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### 1

#### Rohan and I advocate that the President of the United States should no longer detain indefinitely and should release current detainees.

#### CP solves- can create accountability

Michaels 11 (Jon, Professor, UCLA School of Law, “The (Willingly) Fettered Executive: Presidential Spinoffs in National Security Domains and Beyond,” *Virginia Law Review,* <http://www.virginialawreview.org/content/pdfs/97/801.pdf>)

These are revealing case studies, weighty in their own right and interesting complements to one another. They give us insight into how these strategically important, but largely unknown, responsibilities are administered. They show how the Executive, rather than the Executive’s usual rivals—Congress and the courts—can constrain public administration, through mechanisms within the administrative state and outside of it. And, they suggest why the Executive might welcome those constraints (and possibly others as well). The studies bring into focus a new template, one with significant descriptive attributes and predictive power. They reveal an underappreciated phenomenon where (1) legal constraints and political accountability checks over administrative responsibilities are disabled, inapplicable, or dangerous; (2) the Executive seems surprisingly hamstrung by virtue of the absence of constraints; and (3) the Executive appears to take steps to impose an alternative regime of administrative discipline to better carry out the responsibilities in question. Combined, the studies reveal two alternative paths to compensate for the lack of conventional accountability assurances. With In-Q-Tel, the Executive uses an external institutional redesign seemingly to insulate the technology incubation process from perverse political pressures and to better align principal-agent interests. With CFIUS, the President employs an internal institutional redesign with the apparent effect of limiting White House control, both for the good of the parties engaged in the foreign-investment deal and in service of the President’s larger foreign-policy goals. Taken in tandem, In-Q-Tel and CFIUS present a challenge to the dominant view of the Executive as power-aggrandizing. Equally important, however, is the fact that the acts and mechanisms of self-constraint are not obvious or celebrated. The Executive’s subtlety in these domains thus itself serves as testament to the durability and primacy of the dominant understanding.

### 2

#### unique link- courts avoiding detention controvery now- aff spurs circumvention and backlash- kills legitimacy and judicial strength

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

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

In Part III of this Essay, I will argue that the Court's actions in the first year of the Obama administration are cut from the same cloth as its decision to intervene in Bush-era disputes. As this section has suggested, the Court has never risked national security or executive branch non-acquiescence in its enemy combatant decision making. Moreover, as I argued in Part I, Court decision making in this area has largely tracked social and political forces. For reasons I will now detail, the Court's decisions both to steer clear of this issue in the spring and summer of 2009 and its fall 2009 decision to hear the Uighur petition match past Court practices. Throughout the enemy combatant dispute, the Court has found ways to expand its authority without risking an institutionally costly backlash. III. Conclusion: The Past Is Prologue Supreme Court interventions in the enemy combatant disputes never pushed the limits of what was acceptable to the political [\*523] branches of government. The Court, instead, maximized its authority by moving incrementally and expanding judicial power in ways generally acceptable to the political branches. This was true of Bush-era decision making and there is no reason to think that the Court will depart from past practices during the Obama administration. Consider, for example, the Court's March 2009 decision to back away from a case involving Bush administration efforts to detain a legal resident without charges. After agreeing - in December 2008 - to hear a challenge to the Bush administration's detention of Ali Saleh Kahlah al-Marri at a South Carolina Navy brig, the Court sided with the Obama administration and removed the case from its docket. n170 The administration had claimed the case was moot because - in February 2009 - it formally filed federal criminal charges against al-Marri (so that he would be tried in federal court and not held indefinitely at a military base). n171 Mr. Marri's lawyers objected, arguing (unsuccessfully) that the administration could subsequently relocate him to a military base and, consequently, the Court should still resolve his legal challenge. n172 The Court's decisions to hear and then moot al-Marri are readily understandable. The Fourth Circuit had upheld the Bush administration in al-Marri and - when agreeing to hear the case - the Justices had good reason to slap down the Bush administration for their continuing efforts to sidestep federal court review over enemy combatant policy-making. Not only had the Court taken a strong stand in favor of judicial review in Boumediene and other decisions, but the November 2008 election of Barack Obama and the Democratic Congress further solidified the Court's position with elected officials and the American people. And, with none of the eighteen amicus briefs in the case supporting the Bush administration, n173 a Court ruling against [\*524] Bush administration actions would have further buoyed the Court's status with academics and other interest groups. By March 2009, however, there was no good reason to ask the new administration to sort out its views on the al-Marri detention. Candidate Obama had campaigned against the Bush administration efforts to fence out federal courts from war-on-terror litigation. Indeed, when asking the Court to moot the case, the Obama administration told the Justices that it was willing to have the Fourth Circuit ruling vacated (showing "that the government is not attempting to preserve its victory while evading review"). n174 Against this backdrop, there was simply no reason for the Justices to force the Obama administration to formally disavow or embrace Bush administration legal arguments. An Obama administration decision disavowing Bush administration arguments would not strengthen the Court's position vis-a-vis the executive (as the Obama Justice Department had already conceded the Court's authority to vacate the lower court ruling); an administration decision supporting Bush administration arguments would set the stage for a costly battle between the Court and the new administration. A decision on the merits, moreover, would have opened the Court up to charges of judicial over-reaching. In its brief seeking to moot al-Marri, the government argued that keeping the case alive "would lead only to an advisory opinion with no real-world impact on any individual" and that the Court should not reach out to decide "in a hypothetical posture" "complex constitutional questions" about the line where "national security policy and the Constitution intersect." n175 The Court's participation in Kiyemba likewise displays the Court's sensitivity to its status vis-a-vis the other branches and to the risks of unnecessarily interjecting itself in national security policy. This was true of both the June 2009 decision to hold over the appeal of the Uighur petitioners and the October 2009 decision to hear the case (but to schedule oral arguments so as to delay any decision until the summer of 2010). n176 June 2009 was too early for the Court to enter this dispute. Even though petitioners cast the case as an opportunity for the Court to defend its turf (suggesting that Boumediene had become an empty shell and it was up to the Court to give meaning to the decision), n177 [\*525] the Court well understood the costs of entering this dispute. At that time, the Obama administration and Democratic Congress were sorting out their policy priorities on Guantanamo, Bagram detainees, and much more. Correspondingly, the Court had reason to think that a ruling demanding the relocation of Uighur detainees to the United States would not sit well with either the administration or Congress. Not only did the Obama administration oppose the relocation of the Uighurs to the United States, n178 Congress enacted legislation in June 2009 that severely limited the President's power to move Guantanamo detainees to the United States or resettle them in another country. n179 By holding the issue over, however, the Court gave the Obama administration time both to sort out its policy priorities and to relocate the Uighur detainees (and, in so doing, to try to moot the case). n180 In its brief opposing certiorari, the Obama administration made clear that it was trying both to close Guantanamo and to relocate the Uighur petitioners and asked the Court to respect the "efforts of the political Branches to resolve issues relating to petitioners and other individuals located at Guantanamo Bay." n181 Furthermore, the decision to hold the case over bought the Court time to see how the enemy combatant issue would play out among politicians, interest groups, the media, and the American people. As Part I reveals, Court enemy combatant decisions track social and political forces. As Part II reveals, the Court has moved incrementally - advancing its authority to say "what the law is" without risking backlash or national security. The Court's October 2009 decision to hear Kiyemba does not break from this pattern. By scheduling oral arguments for spring 2009, the Court both provided elected government with additional time to settle this issue and provided itself with an opportunity to calibrate its decision making against the backdrop of elected government action and other subsequent developments. n182 More than that, [\*526] since Boumediene only decided the threshold issue that enemy combatants were entitled to habeas corpus relief, Kiyemba is a good vehicle for the Court to provide some details on how habeas proceedings should be conducted. In particular, there is little prospect that the decision will impact the rights on many Guantanamo detainees. By the summer of 2010, Guantanamo may be closed; if not, most detainees who prevail in habeas proceedings are likely to have been relocated to another country. Moreover, Kiyemba raises a quite narrow issue, namely, whether federal courts can mandate that Guantanamo detainees be relocated to the United States if no foreign nation will take them. n183 In other words, there is next to no prospect that Kiyemba will result in the type of scrutinizing judicial review that might raise national security risks (assuming, of course, that the Court will rule against the administration). Instead, Kiyemba seems likely to further tighten judicial control over the executive - but only in a very modest way. Throughout the course of its enemy combatant decision making, the Court has moved incrementally. In so doing, the Court has expanded its authority vis-a-vis the President. Obama administration efforts to moot al-Marri and to relocate Uighur detainees (thereby mooting that litigation) speak to the administration's desire to avoid Supreme Court rulings that might limit the scope of presidential power. Unlike the Bush administration (whose politically tone deaf arguments paved the way for anti-administration rulings), n184 the Obama administration understands that the Court has become a player in the enemy combatant issue. What is striking here, is that the Court never took more than it could get - it carved out space for itself without risking the nation's security or political backlash. Its 2004 and 2006 rulings provided ample opportunity for the President to pursue his enemy combatant initiative. Its 2008 ruling in Boumediene, while clearly constraining the political branches, reflected the views of the new Democratic majority in Congress and (to a lesser extent) the views of presidential candidates Obama and McCain. n185 Its decision to steer clear of early Obama-era [\*527] disputes likewise avoids the risks of a costly backlash while creating incentives for the Obama administration to take judicial authority into account (by settling these cases outside of court). n186 Put another way, by taking prevailing social and political forces into account, the Court was able to flex its muscles without meaningfully undermining the policy preferences of the President and Congress. I, of course, recognize that the Court's willingness to engage the executive and, in so doing, to nullify a signature campaign of the Bush administration, is a significant break from the judiciary's recent practice of steering clear of disputes tied to unilateral presidential war making. n187 At the same time, I see the Court's willingness to challenge, and not defer, as not at all surprising. The Bush administration made arguments that backed the Court into a corner. The Court could either bow at the altar of presidential power, or it could find a way to slap the President down. It is to be expected that the Court chose to find a way to preserve its authority to "say what the law is." n188 The Justices, after all, have incentives to preserve the Court's role in our system of checks and balances - especially when their decisions enhance their reputations with media and academic elites. n189 This is true of the Supreme Court in general, and arguably more true of the current Court - given its penchant to claim judicial supremacy and given the importance of these institutional concerns to the Court's so-called swing Justices. n190 It is also noteworthy that the enemy combatant cases were at the very core of the judicial function. At oral arguments in Hamdan, Justice Kennedy emphasized the importance of habeas corpus relief, n191 suggesting that limitations on habeas relief would "threaten[] the status of the judiciary as a co-equal partner of the legislature and the executive." n192 [\*528] One final comment on the nature of the dialogue that took and is taking place between the three branches on the enemy combatant issue: Throughout the Bush-era, these cases were anything but a constitutional dialogue. The executive persisted in making the same argument, and, as its political fortunes diminished, the Court carved over more and more issue space for itself. For its part, the Bush-era Congress played no meaningful role - it simultaneously backed the executive while signaling to the Court that it would support judicial invalidation of executive initiatives. With a new administration in place, there is reason to think that the inter-branch dynamic will change. The Obama administration has advanced its policies while pursuing a less confrontational course; avoiding absolutist arguments and trying to steer clear of an adverse Supreme Court ruling. In so doing, the administration has yet to launch the type of broadsides that challenge the foundations of judicial authority. Up until now, the Court has responded in kind, leaving the administration breathing room to pursue its policies without a Supreme Court pronouncement on the scope of presidential power. It is a matter of pure speculation whether this pattern will continue. At the same time, there is good reason to think that the Court will follow the path it has laid down in Bush-era cases, taking social and political forces into account so as to protect its turf without risking national security or elected government backlash.

