question is to start with concrete disagreements between deontologists and others (such as consequentialists) and then work backward in search of deeper principles. This is what I've attempted to do with the trolley and footbridge cases, and other instances in which deontologists and consequentialists disagree. If you ask a deontologically-minded person why it's wrong to push someone in front of speeding trolley in order to save five others, you will getcharacteristically deontological answers. Some will betautological: "Because it's murder!" Others will be more sophisticated: "The ends don't justify the means." "You have to respect people's rights." But, as we know, these answers don't really explain anything, because if you give the same people (on different occasions) the trolley case or the loop case (See above), they'll make the opposite judgment, even though their initial explanation concerning the footbridge case applies equally well to one or both of these cases. Talk about rights, respect for persons, and reasons we can share are natural attempts to explain, in "cognitive" terms, what we feel when we find ourselves having emotionally driven intuitions that are odds with the cold calculus of consequentialism. Although these explanations are inevitably incomplete, there seems to be "something deeply right" about thembecause they give voice to powerful moral emotions. But, as with many religious people's accounts of what's essential to religion, they don't really explain what's distinctive about the philosophy in question.

#### The 1acs attempts to fold disability into the norm means you should reject it—don’t normalize

Bayliss 09. Phil Bayliss, professor of education studies at Exeter University, Against Interpretosis: Deleuze, Disability, and Difference Journal of Literary & Cultural Disability Studies, Volume 3, Number 3, 2009, pg. 282-3

In Narrative Prosthesis, Mitchell and Snyder argue that a theoretical position underpinning their thesis is that disability inaugurates interpretation. They argue that literary efforts to “illuminate the dark recesses of disability produce a form of discursive subjugation. The effort to narrate disability’s myriad deviations is an attempt to bring the body’s unruliness under control” (6). Interpretation uses systems of objectification to determine unruliness and to develop control. Significance—the relationship between signs, the signifier (what Deleuze and Guattari call expression) and their objects (the signified content)— assumes an object of disability, which can be understood through the way the object is interpreted. In Towards a Semiology of Paragrams, Julia Kristeva introduces the concept of signifiance: the signifying process as a dynamic understanding of how signs come to be formed and used. Kristeva’s object is to explore, within the entire set of signifying gestures, the “dynamic process whereby signs take on or change their significations” (28). Signifiance assumes a dynamic relationship between signifiers and the signified, which change over time according to interpretative frameworks. Narratives of the broken body, of theories of physiology, of psychology, all assume a univocality, a one-to-one isomorphism of the signifier and the signified, and within the discourses of the medical or social models the drive to control unruly bodies leads to what Deleuze and Guattari call interpretosis: It is well known that the psychoanalysts have ceased to speak, they interpret even more, or better yet, fuel interpretation on the part of the subject, who jumps from one circle of hell to the next. In truth, signifiance and interpretosis are the two diseases of the earth or the skin, in other words, human kind’s fundamental neurosis. (Plateaus 114) The relationship of the signified object and its signification is linked to its his- tory, signifiance, the history of concepts from Michel Foucault’s genealogy in the Birth of the Clinic to Mitchell and Snyder’s narrative prosthesis by way of Henri-Jacques Stiker’s History of Disability. Regimes of truth established through forms of expression (signifiance) have designated the disabled body as something static, not amenable to change without changing the corporeality of the disabled individual. Carlson shows, in her history of docile bodies, how understanding the disabled body as static is contrasted with a dynamic perspective, which sees the disabled body as inher- ently capable of change. For example, the classifications of the World Health Organization, in its use of concepts such as impairment, disability, and handicap, fix the body—these forms of expression fix a content, which creates the disabled body as visible, where before the disability lay beneath the surface of the impaired body, and was invisible. Function cannot be seen (is not visible); handicap lies in the realm of the social and must be inferred; both must be inferred through observation and interpretation. Here, interpretosis creates the content through its forms of expression. Thus, in bringing the invisible to visibility, we have the new conditions, for example, Attention Deficit and Hyperactivity Disorder (what Shannon Lowe calls a miskinetic neuropoliticology: the politics of constructing and disciplining the organism of the brain); and Asperger’s Syndrome (Klin, Volkmar, and Sparrow), which was not recognized by the American Psychiatric Association’s Diagnostic and Statistical Manual (DSM–IV–R) until 1994. For Deleuze and Guattari, “(the) form of expres- sion becomes linguistic rather than genetic: in other words, it operates with symbols that are comprehensible, transmittable and modifiable from outside” (Plateaus 60). Where the relationship of expression and content (or form and matter) is one of interdependence, interpretosis, through creating new forms of expression, generates signifiance; creates visibility out of invisibility, through enunciating it. Foucault, in The Order of Things, makes the same point: that which can be articulated becomes visible. For Deleuze and Guattari: Content then constitutes bodies, things or objects, that enter physical systems, organ- isms and organizations ... all of this culminates in a language stratum that installs an abstract machine on the level of expression and takes the abstraction of content even further, tending to strip it of any form of its own (the imperialism of language, the pretensions to a general semiology). (Plateaus 143) I would call this the interaction between logos and nomos and its strongest formulation is within the field of nosology—the study of diagnosis, which pathologizes invisible differences made visible through expression and signifi- ance. Once expression and signifiance create a nomos through logos, the body is subjected to such articulation; subjection leads to subjectification: the body inscribed as disabled, becomes disabled. If forms of expression are linguistic (transmittable, modifiable...) they may take the form of a majoritarian theory.

#### Anything else would PREVENT the community from being performatively recreated as a distinct singularity at all times and instead would write identity onto such bodies PRIOR to their performance

Bayliss 09. Phil Bayliss, professor of education studies at Exeter University, Against Interpretosis: Deleuze, Disability, and Difference Journal of Literary & Cultural Disability Studies, Volume 3, Number 3, 2009, pg. 289

\*\*\*gender modified, but really only for clarity’s sake

If we challenge the arborescent and deterritorialize and reterritorialize on poetic networks these are predicated on Gemeinschaft (Tonnies, community based on blood or kinship) and also sharing. Jean-Luc Nancy, in The Inopera- tive Community, argues for a concept of community, which only comes into being through the enactment (performance) of sharing/community. In Nancy’s terms, a community is not prefigured or signified: the act of sharing the community comes into being as a coming into presence. The psychological or tran- scendental perspective (interpretosis) inscribes community as sharing post hoc: a principle is established which both requires and defines membership that pre- constitutes both the individual and the principle of being-in-the-community.

This is a form of totalitarianism. However, sharing in Nancy’s sense, does not prefigure or totalize that sharing: it is an action (performance), not a state for which principles can be adduced a priori, i.e., performance is not an order-word. Sharing co-constitutes both individual and community. In some cultures (e.g., Mongolian nomadic society), sharing underpins survival and, in the sense I am writing here, brotherhood, which transcends the subject-as-individual, is sharing. This idea of sharing and its relationship to community allows for reflection within either an arborescently structured Socius, or one that is unstructured rhizomatically. Is the Socius a striated or smooth space?

In Mongolian culture, nomadism (the rhizomatic) is co-terminous and contiguous with sedentary culture: the arborescent (Moses and Halkovic). In Deleuze and Guattari’s writing, nomadism is a metaphor for escape (deterrito- rialization).

Stanley Stewart, in his history of the Mongol Empire and the revision of Chingiss Khan’s reputation as a great leader of the largest empire the world has known, shows that when Chingiss died his broken body was revered and the war machine went to a lot of trouble to guard both his body and his spirit. The broken body here (for Chingiss) is not ordered on a stratum, which belongs to the sedentary (facialized as Other/disabled), instead the brotherhood [community] of the war machine ensured sharing and maintained a spirit, which overcame the body.

Deleuze and Guattari’s nomadology and the nomadic war machine constitutes the war-band (the outside minorities) through sharing; the immanent projective narratives of minoritarian fictions create and enable the war-band; they bring it in to being, they do not disable it. The war machine rejects the sedentary.

If the sharing can be maintained through epic (oral) poetry and myth, then stories create the war machine, they also create the projective narrative of what it means to share in the community, by performing community.

The minoritarian fictions of community (in Nancy’s sense of the shared com- munity) follow poetics, not interpretosis. The mythic (following Kristeva) offers forms of expression and enunciation, which does not abstract content, and counteracts the imperialism of language.

The use of poetics allows transgressive meanings to be developed by both the self (as the possibility of writing the self/projective (auto)biography) and the audience. The potential transgressive meanings are not dictated by the author; a poetics offers alternative linguistic networks, which offer counter-cultural narrative possibilities. Self (or identity) is no longer dependent on Battersby’s grand narratives, but is rather an emergent property between self and audience, as Nicholas Abercrombie and Brian Longhurst demonstrate in Audiences. Such emergence is locational and temporal.

Giles Perring, in writing about performance and people with learning dif- ficulties, argues that:

an objective (of counter-cultural narratives is one) that challenges mainstream cultur- al and aesthetic precepts and views about disability. It often flows from a perception of the value of transgressive and nonnormative qualities in learning-disabled people creating a concern for addressing their marginalisation and institutionalisation. (186)

School destroys fictions by replacing them with eternal truths that must be learned—these, following Walter Ong, are a property of literacy, as opposed to oracy, and are not created. The projective narrative of disability sees impairment as the defining characteristic of facialized bodies. Challenging faciality, the storied-self moves between the episodic and the narrative self, between the oral and the literate, between the ordered and the disordered. We understand broken bodies from stories of the war-band, not the universal (totalizing) discourses of the Diagnostic and Statistical Manual (DSM–IV) and the Inter national Classification of Disability, Impairments and Handicaps (ICIDH–2). The movement between the ordered and the disordered symbolizes a landscape and the writings of Deleuze and Guattari conjure images of nomads, who occupy smooth space:

Smooth (vectorial, projective, or topological) space and ... striated space: in the first case “space is occupied without being counted” and in the second case “space is count- ed in order to be occupied” ... the nomad has a territory; he [they] follows customary paths he goes from one point to another; he is not ignorant of points ... But the question is what in nomad life is a principle and what is only a consequence. To begin with, although the points determine paths, they are strictly subordinated to the paths they determine, the reverse of what happens with the sedentary. ... Second, even though the nomadic trajectory may follow trails or customary routes, it does not fulfill the function of the sedentary road, which is to parcel out a closed space to people, assigning each person a share and regulating the communication between shares. The nomadic trajectory does the opposite: it distributes people or animals in an open space, one that is indef- inite and noncommunicating. (Plateaus 362–363, 380)

Outcomes-based education, the sociology of health, the programmes of the carcereal, all these define the arborescent, the sedentary, the measurable. They allocate closed spaces; they define both the destination and the road (‘travelling through the landscape’). The final destination (solution?) denies the journey to the DSM–IV’ed child and the diagnosed body. They cannot keep up, they cannot make it... Physical journeys along roads need bodies, eyes, and minds. Nomadic journeys in the landscape need none of these.

#### Disability studies should embrace the register of impersonal life, no longer dependent on the recognition of an empowered ego *possessing* disability; rather, using disability to rupture the entire concept of coherent bodies itself

Overboe 09. James Overboe, professor of sociology at Wilfred Laurier University, “Affirming an Impersonal Life: A Different Register for Disability Studies,” Journal of Literary & Cultural Disability Studies, Volume 3, Number 3, 2009, pg. 241-2

Drawing from the template of feminism, queer politics, and other civil rights movements, a fundamental tenet of the Disability Studies movement continues to be the validation of one’s own identity and politics based upon various disabilities: sensory, psychiatric, developmental, environmental, and physical (or any combination of the aforementioned). Underlying this politics of identity, or even the politics of difference, is the self-reflexive individual. Michel Foucault has argued that, since the Enlightenment, society has followed the ‘humanistic register’ noted by the conscious self. This self through subjection internalizes the effects of institutionalized discourses and subsequent power circulates through the subject, being reiterated because it is beneficial for the individual and productive for society as a whole. In The Psychic Life of Power: Theories in Subjection, Judith Butler writes, “Subjection consists precisely in this fundamental dependency upon a discourse we never chose but that, paradoxically, initiates and sustains our agency” (2). Both Foucault and Butler reject the notion of the founding subject that constructs the social and material world. Fundamentally, they offer differing accounts of how the self is formulated, and in doing so retain both self-reflexivity and intent.

In his analysis of “Immanence: A Life...” Giorgio Agamben argues that Deleuze moves this discussion to a different register, that of the impersonal life (without a self). In Potentialities: Collected Essays on Philosophy, Agamben contends that many of the categories of the philosophical tradition must be rethought or reconsidered, making room for “Life as contemplation without knowledge ... that has freed itself of all cognition and intentionality” (239). Agamben realizes this endeavour will not be easy as, in the philosophical community, self-reflexivity has given meaning to the world for many centuries. This article will assert that Disability Studies should embrace the register of the impersonal life. While this self-reflexive humanism gained prominence in modernity and often displaced other forms of governance and life, the article will contend that the registers of humanistic self-reflexivity and impersonal life co-exist and affect or may affect the social world.

My purpose here is not to resurrect the sanctity of life versus quality of life debate, which I believe is framed within a discourse of humanistic self-reflexiv- ity. Within this discourse, on one hand, people with cognitive ability recognize the pitiful existence of the non-communicative, the comatose, or the non- cognitive subjects, but on moral grounds argue that the sanctity of life must be upheld. On the other hand, from a quality of life perspective, people considered non-communicative, comatose, or non-cognitive are suffering and to ease their torment must be allowed the right to die if they so choose by prior informed consent. Either argument remains steadfast in the realm of the humanistic reg- ister with its emphasis on agency and intent. Moreover, from the perspective of the humanistic register, a lack of self-reflexivity and intentionality is taken for granted as an inferior and questionable existence. This article makes a case to affirm lives that are alive without

#### Articulating the disabled body through the standard logic of Cartesian ego eviscerates the ability of the non-neurotypical to participate in the 1AC—their claims to the contrary ONLY fold that difference onto the pre-defined register of “disabled ego”

Overboe 09. James Overboe, professor of sociology at Wilfred Laurier University, “Affirming an Impersonal Life: A Different Register for Disability Studies,” Journal of Literary & Cultural Disability Studies, Volume 3, Number 3, 2009, pg. 252-4

Can Disability Studies risk cutting through the patchwork of rhetoric and cli- chés that continually privilege the self-reflexive narrative and equally recognize the palpating voice that eschews language and representation, that simply exists without needing to be understood? This voice is pure difference, a difference in itself without hierarchical comparison, or subordination of difference to identity. A voice that is “at once distant and intimate” (May 20), which needs to be affirmed within the discipline of Disability Studies.

This may be difficult because disability scholars and activists have an affinity and commitment to language, communication, and community. Like rehabilitation, underscoring language and communication is the belief in a self with agency and intent. In A Thousand Plateaus, Deleuze and Guattari assert:

No one is supposed to be ignorant of grammaticality; those who are belong in special institutions. The unity of language is fundamentally political. There is no mother tongue, only a power takeover by a dominant language that at times advances along a broad front, and at times swoops down on diverse centers simultaneously. We can conceive of several ways for a language to homogenize [and] centralize. (101)

This dominant language or pattern of communication is in itself a strategic site of normality. It paints normality with broad strokes or, under the guise of diversity, it may allow for difference within a range of normality, but it nevertheless rejects any sense of communication (or non-communication) that is deemed abnormal. Thus, the vitalism of an impersonal life is often considered noise that will be filtered out, in the name of clarity, in order to facilitate the real business of social change and so-called emancipation. This re-establishes and re-inscribes the dominant language or communication style associated with being a person or individual with agency.

Deleuze writes, “The ultimate aim of literature is to set free, in the delirium, this creation of a health or this invention of a people, that is, a possibility of life” (Essays Critical and Clinical, 4). If Deleuze is correct, and literature and life are intertwined, then we must find a way to write about impersonal possibilities of life in Disability Studies before (as Agamben suggests about philosophy) it becomes restricted by cognition and intentionality. I am not suggesting (nor do I think it possible) that we rid ourselves of the seductive allure and pragmat- ic force of the self with agency. But can I ask that people living an impersonal expression of life be acknowledged as existing on a differing plane of life, not considered an inferior expression of life that inhibits access to the ‘real person’ trapped in the recesses of our mind and/or body? Moreover, for those disabled people who acquire a disability through brain injury, stroke, Locked-in Syndrome, ‘mind problems’ or those who experience neurodiversity, could Disability Studies realize, in a Deleuzian sense, becoming impersonal, opening up the possibility of different expressions of life in addition to a return to personhood? Even more radical, could those of us who have succeeded in grabbing the brass ring of personhood with agency risk embracing our impersonal existence, as well as later ‘expressions of life’ that are considered post-person, thereby realizing a potential not even imagined? The implications for Disability Studies and social change are vast and immense if the discipline embraces pure immanence: a life...

#### Restrictions on war powers are MEANINGLESS

**Glennon 14**—Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University [Trumanites=“the network of several hundred high-level military, intelligence, diplomatic, and law enforcement officials within the Executive Branch who are responsible for national security policymaking”]

(Michael, “National Security and Double Government”, Harvard National Security Journal / Vol. 5, pg 1-114, dml)

The first set of potential remedies aspires to tone up Madisonian muscles one by one with ad hoc legislative and judicial reforms, by, say, narrowing the scope of the state secrets privilege; permitting the recipients of national security letters at least to make their receipt public; broadening standing requirements; improving congressional oversight of covert operations, including drone killings and cyber operations; or strengthening statutory constraints like FISA545 and the War Powers Resolution.546 Law reviews brim with such proposals. But their stopgap approach has been tried repeatedly since the Trumanite network’s emergence. Its futility is now glaring. Why such efforts would be any more fruitful in the future is hard to understand. The Trumanites are committed to the rule of law and their sincerity is not in doubt, but the rule of law to which they are committed is largely devoid of meaningful constraints.547 Continued focus on legalist band-aids merely buttresses the illusion that the Madisonian institutions are alive and well—and with that illusion, an entire narrative premised on the assumption that it is merely a matter of identifying a solution and looking to the Madisonian institutions to effect it. That frame deflects attention from the underlying malady. What is needed, if Bagehot’s theory is correct, is a fundamental change in the very discourse within which U.S. national security policy is made. For the question is no longer: What should the government do? The questions now are: What should be done about the government? What can be done about the government? What are the responsibilities not of the government but of the people?

## 2nc

### A/T: Perm – Do Both

#### Perm doesn’t solve the net benefit – The result of the perm is the ICJ issuing a ruling that is consistent with U.S. government policy. That means the ICJ doesn’t get a credibility boost from the ruling – that’s the Murphy evidence.

#### More evidence that a ruling against the U.S. is key –

**POSNER ‘9** (Eric A.; Kirkland and Ellis Professor of Law – University of Chicago, The Perils of Global Legalism, p. 147) ww

This change in representation alone suggests that the ICJ would subsequently tilt in favor of developing nations. It might also have been the case that even Western judges realized that the ICJ needed both legitimacy and users, and that as long as it decided cases in a manner that pleased Western powers but outraged developing nations, it would have little global legitimacy— it would be seen as a puppet of powerful states. And although the handful of Western powers might continue to use it, it would lose the business of the dozens of nations that came into existence in the period of decolonization after World War II. In short, the ICJ had to develop a jurisprudence friendlier to the weaker states. It accomplished this task by softening its commitment to positivism — which meant enforcing treaty structures largely developed by the Western powers — and developing a "progressive" jurisprudence, one based more on the judges' notions of global fairness.