#### Loss of legitimacy undermines compliance with court decisions – turns case

Hansford 06 (Thomas Hansford, Assistant Professor of Political Science, University of South Carolina and James Spriggs, Associate Professor of Political Science, University of California, Davis, “The Politics of Precedent on the U.S. Supreme Court,” p. 18-24)

Judges promote legitimacy because they recognize that it encourages acceptance of and compliance with their decisions(Gibson 1989; Mon¬dak 1990, 1994; Tyler and Mitchell 1994). In our view of Supreme Court decision making, the justices value legitimacy for instrumental reasons, namely, as a means to the end of producing efficacious policy (see Epstein and Knight 1998). As discussed more fully below, court decisions are not self-executing and thus third parties must implement them before they have any real effects. **Since** legitimacy encourages compliance, **it enhances the power of courts and** facilitates their ability to cause legal **and** political change. Landes and Posner (1976, 273) make this point when stating: "No matter how willful a judge is, he is likely to follow precedent to some extent, for if he did not the practice of decision according to precedent (stare decisis, the lawyers call it) would be undermined and the precedential significance of his own decisions thereby reduced." Justice Stevens (1983, 2) reiterates this point by noting that stare decisis "obvi¬ously enhances the institutional strength of the judiciary." The significance of institutional and decisional legitimacy follows from two well-known characteristics of the judiciary. While these features apply to all courts, we will discuss them in the context relevant for our purposes-the U.S. Supreme Court. First, unlike elected officials or bureaucrats, the justices are expected to provide neutral, legal justifica¬tions for their decisions (Friedman et al. 1981; Maltz 1988). One important element of this expectation is that the justices show respect for the Court's prior decisions (Powell 1990). A recent national survey, for instance, demonstrates that the American public expects the Court to decide based on legal factors (Scheb and Lyons 2001). Nearly eighty-five percent of respondents to this survey indicated that precedent should have some or a large impact on the justices' decisions. By contrast, over seventy-three percent of respondents thought that whether judges were Democrats or Republicans should have no influence on their decisions. As these data indicate, Americans overwhelmingly believe in the idea that judges should make decisions based on neutral, legal criteria. Second, the Court lacks significant implementation powers and thus relies on its external reputation to encourage implementation of and compliance with its decisions. Alexander Hamilton pointed this idea out in Federalist 78: "The judiciary on the contrary has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither Force nor Will, but merely judgment; and must ultimately depend upon the aid of the executive arm for the efficacy of its judgments." The basic idea is that the Court must rely on third parties to implement its policies, and a central way to promote compliance is through fostering institutional and decisional legitimacy (see Knight and Epstein 1996). If the Court, or a particular majority opinion, is perceived as somewhat illegitimate, then the prospects for compliance may decrease. The power of the Court, that is, rests on its "prestige to persuade" (Ginsburg 2004, 199).

#### An effective court is key to sustainable development

Stein 5—Former Judge of the New South Wales Court of Appeal and the New South Wales Land and Environment Court [Justice Paul Stein (International Union for Conservation of Nature (IUCN) Specialist Group on the Judiciary), “Why judges are essential to the rule of law and environmental protection,” Judges and the Rule of Law: Creating the Links: Environment, Human Rights and Poverty, IUCN Environmental Policy and Law Paper No. 60, Edited by Thomas Greiber, 2006]

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

#### Sustainable development is key to prevent extinction

Barry 13—Political ecologist with expert proficiencies in old forest protection, climate change, and environmental sustainability policy [Dr. Glen Barry (Ph.D. in "Land Resources" and Masters of Science in "Conservation Biology and Sustainable Development” from the University of Wisconsin-Madison), “ECOLOGY SCIENCE: Terrestrial Ecosystem Loss and Biosphere Collapse,” Forests.org, February 4, 2013, pg. http://forests.org/blog/2013/02/ecology-science-terrestrial-ec.asp

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

### 3

#### Capture over drones now

David Corn, “Obama's Counterterrorism Speech: A Pivot Point on Drones and More?,” MOTHER JONES, 5—23—13,

http://www.motherjones.com/mojo/2013/05/obama-speech-drones-civil-liberties

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

#### Plan spurs shift towards drones

Robert Chesney, Professor, Law, University of Texas, “Who May Be Held? Military Detention through the Habeas Lens,” BOSTON COLLEGE LAW REVIEW v. 52, 2011, LN.

The convergence thesis describes one manner in which law might respond to the cross-cutting pressures associated with the asymmetric warfare phenomenon—i.e., the pressure to reduce false positives (targeting, capture, or detention of the wrong individual) while also ensuring an adequate capacity to neutralize the non-state actors in question. One must bear in mind, however, that detention itself is not the only system of government action that can satisfy that latter interest. Other options exist, including the use of lethal force; the use of rendition to place individuals in detention at the hands of some other state; the use of persuasion to induce some other state to take custody of an individual through its own means; and perhaps also the use of various forms of surveillance to establish a sort of constructive, loose control over a person (though for persons located outside the United States it is unlikely that surveillance could be much more than episodic, and thus any resulting element of “control” may be quite weak).210¶ From the point of view of the individual involved, all but the last of these options are likely to be far worse experiences than U.S.-administered detention. In addition, all but the last are also likely to be far less useful for purposes of intelligence-gathering from the point of view of the U.S. government.211 Nonetheless, these alternatives may grow attractive to the government in circumstances where the detention alternative becomes unduly restricted, yet the pressure for intervention remains. The situation is rather like squeezing a balloon: the result is not to shrink the balloon, but instead to displace the pressure from one side to another, causing the balloon to distend along the unconstrained side. So too here: when one of these coercive powers becomes constrained in new, more restrictive ways, the displaced pressure to incapacitate may simply find expression through one of the alternative mechanisms. On this view it is no surprise that lethal drone strikes have increased dramatically over the past two years, that the Obama administration has refused to foreswear rendition, that in Iraq we have largely (though not entirely) outsourced our detention operations to the Iraqis, and that we now are progressing along the same path in Afghanistan.212¶ Decisions regarding the calibration of a detention system—the¶ management of the convergence process, if you will—thus take place in the shadow of this balloon-squeezing phenomenon. A thorough policy review would take this into account, as should any formal lawmaking process. For the moment, however, our formal law-making process is not directed at the detention-scope question. Instead, clarification and development with respect to the substantive grounds for detention takes place through the lens of habeas corpus litigation.

#### Increasing drones causes blowback – risks instability and terrorism, kills US-Yemen relations, turns the effectiveness of drone operations

Smith 12 (Jordan Michael, U.S. foreign policy writer for Salon, 9/5/12, “Drone “blowback” is real”, http://www.salon.com/2012/09/05/drone\_blowback\_is\_real/, zzx)

A new analysis questions that assumption. Published in the Middle East Policy Journal, the article looks at Yemen and concludes that increased drone strikes “will produce distinct forms of blowback,” the CIA-coined term describing the unintended actions that harm America resulting from U.S. policies. Overall, “this will manifest itself in terms of increased recruitment for al-Qaeda or affiliated groups and a reduction of the Yemeni leadership’s ability to govern, increasing competition from alternative groups.” Written by three scholars at the University of Arizona, “Drone Warfare in Yemen” finds five distinct forms of blowback: Attacks on America targets such as the 2009 Khost bombing of a CIA Camp Increased ability of Al Qaeda to recruit new members, particularly those who had loved ones killed in drone attacks Decreased U.S. accountability, resulting from control of the drone program oscillating between the CIA and Joint Chiefs of Staff Continued destabilization of Yemen An increasingly precarious alliance between the American and Yemeni governments The authors make the compelling points that drone programs rely on the support of the local regime. Whatever benefits this has over the short-term, over the long-term it makes those regimes lose legitimacy in the eyes of their own people. Such a development can be deadly — al-Qaida first declared war on the United States in no small part because it saw Saudi Arabia and Egypt as puppets of the Americans. It is no coincidence that the increased frequency of drone attacks after 2009 coincided with the domestic unrest in Yemen, the authors say. On June 3, 2011, the leader of Yemen, Ali Abadallah Saleh, who cooperated with the United States even as he tolerated al-Qaida elements, was injured in attacks on his compound, compelling him to go to Saudi Arabia and New York City for medical treatment. A new government may come to power that is less hospitable to American interests, as was the case in Egypt. The United States should welcome a government beholden to its people — but the result may not always be so benign, as was the case with Iran in 1979. In addition, heavy reliance on drones may have the perverse effect of creating safe havens for terrorists or their supporters. Robert Grenier, head of the CIA’s counterterrorism center from 2004 to 2006 and former CIA station chief in Pakistan, explained in June how this happens: That brings you to a place where young men, who are typically armed, are in the same area and may hold these militants in a certain form of high regard. If you strike them indiscriminately you are running the risk of creating a terrific amount of popular anger. They have tribes and clans and large families. Now all of a sudden you have a big problem … I am very concerned about the creation of a larger terrorist safe haven in Yemen. In destroying the state from above, terrorists can fill in the void on the ground. That’s just what happened with Ansar al-Sharia, a Taliban-like group in Yemen, which has seized parts of that country and was only recently formed. “The extensive use of [drones] for executive executions and signature strikes with Yemeni government partners is a dangerous precedent that lends itself to the creation of local-emirate enclaves,” write the journal article’s authors.

#### Yemen instability collapses global trade lanes

Yuriditsky ’11 (Associate of the Institute for Gulf Affairs (Lev, “Yemen's Chaos - August 2011,” <http://yuriditsky.blogspot.com/2011/09/yemens-chaos-august-2011.html>, August 28, 2011)

Towards the end of July, the leader of AQAP, Nasir al Wuhayshi, pledged allegiance to Bin Laden’s successor, Ayman al Zawahiri. Wuhayshi vowed to fight until Sharia law is imposed across the globe and that he and the AQAP fighters under his order will “fight the enemies without leniency or surrender until Islam rules.” Wuhayshi’s pledge of allegiance came just a month after Al Shabaab, the Al Qaeda-linked organization in Somalia gave the same oath. The two groups, separated by the strategic Gulf of Aden and the Bab al-Mandab straight, through which millions of barrels of oil and other goods are shipped daily between Asia, Europe and the Americas, make instability in Yemen a tremendous risk to global trade. The groups have cooperated with each other in the past and together can prove to be one of the most deadly terrorist organizations in history. With Al Shabaab’s strong presence in Somalia, all it takes is Al Qaeda strengthening just slightly and the groups will control the horn of Africa, the southwestern peninsula, and the strategic Gulf of Aden. The alliance between Al Shabaab and Al Qaeda is of special significance to the U.S. Al Shabaab has a proven ability to recruit from the U.S. Somali-American population. During a hearing on Muslim radicalization, chair of the House Homeland Security Committee, Peter King discussed Al Shabaab’s “large cadre of American Jihadis” and the groups growing threat in the U.S. He went on to say that AQAP’s resources, such as arms and training (Yemen is the most heavily armed country in the world) with Al Shabaab’s reach can make for a particularly challenging situation.