#### ICJ will dismiss the case as being moot in the world of the perm—here’s the precedent

**BILDER ‘6** (Professor of Law at Wisconsin, Spring, Virginia Journal of International Law)

Third, an apology may have legal consequences even apart from the possible effect of the apology on customary or treaty law. For example, an official apology acknowledging or representing that particular conduct is required by international customary law, especially if relied on by another state, may arguably be held to "estop" the apologizing state from later denying the existence of that rule as applicable in their relations. That is, the apologizing state's statement, intended to induce reliance, may be held to require that the apologizing state subsequently conduct itself in accordance with the norm it purported to recognize. Again, even if the U.S. apology in the LaGrand case was regarded as not establishing an agreed interpretation by Germany and the United States regarding the meaning of the Convention's consular notification provisions, it would clearly be very difficult for the United States, in any future dispute with Germany, to suggest that those provisions had some different meaning. Moreover, as Professors Gibney and Roxstrom suggest, there is international authority (albeit somewhat controversial) indicating that official unilateral statements, such as an official state apology, may in some circumstances be given legal effect. This might presumably be true, in particular, of a formal apology which represents or promises that the apologizing state will act, or cease to conduct itself, in certain ways in the future. Thus, in the 1974 Nuclear Test case, involving France's conduct of nuclear tests in the atmosphere on a French island in the South Pacific, the International Court of Justice held that certain unilateral statements by French authorities indicating that they would no longer conduct nuclear tests in the atmosphere in the South Pacific had binding legal effect, and on that basis mooted and dismissed the case.

#### …proceeding domestically while the case is pending before the ICJ is a slap in the face

**DAMROSCH ’98** (Board of Editors American Journal of International Law, October 1998, American Journal of International Law)

For a brief period -- from April 3 to April 14, 1998 -- the cases were simultaneously pending at the U.S. Supreme Court and the ICJ. The Supreme Court had invited the Solicitor General to present the views of the United States by April 13; Breard's execution was set for 9:00 P.M. on April 14. The ICJ's interim measures ruling of April 9 opened up a new set of issues of first impression, including the effects (if any) that such measures should have on pending domestic proceedings. The Solicitor General's submission renewed the points on unavailability of judicial relief to enforce the Vienna Convention by vacating a criminal conviction and further advised the Supreme Court that the ICJ ruling did not provide a basis for entering a stay of execution: n14 in the view of the United States, it was sufficient for the Secretary of State to write to the Governor of Virginia requesting a stay (which the Governor ultimately declined to grant). The Supreme Court called the procedural posture "unfortunate," but perceived no ground for giving domestic effect to the ICJ's request to preserve the status quo pending an orderly adjudication on the international plane.

### A/T: Perm – Do the CP

#### Perm severs the entire aff – the cp is neither a statutory nor judicial restriction – we only have the executive submit the harms area of the plan to the ICJ. Severance perms are illegit and voting issue – they make it impossible for the neg to generate stable link ground.

### 2NC Solvency

#### The CP solves – our text has the president submit the harms area of the plan to the ICJ for binding compulsory judgment

**WEST ‘8** (West’s encyclopedia of law, “International Court of Justice,” 2nd edition)

Many states have accepted the court's jurisdiction under the Optional Clause. A few states have done so with certain restrictions. The United States, for instance, has invoked the so called self-judging reservation, or Connally Reservation. This reservation allows states to avoid the court's jurisdiction previously accepted under the Optional Clause if they decide not to respond to a particular suit. It is commonly exercised when a state determines that a particular dispute is of domestic rather than international character, and thus domestic jurisdiction applies. If a state invokes the self-judging reservation, another state may also invoke this reservation against that state, and thus a suit against the second state would be dismissed. This is called the rule of reciprocity, and stands for the principle that a state has to respond to a suit brought against it before the ICJ only if the state bringing the suit has also accepted the court's jurisdiction.¶ Under the ICJ Statute, the ICJ must decide cases in accordance with International Law. This means that the ICJ must apply (1) any international conventions and treaties; (2) international custom; (3) general principles recognized as law by civilized nations; and (4) judicial decisions and the teachings of highly qualified publicists of the various nations.¶ One common type of conflict presented to the ICJ is treaty interpretation. In these cases the ICJ is asked to resolve disagreements over the meaning and application of terms in treaties formed between two or more countries. Other cases range from nuclear testing and water boundary disputes to conflicts over the military presence of a foreign country.¶ The ICJ is made up of 15 jurists from different countries. No two judges at any given time may be from the same country. The court's composition is static but generally includes jurists from a variety of cultures.¶ Despite this diversity in structure, the ICJ has been criticized for favoring established powers. Under articles 3 and 9 of the ICJ Statute, the judges on the ICJ should represent "the main forms of civilization and … principal legal systems of the world." This definition suggests that the ICJ does not represent the interests of developing countries. Indeed, few Latin American countries have acquiesced to the jurisdiction of the ICJ. Conversely, most developed countries accept the compulsory jurisdiction of the ICJ.¶ The judgment of the ICJ is binding and (technically) cannot be appealed (arts. 59, 60) once the parties have consented to its jurisdiction and the court has rendered a decision. However, a state's failure to comply with the judgment violates the U.N. Charter, article 94(2). Noncompliance can be appealed to the U.N. Security Council, which may either make recommendations or authorize other measures by which the judgment shall be enforced. A decision by the Security Council to enforce compliance with a judgment rendered by the court is subject to the Veto power of permanent members, and thus depends on the members' willingness not only to resort to enforcement measures but also to support the original judgment.

#### …and our Murphy evidence indicates that the counterplan has the power to force U.S. courts to engage in further judicial review. That means we spillover to solve the case.

### Schneier

#### They’re wrong about predictions and voting for them makes it worse

**Fitzsimmons, 7** – Ph.D. in international security policy from the University of Maryland, Adjunct Professor of Public Policy, analyst in the Strategy, Forces, and Resources Division at the Institute for Defense Analyses (Michael, “The Problem of Uncertainty in Strategic Planning”, Survival, Winter 06/07)

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

#### Worst case scenarios in this setting are valuable

Lee Clarke 6, Ph.D., Associate Professor of Sociology at Rutgers University, Worst Cases: Terror and Catastrophe in the Popular Imagination, 2006, p. ix-xi

People are worried, now, about terror and catastrophe in ways that a short time ago would have seemed merely fantastic. Not to say that horror and fear suffuse the culture, but they are in the ascendant. And for good reason. There are possibilities for accident and attack, disease and disaster that would make September 11 seem like a mosquito bite. I think we have all become more alert to some of those possibilities, and it is wise to face them down. The idea of worst cases isn’t foreign to us. We have not, however, been given enough useful insight or guidance, either from academics or political leaders, regarding how to do that. In this book I look the worst full in the face. What I see is frightening but enlightening. I believe that knowing a thing permits more comfort with that thing. Sometimes the comfort comes from greater control. Sometimes it comes from knowing the enemy, or the scary thing, which proffers a way forward, toward greater safety. There is horror in disaster. But there is much more, for we can use calamity to glean wisdom, to find hope. Tragedy is with us now as never before. But that does not mean we need be consumed with fear and loathing. We can learn a lot about how society works, and fails to work, by looking at the worst. We can learn about the imagination, about politics, and about the wielding of power. We can learn about people’s capacities for despair and callousness, and for optimism and altruism. As we learn, our possibilities for improvement increase. Worst Cases is about the human condition in the modern world. Some say that September 11 changed everything. That’s not true. But it did imprint upon our imaginations scenes of horror that until then had been the province of novels and movies. We now imagine ourselves in those images, and our wide-awake nightmares are worse than they used to be. We must name, analyze, and talk about the beast. That’s our best hope, as a society, to come to terms with the evil, the human failings, the aspects of nature, and just plain chance that put us in harm’s way. Of course, talking about the worst can be a way to scare people into accepting programs that have other ends, and that they might not otherwise accept. The image of a nuclear mushroom cloud, for example, can be used to justify war because the possibility is so frightening that we would do almost anything to prevent it. The dark side of worst case thinking is apparent even at the level of personal relationships. Unleavened by evidence or careful thought it can lead to astonishingly poor policy and dumb decisions. No organizational culture can prevent or guard against it. The only response that will effectively mute such abuses is one that is organized and possessed of courage and vision. So warnings that the worst is at hand should be inspected closely, particularly if they call for actions that would serve ends the speaker cannot or does not freely acknowledge. I acknowledge my ends in this book. For better or worse, I always have. Worst Cases is a book full of stories about disasters. But it is not a disaster book. It is a book about the imagination. We look back and say that 9/11 was the worst terrorist attack ever in the United States, that the Spanish Flu of 1918, the Black Death, or AIDS was the worst epidemic ever, or that the 1906 San Francisco earthquake was the Great Earthquake. Nothing inherent to the events requires that we adorn them with superlatives. People’s imaginations make that happen. Similarly, we construct possible futures of terror and calamity: what happens if the nation’s power grid goes down for six months? what if smallpox sweeps the world? what if nuclear power has a particularly bad day? what if a monster tsunami slams southern California? These too are feats of imagination. There are those who say we shouldn’t worry about things that are unlikely to happen. That’s what your pilot means in saying, after a turbulent cross-country flight, “You’ve just completed the safest part of your trip.” We hear the same thing when officials tell us that the probability of a nuclear power plant melting down is vanishingly small. Or that the likelihood of an asteroid striking the earth is one in a million, billion, or trillion. There is similar advice from academics who complain that people are unreasonable because their fears don’t jibe with statistics. Chance, they reckon, is in our favor. But chance is often against us. My view is that disasters and failures are normal, that, as a colleague of mine puts it, things that have never happened before happen all the time. A fair number of those things end up being events we call worst cases. When they happen we’re given opportunities to learn things about society and human nature that are usually obscured. Worst case thinking hasn’t been given its due, either in academic writings or in social policy. We’re not paying enough attention to the ways we organize society that make us vulnerable to worst cases. We’re not demanding enough responsibility and transparency from leaders and policy makers. I am not an alarmist, but I am alarmed. That’s why I wrote Worst Cases. It is also why my tone and language are not technical. I am a sociologist, but I wrote Worst Cases so that nonsociologists can read it.

#### Scenario planning is good, even with uncertainty—the 1nc isn’t a research paper so you can always reject false claims

Wimbush, 8 – director of the Center for Future Security Strategies (S. Enders, senior fellow at the Hudson Institute and the author of several books and policy articles, “A Parable: The U.S.-ROK Security Relationship Breaks Down”, Asia Policy, Number 5 (January 2008), 7-24)

What if the U.S.-ROK security relationship were to break down? This essay explores the alternative futures of such a scenario. Analyzing scenarios is one technique for trying to understand the increasing complexity of strategic environments. A scenario is an account of an imagined sequence of events. The intent of a scenario is to suggest how alternative futures might arise and where they might lead, where conflicts might occur, how the interests of different actors might be challenged, and the kinds of strategies actors might pursue to achieve their objectives. Important to keep in mind is that scenarios are nothing more than invented, in-depth stories—stories about what different futures could look like and what might happen along plausible pathways to those futures. The trends and forces that go into building a scenario may be carefully researched, yet a scenario is not a research paper. Rather, it is a work of the imagination. As such, scenarios are, first, tools that can help bring order to the way analysts think about what might happen in future security environments; second, scenarios are a provocative way of revealing possible dynamics of future security environments that **might not be apparent** simply by projecting known trends into the future. Scenarios are particularly useful in suggesting where the interests and actions of different actors might converge or collide with other forces, trends, attitudes, and influences. By using scenarios, to explore the question “what if this or that happened?” in a variety of different ways, with the objective of uncovering as many potential answers as possible, analysts can build hedging strategies for dealing with many different kinds of potential problems. Though they may choose to discount some of these futures and related scenarios, analysts will not be ignorant of the possibilities, with luck avoiding having to say: “I never thought about that.”

### Yes Asia War

#### Risk is high

**Hallinan 12** (Conn Hallinan, Columnist at FPIF, 5/23/2012, "Asia's Mad Arms Race", www.fpif.org/articles/asias\_mad\_arms\_race)

Asia is currently in the middle of an unprecedented arms race that is not only sharpening tensions in the region but also competing with efforts by Asian countries to address poverty and growing economic disparity. The gap between rich and poor—calculated by the Gini coefficient that measures inequality—has increased from 39 percent to 46 percent in China, India, and Indonesia. Although affluent households continue to garner larger and larger portions of the economic pie, “Children born to poor families can be 10 times more likely to die in infancy” than those from wealthy families, according to Changyong Rhee, chief economist of the Asian Development Bank. Guns Over Ghee This inequality trend is particularly acute in India, where life expectancy is low, infant mortality high, education spotty, and illiteracy widespread, despite that country’s status as the third-largest economy in Asia, behind China and Japan. According to an independent charity, the Naandi Foundation, some 42 percent of India’s children are malnourished. Bangladesh, a far poorer country, does considerably better in all these areas. And yet last year India was the world’s leading arms purchaser, exemplified by a $20-billion purchase of high-performance French fighter planes. India is also developing a long-range ballistic missile capable of carrying multiple nuclear warheads, as well as buying submarines and surface craft. Its military budget is set to rise 17 percent this year to $42 billion. “It is ridiculous. We are getting into a useless arms race at the expense of fulfilling the needs of poor people,” Praful Bidwai of the Coalition of Nuclear Disarmament and Peace told The New York Times. China, too, is in the middle of an arms boom that includes beefing up its navy, constructing a new generation of stealth aircraft, and developing a ballistic missile that is potentially capable of neutralizing U.S. carriers near its coast. Beijing’s arms budget has grown at a rate of some 12 percent a year and, at $106.41 billion, is now the second-largest on the planet. The overall U.S. budget for national security—not counting the various wars Washington is embroiled in—runs a little over $800 billion, although some have estimated it at over $1 trillion. Although China has made enormous strides in overcoming poverty, some 250 million Chinese officially are still considered poor, and the country’s formerly red-hot economy is cooling. “Data on April spending and output put another nail into hopes that China’s economy is bottoming out,” Mark Williams, chief Asia economist at Capital Economics, told the Financial Times. The same is true for most of Asia. For instance, India’s annual economic growth rate has fallen from 9 percent to 6.1 percent over the past two and a half years. Regional Tensions Tensions between China and other nations in the region have set off a local arms race. Taiwan is buying four U.S.-made Perry-class guided missile frigates, and Japan has shifted much of its military from its northern islands to face southward toward China. The Philippines are spending almost $1 billion on new aircraft and radar, and recently held joint war games with the United States. South Korea has just successfully tested a long-range cruise missile. Washington is reviving ties with Indonesia’s brutal military because the island nation controls the strategic seaways through which pass most of the region’s trade and energy supplies. Australia is also re-orienting its defense to face China, and Australian Defense Minister Stephen Smith has urged “that India play the role it could and should as an emerging great power in the security and stability of the region.” But that “role” is by no means clear, and some have read Smith’s statement as an attempt to rope New Delhi into a united front against Beijing. The recent test of India’s Agni V nuclear-capable ballistic missile is largely seen as directed at China. India and China fought a brief but nasty border war in 1962, and India claims China is currently occupying some 15,000 square miles of Indian territory. The Chinese, in turn, claim almost 40,000 square miles of the Indian state of Arunachal Pradesh. Although Indian Prime Minister Manmohan Singh says that “overall our relations [with China] are quite good,” he also admits “the border problem is a long-standing problem.” India and China also had a short dust up last year when a Chinese warship demanded that the Indian amphibious assault vessel Airavat identify itself shortly after the ship left the port of Hanoi, Vietnam. Nothing came of the incident, but Indian President Pratibha Patil has since stressed the need for “maritime security” and “the protection of our coasts, our ‘sea lines of communications,’ and the offshore development areas.” China’s forceful stance in the South China Sea has stirred up tensions with Vietnam, Taiwan, Brunei, and Malaysia as well. A standoff last month between a Philippine warship and several Chinese surveillance ships at Scarborough Shoal is still on a low simmer. China’s more assertive posture in the region stems largely from the 1995-96 Taiwan Straits crisis that saw two U.S. carriers humiliate Beijing in its home waters. There was little serious danger of war during the crisis—China does not have the capability to invade Taiwan—but the Clinton administration took the opportunity to demonstrate U.S. naval power. China’s naval build-up dates from that incident. The recent “pivot” by Obama administration toward Asia, including a military buildup on Wake and Guam and the deployment of 2,500 Marines in Australia, has heightened tensions in the region, and Beijing’s heavy-handedness in the South China Sea has given Washington an opening to insert itself into the dispute. China is prickly about its home waters—one can hardly blame it, given the history of the past 100 years—but there is no evidence that it is expansionist. A Chinese Foreign Ministry spokesman said in February, “No country, including China, has claimed sovereignty over the entire South China Sea.” Nor does Beijing seem eager to use military force. Beijing has drawn some lessons from its disastrous 1979 invasion of Vietnam. On the other hand, Beijing is seriously concerned about who controls the region’s seas, in part because some 80 percent of China’s energy supplies pass through maritime choke points controlled by the United States and its allies. Eisenhower’s Warning The tensions in Asia are real, if not as sharp or deep as they have been portrayed in the U.S. media. China and India do, indeed, have border “problems,” but China also describes itself and New Delhi as “not competitors but partners,” and has even offered an alliance to keep “foreign powers”—read the United States and NATO—from meddling in the region.

**Most likely nuke war**

**Dibb 2001** – head of the Strategic and Defense Studies Centre in the Research School of Pacific and Asian Studies for The Australian National University, former Deputy Secretary for Strategic Policy and Intelligence in the Australian Department of Defense and director of the Joint Intelligence Organisation (Paul, Naval War College Review, "Strategic trends: Asia at a crossroads", 54:1, ProQuest, WEA)

The areas of maximum danger and instability in the world today are in Asia, followed by the Middle East and parts of the former Soviet Union. The strategic situation in Asia is more uncertain and potentially threatening than anywhere in Europe. Unlike in Europe, it is possible to envisage war in Asia involving the major powers: remnants of Cold War ideological confrontation still exist across the Taiwan Straits and on the Korean Peninsula; India and Pakistan have nuclear weapons and ballistic missiles, and these two countries are more confrontational than at any time since the early 1970s; in Southeast Asia, Indonesia-which is the world's fourth-largest country-faces a highly uncertain future that could lead to its breakup. The Asia-Pacific region spends more on defense (about $150 billion a year) than any other part of the world except the United States and Nato Europe. China and Japan are amongst the top four or five global military spenders. Asia also has more nuclear powers than any other region of the world.

Asia's security is at a crossroads: the region could go in the direction of peace and cooperation, or it could slide into confrontation and military conflict. There are positive tendencies, including the resurgence of economic growth and the spread of democracy, which would encourage an optimistic view. But there are a number of negative tendencies that must be of serious concern. There are deep-seated historical, territorial, ideological, and religious differences in Asia. Also, the region has no history of successful multilateral security cooperation or arms control. Such multilateral institutions as the Association of Southeast Asian Nations and the ASEAN Regional Forum have shown themselves to be ineffective when confronted with major crises.