#### The impact is global nuclear war

Panzner ‘8 (Michael, faculty at the New York Institute of Finance, 25-year veteran of the global stock, bond, and currency markets who has worked in New York and London for HSBC, Soros Funds, ABN Amro, Dresdner Bank, and JPMorgan Chase, “Financial Armageddon: Protect Your Future from Economic Collapse”, Revised and Updated Edition, p. 136-138, googlebooks)

Continuing calls for curbs on the flow of finance and trade will inspire the United States and other nations to spew forth protectionist legislation like the notorious Smoot-Hawley bill. Introduced at the start of the Great Depression, it triggered a series of tit-for-tat economic responses, which many commentators believe helped turn a serious economic downturn into a prolonged and devastating global disaster. But if history is any guide, those lessons will have been long forgotten during the next collapse. Eventually, fed by a mood of desperation and growing public anger, restrictions on trade, finance, investment, and immigration will almost certainly intensify. Authorities and ordinary citizens will likely scrutinize the cross-border movement of Americans and outsiders alike, and lawmakers may even call for a general crackdown on nonessential travel. Meanwhile,many nations will make transporting or sending funds to other countries exceedingly difficult. As desperate officials try to limit the fallout from decades of ill-conceived, corrupt, and reckless policies, they will introduce controls on foreign exchange. Foreign individuals and companies seeking to acquire certain American infrastructure assets, or trying to buy property and other assets on the cheap thanks to a rapidly depreciating dollar, will be stymied by limits on investment by noncitizens. Those efforts will cause spasms to ripple across economies and markets, disrupting global payment, settlement, and clearing mechanisms. All of this will, of course, continue to undermine business confidence and consumer spending. In a world of lockouts and lockdowns, any link that transmits systemic financial pressures across markets through arbitrage or portfolio-based risk management, or that allows diseases to be easily spread from one country to the next by tourists and wildlife, or that otherwise facilitates unwelcome exchanges of any kind will be viewed with suspicion and dealt with accordingly. The rise in isolationism and protectionism will bring about ever more heated arguments and dangerous confrontations over shared sources of oil, gas, and other key commodities as well as factors of production that must, out of necessity, be acquired from less-than-friendly nations. Whether involving raw materials used in strategic industries or basic necessities such as food, water, and energy, efforts to secure adequate supplies will take increasing precedence in a world where demand seems constantly out of kilter with supply. Disputes over the misuse, overuse, and pollution of the environment and natural resources will become more commonplace. Around the world, such tensions will give rise to full-scale military encounters, often with minimal provocation. In some instances, economic conditions will serve as a convenient pretext for conflicts that stem from cultural and religious differences. Alternatively, nations may look to divert attention away from domestic problems by channeling frustration and populist sentiment toward other countries and cultures. Enabled by cheap technology and the waning threat of American retribution, terrorist groups will likely boost the frequency and scale of their horrifying attacks, bringing the threat of random violence to a whole new level. Turbulent conditions will encourage aggressive saber rattling and interdictions by rogue nations running amok. Age-old clashes will also take on a new, more heated sense of urgency. China will likely assume an increasingly belligerent posture toward Taiwan, while Iran may embark on overt colonization of its neighbors in the Mideast. Israel, for its part, maylook to draw a dwindling list of allies from around the world into a growing number of conflicts. Some observers, like John Mearsheimer, a political scientist at the University of Chicago, have even speculated that an “intense confrontation” between the United States and China is “inevitable” at some point. More than a few disputes will turn out to be almost wholly ideological. Growing cultural and religious differences will be transformed from wars of words to battles soaked in blood. Long-simmering resentments could also degenerate quickly, spurring the basest of human instincts and triggering genocidal acts. Terrorists employing biological or nuclear weapons will vie with conventional forces using jets, cruise missiles, and bunker-busting bombs to cause widespread destruction. Many will interpret stepped-up conflicts between Muslims and Western societies as the beginnings of a new world war.

#### Drone shift turns case

Graham 06 STEPHEN GRAHAM, Centre for the Study of Cities and Regions, Department of Geography, University of Durham, Cities and the 'War on Terror'nWiley interscience International Journal of Urban and Regional Research Volume 30, Issue 2, Pages 255-276

Crucially, however, this very integration of geographically distanced urban sites through military techno-science is being done in a manner which actually hard-wires highly divisive judgements of people's right to life within the 'war on terror' into hard, military systems of control, targeting and, sometimes, (attempted) killing. These systems, very literally, enable, reinforce and inscribe the geopolitical, biopolitical and urban architectures of US Empire, with their stark judgements of the value — or lack of value — of the urban subjects and human lives under scrutiny within an integrated and all-encompassing 'battlespace'. In US cities, as we saw in this article's first discussion, this scrutiny is aimed at separating out, for extra-legal processing or incarceration, those deemed 'terrorists' and their sympathizers from legitimized and valorized US citizens warranted protection and value. In the 'targeted' Arab cities just discussed, however, all human subjects are deemed to warrant no rights or protections. In such cities, the exposure of human subjects within the unified 'battlespace' is, as we shall soon discuss, being combined with the development of new, high-tech weapons systems. These threaten to emerge as automated systems dealing out continuous violence and death to those deemed by computerized sensors to be 'targets', with little or no human supervision.  

### 4

**Next off is the China Relations DA**

**US diplomatic advances have convinced China that the pivot is not a threat – maintaining supportive action key to sustain good relations**

**Smith 9/14**, NBC News Contributor

(13, Analysis: Superpower rivalry between US, China shows signs of softening, behindthewall.nbcnews.com/\_news/2013/09/14/20476425-analysis-superpower-rivalry-between-us-china-shows-signs-of-softening?lite)

The **superpower rivalry between the U.S. and China is showing signs of softening, following a series of high-level military visits and plans for a rare joint naval exercise** between the two nations next year. Washington invited Beijing to participate in the biennial Rim of the Pacific Exercise (RIMPAC), which has formerly included scenarios such as China itself launching an offensive against U.S. ally Taiwan. Hosted by the U.S., RIMPAC is the world's largest maritime training operation and features 22 countries. It will be the first time China has participated. A smaller joint navy exercise last week was the first time Chinese vessels had visited U.S. waters since 2006, The Associated Press reported. Three People’s Liberation Army (PLA) ships carrying 680 officers and sailors performed drills on Sept. 6 with USS Lake Erie off Waikiki and Diamond Head, Honolulu. Two days later, Chinese Admiral Wu Shengli met U.S. Navy Chief of Operations Admiral Jonathan Greenert in San Diego, home of the U.S. naval fleet. This followed up on a visit by Chinese Defense Minister Chang Wanquan to the Pentagon in August. "Our goal is to build trust between our militaries through cooperation," Defense Secretary Chuck Hagel told reporters during Chang’s visit. The state-run China Daily newspaper characterized the admiral's visit to the U.S. as "a move experts described as part of the 'rare, determined and intensive efforts' by Beijing and Washington in recent months to improve military ties." **The exchanges come as part of** President Barack **Obama’s “Pivot to Asia” policy**, an eastern re-balancing of military might in the wake of the withdrawal from Afghanistan and Iraq, **which raised eyebrows in Beijing when it was unveiled** last year. Stephen **Orlins, president of New-York based National Committee on U.S.-China Relations, said the series of events has the potential to build a significant affiliation between the world’s two largest economies. “It is very meaningful, and it might be just the beginning**,” said Orlins, who in 2011 led a delegation of U.S. members of Congress to visit a Chinese navy submarine, and has briefed U.S. naval personnel on China. “**The question is: Are these just symbolic actions or are they actually substantive? Whether this is a new relationship between the U.S. and China will depend on actions by both states.” There have also been positive steps on the political front**. During this year's meeting at Sunnylands, Calif., **Obama and Xi Jinping**, general secretary of China’s Communist Party, **began to ameliorate recent hostilities over alleged cyber attacks by Chinese hackers. These events -- both military and political -- have huge symbolic value in China**, Orlins said: “**The meeting with Hagel** made the papers in the U.S. but **in China** it **was front-page news**."

**Mandating release means letting Uighur’s into the United States**

**Kagan 10**, Solicitor General US DOJ

(2/19, Elena, [www.scotusblog.com/wp-content/uploads/2010/02/SG-Kiyemba-letter-2-19-10.pdf](http://www.scotusblog.com/wp-content/uploads/2010/02/SG-Kiyemba-letter-2-19-10.pdf))

**Petitioners are members of the Uighur ethnic minority group in China who were previously held in military detention in an enemy status at the Guantanamo Bay Naval Base**. **The United States agreed** in 2008 **that petitioners should not be held on that basis and continued to pursue efforts to resettle them. When a person is released from military detention based on enemy status, the assumption is that he will be returned to his country of citizenship. But the Uighurs reasonably fear torture in China, so consistent with longstanding policy, the United States has agreed to resettle them elsewhere. Petitioners sought an order from the habeas court requiring the Executive Branch to bring them to the United States and release them here because, in their view, resettlement efforts had failed.** The district court issued such an order, but **the court of appeals** reversed. This Court **granted certiorari to address the following question: “Whether a federal court exercising its habeas jurisdiction**, as confirmed by Boumediene v. Bush, **has no power to order the release of prisoners held by the Executive** for seven years, where the Executive detention is indefinite and without authorization in law, and release into the continental United States is the only possible effective remedy.” Pet. i (citation omitted). In letters dated February 3, 2010, and February 5, 2010, counsel for the parties informed the Court that the government of Switzerland has agreed to accept for resettlemen two of the petitioners in this case, Arkin Mahmud and Bahtiyar Mahnut. One of those men (Arkin Mahmud) had not previously received an offer of resettlement from any country. The parties also informed the Court that the two men had accepted Switzerland’s offer, and are expected to be resettled shortly. Once the two men leave Guantanamo Bay for Switzerland, only five of the 22 Uighurs originally detained at Guantanamo Bay (and two of the 14 original petitioners in this Court) will remain there. All of the remaining five Uighurs at Guantanamo Bay have received two offers of resettlement, one from Palau and one from another nation. In our letter dated February 5, 2010, and in our brief on the merits (at 51-52), the government noted that these recent developments have eliminated the premise of the question presented. All of the petitioners remaining at Guantanamo Bay have received offers of resettlement from other countries. Yet petitioners' claim to be brought to and released in the United States has always depended on their having no other nations walling to accept them. Because these developments eliminate the factual premise of the question on which the Court granted review, the Court should dismiss the writ of certiorari. 1. Petitioners are Chinese nationals who are members of the Uighur ethnic group, a Turkic Muslim minority in the far-western region of China. Pet. App. la-2a. After September 11,2001, they were captured by Pakistan or coalition forces, transferred to U.S. military custody, and brought to the Guantanamo Bay Naval Base for detention under the Authorization for Use of Military Force (AUMF), Pub. L. No. 107-40,115 Stat. 224 (50 U.S.C. 1541 note). Pet. App. 2a. In all, 22 Uighurs were brought to Guantanamo Bay. J.A. 25a. All 22 Uighurs were given hearings before Combatant Status Review Tribunals (CSRTs) to determine whether they should be retained in military detention. Pet. App. 2a. The CSRTs determined that five of them should no longer be considered enemy combatants. Those five men were resettled in Albania in 2006. For the other 17 Uighurs, a CSRT issued a final determination that the record supported continued detention. See id. at 2a-3a; U.S. Br. 5. Habeas petitions were filed in federal court to challenge the legality of the detention of those 17 men (14 of whom are petitioners in this Court). In September 2008, the United States determined that these 17 men should no longer be held in military detention in an enemy status. The government moved the Uighurs to new, less restrictive housing at Guantanamo Bay and focused its efforts on resettling them. See U.S. Br. 6, 21-22. 2. **Petitioners moved for judgment on their habeas petitions and sought an order requiring the Executive to bring them into the United States and release them here**. The premise of their claim to such an order was that there is no other means by which they can be released from U.S. custody at Guantanamo Bay. J.A. 175a-176a. In particular, petitioners argued that, under Boimiediene v. Bush, 128 S. Ct. 2229 (2008), and the court of appeals' decision in Parked v. Gates, 582 F.Bd 884 (D.C. Cir. 2008), they are entitled to release, and because they cannot return to China**, "release can only mean release into the United States**." J.A. 175a-176a. Petitioners "emphasize[d] that this is an unusual case" because "[i]n most cases, release of the prisoner to his home country would be the natural remedy." J.A. 189a n.13. But here, they claimed, they are "entitled to release into the United States because no other remedy is available." Ibid.; see also J.A. 160a ("He is entitled to relief, and there is no relief—except an order that he be released into the continental United States."). That theme pervaded petitioners' presentation in the district court. J.A. 205a (stating that petitioners "are stranded because no foreign government has agreed to accept them"); J.A. 208a ("Parhat is detained for the practical reason that no safe country has been found to take him"; "[A]ll efforts to persuade allies to accept him as a refuge have failed."); J.A. 260a ("We are at the end of a five-year failed effort by the government to repatriate Parhat and the other Uighurs."); J.A. 462a There's only two places to go from Guantanamo. You can come here or you can go somewhere else in the world, but somewhere else in the world requires the cooperation of a foreign sovereign.").

**Releasing Uigher’s into the US** **wrecks US/China relations**

**Black 10**, Former Judge Advocate General of the US Army

(Lt. Gen. Scott C., Amici Curaie in support of Respondents, Kiyemba v. Obama, www.oyez.org/sites/default/files/cases/briefs/pdf/brief\_\_08-1234\_\_8.pdf)

**The potential national security concerns at issue range far beyond how the Uighurs may conduct themselves once released into the United States.** For example, **China has stated in no uncertain terms that it wants the Uighurs returned to China and opposes permitting them to live freely in some other country.** See, e.g., Peter Spiegel and Barbara Demick, “Uighur Detainees at Guantanamo Pose a Problem for Obama,” Los Angeles Times (Feb. 18, 2009) (“China is insisting that the Uighurs be sent home to face trial for separatist activities. It has further intimated that any country that offers them political asylum will in effect be harboring dangerous terrorists.”); Bradley S. Klapper, “China to Swiss: Don’t Take Uighurs from Guantanamo,” Miami Herald (Jan. 8, 2010) (“China warned the Swiss government Friday against accepting two Guantanamo inmates as part of President Barack Obama’s effort to close the detention center, calling them terrorist suspects who should face Chinese justice.”). **Releasing the seven Uighurs into the United States undoubtedly would have adverse effects on U.S. relations with China**. Amici submit that **the Executive Branch and Congress are better equipped than is the Court to weigh the costs of those effects** against whatever benefits might come from the Uighurs’ release into the United States.

**US/China relations key to the global economy and preventing Korean war**

**Carpenter 9/5**, Senior fellow for defense and foreign policy studies at the Cato Institute

(13, Ted Galen, Don’t Wreck Relations with Russia and China over Syria, www.cato.org/blog/dont-wreck-relations-russia-china-over-syria)

Conversely, **we need cooperation from** Moscow and **Beijing on a host of important issues**. Without Russia’s help, there is little chance for serious progress on nuclear issues, either reducing the bloated U.S. and Russian stockpiles of such weapons or discouraging Iran and other countries from barging into the global nuclear weapons club. China’s cooperation is even more important. **Not only is China a major purchaser of U.S. government debt**, which in an era of chronic budget deficits is no trivial matter, **but the country is an increasingly crucial U.S. trading partner and a vital factor in the overall global economy.** **An angry, recalcitrant China would not be good for America’s or the world’s economic health. China is also the most important player in efforts to discourage North Korea from engaging in reckless, destabilizing conduct. During the first half of 2013, Beijing appeared to grow weary of Pyongyang’s disruptive, provocative conduct and began to exert pressure on its obnoxious client**. **That pressure has been at least one factor in North Korea’s more conciliatory behavior in the past few months. But China will have little incentive to continue that course if Washington tramples on Beijing’s interests** in Syria and the rest of the Middle East.

**Korean war goes nuclear - extinction**

**Hamel-Green 09**, Dean of and Professor in the Faculty of Arts, Education and Human Development, Victoria University

(Michael, The Path Not Taken, The Way Still Open: Denuclearizing the Korean Peninsula and Northeast Asia, www.japanfocus.org/-Michael-Hamel\_Green/3267

The international community is increasingly aware that cooperative diplomacy is the most productive way to tackle the multiple, interconnected global challenges facing humanity, not least of which is the increasing proliferation of nuclear and other weapons of mass destruction. **Korea and Northeast Asia are instances where risks of** nuclear proliferation and **actual nuclear use** arguably **have increased** in recent years. This negative trend is a product of continued US nuclear threat projection against the DPRK as part of a general program of coercive diplomacy in this region, North Korea’s nuclear weapons programme, the breakdown in the Chinese-hosted Six Party Talks towards the end of the Bush Administration, regional concerns over China’s increasing military power, and concerns within some quarters in regional states (Japan, South Korea, Taiwan) about whether US extended deterrence (“nuclear umbrella”) afforded under bilateral security treaties can be relied upon for protection. The consequences of failing to address the proliferation threat posed by the North Korea developments, and related political and economic issues, are serious, not only for the Northeast Asian region but for the whole international community. At worst, **there is the possibility of nuclear attack, whether by intention, miscalculation, or merely accident,** leading to the resumption of Korean War hostilities. On the Korean Peninsula itself, key population centres are well within short or medium range missiles. The whole of Japan is likely to come within North Korean missile range. Pyongyang has a population of over 2 million, Seoul (close to the North Korean border) 11 million, and Tokyo over 20 million. Even a limited nuclear exchange would result in a holocaust of unprecedented proportions. But the catastrophe within the region would not be the only outcome. New research indicates that **even a limited nuclear war in the region would rearrange our global climate far more quickly than global warming.** Westberg draws attention to new studies modelling the effects of even a limited nuclear exchange involving approximately 100 Hiroshima-sized 15 kt bombs2 (by comparison it should be noted that the United States currently deploys warheads in the range 100 to 477 kt, that is, individual warheads equivalent in yield to a range of 6 to 32 Hiroshimas).The studies indicate that the soot from the fires produced would lead to a decrease in global temperature by 1.25 degrees Celsius for a period of 6-8 years.3 In Westberg’s view: That is not global winter, but **the nuclear darkness will cause a deeper drop in temperature than at any time during the last 1000 years**. The temperature over the continents would decrease substantially more than the global average. A decrease in rainfall over the continents would also follow…The period of nuclear darkness will cause much greater decrease in grain production than 5% and it will continue for many years...hundreds of millions of people will die from hunger…To make matters even worse**, such amounts of smoke injected into the stratosphere would cause a huge reduction in the Earth’s protective ozone.**

### 5

#### Plan leads to court stripping

David Gordon, senior fellow, Ludwig von Mises Institute, MISES DAILY, 11—4—08, <http://mises.org/daily/3185>)

So far, you may ask, what is original about that? Do not many other critics of the Court attack its at-times-bizarre interpretive methods? Quirk's originality rests in his taking literally, and emphasizing, a part of the Constitution that most writers ignore. According to Article III, Section 2, the jurisdiction of the Supreme Court lies almost totally up to Congress. The Court has original jurisdiction only in cases involving disputes among the states and in cases where foreign diplomats are a party. Its appellate jurisdiction is subject to whatever "rules and exceptions" Congress chooses to make. So far as lower federal courts are concerned, they stand completely at the mercy of Congress. If it wished to do so, Congress could abolish the lower federal courts altogether. Thus, if Congress does not like the decision of the Court in Roe v Wade and its successor cases, it can take away the right of the Court to hear any cases on appeal that involve abortion. True enough, that would still leave the decision on the books, and it would presumably be binding on other courts; but in practice, it might be difficult to sustain it. If a court decided to allow restrictions on Roe contrary to the mandate of the Supreme Court, this ruling could not then be appealed to that court for reversal. Congress might, by getting rid of the federal courts completely, leave abortion entirely in the hands of the state courts. In like fashion, of course, for other controversial areas. Quirk points out that until 1875, the lower federal courts did not have the right to hear appeals from state court decisions about federal law. By using its Article III powers, Congress could radically reshape constitutional law. One might at first think that Quirk has made a mistake. Is he not blowing out of proportion a passage that really deals only with setting up rules of procedure for the federal courts? History buffs will be aware of the famous case of ex parte McCardle (1868), in which the Reconstruction Congress withdrew the right of the Court to hear a case, while that very case was pending before the Court; but is not this use of Article III an aberration? Surely, like the famous Tenure of Office Act, this was an example of how extreme that Congress was, rather than a guide to sound constitutional practice. To those inclined to think so, the ruling of the Court in McCardle will come as a surprise. It fully recognized the right of Congress to withdraw its jurisdiction. The Court said, “We are not at liberty to inquire into the motives of the legislature. We can only examine its powers under the Constitution; and the power to make exceptions to the appellate jurisdiction of this court is given by express words… It is quite clear, therefore, that this court cannot proceed to pass judgment in this case, for it no longer has jurisdiction of the appeal; and the judicial duty is not less fully performed by declining ungranted jurisdiction than in exercising firmly that which the Constitution and the laws confer. (pp. 289–90) It is Quirk's great merit to show that Congress's power to limit the federal courts is a recurring theme in American history. Quirk is a Jeffersonian; and he points out that Jefferson and his followers feared the potential for abuse in federal judicial power and acted to curb it. The Federalists had secured the appointment of a number of Federalist judges in the Judiciary Act of 1801. The Republicans replied to the Judiciary Act of 1801 by repealing it in the Judiciary Act of 1802. The 1802 act repealed "federal question" jurisdiction. It stripped the new judges of their offices. (p. 178) Congressional power under Article III is far from a theoretical question. Congress has in fact acted to limit the federal courts in several notable instances. By the early 1930s, a majority of Congress had come to think that the courts often acted in an improperly antilabor way by issuing injunctions that forbade unions to strike. Employers who claimed that unions were a threat to their property did not have to go through the long and involved process of a civil suit. Once an injunction against a union had been issued, the court could instead hold the union in contempt and inflict civil and criminal penalties. Accordingly, in the Norris-LaGuardia Act (continually misspelled in the book), Congress, exercising its Article III authority, took away the power of federal courts to issue injunctions in labor cases. An interesting question, not discussed in the book, is why Franklin Roosevelt did not resort to this tactic in his disputes with the Court. Again, in the 1950s, there was a Congressional outcry against several Supreme Court decisions that were deemed unduly protective of the civil liberties of members of the Communist Party. Senator William Jenner introduced a bill to withdraw the appellate jurisdiction of the Court in such cases; and although the measure failed to pass, its constitutionality was not seriously challenged.[2] Opponents, such as Senator Jacob Javits of New York, claimed rather that the bill was unwise. One eminent law professor, Arthur J. Freund, who opposed the Jenner Bill, responded in this way when asked whether it was constitutional to limit the Supreme Court's jurisdiction: "You can't challenge the constitutionality of a constitutional provision" (p. 234). The famous Engel v. Vitale (1962) decision, which held recitation by a public school teacher of a prayer in class to be unconstitutional, and the failure of a proposed constitutional amendment to overturn it to gain sufficient votes, aroused Senator Jesse Helms in 1979 to propose a "stripper" bill, as this sort of legislation is called, but it also failed of passage. In a number of instances, though, Congress has in fact stripped the federal courts of jurisdiction, and several such laws remain on the books today. In recent years, a number of scholars have maintained that the Article III power of Congress is limited and that it cannot, e.g., bring it about that a constitutionally protected right is withdrawn from judicial scrutiny. Supporters of this position can appeal to the weighty authority of Justice Story, who thought that Congress was required to extend the full "judicial power" mentioned in the Constitution to the federal courts. Quirk successfully shows, though, that there is an extremely strong case that Congress does have the power to strip the federal courts of jurisdiction.

#### Stripping sends a signal that kills rule of law and judicial independence

Gerhardt 5 (Michael J. Gerhardt, William & Mary School of Law Professor, Lewis & Clark Review, "THE CONSTITUTIONAL LIMITS TO COURT-STRIPPING," 9 Lewis & Clark L. Rev. 347, lexis)

Another aspect of federalism, to which I have alluded, is that it is not just concerned with protecting the states from federal encroachments. It also protects the federal government and officials from state encroachments. In a classic decision in Tarble's Case, n38 the Supreme Court held that the Constitution precluded state judges from adjudicating federal officials' [\*360] compliance with state habeas laws. The prospect of state judges exercising authority over federal officials is not consistent with the structure of the Constitution. They could then direct, or impede, the exercise of federal power. The Act, however, allows state courts to do this. By stripping all federal jurisdiction over certain claims against federal officials, the Act leaves only state courts with jurisdiction over claims brought against those officials. It further leaves only to the state courts enforcement of the provisions of the Bill pertaining to federal officials. n39The popular will might lead state judges to be disposed to be hostile to federal claims or federal officials. Hostility to the federal claims poses problems with the Fifth Amendment, while hostility to federal officials poses serious federalism difficulties.

Beyond the constitutional defects with the Act, n40 it may not be good policy. It may send the wrong signals to the American people and to people around the world. It expresses hostility to our Article III courts, in spite of their special function in upholding constitutional rights and enforcing and interpreting federal law. If a branch of our government demonstrates a lack of respect for federal courts, our citizens and citizens in other countries may have a hard time figuring out why they should do otherwise. Rejecting proposals to exclude all federal jurisdiction or inferior court jurisdiction for some constitutional claims extends an admirable tradition within Congress and reminds the world of our hard-won, justifiable confidence in the special role performed by Article III courts throughout our history in vindicating the rule of law.