#### Goes nuclear

**Campbell et al 8** (Kurt M, Assistant Secretary of State for East Asian and Pacific Affairs, Dr. Campbell served in several capacities in government, including as Deputy Assistant Secretary of Defense for Asia and the Pacific, Director on theNational Security Council Staff, previously the Chief Executive Officer and co-founder of the Center for a New American Security (CNAS), served as Director of the Aspen Strategy Group and the Chairman of the Editorial Board of the Washington Quarterly, and was the founder and Principal of StratAsia, a strategic advisory company focused on Asia, rior to co-founding CNAS, he served as Senior Vice President, Director of the International Security Program, and the Henry A. Kissinger Chair in National Security Policy at the Center for Strategic and International Studies, doctorate in International Relation Theory from Oxford, former associate professor of public policy and international relations at the John F. Kennedy School of Government and Assistant Director of the Center for Science and International Affairs at Harvard University, member of Council on Foreign Relations and  International Institute for Strategic Studies, “The Power of Balance: America in iAsia” June 2008, <http://www.cnas.org/files/documents/publications/CampbellPatelSingh_iAsia_June08.pdf>)

Asian *investment* is also at record levels. Asian countries lead the world with unprecedented infra­structure projects. With over $3 trillion in foreign currency reserves, Asian nations and businesses are starting to shape global economic activity. Indian firms are purchasing industrial giants such as Arcelor Steel, as well as iconic brands of its once-colonial ruler, such as Jaguar and Range Rover. China’s Lenovo bought IBM’s personal computer We call the transformations across the Asia-Pacific the emergence of “iAsia” to reflect the adoption by countries across Asia of fundamentally new stra­tegic approaches to their neighbors and the world. Asian nations are pursuing their interests with real power in a period of both tremendous potential and great uncertainty. iAsia is: *Integrating:* iAsia includes increasing economic interdependence and a flowering of multinational forums to deal with trade, cultural exchange, and, to some degree, security. *Innovating:* iAsia boasts the world’s most successful manufacturing and technology sectors and could start taking the lead in everything from finance to nanotech to green tech. *Investing:* Asian nations are developing infrastruc­ture and human capital at unprecedented rates. But the continent remains plagued by: Insecurity: Great-power rivalry is alive in Asia. Massive military investments along with historic suspicions and contemporary territorial and other conflicts make war in Asia plausible. Instability: From environmental degradation to violent extremism to trafficking in drugs, people, and weapons, Asian nations have much to worry about. *Inequality:* Within nations and between them, inequality in Asia is more stark than anywhere else in the world. Impoverished minorities in countries like India and China, and the gap in governance and capacity within countries, whether as back­ward as Burma or as advanced as Singapore, present unique challenges. A traditional approach to Asia will not suffice if the United States is to both protect American interests and help iAsia realize its potential and avoid pitfalls. business and the Chinese government, along with other Asian financial players, injected billions in capital to help steady U.S. investment banks such as Merrill Lynch as the American subprime mortgage collapse unfolded. Chinese investment funds regional industrialization, which in turn creates new markets for global products. Asia now accounts for over 40 percent of global consumption of steel 4 and China is consuming almost half of world’s available concrete. 5 Natural resources from soy to copper to oil are being used by China and India at astonishing rates, driving up commodity prices and setting off alarm bells in Washington and other Western capitals. Yet Asia is not a theater at peace. On average, between 15 and 50 people die every day from causes tied to conflict, and suspicions rooted in rivalry and nationalism run deep. The continent harbors every traditional and non-traditional challenge of our age: it is a cauldron of religious and ethnic tension; a source of terror and extrem­ism; an accelerating driver of the insatiable global appetite for energy; the place where the most people will suffer the adverse effects of global climate change; the primary source of nuclear proliferation; and the most likely theater on Earth for a major conventional confrontation and even a nuclear conflict. Coexisting with the optimism of iAsia are the ingredients for internal strife, non-traditional threats like terrorism, and traditional interstate conflict, which are all magnified by the risk of miscalculation or poor decision-making.

**Asia war goes nuclear—tons of escalation factors**

**Cimbala 8** – PolSci Professor at UPenn (Stephen, March, “Anticipatory Attacks: Nuclear Crisis Stability in Future Asia” Comparative Strategy, Vol 27 No 2, p 113-132, InformaWorld)

If the possibility existed of a mistaken preemption during and immediately after the Cold War, between the experienced nuclear forces and command systems of America and Russia, then it may be a matter of even more concern with regard to states with newer and more opaque forces and command systems. In addition, the Americans and Soviets (and then Russians) had a great deal of experience getting to know one another’s military operational proclivities and doctrinal idiosyncrasies, including those that might influence the decision for or against war. Another consideration, relative to nuclear stability in the present century, is that the Americans and their NATO allies shared with the Soviets and Russians a commonality of culture and historical experience. Future threats to American or Russian security from weapons of mass destruction may be presented by states or nonstate actors motivated by cultural and social predispositions not easily understood by those in the West nor subject to favorable manipulation during a crisis. The spread of nuclear weapons in Asia presents a complicated mosaic of possibilities in this regard. States with nuclear forces of variable force structure, operational experience, and command-control systems will be thrown into a matrix of complex political, social, and cultural crosscurrents contributory to the possibility of war. In addition to the existing nuclear powers in Asia, others may seek nuclear weapons if they feel threatened by regional rivals or hostile alliances. Containment of nuclear proliferation in Asia is a desirable political objective for all of the obvious reasons. Nevertheless, the present century is unlikely to see the nuclear hesitancy or risk aversion that marked the Cold War, in part, because the military and political discipline imposed by the Cold War superpowers no longer exists, but also because states in Asia have new aspirations for regional or global respect.12 The spread of ballistic missiles and other nuclear-capable delivery systems in Asia, or in the Middle East with reach into Asia, is especially dangerous because plausible adversaries live close together and are already engaged in ongoing disputes about territory or other issues.13 The Cold War Americans and Soviets required missiles and airborne delivery systems of intercontinental range to strike at one another’s vitals. But short-range ballistic missiles or fighter-bombers suffice for India and Pakistan to launch attacks at one another with potentially “strategic” effects. China shares borders with Russia, North Korea, India, and Pakistan; Russia, with China and NorthKorea; India, with Pakistan and China; Pakistan, with India and China; and so on. The short flight times of ballistic missiles between the cities or military forces of contiguous states means that very little time will be available for warning and attack assessment by the defender. Conventionally armed missiles could easily be mistaken for a tactical nuclear first use. Fighter-bombers appearing over the horizon could just as easily be carrying nuclear weapons as conventional ordnance. In addition to the challenges posed by shorter flight times and uncertain weapons loads, potential victims of nuclear attack in Asia may also have first strike–vulnerable forces and command-control systems that increase decision pressures for rapid, and possibly mistaken, retaliation. This potpourri of possibilities challenges conventional wisdom about nuclear deterrence and proliferation on the part of policymakers and academic theorists. For policymakers in the United States and NATO, spreading nuclear and other weapons of mass destruction in Asia could profoundly shift the geopolitics of mass destruction from a European center of gravity (in the twentieth century) to an Asian and/or Middle Eastern center of gravity (in the present century).14 This would profoundly shake up prognostications to the effect that wars of mass destruction are now passe, on account of the emergence of the “Revolution in Military Affairs” and its encouragement of information-based warfare.15 Together with this, there has emerged the argument that large-scale war between states or coalitions of states, as opposed to varieties of unconventional warfare and failed states, are exceptional and potentially obsolete.16 The spread of WMD and ballistic missiles in Asia could overturn these expectations for the obsolescence or marginalization of major interstate warfare.

#### Goes nuclear

**Chakraborty 10**

(United Service Institution of India“The Initiation & Outlook of ASEAN Defence Ministers Meeting (ADMM) Plus Eight,” pg online @ <http://www.usiofindia.org/Article/?pub=Strategic%20Perspective&pubno=20&ano=739>)

The first ASEAN Defence Ministers Meeting Plus Eight (China, India, Japan, South Korea, Australia, New Zealand, Russia and the USA) was held on the 12th of October. When this frame work of ADMM Plus Eight came into news for the first time it was seen as a development which could be the initiating step to a much needed security architecture in the Asia Pacific. Asia Pacific is fast emerging as the economic center of the world, consequently securing of vulnerable economic assets has becomes mandatory. The source of threat to economic assets is basically unconventional in nature like natural disasters, terrorism and maritime piracy. This coupled with the conventional security threats and flashpoints based on territorial disputes and political differences are very much a part of the region posing a major security challenge. As mentioned ADMM Plus Eight can be seen as the first initiative on such a large scale where the security concerns of the region can be discussed and areas of cooperation can be explored to keep the threats at bay. The defence ministers of the ten ASEAN nations and the eight extra regional countries (Plus Eight) during the meeting have committed to cooperation and dialogue to counter insecurity in the region. One of the major reasons for initiation of such a framework has been the new face of threat which is non-conventional and transnational which makes it very difficult for an actor to deal with it in isolation. Threats related to violent extremism, maritime security, vulnerability of SLOCs, transnational crimes have a direct and indirect bearing on the path of economic growth. Apart from this the existence of territorial disputes especially on the maritime front plus the issues related to political differences, rise of China and dispute on the Korean Peninsula has aggravated the security dilemma in the region giving rise to areas of potential conflict. This can be seen as a more of a conventional threat to the region. The question here is that how far this ADMM Plus Eight can go to address the conventional security threats or is it an initiative which would be confined to meetings and passing resolution and playing second fiddle to the ASEAN summit. It is very important to realize that when one is talking about effective security architecture for the Asia Pacific one has to talk in terms of addressing the conventional issues like the territorial and political disputes. **These issues serve as bigger flashpoint which can snowball into a major conflict which has the possibility of turning into a nuclear conflict**..