#### rule of law and strong judiciaries solve multiple impacts including war

[Noah Feldman, a contributing writer for the magazine, is a law professor at Harvard University and an adjunct senior fellow at the Council on Foreign Relations, “When Judges Make Foreign Policy”, NEW YORK TIMES, 9—25—08, www.nytimes.com/2008/09/28/magazine/28law-t.html

Looking at today’s problem through the lens of our great constitutional experiment, it emerges that there is no single, enduring answer to which way the Constitution should be oriented, inward or outward. The truth is that we have had an inward- and outward-looking Constitution by turns, depending on the needs of the country and of the world. Neither the text of the Constitution, nor the history of its interpretation, nor the deep values embedded in it justify one answer rather than the other. In the face of such ambiguity, the right question is not simply in what direction does our Constitution look, but where do we need the Constitution to look right now? Answering this requires the Supreme Court to think in terms not only of principle but also of policy: to weigh national and international interests; and to exercise fine judgment about how our Constitution functions and is perceived at home and abroad. The conservative and liberal approaches to legitimacy and the rule of law need to be supplemented with a healthy dose of real-world pragmatism. In effect, the fact that the Constitution affects our relations with the world requires the justices to have a foreign policy of their own. On the surface, it seems as if such inevitably political judgments are not the proper province of the court. If assessments of the state of the world are called for, shouldn’t the court defer to the decisions of the elected president and Congress? Aren’t judgments about the direction of our country the exclusive preserve of the political branches? Indeed, the Supreme Court does need to be limited to its proper role. But when it comes to our engagement with the world, that role involves taking a stand, not stepping aside. The reason for this is straightforward: the court is in charge of interpreting the Constitution, and the Constitution plays a major role in shaping our engagement with the rest of the world. The court therefore has no choice about whether to involve itself in the question of which direction the Constitution will face; it is now unavoidably involved. Even choosing to defer to the other branches of government amounts to a substantive stand on the question. That said, when the court exercises its own independent political judgment, it still does so in a distinctively legal way.For one thing, the court can act only through deciding the cases that happen to come before it, and the court is limited to using the facts and circumstances of those cases to shape a broader constitutional vision. The court also speaks in the idiom of law — which is to say, of regular rules that apply to everyone across the board. It cannot declare, for instance, that only this or that detainee has rights. It must hold that the same rights extend to every detainee who is similarly situated. This, too, is an effective constraint on the way the court exercises its policy judgment. Indeed, it is this very regularity that gives its decisions legitimacy as the product of judicial logic and reasoning. Why We Need More Law, More Than Ever So what do we need the Constitution to do for us now? The answer, I think, is that the Constitution must be read to help us remember that while the war on terror continues, we are also still in the midst of a period of rapid globalization. An enduring lesson of the Bush years is the extreme difficulty and cost of doing things by ourselves. We need to build and rebuild alliances — and law has historically been one of our best tools for doing so. In our present precarious situation, it would be a terrible mistake to abandon our historic position of leadership in the global spread of the rule of law. Our leadership matters for reasons both universal and national. Seen from the perspective of the world, the fragmentation of power after the cold war creates new dangers of disorder that need to be mitigated by the sense of regularity and predictability that only the rule of law can provide. Terrorists need to be deterred. Failed states need to be brought under the umbrella of international organizations so they can govern themselves. And economic interdependence demands coordination, so that the collapse of one does not become the collapse of all. From a national perspective, our interest is less in the inherent value of advancing individual rights than in claiming that our allies are obligated to help us by virtue of legal commitments they have made. The Bush administration’s lawyers often insisted that lawwas a tool of the weak, and that therefore as a strong nation we had no need to engage it. But this notion of “lawfare” as a threat to the United States is based on a misunderstanding of the very essence of how law operates. Law comes into being and is sustained not because the weak demand it but because it is a tool of the powerful — as it has been for the United States since World War II at least. The reason those with power prefer law to brute force is that it regularizes and legitimates the exercise of authority. It is easier and cheaper to get the compliance of weaker people or states by promising them rules and a fair hearing than by threatening them constantly with force. After all, if those wielding power really objected to the rule of law, they could abolish it, the way dictators and juntas have often done the world over.

### 6

#### Attempts to shift towards a borderless society reinforces capitalism by enabling the free flow of capital.

Wilkie 2

(Rob, “Judith Butler's "Guantánamo Bay": A Marxist Critique”, Red Critique, 4, 2002, <http://redcritique.org/MayJune02/printversions/judithbutlersguantanamobayprint.htm>, Accessed 9/11/13, ASH)

In her essay, "Guantánamo Limbo", (The Nation, April 1, 2002), Judith Butler argues for the development of a more "nuanced" and "ethical" theory of international human rights. "Nuanced" and "ethical" are code words on the contemporary academic left for a subtle form of opportunism that textualizes the existing conditions and demonstrates their intricate layeredness but after many interpretive twists arrives at a verdict that legitimizes the ruling power structures in a new rhetoric. Judith Butler has not only mastered this technique, but has helped popularize it into a new form of red-baiting against those who dare to question the priority of rhetoric over class (a questioning she rejects out-of-hand as "left conservatism"). In "Guantánamo Limbo", Butler textualizes the Geneva Convention's "bias" for non-nomadic, nation-state combatants, arguing that the Geneva Convention accords function "as a civilizational discourse" (20) that "aid and abet" (22) the Bush administration's brutal acts of repression in Afghanistan and the U.S. This all sounds very "radical" and even progressive. But, and this is the politics of this subtle progressiveness, she concludes that the United States is essentially not acting outside of international law by indefinitely imprisoning hundreds of alleged Al Qaeda and Taliban, because they are not recognized by international law either: "The Geneva Conventions and the United States both engage in the questionable practice of distributing rights of protection differentially, depending upon a prisoner's affiliation with a state-based military operation" (22). Butler's "conclusion" (never mind that such conclusion is obtained by discursive violence that fixes the meaning of the "non-nomadic", "nation-",) that the Geneva accords and the repressive actions of the Bush administration are merely two articulations of the same interests is justified as an enlightened, "left complexity". Her argument is, however, an instance of left intellectuals (following the example of Antonio Negri and others) providing a progressive alibi for imperialism—an alibi which " subtly" (and to the relief of the powerful) renders the line between oppressors and oppressed in a constant state of "limbo" and indeterminacy. Declaring as "outdated" and "unfashionable" political binaries such as "rich" and "poor", "North" and "South", "democracy" and "fascism", "socialism" and "capitalism",… post-political theorists such as Butler instead posit that, given the inevitability of the domination of global capital, political oscillation represents the only freedom from dogmatism. By obscuring the class interests behind the Bush administration's attack on democracy and, instead, turning the issue of democracy from the struggle for economic justice to the impossibility of textual representation, Butler erases the basis for collective political praxis and, in its place, substitutes a "fluctuating" and "flexible" post-politics that, not accidentally, always reiterates in a culturally radical idiom the clichés of the powerful. Butler's call for a "post-national" politics repeats, in a post-bureaucratic language, the policies of the G-8, which favor a world-without-borders in which capital can travel without any restrictions. "Guantánamo Limbo" normalizes social contradictions and states that the U.S. attack on Afghanistan is not an effect of competing class interests (over who will own, control, and profit from the natural and social resources in the Middle East and central Asia), but rather the after-effect of outdated discourses and fixed ideas. In other words, there would be a more "just" war in Afghanistan if the combatants were just recognized as "combatants". Despite rhetorical distancing, Butler's left reading of the "war" echoes the theories of such right-wing writers as Samuel Huntington (The Clash of Civilizations and the Remaking of World Order) by getting rid of class and treating "war" as a purely cultural matter—a view that one can find in much more direct form at "freerepublic.com" every day of the week.

**Capitalism is the root cause of exploitation, war and ecological devastation**

John Bellamy Foster, University of Oregon, “The Ecology of Destruction,” MONTHLY REVIEW, February 2007, [www.monthlyreview.org/0207jbf.htm](http://www.monthlyreview.org/0207jbf.htm)

My intention here is not of course to recount Pontecorvo’s entire extraordinary film, but to draw out some important principles from this allegory that will help us to understand capitalism’s relation to nature. Joseph Schumpeter once famously praised capitalism for its “creative destruction.”2 But this might be better seen as the system’s destructive creativity. Capital’s endless pursuit of new outlets for class-based accumulation requires for its continuation the destruction of both pre-existing natural conditions and previous social relations. Class exploitation, imperialism, war, and ecological devastation are not mere unrelated accidents of history but interrelated, intrinsic features of capitalist development. There has always been the danger, moreover, that this destructive creativity would turn into what István Mészáros has called the “destructive uncontrollability” that is capital’s ultimate destiny. The destruction built into the logic of profit would then take over and predominate, undermining not only the conditions of production but also those of life itself. Today it is clear that such destructive uncontrollability has come to characterize the entire capitalist world economy, encompassing the planet as a whole.3

**Our alternative is to reject the affirmative – hollowing out structures of capitalism is key to prevent extinction**

Herod 4 (James, Getting Free, <http://site.www.umb.edu/faculty/salzman_g/Strate/GetFre/06.htm>)

It is time to try to describe, at first abstractly and later concretely, a strategy for destroying capitalism. This strategy, at its most basic, calls for pulling time, energy, and resources out of capitalist civilization and putting them into building a new civilization. The image then is one of emptying out capitalist structures, hollowing them out, by draining wealth, power, and meaning out of them until there is nothing left but shells. This is definitely an aggressive strategy. It requires great militancy, and constitutes an attack on the existing order. The strategy clearly recognizes that capitalism is the enemy and must be destroyed, but it is not a frontal attack aimed at overthrowing the system, but an inside attack aimed at gutting it, while simultaneously replacing it with something better, something we want. Thus capitalist structures (corporations, governments, banks, schools, etc.) are not seized so much as simply abandoned. Capitalist relations are not fought so much as they are simply rejected. We stop participating in activities that support (finance, condone) the capitalist world and *start participating* in activities that build a new world while simultaneously undermining the old. We create a new pattern of social relations alongside capitalist relations and then we continually build and strengthen our new pattern while doing every thing we can to weaken capitalist relations. In this way our new democratic, non-hierarchical, non-commodified relations can eventually overwhelm the capitalist relations and force them out of existence. This is how it has to be done. This is a plausible, realistic strategy. To think that we could create a whole new world of decent social arrangements overnight, in the midst of a crisis, during a so-called revolution, or during the collapse of capitalism, is foolhardy. Our new social world must grow within the old, and in opposition to it, until it is strong enough to dismantle and abolish capitalist relations. Such a revolution will never happen automatically, blindly, determinably, because of the inexorable, materialist laws of history. It will happen, and only happen, because we want it to, and because we know what we’re doing and know how we want to live, and know what obstacles have to be overcome before we can live that way, and know how to distinguish between our social patterns and theirs. But we must not think that the capitalist world can simply be ignored, in a live and let live attitude, while we try to build new lives elsewhere. (There *is* no elsewhere.) There is at least one thing, wage-slavery, that we can’t simply stop participating in (but even here there are ways we can chip away at it). Capitalism must be explicitly refused and replaced by something else. This constitutes War, but it is not a war in the traditional sense of armies and tanks, but a war fought on a daily basis, on the level of everyday life, by millions of people. It is a war nevertheless because the accumulators of capital will use coercion, brutality, and murder, as they have always done in the past, to try to block any rejection of the system. They have always had to force compliance; they will not hesitate to continue doing so. Nevertheless, there are many concrete ways that individuals, groups, and neighborhoods can gut capitalism, which I will enumerate shortly. We must always keep in mind how we became slaves; then we can see more clearly how we can cease being slaves. We were forced into wage-slavery because the ruling class slowly, systematically, and brutally destroyed our ability to live autonomously. By driving us off the land, changing the property laws, destroying community rights, destroying our tools, imposing taxes, destroying our local markets, and so forth, we were forced onto the labor market in order to survive, our only remaining option being to sell, for a wage, our ability to work. It’s quite clear then how we can overthrow slavery. We must reverse this process. We must begin to reacquire the ability to live without working for a wage or buying the products made by wage-slaves (that is, we must get free from the labor market and the way of living based on it), and embed ourselves instead in cooperative labor and cooperatively produced goods. Another clarification is needed. This strategy does not call for reforming capitalism, for changing capitalism into something else. It calls for replacing capitalism, totally, with a new civilization. This is an important distinction, because capitalism has proved impervious to reforms, as a system. We can sometimes in some places win certain concessions from it (usually only temporary ones) and win some (usually short-lived) improvements in our lives as its victims, but we cannot reform it piecemeal, as a system. Thus our strategy of gutting and eventually destroying capitalism requires at a minimum a totalizing image, an awareness that we are attacking an entire way of life and replacing it with another, and not merely reforming one way of life into something else. Many people may not be accustomed to thinking about entire systems and social orders, but everyone knows what a lifestyle is, or a way of life, and that is the way we should approach it. The thing is this: in order for capitalism to be destroyed millions and millions of people must be dissatisfied with their way of life. They must *want something else* and see certain existing things as obstacles to getting what they want. It is not useful to think of this as a new ideology. It is not merely a belief-system that is needed, like a religion, or like Marxism, or Anarchism. Rather it is a new prevailing vision, a dominant desire, an overriding need. What must exist is a pressing desire to live a certain way, and not to live another way. If this pressing desire were a desire to live free, to be autonomous, to live in democratically controlled communities, to participate in the self-regulating activities of a mature people, then capitalism could be destroyed. Otherwise we are doomed to perpetual slavery and possibly even to extinction.

### Case

#### Next, the “value to life” debate

#### 1. There’s always a value to life, that meaning is determined by the individual, and survival is a prerequisite to determining individual meaning

#### B) Its paternalistic and insulting for them to determine what the value of life is for everyone else—they don’t have a god’s eye view of the world

#### 2. Their warrant is wrong—the state will not assign zero value to any lives, it’s just a bad slippery slope argument, two reasons

#### A.) Democracy and economic liberalization checks—we’re a long way from running over people with tanks, and the large-scale genocides that have occurred have only been from totalitarian regimes

**O’Kane 97** “Modernity, the Holocaust, and politics”, Economy and Society, February, ebsco

Chosen policies cannot be relegated to the position of immediate condition (Nazis in power) in the explanation of the Holocaust. Modern bureaucracy is not ‘intrinsically capable of genocidal action’ (Bauman 1989: 106). Centralized state coercion has no natural move to terror. In the explanation of modern genocides it is chosen policies which play the greatest part, whether in effecting bureaucratic secrecy, organizing forced labour, implementing a system of terror, harnessing science and technology or introducing extermination policies, as means and as ends. As Nazi Germany and Stalin’s USSR have shown, furthermore, those chosen policies of genocidal government turned away from and not towards modernity. The choosing of policies, however, is not independent of circumstances. An analysis of the history of each case plays an important part in explaining where and how genocidal governments come to power and analysis of political institutions and structures also helps towards an understanding of the factors which act as obstacles to modern genocide. But it is not just political factors which stand in the way of another Holocaust in modern society. Modern societies have not only pluralist democratic political systems but also economic pluralism where workers are free to change jobs and bargain wages and where independent firms, each with their own independent bureaucracies, exist in competition with state-controlled enterprises. In modern societies this economic pluralism both promotes and is served by the open scientific method. By ignoring competition and the capacity for people to move between organizations whether economic, political, scientific or social, Bauman overlooks crucial but also very ‘ordinary and common’ attributes of truly modern societies. It is these very ordinary and common attributes of modernity which stand in the way of modern genocides.

#### B.) Even if they’re right, the impact is not extinction—even if the state kills some people, the worst genocides in history were under nazism and communism and didn’t exceed tens of millions—nuclear extinction clearly outweighs

#### 3. Preserving existence is our primary obligation and precedes value to life questions.

Wapner ’03 (Paul, associate professor and director of the Global Environmental Policy Program at American University, “Leftist Criticism of ‘Nature’ Environmental Protection in a Postmodern Age,” Dissent, <http://www.dissentmagazine.org/menutest/archives/2003/wi03/wapner.htm>)

All attempts to listen to nature are social constructions-except one. Even the most radical postmodernist must acknowledge the distinction between physical existence and non-existenceWe can't ascribe meaning to that which doesn't appear. What doesn't exist can manifest no character. Put differently, yes, the postmodernist should rightly worry about interpreting nature's expressions. And all of us should be wary of those who claim to speak on nature's behalf (including environmentalists who do that). But we need not doubt the simple idea that a prerequisite of expression is existence. This in turn suggests that preserving the nonhuman world-in all its diverse embodiments-must be seen by eco-critics as a fundamental good. Eco-critics must be supporters, in some fashion, of environmental preservation.  Postmodernists reject the idea of a universal good. They rightly acknowledge the difficulty of identifying a common value given the multiple contexts of our value-producing activity. In fact, if there is one thing they vehemently scorn, it is the idea that there can be a value that stands above the individual contexts of human experience. Such a value would present itself as a metanarrative and, as Jean-François Lyotard has explained, postmodernism is characterized fundamentally by its "incredulity toward meta-narratives."  Nonetheless, I can't see how postmodern critics can do otherwise than accept the value of preserving the nonhuman world. The nonhuman is the extreme "other"; it stands in contradistinction to humans as a species. In understanding the constructed quality of human experience and the dangers of reification, postmodernism inherently advances an ethic of respecting the "other." At the very least, respect must involve ensuring that the "other" actually continues to exist. In our day and age, this requires us to take responsibility for protecting the actuality of the nonhuman. Instead, however, we are running roughshod over the earth's diversity of plants, animals, and ecosystems. Postmodern critics should find this particularly disturbing. If they don't, they deny their own intellectual insights and compromise their fundamental moral commitment.

#### Extinction outweighs everything else—there is no recovering from it

Anders **Sandberg** et al., James Martin Research Fellow, Future of Humanity Institute, Oxford University, "How Can We Reduce the Risk of Human Extinction?" BULLETIN OF THE ATOMIC SCIENTISTS, 9-9-**08**, http://www.thebulletin.org/web-edition/features/how-can-we-reduce-the-risk-of-human-extinction, accessed 5-2-10.

Such remote risks may seem academic in a world plagued by immediate problems, such as global poverty, HIV, and climate change. But as intimidating as these problems are, they do not threaten human existence. In discussing the risk of nuclear winter, Carl Sagan emphasized the astronomical toll of human extinction: A nuclear war imperils all of our descendants, for as long as there will be humans. Even if the population remains static, with an average lifetime of the order of 100 years, over a typical time period for the biological evolution of a successful species (roughly ten million years), we are talking about some 500 trillion people yet to come. By this criterion, the stakes are one million times greater for extinction than for the more modest nuclear wars that kill "only" hundreds of millions of people. There are many other possible measures of the potential loss--including culture and science, the evolutionary history of the planet, and the significance of the lives of all of our ancestors who contributed to the future of their descendants. Extinction is the undoing of the human enterprise. There is a discontinuity between risks that threaten 10 percent or even 99 percent of humanity and those that threaten 100 percent. For disasters killing less than all humanity, there is a good chance that the species could recover. If we value future human generations, then reducing extinction risks should dominate our considerations. Fortunately, most measures to reduce these risks also improve global security against a range of lesser catastrophes, and thus deserve support regardless of how much one worries about extinction.

# 2NC

## Restraint

### ER Solv: A2 “Rollback—Future Prez”

#### No rollback- inertia, desire to keep congress from interfering

**Brecher, 2012**. (Aaron, Cyberattacks and the Covert Action Statute: Toward a Domestic Legal Framework for Offensive Cyberoperations, 111 Michigan Law Review, No 3, p 423, L/N)

The executive might also issue the proposed order, even though it would limit her freedom in some ways, because of the possible benefits of constraining future administrations or preempting legislative intervention. [n149](http://www.lexisnexis.com.ezp1.lib.umn.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1374611534093&returnToKey=20_T17845089181&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.59498.56057527503#n149) For example, in this context, an administration may choose to follow the finding and reporting requirements in order to convince Congress that legislative intervention is unnecessary for proper oversight. This is acceptable if the covert action regime is in fact adequate on its own. Moreover, if greater statutory control over cyberattacks is needed, the information shared with Congress may give Congress the tools and knowledge of the issue necessary to craft related legislation. [n150](http://www.lexisnexis.com.ezp1.lib.umn.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1374611534093&returnToKey=20_T17845089181&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.59498.56057527503#n150) Additionally, while executive orders are hardly binding, the inertia following adoption of an order may help constrain future administrations, which may be more or less trustworthy than the current one. Creating a presumption through an executive order also establishes a stable legal framework for cyberattacks that allows law to follow policy in this new field, and permits decisionmakers to learn more about the nature of cyberoperations before passing detailed statutes that may result in unintended consequences.

Executive orders are permanent

Duncan, Associate Professor of Law at Florida A&M, Winter 2010

(John C., “A Critical Consideration of Executive Orders,” 35 Vt. L. Rev. 333, Lexis)

The trajectory of the evolution of the executive power in the United States, as seen through the prism of the growing edifice of executive orders have become increasingly formal and permanent. The evolution of executive power in the United States has shifted executive orders from mere legislative interpretation to ancillary legislation. **Executive orders continue to influence subsequent presidents**. The elaboration of executive order promulgation, as an autopoietic process was necessary to the very existence of presidential power. That is, the mechanisms for formalizing executive orders have always existed in the executive power in a government whose legitimacy lives in written pronouncements treated as delicate, sacred, and worth protecting at all cost. **Part of this formalization is** a consequence of **the reverence for precedent**. Thus, **prior presidents influence future presidents**, less because future presidents wish to mimic their predecessors, but more **because future presidents act within an edifice their predecessors have already erected**. Thus, the growth and elaboration of an ever more robust structure of executive orders resembles an autopoietic process. n561

### ER: A2 “Theory—ER Bad”

#### Counterplan is legitimate –

#### 1. Tests “statutory” and “judicial” – executive action is a different mechanism. Its non-topical, core ground, and something they should be prepared for – that’s Duncan

#### 2. Inter-branch politics are crucial in the context of war powers – it's the reason restrictions exist – makes the counterplan educational and necessary ground

Jenkins 10 (David – Assistant Professor of Law, University of Copenhagen, “Judicial Review Under a British War Powers Act”, Vanderbilt Journal of Transnational Law, May, 43 Vand. J. Transnat'l L. 611, lexis)

In this pragmatic way, the Constitution attempts to balance the efficiency of centralized, executive military command with heightened democratic accountability through legislative debate, scrutiny, and approval. n28 Therefore, despite the Constitution's formal division of war powers between the executive and the legislature, disputes over these powers in the U.S. are usually resolved politically rather than judicially. n29 This constitutional arrangement implicitly acknowledges that both political branches possess certain institutional qualities suited to war-making. n30 These include the dispatch, decisiveness, and discretion of the executive with the open deliberation of the legislature and localized political accountability of its members, which are virtues that the slow, case specific, and electorally isolated courts do not possess. n31 The open, politically contestable allocation of [\*618] war powers under the Constitution not only permits differing and perhaps conflicting interpretations of the legal demarcations of branch authority but also accommodates differing normative preferences for determining which values and which branches are best-suited for war-making. n32 Furthermore, this system adapts over time in response to inter-branch dynamics and shifting value judgments that are themselves politically contingent. Thus, the American war powers model is an intrinsically political - not legal - process for adjusting and managing the different institutional capabilities of the legislative and executive branches to substantiate and reconcile accountability and efficiency concerns. A deeper understanding of why this might be so, despite the judiciary's power to invalidate even primary legislation, can inform further discussions in the United Kingdom about the desirability and advisability of putting the Crown's ancient war prerogative on a statutory footing.