### other stuff

#### Failure to engage in comparative institutional analysis means vote neg on presumption – they make change less likely to occur

**Heminway, 05** (Joan, professor of law at the University of Tennessee, 10 Fordham J. Corp. & Fin. L. 225, lexis)

This article offers a model for comparative institutional choice specifically for use in the context of federal corporate governance reforms. It also, however, constitutes part of the larger academic movement advocating comparative institutional analysis. Comparative institutional analysis is **critically important** to the work of scholars and other proponents of law reform. These rule proponents should not suggest changes in legal rules without also suggesting the vehicle for the suggested reforms. The determination of the appropriate rulemaking body should be accomplished by employing some rigorous form of comparative institutional analysis. In this regard, the framework included in this article is intended to endorse in full the views of Professor Neil Komesar when he says: [\*384] Unless we do better with the difficult issues of institutional choice, any reforms, changes and proposals will remain **illusory or cosmetic**. We will continue to cycle through the same proposals with the same arguments. Today's policy will always have feet of clay and be replaced by yesterday's rejected panacea, which somehow reappears (without blemishes) as tomorrow's solution. Attempts to fashion proposals and programs cannot stop until we fully understand institutional choice. That understanding will be long in coming and is more likely to occur if judges, lawyers and law reformers seriously struggle with the subject **as they make** their decisions and proposals. It is that struggle that I hope for. I want those who make or seek to change law to seriously confront and address institutional choice and comparison. I recognize that, to do so, they will often have to rely on intuition and guesses. It is the **responsibility** of legal academics to provide deeper understanding of these central issues and, therefore, to improve the ability of those who struggle with these decisions. 581

#### Goal focus alone isn’t enough

**Ku and Yoo, 04** (Julian and John, professor of law at Hofstra University and professor of law at Berkeley, 2004 Sup. Ct. Rev. 153, lexis)

2. Executive branch competence and comparative institutional advantage.  [\*190]  To complete our study, we must conduct a comparative analysis. As Professors Sunstein, Vermeule, and Komesar have argued with regard to allocating decisions among courts, agencies, and markets, **simply deciding on a social goal is not enough**. n148 We must also make **comparative judgments on the ability of different institutions** to achieve those goals. Such comparative institutional judgments have been applied in both constitutional and statutory interpretation. n149 Even if the judiciary would perform poorly at enforcing national policy in the human rights area, it still may be the best institutional mechanism available. A comprehensive analysis of the effectiveness of the ATS at promoting international law and human rights requires a judgment of the relative ability of the judiciary and the institution most likely to replace it: the executive.

#### Seriously none of their stuff assumes the CP—even deontologists agree that it’s a bad idea to choose an inefficient method

Finnish, 1980

John Finnis, deontologist, teaches jurisprudence and constitutional Law. He has been Professor of Law & Legal Philosophy since 1989,1980, Natural Law and Natural Rights, pg. 111-2

The sixth requirement has obvious connections with the fifth, but introduces a new range of problems for practical reason, problems which go to the heart of ‘morality’. For this is the requirement that one bring about good in the world (in one’s own life and the lives of others) by actions that are efficient for their (reasonable) purpose (s). One must not waste one’s opportunities by using inefficient methods. One’s actions should be judged by their effectiveness, by their fitness for their purpose, by their utility, their consequences… There is a wide range of contexts in which it is possible and only reasonable to calculate, measure, compare, weigh, and assess the consequences of alternative decisions. Where a choice must be made it is reasonable to prefer human good to the good of animals. Where a choice must be made it is reasonable to prefer basic human goods (such as life) to merely instru­mental goods (such as property). Where damage is inevitable, it is reasonable to prefer stunning to wounding, wounding to maiming, maiming to death: i.e. lesser rather than greater damage to one-and-the-same basic good in one-and-the-same instantiation. Where one way of participating in a human good includes both all the good aspects and effects of its alternative, and more, it is reasonable to prefer that way: a remedy that both relieves pain and heals is to be preferred to the one that merely relieves pain. Where a person or a society has created a personal or social hierarchy of practical norms and orienta­tions, through reasonable choice of commitments, one can in many cases reasonably measure the benefits and disadvantages of alternatives. (Consider a man who ha decided to become a scholar, or a society that has decided to go to war.) Where one ~is considering objects or activities in which there is reasonably a market, the market provides a common de­nominator (currency) and enables a comparison to be made of prices, costs, and profits. Where there are alternative techniques or facilities for achieving definite, objectives, cost— benefit analysis will make possible a certain range of reasonable comparisons between techniques or facilities. Over a wide range of preferences and wants, it is reasonable for an individual or society to seek o maximize the satisfaction of those preferences or wants.

#### Our claim is that nobodys perspective has a monopoly on reality—if anything, that's counter-privilege

**Parrish ’11** Jesse, student commenter on Victor Reppert’s blog Dangerous Idea, devoted to exploring biases in argumentation, August http://dangerousidea.blogspot.com/2011/08/sltf.html

I think that **whenever we are looking to calibrate the effect of evidence on probability, we should rely first and foremost on `public knowledge', but there is theoretical room for differences, including legitimate differences in intuitions**. Trivially, my confidence in the contents of a first-hand testimony may be less than the person who is providing the testimony. Is it that I am more of an `outsider' than that person? Is it that I am more `objective'? Not necessarily. Our critical faculties may all be functioning perfectly well, and we may still have legitimate differences in credence. There are cases where we trust `outsiders' more than `insiders', say whenever we are investigating the claims of homeopaths. But this is not an intrinsically objective fact about the epistemic superiority of outsiders; rather, it is that we have known biases to deal with which may be partially controlled for by introducing a skeptical opinion. In the case of homeopathy, these would include placebo affects and confirmation bias. In general, the best `outsider position' is not a particular agent. The best `objective' means of controlling for biases, as employed in the sciences, is "argument amongst friends." **Barring decisive argumentation, we give each other a presumption of similar reasonableness and attempt to state the arguments at their strongest. We seek out opposing views to avoid the errors of confirmation bias. We seek to nail down *as exactly as we can* what is required for the preservation of disagreement or the arrival to consensus. We seek fervently the outlines of our opinions, and find their shortcomings. In other words, we should *never* assume that we in general have special privileges - epistemic entitlements, if you prefer - over knowledgeable peers.**

## 1nr

### AT: Structural Violence

#### Most of the util stuff was in the 2nc, but their invocation of the idea of structural violence doesn’t have predictive power and isn’t capable of solving

**Boulding 1977** – Kenneth, Prof Univ. of Michigan and UC Boulder, Journal of Peace Research; 14; 75 p. Boulding p. 83-4

Finally, we come to the great Galtung metaphors of ’structural violence’ and ’positive peace’. They are **metaphors rather than models**, and for that very reason are suspect. Metaphors always imply models and metaphors have much more persuasive power than models do, for models tend to be the preserve of the specialist. But when a metaphor implies a bad model it can be very dangerous, for it is both persuasive and wrong. The metaphor of structural violence I would argue falls right into this category. The metaphor is that poverty, deprivation, ill health, low expectations of life, a condition in which more than half the human race lives, is ’like’ a thug beating up the victim and taking his money away from him in the street, -or it is ’like’ a conqueror stealing the land of the people and reducing them to slavery. The implication is that poverty and its associated ills are the fault of the thug or the conqueror and the solution is to do away with thugs and conquerors. While there is some truth in the metaphor, in the modem world at least there is not very much. Violence, whether of the streets and the home, or of the guerilla, of the police, or of the armed forces, is a very different phenomenon from poverty. The processes which create and sustain poverty are not at all like the processes which create and sustain violence, although like everything else in the world, everything is somewhat related to everything else. There is a very real problem of the structures which lead to violence, but unfortunately Galtung’s metaphor of structural violence as he has used it has diverted attention from this problem. Violence in the behavioral sense, that is, somebody actually doing damage to somebody else and trying to make them worse off, is a ’threshold’ phenomenon, rather like the boiling over of a pot. The temperature under a pot can rise for a long time without its boiling over, but at some threshold boiling over will take place. The study of the structures which underlie violence are a very important and much neglected part of peace research and indeed of social science in general. Threshold phenomena like violence are difficult to study because they represent ’breaks’ in the system rather than uniformities. Violence, whether between persons or organizations, occurs when the ’strain’ on a system is too great for its ‘strength’. The metaphor here is that violence is like what happens when we break a piece of chalk. Strength and strain, however, especially in social systems, are so interwoven historically that it is very difficult to separate them. The diminution of violence involves two possible strategies, or a mixture of the two; one is the increase in the strength of the system, the other is the diminution of the strain. The strength of systems involves habit, culture, taboos, and sanctions, all these things, which enable a system to stand Increasing strain without breaking down into violence. The strains on the system are largely dynamic in character, such as arms races, mutually stimulated hostility, changes in relative economic position or political power, which are often hard to identify. Conflict of interest are only part of the strain on a system, and not always the most important part. It is very hard for people to know their interests, and misperceptions of interests take place mainly through the dynamic processes, not through the structural ones. It is only perceptions of interest which affect people’s behavior, not the ’real’ interests, whatever these may be, and the gap between perception and reality can be very large and resistant to change. However, what Galitung calls structural violence (which has been defined by one unkind commentator as anything that Galltung doesn’t like) was originally defined as any unnecessarily low expectation of life, an that assumption that anybody who dies before the allotted span has been killed, however unintentionally and unknowingly, by somebody else. The concept has been expanded to include all the problems off poverty, destitution, deprivation, and misery. These are enormously real and are a very high priority for research and action, but they belong to systems which are only peripherally related to the structures which, produce violence. This is not to say that the cultures of violence and the cultures of poverty are not sometimes related, though not all poverty cultures are culture of violence, and certainly not all cultures of violence are poverty cultures. But the dynamics of poverty and the success or failure to rise out off it are of a complexity far beyond anything which the metaphor of structural violence can offer. While the metaphor of structural violence performed a service in calling attention to a problem, it may have done a disservice in **preventing us from finding the answer**.

### AT: Coal Thumpers

#### It’s top of the docket – 1nc Meyers says it will be marked up mid-April – and it’s actually likely to be taken up next week

**Schatz, 3/23/14** (Amy, “Tech Firms and Universities Spar Over Patent Troll Bill” re/code, <http://recode.net/2014/03/23/tech-firms-and-universities-spar-over-patent-troll-bill/>)

Last year, House lawmakers overwhelming passed the Innovation Act, a patent troll-focused bill which was approved on a 325 to 91 vote. That legislation adopted rules on fee shifting, despite last-minute lobbying by universities, biotech companies and other patent holders to kill that language. The White House weighed in with support, although administration officials have suggested changes to different provisions, such as demand letters.

Not surprisingly, the House legislation was opposed by patent aggregators such as Intellectual Ventures, which complained that the legislation “would make it much harder for inventors — especially individual inventors and small businesses — to defend against big corporate infringers.”

Now the fight has shifted to the Senate where lawmakers are expected next week to consider a different bill drafted by Senate Judiciary Committee Chairman Patrick Leahy’s staff. That bill is expected to look different now, since staffers have been shifting through new provisions lifted from other proposals offered by various senators in search of a compromise.