#### 3. Process key to education

Schuck 99 (Peter H., Professor, Yale Law School, and Visiting Professor, New York Law School, Spring (“Delegation and Democracy” – Cardozo Law Review) http://www.constitution.org/ad\_state/schuck.htm)

God and the devil are in the details of policymaking, as they are in most other important things—and the details are to be found at the agency level. This would remain true, moreover, even if the nondelegation doctrine were revived and statutes were written with somewhat greater specificity, for many of the most significant impacts on members of the public would still be indeterminate until the agency grappled with and defined them. Finally, the agency is often the site in which public participation is most effective. This is not only because the details of the regulatory impacts are hammered out there. It is also because the agency is where the public can best educate the government about the true nature of the problem that Congress has tried to address. Only the interested parties, reacting to specific agency proposals for rules or other actions, possess (or have the incentives to ac-quire) the information necessary to identify, explicate, quantify, and evaluate the real-world consequences of these and alternative proposals. Even when Congress can identify the first-order effects of the laws that it enacts, these direct impacts seldom exhaust the laws’ policy consequences. Indeed, first-order effects of policies usually are less significant than the aggregate of more remote effects that ripple through a complex, interrelated, opaque society. When policies fail, it is usually not because the congressional purpose was misunderstood. More commonly, they fail because Congress did not fully appreciate how the details of policy implementation would confound its purpose. Often, however, this knowledge can only be gained through active public participation in the policymaking process at the agency level where these implementation issues are most clearly focused and the stakes in their correct resolution are highest.

#### 4. Fair & Predictable – they can defend “congress/judiciary key”, our net-benefit proves it’s not trivial, and it’s at the heart of the topic

#### 5. Not a voter – reject the argument, not the team

## Legitimacy DA

### Compliance Lx: Detention 2NC

#### Obama will defy the court’s attempt to overrule his indefinite detention policy – he perceives it as essential tools to fight against terrorism, non compliance undermines legitimacy and triggers backlash – that’s Devins

#### That backlash independently destroys legitimacy – undermines enforcement of decisions

Andrew D. Martin 1, Prof of Political Science at Washington University 2001. Statuatory Battles and Constitutional Wars: Congress and the Supreme Court

But the large policy payoff in the constitutional cases. What does the ability of the President and Congress to attack through overrides or other means constitutional court decisions imply in terms of the cost of the justices bear? If an attack succeeds and the court does not back down, it effectively removes the court from the policy game and may seriously or, even irrevocably harm its reputation, credibility, and legitimacy. Indeed, such an attack would effectively remove the court from policy making, thus incurring an infinite cost. With no constitutional prescription for judicial review, this power is vulnerable, and would be severely damaged if congress and the president were effective in attack on the Court. But even if the attack is unsuccessful, the integrity of the court may be damaged, for the assault may compromise its ability to make future constitutional decisions and, thus, more long-lasting policy. One does not have to peer as far back as scott v. sandford to find examples; Bush v. Gore (2000, U.S.) may provide one. To be sure, the new President and Congress did not attack the decision, but other members of government did of course, unsuccessfully at least in terms of the ruling’s impact. Yet, there seems little doubt that the critics (not to mention the decision itself) caused some major damage to the reputation of the court, the effects of which the justices may feel in the not-so-distant future.

#### The court is a paper tiger when it comes to detention – no enforcement

Wheeler 9—Professor of political science @ Ball State University [Darren A. Wheeler, “Checking Presidential Detention Power in the War on Terror: What Should We Expect from the Judiciary?” Presidential Studies Quarterly, December 2009, pg. 677–700]

However, a closer examination of the process that followed the Supreme Court's detainee decisions reveals that the Bush administration was actually quite adept at retaining significant power over detainee matters (Ball 2007; Fisher 2008; Schwarz and Huq 2007; Wheeler 2008). Consequently, it is possible to make the argument that, despite media and Bush administration rhetoric to the contrary, the Supreme Court actually serves as a poor check on presidential detention power in the war on terror. A significant body of academic literature, amassed over a considerable period of time, lends support to this alternative argument, as these authors conclude that the courts are generally a poor check on executive war powers (Fisher 2005; Henkin 1996; Howell 2003; Koh 1990; Rossiter and Longaker 1976; Scigliano 1971). Which view on judicial power in the war on terror is accurate? Is the Supreme Court severely limiting the president's detention powers, or are the courts merely a paper tiger—at worst, an inconvenience to presidential administrations determined to retain control over detainees in the war on terror? This article examines the question, does the Supreme Court serve as a significant check on presidential detention power in the war on terror? It concludes that there are important institutional and political factors that mitigate the Court's ability to be a significant check on presidential detention power in this context.

## Case

### Life Has Value: Ext #1—Life Always Has Value

#### NEXT, the value to life debate

#### FIRST, their fundamental claim is ridiculous—meaning is determined by individuals, and individuals cannot make judgements about meaning unless they are alive… it is paternalistic for them to assume that they can judge whether the lives of others are meaningful

#### AND, life always have meaning, even when we are suffering

Victor **Frankl**, Professor of Neurology and Psychiatry at the University of Vienna, Man’s Search for Meaning, 19**46**, p. 104

But I did not only talk of the future and the veil which was drawn over it. I also mentioned the past; all its joys, and how its light shone even in the present darkness. Again I quoted a poet—to avoid sounding like a preacher myself—who had written, “Was Dii erlebst, k,ann keme Macht der Welt Dir rauben.” (What you have experienced, no power on earth can take from you.) Not only our experiences, but all we have done, whatever great thoughts we may have had, and all we have suffered, all this is not lost, though it is past; we have brought it into being. Having been is also a kind of being, and perhaps the surest kind. Then I spoke of the many opportunities of giving life a meaning. I told my comrades (who lay motionless, although occasionally a sigh could be heard) that human life, under any circumstances, never ceases to have a meaning, and that this infinite meaning of life includes suffering and dying, privation and death. I asked the poor creatures who listened to me attentively in the darkness of the hut to face up to the seriousness of our position. They must not lose hope but should keep their courage in the certainty that the hopelessness of our struggle did not detract from its dignity and its meaning. I said that someone looks down on each of us in difficult hours—a friend, a wife, somebody alive or dead, or a God—and he would not expect us to disappoint him. He would hope to find us suffering proudly—not miserably—knowing how to die.

#### AND, people define their own value to life

Schwartz 04 [“A Value to Life: Who Decides and How?” www.fleshandbones.com/readingroom/pdf/399.pdf]

Those who choose to reason on this basis hope that if the quality of a life can be measured then the answer to whether that life has value to the individual can be determined easily. This raises special problems, however, because the idea of quality involves a value judgement, and value judgements are, by their essence, subject to indeterminate relative factors such as preferences and dislikes. Hence, quality of life is difficult to measure and will vary according to individual tastes, preferences and aspirations. As a result,

no general rules or principles can be asserted that would simplify decisions about the value of a life based on its quality. Nevertheless, quality is still an essential criterion in making such decisions because it gives legitimacy to the possibility that rational, autonomous persons can decide for themselves that their own lives either are worth, or are no longer worth, living. To disregard this possibility would be to imply that no individuals can legitimately make such value judgements about their own lives and, if nothing else, that would be counterintuitive. 2 In our case, Katherine Lewis had spent 10 months considering her decision before concluding that her life was no longer of a tolerable quality. She put a great deal of effort into the decision and she was competent when she made it. Who would be better placed to make this judgement for her than Katherine herself? And yet, a doctor faced with her request would most likely be uncertain about whether Katherine’s choice is truly in her best interest, and feel trepidation about assisting her. We need to know which considerations can be used to protect the patient’s interests. The quality of life criterion asserts that there is a difference between the type of life and the fact of life. This is the primary difference between it and the sanctity criterion discussed on page 115. Among quality of life considerations rest three assertions: 1. there is relative value to life 2. the value of a life is determined subjectively 3. not all lives are of equal value. Relative value The first assertion, that life is of relative value, could be taken in two ways. In one sense, it could mean that the value of a given life can be placed on a scale and measured against other lives. The scale could be a social scale, for example, where the contributions or potential for contribution of individuals are measured against those of fellow citizens. Critics of quality of life criteria frequently name this as a potential slippery slope where lives would be deemed worthy of saving, or even not saving, based on the relative social value of the individual concerned. So, for example, a mother of four children who is a practising doctor could be regarded of greater value to the community than an unmarried accountant. The concern is that the potential for discrimination is too high. Because of the possibility of prejudice and injustice, supporters of the quality of life criterion reject this interpersonal construction in favour of a second, more personalized, option. According to this interpretation, the notion of relative value is relevant not between individuals but within the context of one person’s life and is measured against that person’s needs and aspirations. So Katherine would base her decision on a comparison between her life before and after her illness. The value placed on the quality of a life would be determined by the individual depending on whether he or she believes the current state to be relatively preferable to previous or future states and whether he or she can foresee controlling the circumstances that make it that way. Thus, the life of an athlete who aspires to participate in the Olympics can be changed in relative value by an accident that leaves that person a quadriplegic. The athlete might decide that the relative value of her life is diminished after the accident, because she perceives her desires and aspirations to be reduced or beyond her capacity to control. However, if she receives treatment and counselling her aspirations could change and, with the adjustment, she could learn to value her life as a quadriplegic as much or more than her previous life. This illustrates how it is possible for a person to adjust the values by which they appraise their lives. For Katherine Lewis, the decision went the opposite way and she decided that a life of incapacity and constant pain was of relatively low value to her. It is not surprising that the most vociferous protesters against permitting people in Katherine’s position to be assisted in terminating their lives are people who themselves are disabled. Organizations run by, and that represent, persons with disabilities make two assertions in this light. First, they claim that accepting that Katherine Lewis has a right to die based on her determination that her life is of relatively little value is demeaning to all disabled people, and implies that any life with a severe disability is not worth Write a list of three things that make living. Their second assertion is that with proper help, over time Katherine would be able to transform her personal outlook and find satisfaction in her life that would increase its relative value for her. The first assertion can be addressed by clarifying that the case of Katherine Lewis must not be taken as a general rule. Deontologists, who are interested in knowing general principles and duties that can be applied across all cases would not be very satisfied with this; they would prefer to be able to look to duties that would apply in all cases. Here, a case-based, context-sensitive approach is better suited. Contextualizing would permit freedom to act within a particular context, without the implication that the decision must hold in general. So, in this case, Katherine might decide that her life is relatively valueless. In another case, for example that of actor Christopher Reeve, the decision to seek other ways of valuing this major life change led to him perceiving his life as highly valuable, even if different in value from before the accident that made him a paraplegic. This invokes the second assertion, that Katherine could change her view over time. Although we recognize this is possible in some cases, it is not clear how it applies to Katherine. Here we have a case in which a rational and competent person has had time to consider her options and has chosen to end her life of suffering beyond what she believes she can endure. Ten months is a long time and it will have given her plenty of opportunity to consult with family and professionals about the possibilities open to her in the future. Given all this, it is reasonable to assume that Katherine has made a well-reasoned decision. It might not be a decision that everyone can agree with but if her reasoning process can be called into question then at what point can we say that a decision is sound? She meets all the criteria for competence and she is aware of the consequences of her decision. It would be very difficult to determine what arguments could truly justify interfering with her choice. The second assertion made by supporters of the quality of life as a criterion for decisionmaking is closely related to the first, but with an added dimension. This assertion suggests that the determination of the value of the quality of a given life is a subjective determination to be made by the person experiencing that life. The important addition here is that the decision is a personal one that, ideally, ought not to be made externally by another person but internally by the individual involved. Katherine Lewis made this decision for herself based on a comparison between two stages of her life. So did James Brady. Without this element, decisions based on quality of life criteria lack salient information and the patients concerned cannot give informed consent. Patients must be given the opportunity to decide for themselves whether they think their lives are worth living or not. To ignore or overlook patients’ judgement in this matter is to violate their autonomy and their freedom to decide for themselves on the basis of relevant information about their future, and comparative consideration of their past. As the deontological position puts it so well, to do so is to violate the imperative that we must treat persons as rational and as ends in themselves.