#### Recent evidence proves sustained leadership solves

**Kravets, 3/20/14 –** WIRED senior staff writer (David, “History Will Remember Obama as the Great Slayer of Patent Trolls” Wired, <http://www.wired.com/threatlevel/2014/03/obama-legacy-patent-trolls/>)

But Obama will leave another gift to posterity, one not so obvious, one that won’t be felt until years after his term ends: The history ebooks will remember the 44th president for setting off a chain of reforms that made predatory patent lawsuits a virtual memory. Obama is the patent troll slayer. Even now, a perfect storm of patent reform is brewing in all three branches of government. Over time, it could reshape intellectual property law to turn the sue-and-settle troll mentality into a thing of the past. “If these reforms go into effect, they will be felt only minimally during the Obama administration,” says Joe Gratz, a San Francisco-based patent lawyer who is representing Twitter in a patent dispute. “They will be felt quite strongly well after the Obama administration.” “The president is a strong leader on these issues. We haven’t really seen that before,” says Julie Samuels, the executive director of startup advocacy group Engine. “I do think that this could be one of the legacies of this administration.” A patent troll is generally understood to be a corporation that exists to stockpile patents for litigation purposes, instead of to build products. Often taking advantage of vague patent claims and a legal system slanted in the plaintiff’s favor, the company uses the patents to sue or threaten to sue other companies, with an eye to settling out of court for a fraction of what they were originally seeking. The nation’s legal dockets are littered with patent cases with varying degrees of merit, challenging everything from mobile phone push notifications and podcasting to online payment methods and public Wi-Fi. Some 2,600 companies were targeted in new patent lawsuits last year alone. Against that backdrop, Obama issued five executive orders on patent reform last summer. Among other things, they require the Patent and Trademark Office to stop issuing overly broad patents, and to force patent applicants to provide more details on what invention they are claiming. One of the orders opens up patent applications for public scrutiny — crowdsourcing — while they are in the approval stage, to help examiners locate prior art and assist with analyzing patent claims. Since a patent is binding for 20 years, the impact of the new rules won’t be felt for some time. But they will be felt, says Gratz, a litigator who defends technology-heavy patent lawsuits. “The supply of overly broad, vague patents will start to dry up as new rules get put into place,” he says. In January, Obama became the first president to elevate patent reform to a national meat-and-potatoes issue, when he used the State of the Union address to urge Congress to “pass a patent reform bill that allows our businesses to stay focused on innovation, not costly and needless litigation.” The market is already reacting to the wind change. Shares of patent-litigation firm Acacia dropped sharply following Obama’s State of the Union, and are hovering near 52-week lows. Shares of VirnetX are in a similar tailspin. RPX, another intellectual-property concern, has seen its share prices slashed in half over the past three years. The House passed major patent reform legislation last year, on a 325-91 vote, in a bid to even out the litigation playing field. Among other things, the Innovation Act requires plaintiffs in lawsuits to be more specific about what they believe is being infringed, and to identify the people who have financial interests behind a company. Perhaps most significantly, it requires that plaintiffs pay litigation expenses if they lose at trial. The bill also prohibits patent holders from suing mere users of a technology that allegedly infringes on an invention, like restaurants offering Wi-Fi access to their diners. The Senate is debating similar legislation in a piecemeal manner. Whatever it finally approves, the package will have to go back to the House for final approval before landing on the president’s desk.

### AT: No Link

#### The plan expends capital on a separate war powers issue – it’s immediate and forces a trade-off in prioritization

O’Neil 7 (David – Adjunct Associate Professor of Law, Fordham Law School, “The Political Safeguards of Executive Privilege”, 2007, 60 Vand. L. Rev. 1079, lexis)

a. Conscious Pursuit of Institutional Prerogatives The first such assumption is belied both by first-hand accounts of information battles and by the conclusions of experts who study them. Participants in such battles report that short-term political calculations consistently trump the constitutional interests at stake. One veteran of the first Bush White House, for example, has explained that rational-choice theory predicts what he in fact experienced: The rewards for a consistent and forceful defense of the legal interests of the office of the presidency would be largely abstract, since they would consist primarily of fidelity to a certain theory of the Constitution... . The costs of pursuing a serious defense of the presidency, however, would tend to be immediate and tangible. These costs would include the expenditure of political capital that might have been used for more pressing purposes, [and] the unpleasantness of increased friction with congressional barons and their allies. n182 Louis Fisher, one of the leading defenders of the political branches' competence and authority to interpret the Constitution independently of the courts, n183 acknowledges that politics and "practical considerations" typically override the legal and constitutional principles implicated in information disputes. n184 In his view, although debate about congressional access and executive privilege "usually proceeds in terms of constitutional doctrine, it is the messy political realities of the moment that usually decide the issue." n185 Indeed, Professor Peter Shane, who has extensively studied such conflicts, concludes that their successful resolution in fact depends upon the parties focusing only on short-term political [\*1123] considerations. n186 When the participants "get institutional," Shane observes, non-judicial resolution "becomes vastly more difficult." n187

### AT: Reform fails/too weak

#### A final bill is emerging – even if all details aren’t settled, it will be similar to the House Act and will definitely include fee-shifting

**WWID, 3/6/14** – Warren’s Washington Internet Daily (“Prospects Good for Patent Litigation Bill to Pass Congress by End of 2014, Pro-Revamp Lawmakers Say,” factiva)

Legislation that seeks to curb patent litigation abuse has a **good chance of passing** both chambers before the end of the year, two top patent revamp advocates in Congress said Wednesday. "It's a pretty good bet you could see something on this, this year," said Sen. Mike Lee, R-Utah, at a Politico event sponsored by the pro-revamp Main Street Patent Coalition. Lee and Senate Judiciary Committee Chairman Patrick Leahy, D-Vt., are the main sponsors of the Patent Transparency and Improvements Act (S-1720), the Senate's marquee bill addressing patent litigation. The House has already passed the Innovation Act (HR-3309), its own patent litigation revamp measure, but the two bills are not completely similar.

Senate Judiciary could mark up S-1720 before Congress begins its mid-April recess, an industry source told us. Leahy said in a statement that he plans to "list bipartisan legislation for consideration later this month." A committee spokeswoman would not confirm the exact timeline of an S-1720 markup or whether the committee plans any additional hearings on the bill. A committee markup would follow months of behind-the-scenes work to collect stakeholders' input on the bill (WID Feb 12 p4).

Senate Judiciary is hoping to incorporate language from other patent litigation bills into a bipartisan compromise, most notably provisions from the Patent Abuse Reduction Act (S-1013), Lee said Wednesday. A compromise S-1720 could more closely resemble HR-3309 than its original iteration, he said. S-1013, sponsored by Sen. Jon Cornyn, R-Texas, includes language addressing a revamp of court rules on patent litigation, including language that would expand a judge's discretion to allow fee-shifting. A fee-shifting provision will be crucial to getting Republican support for a final bill, Lee said. It's less certain whether S-1720 will include a provision expanding the Patent and Trademark Office's (PTO) covered business method (CBM) patent review program, he said. The America Invents Act created the CBM program in 2011, and Lee said he would like the program to wait until the program has been in effect for a longer period "before we expand it."

#### Fee-shifting is the internal link to patent trolls

**Shapiro, 3/26/14 -** president and CEO of the Consumer Electronics Association

(Gary, “Senate should finish off the patent trolls” The Hill, <http://thehill.com/blogs/congress-blog/technology/201701-senate-should-finish-off-the-patent-trolls>)

Fixing the problem requires changing the economic incentives and imposing a penalty on the trolls for their so-called “business model.” To truly free innovators and spark our economy, the system should follow the model of other countries and put the burden of frivolous lawsuits squarely on the shoulders of the trolls.

That is why any Senate patent troll fix must include a fee shifting provision similar to the one found in the House bill. With this provision, if a troll brings a bogus lawsuit and loses, it could pay the winning party’s legal fees. Fee shifting gives defendants a chance to fight back against racketeers who capitalize on the outrageous expense of patent litigation to extort settlements. It does not disadvantage legitimate patent holders bringing actions to enforce their claims. Finally, it imposes a price tag on the patent trolls, which is important since the trolls overwhelmingly lose when their weak patents are actually litigated.

### AT: No link

#### Obama fights the plan – strongly supports war powers

Rana 11 (Aziz – Assistant Professor of Law, Cornell Law School, “TEN QUESTIONS: RESPONSES TO THE TEN QUESTIONS”, 2011, 37 Wm. Mitchell L. Rev. 5099, lexis)

Thus, for many legal critics of executive power, the election of Barack Obama as President appeared to herald a new approach to security concerns and even the possibility of a fundamental break from Bush-era policies. These hopes were immediately stoked by Obama's decision before taking office to close the Guantanamo Bay prison. n4 Over two years later, however, not only does Guantanamo remain open, but through a recent executive order Obama has formalized a system of indefinite detention for those held there and also has stated that new military commission trials will begin for Guantanamo detainees. n5 More important, in ways small and large, the new administration remains committed to core elements of the previous constitutional vision of national security. Just as their predecessors, Obama officials continue to defend expansive executive detention and war powers and to promote the centrality of state secrecy to national security.

#### even if the executive wants the plan – it’s about who decides, not the decision itself

**Posner and Vermeule, 10** - \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 75-77)

Showdowns occur when the location of constitutional authority for making an important policy decision is ambiguous, and multiple political agents (branches, parties, sections, governments) have a strong interest in establishing that the authority lies with them. Although agents often have an interest in negotiating a settlement, asymmetric information about the interests and bargaining power of opposing parties will sometimes prevent such a settlement from being achieved. That is when a showdown occurs. Ultimately, however, someone must yield; this yielding to or acquiescence in the claimed authority of another agent helps clarify constitutional lines of authority, so that next time the issue arises, a constitutional impasse can be avoided. From a normative standpoint, constitutional showdowns thus have an important benefit, but they are certainly not costless. As long as the showdown lasts, the government may be paralyzed, unable to make important policy decisions, at least with respect to the issue under dispute. We begin by examining a simplified version of our problem, one involving just two agents—Congress and the executive. We assume for now that each agent is a unitary actor with a specific set of interests and capacities. We also assume that each agent has a slightly different utility function, reflecting their distinct constituencies. If we take the median voter as a baseline, we might assume that Congress is a bit to the left (or right) of the median voter, while the president is a bit to the right (or left). We will assume that the two agents are at an equal distance from the median, and that the preferences of the population are symmetrically distributed, so that the median voter will be indifferent between whether the president or Congress makes a particular decision, assuming that they have equal information.39 But we also will assume that the president has better information about some types of problems, and Congress has better information about other types of problems, so that, from the median voter’s standpoint, it is best for the president to make decisions about the first type of problem and for Congress to make decisions about the second type ofproblem.40 Suppose, for example, that the nation is at war and the government must decide whether to terminate it soon or allow it to continue. Congress and the president may agree about what to do, of course. But if they disagree, their disagreement may arise from one or both of two sources. First, Congress and the president have different information. For example, the executive may have better information about the foreign policy ramifications of a premature withdrawal, while Congress has better information about home-front morale. These different sources of information lead the executive to believe that the war should continue, while Congress believes the war should be ended soon. Second, Congress and the president have different preferences because of electoral pressures of their different constituents. Suppose, for example, that the president depends heavily on the continued support of arms suppliers, while crucial members of Congress come from districts dominated by war protestors. Thus, although the median voter might want the war to continue for a moderate time, the president prefers an indefinite extension, while Congress prefers an immediate termination. So far, we have explained why the president and Congress might disagree about when to terminate the war, but mere policy disagreement does not result in a showdown. Showdowns arise only when there is a disagreement about authority. If Congress believes that the president has the sole authority to terminate the war, then his view will prevail. Congress may try to pressure him or influence him by offering support for other programs desired by the president, or by trying to rile up the public, but these activities are part of normal politics, and do not provoke a constitutional showdown. Similarly, if the president believes that Congress has the sole authority to terminate the war, then Congress’s view will prevail. This outcome is shown in cell 3 in table 2.1. Similarly, no showdown occurs when the two branches agree both about authority and policy—for example, that the president decides, and Congress agrees with his decision (cell 1). The first column represents the domain of normal politics. Showdowns can arise only when Congress and the president disagree about who decides. Here, there are two further possibilities. First, Congress and the president disagree about who decides but agree about the correct policy outcome (cell 2). In these situations, which arise with some frequency, the two branches are often tempted to paper over their differences because an immediate policy choice is not at stake. But sometimes a showdown will occur. We will discuss this special case later. Second, Congress and the president disagree about the policy outcome and about authority (cell 4). In this case, showdowns are likely, because a policy decision must be made, and if the parties cannot agree about what it should be, then they cannot avoid resolving the question of authority. We focus on this case for now.

#### The President has institutional incentives to resist encroachments on authority even if he agrees with the policy

**Posner and Vermeule, 8 -** \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, “Constitutional Showdowns” 156 U. Pa. L. Rev. 991, lexis)

In many historical cases, Congress and the President agree about the policy outcome but disagree about lines of authority. For example, suppose that the executive branch has made a controversial decision, and a suspicious Congress wants the relevant executive officials to testify about their role in that decision. The President believes that Congress has no right to compel the officials to testify, whereas Congress believes that it has such a right. However, the President, in fact, does not mind if the officials testify because he believes that their testimony will reveal that the decision was made in good faith and for good reasons. [\*1016] The President's problem is that, if he allows the officials to testify, Congress and the public might interpret his acquiescence as recognition that Congress has the power to force executive officials to testify. If he refuses to allow the officials to testify, then he preserves his claim of executive privilege but loses the opportunity to show that the decision was made in good faith. In addition, he risks provoking a constitutional impasse in which Congress could eventually prevail - if, as we have discussed, public constitutional sentiment turns out to reject executive privilege in these circumstances. Congress faces similar dilemmas, for example, when it approves of officials nominated by the President for an agency or commission but wants to assert the power in general to impose restrictions on appointments. Political agents have long relied on a middle way to avoid the two extremes of acquiescence, on the one hand, and impasse, on the other. They acquiesce in the decision made by the other agent while claiming that their acquiescence does not establish a precedent. Or, equivalently, they argue that their acquiescence was a matter of comity rather than submission to authority. Are such claims credible? Can one avoid the precedential effect of an action by declaring that it does not establish a precedent - in effect, engaging in "ambiguous acquiescence"? The answer to this question is affirmative as long as the alternative explanation for the action is in fact credible. If, for example, observers agree that the President benefits from the testimony of executive officials, then his acquiescence to a congressional subpoena has two equally plausible explanations: that he independently benefits from the testimony, or that he believes that public constitutional sentiment rejects executive privilege. The response is thus ambiguous, and Congress may be no wiser about what will happen in the future when the President does not wish to permit officials to testify because their testimony would harm him or executive branch processes. If so, the ambiguous nature of the action does not establish a focal point that avoids an impasse in the future. On the other hand, if the President's claim that he benefits from the testimony is obviously false, then his authority will be accordingly diminished. This is why ambiguous acquiescence is not a credible strategy when the President and Congress disagree about the policy outcome. If the President thinks the war should continue, Congress thinks the war should end, and the President acquiesces to a statute that terminates the war, then he can hardly argue that he is acting out of comity. He could only be acting because he lacks power. But an agent can lack authority in more complicated settings where no serious [\*1017] policy conflict exists. If the President makes officials available for testimony every time Congress asks for such testimony, and if the testimony usually or always damages the President, then his claim to be acting out of comity rather than lack of authority eventually loses its credibility. Repeated ambiguous acquiescence to repeated claims over time will eventually be taken as unambiguous acquiescence and hence a loss of authority. For this reason, a President who cares about maintaining his constitutional powers will need to refuse to allow people to testify even when testimony would be in his short-term interest.

### AT: neocleous

#### First, doesn’t deny our economic predictions – defer to our predictions based on the specifics of the patent – their totalizing rejection proves our second argument which his that Neocleous’ approach is ahistorical and wrong

**Dayan 09** (Hilla, Phd Candidate @ New School for Social Research, "Critique of Security (review)," Canadian Journal of Law and Society, http://muse.jhu.edu.proxy2.library.uiuc.edu/journals/canadian\_journal\_of\_law\_and\_society/v024/24.2.dayan.html)

The book's main grievance is that the fetish of security—very broadly defined to include security both in the economic and in the political sense—is the root of anti-democratic measures, massive repression, and socio-economic injustice. In chapter 3, which deals with the relationship between social and national security, the overriding argument is that liberal democracies are, almost by definition, security states in the worst possible sense. The United States in particular is held responsible, given examples such as the New Deal and the Marshall Plan, for enforcing economic security intertwined with political and military interests on "the whole world, [which] was to be inclded in this new, 'secure' global liberal order" (p. 103). In this account, the desire to sustain a capitalist socio-economic order is portrayed as not much different from either the security obsessions of, for example, Israel and the apartheid regime of South Africa (p. 63) or the policies of any European welfare state. This is a strikingly ahistorical approach that bundles up highly complex social, economic, and political systems into a generic straitjacket. Because of this overly generalizing line of argument, Critique of Security does not add much to the insights of critical theory dating back to the 1970s, which has already dealt extensively with authoritarian practices and tendencies of liberal-capitalist orders.2 Moreover, it curiously ignores the fact that earlier post- or neo-Marxist critiques of the liberal-capitalist order have been formulated primarily in the name of security—the demand to secure and protect the status of workers, women, minorities, and the environment, for example.3 Especially under the current conditions of insecurity generated by a global financial crisis, Neocleous' attack on welfare security seems misplaced or incomplete. The interesting tension between popular and progressive demands for security from the ravages of capitalism, on the one hand, and security as a project of protecting the capitalist order, on the other hand, is not dealt with at all. Instead, the author pleads with us to simply eliminate the desire for security from our lives, or, in other words, to [End Page 291] throw the baby out with the bathwater. Still, Critique of Security serves as a useful reminder that demands for collective protection from the conditions generated by the systemic failures of the capitalist system must be accompanied by a sober re-evaluation of the limits and responsibilities of the state and its capacity to abuse power, especially in times of economic and political crisis and insecurity. It is a timely contribution that raises questions about the current responses by states to the global economic crisis. Now that all state resources are pulled and stretched to put capitalism back on track, whose security is really protected?

**Three, security rhetoric empirically causes a focus on practical solutions like the paten reform bill – getting rid of this rhetoric doesn’t solve**

Robert Wuthnow 10, Gerhard Andlinger Prof of Sociology at Princeton, PhD in Sociology from Cal Berkeley, “Be Very Afraid: The Cultural Response to Terror, Pandemics, Environmental Devastation, Nuclear Annihilation, and Other Threats,” p. 21, google books

The notable feature of the perilous times that humanity has faced over the past half century is that the response has made them seem manageable enough that we roll up our collective sleeves and work on practical solutions. There have been relatively few panics involving spontaneous outbreaks of irrational behavior. Work, family life, and other routine activities have continued. Individuals have sometimes shouldered the small tasks of learning about impending crises and pitching in to support research or protect their families. These responsibilities, though, have seldom required great sacrifices on the part of large populations, at least not in the Western world. Social movements have emerged and policies have been affected, but regimes have rarely been toppled as a result. None of this can be understood simply as denial. Were denial the correct interpretation, billions would not have been spent on weapons, deterrence programs, research, and communication. Millions of readers and television viewers would not have paid attention to warnings and documentaries. People responded, but in ways that incorporated the problem solving into ordinary roles and competencies. Nor can the normality of the response be explained by arguing that the dangers envisioned generated little upheaval because they never happened. A nuclear holocaust did not occur, but enough destruction did take place that people could imagine the results. There were also chemical spills, accidents at nuclear plants, terrorist attacks, and natural disasters. Enough went wrong, even with well-intentioned planning, that danger could not be ignored. Indeed, it is truly surprising that more chaos, more panic, more soul searching, and more enervating fear did not ensue.