### Life Has Value: Ext #2—State Won’t Kill/Extinction Trumps

#### NEXT, their internal link evidence misrepresents the dangers of state calculation—lives will neer be assigned zero value because of the institutional checks imposed by democracy and economic liberalization… their impact only occurs in a world of totalitarian regimes

#### AND, even if they are correct, the impact is NOT extinction—the state will surely keep some people alive, while an extinction-level event will clearly ill everyone

#### And,, turn-- n“o value to life” rhetoric undermines hope for the future. It creates false hope of liberation from meaninglessness without addressing what we are living for. Vote to affirm intrinsic value to existence [THIS EVIDENCE IS GENDER PARAPHRASED]

Victor Frankl, Professor of Neurology and Psychiatry at the University of Vienna, Man’s Search for Meaning, 1946, p. 96-98

I once had a dramatic demonstration of the close link between the loss of faith in the future and this dangerous giving up. F—, my senior block warden, a fairly well-known composer and librettist, confided in me one day: “I would like to tell you something, Doctor. I have had a strange dream. A voice told me that I could wish for something, that I should only say what I wanted to know, and all my questions would be answered. What do you think I asked? That I would like to know when the war would be over for me. You know what I mean, Doctor—for me! I wanted to know when we, when our camp, would be liberated and our sufferings come to an end.” “And when did you have this dream?” I asked. “In February, 1945,” he answered. It was then the beginning of March. “What did your dream voice answer?” Furtively he whispered to me, “March thirtieth.” When F— told me about his dream, he was still full of hope and convinced that the voice of his dream would be right. But as the promised day drew nearer, the war news which reached our camp made it appear very unlikely that we would be free on the promised date. On March twenty-ninth, F— suddenly became ill and ran a high temperature. On March thirtieth, the day his prophecy had told him that the war and suffering would be over for him, he became delirious and lost consciousness. On March thirty-first, he was dead. To all outward appearances, he had died of typhus. Those who know how close the connection is between the state of mind of a man—his courage and hope, or lack of them—and the state of immunity of his body will understand that the sudden loss of hope and courage can have a deadly effect. The ultimate cause of my friend’s death was that the expected liberation did not come and he was severely disappointed. This suddenly lowered his body’s resistance against the latent typhus infection. His faith in the future and his will to live had become paralyzed and his body fell victim to illness—and thus the voice of his dream was right after all. The observations of this one case and the conclusion drawn from them are in accordance with something that was drawn to my attention by the chief doctor of our concentration camp. The death rate in the week between Christmas, 1944, and New Year’s, 1945, increased in camp beyond all previous experience. In his opinion, the explanation for this increase did not lie in the harder working conditions or the deterioration of our food supplies or a change of weather or new epidemics. It was simply that the majority of the prisoners had lived in the naive hope that they would be home again by Christmas. As the time drew near and there was no encouraging news, the prisoners lost courage and disappointment overcame them. This had a dangerous influence on their powers of resistance and a great number of them died. As we said before, any attempt to restore a man’s inner strength in the camp had first to succeed in showing him some future goal. Nietzsche’s words, “[One] He who has a why to live for can bear with almost any how,” could be the guiding motto for all psychotherapeutic and psychohygienic efforts regarding prisoners. Whenever there was an opportunity for it, one had to give them a why—an aim—for their lives, in order to strengthen them to bear the terrible how of their existence. Woe to him who saw no more sense in his life, no aim, no purpose, and therefore no point in carrying on. He was soon lost. The typical reply with which such a man rejected all encouraging arguments was, “I have nothing to expect from life any more.” What sort of answer can one give to that? What was really needed was a fundamental change in our attitude toward life. We had to learn ourselves and, furthermore, we had to teach the despairing men, that it did not really matter what we expected from life, but rather what life expected from us. We needed to stop asking about the meaning of life, and instead to thisnk of ourselves as those who were being questioned by life—daily and hourly. Our answer must consist, not in talk and meditation, but in right action and in right conduct. Life ultimately means taking the responsibility to find the right answer to its problems and to fulfill the tasks which it constantly sets for each individual.

#### More evidence—liberal democracy solves their impacts

Edward Ross **Dickinson** (Professor at University of Cincinnati) 20**04** “Biopolitics, Fascism, Democracy: Some Reflections on Our Discourse About “Modernity,” Central European History, vol. 37, no. 1, March

In an important programmatic statement of 1996 Geoff Eley celebrated the fact that Foucault’s ideas have “fundamentally directed attention away from institutionally centered conceptions of government and the state . . . and toward a dispersed and decentered notion of power and its ‘microphysics.’”48 The “broader, deeper, and less visible ideological consensus” on “technocratic reason and the ethical unboundedness of science” was the focus of his interest.49 But the “power-producing effects in Foucault’s ‘microphysical’ sense” (Eley) of the construction of social bureaucracies and social knowledge, of “an entire institutional apparatus and system of practice” ( Jean Quataert), simply do not explain Nazi policy.50 The destructive dynamic of Nazism was a product not so much of a particular modern set of ideas as of a particular modern political structure, one that could realize the disastrous potential of those ideas. What was critical was not the expansion of the instruments and disciplines of biopolitics, which occurred everywhere in Europe. Instead, it was the principles that guided how those instruments and disciplines were organized and used, and the external constraints on them. In National Socialism, biopolitics was shaped by a totalitarian conception of social management focused on the power and ubiquity of the völkisch state. In democratic societies, biopolitics has historically been constrained by a rights-based strategy of social management. This is a point to which I will return shortly. For now, the point is that what was decisive was actually politics at the level of the state. A comparative framework can help us to clarify this point. Other states passed compulsory sterilization laws in the 1930s — indeed, individual states in the United States had already begun doing so in 1907. Yet they did not proceed to the next steps adopted by National Socialism — mass sterilization, mass “eugenic” abortion and murder of the “defective.” Individual figures in, for example, the U.S. did make such suggestions. But neither the political structures of democratic states nor their legal and political principles permitted such policies actually being enacted. Nor did the scale of forcible sterilization in other countries match that of the Nazi program. I do not mean to suggest that such programs were not horrible; but in a democratic political context they did not develop the dynamic of constant radicalization and escalation that characterized Nazi policies.

### Life Has Value: Ext #3—Existence Precedes Essence

#### NEXT, existence precedes essence—the best way we can affirm a value to life is to preserve life, which is a prerequisite to the value questions they address—that’s Wapner

Wapner ’03 (Paul, associate professor and director of the Global Environmental Policy Program at American University, “Leftist Criticism of ‘Nature’ Environmental Protection in a Postmodern Age,” Dissent, <http://www.dissentmagazine.org/menutest/archives/2003/wi03/wapner.htm>)

All attempts to listen to nature are social constructions-except one. Even the most radical postmodernist must acknowledge the distinction between physical existence and non-existenceWe can't ascribe meaning to that which doesn't appear. What doesn't exist can manifest no character. Put differently, yes, the postmodernist should rightly worry about interpreting nature's expressions. And all of us should be wary of those who claim to speak on nature's behalf (including environmentalists who do that). But we need not doubt the simple idea that a prerequisite of expression is existence. This in turn suggests that preserving the nonhuman world-in all its diverse embodiments-must be seen by eco-critics as a fundamental good. Eco-critics must be supporters, in some fashion, of environmental preservation.  Postmodernists reject the idea of a universal good. They rightly acknowledge the difficulty of identifying a common value given the multiple contexts of our value-producing activity. In fact, if there is one thing they vehemently scorn, it is the idea that there can be a value that stands above the individual contexts of human experience. Such a value would present itself as a metanarrative and, as Jean-François Lyotard has explained, postmodernism is characterized fundamentally by its "incredulity toward meta-narratives."  Nonetheless, I can't see how postmodern critics can do otherwise than accept the value of preserving the nonhuman world. The nonhuman is the extreme "other"; it stands in contradistinction to humans as a species. In understanding the constructed quality of human experience and the dangers of reification, postmodernism inherently advances an ethic of respecting the "other." At the very least, respect must involve ensuring that the "other" actually continues to exist. In our day and age, this requires us to take responsibility for protecting the actuality of the nonhuman. Instead, however, we are running roughshod over the earth's diversity of plants, animals, and ecosystems. Postmodern critics should find this particularly disturbing. If they don't, they deny their own intellectual insights and compromise their fundamental moral commitment.

#### Security is a prerequisite to values

Erika **George 95** 30 HARVARD CIVIL RIGHTS CIVIL LIBERTIES LAW REVIEW 577, Summer, lexis

While the Pratt Court's decision falls squarely within the confines of existing Fourth Amendment cases such as Skinner n102 or Silverman n103 (which govern an individual's privacy interest), the level of abstraction employed in the decision ignores, and thereby devalues, the realities of public housing residents. Those unfortunate enough to inhabit the "other side of town" do not enjoy a level of security comparable to residents of "Gold Coast high-rises." n104 That individuals must, in addition to civil liberties, have basic needs met is well established. n105 Security and freedom from fear are among the  [\*592]  most elemental of human needs, n106 and they must be acquired before social or moral needs may be actualized. Abraham Maslow argues that an individual cannot begin to concern herself with higher social and moral needs until her very basic material needs of life are met. n107 A good society, in Maslow's view, is one that permits the highest purposes of human existence to emerge by satisfying all basic needs. n108 As evidenced by the Pratt litigation, negative notions of the content of freedom can impede the realization of basic human needs. Another scholar, John Galtung, argues that "a constitutional scheme of liberties cannot reasonably or lawfully blind itself to the distributive relation of the liberty interests that it cherishes." n109 He offers the insight that "[a] constitution is a rule of law. To speak of liberties established by a rule of law is to speak of a general scheme of liberties for all; it is to invite the question of distribution." n110 The Pratt Court's reasoning dodges this notion of distribution. It is an issue that if addressed directly would require the Pratt Court to reevaluate its formalistic protections of liberty and to question the content of what classical liberalism protects. n111 The Pratt Court ignores the reality that poor people's ability to exercise and enjoy rights is severely curtailed by the conditions under which they live. Society's failure to meet basic economic and social rights or needs diminishes poor citizens' capacity to exercise the civil and political rights Pratt strains to protect. Social and economic needs are inextricably linked to civil and political rights and require concurrent fulfillment. By focusing first and fundamentally on what the residents of public housing have a right to be free from, namely governmental intrusion, the court neglected precisely what public housing residents are entitled to, freedom to flourish. The lack of one of life's most basic necessities -- security -- prevents residents of public housing from experiencing substantive freedom.

### Extinction Outweighs: S/L

#### NEXT, extinction ethics

#### The threat of extinction changes the rules of the game—our Sandberg—from an Oxford scholar—says that risks that threaten to destroy everyone must be prioritized over 99% risks because we can always recover from them

#### And, Extinction destroys all human aspiration – Claims to outweigh it destroy value to life

Schell 82 (Jonathan, Visiting professor of liberal studies at Harvard University, “Fate of the Earth”)

For the generations that now have to decide whether or not to risk the future of the species, the implication of our species’ unique place in the order of things is that while things in the life of [hu]mankind have worth, we must never raise that worth above the life of [hu]mankind and above our respect for that life’s existence. To do this would be to make of our highest ideals so many swords with which to destroy ourselves. To sum up the worth of our species by reference to some particular standard, goal, or ideology, no matter how elevated or noble it might be, would be to prepare the way for extinction by closing down in thought and feeling the open-ended possibilities for human development which extinction would close down in fact. There is only one circumstance in which it might be possible to sum up the life and achievement of the species, and that circumstance would be that it had already died; but then, of course, there would be no one left to do the summing up. Only a generation that believed itself to be in possession of final, absolute truth could ever conclude that it had reason to put an end to human life, and only generations that recognized the limits to their own wisdom and virtue would be likely to subordinate their interests and dreams to the as yet unformed interests and undreamed dreams of the future generations, and let human life go on.

#### And, existence of the species trumps the individual

Schell 82 (Jonathan, Professor at Wesleyan University, The Fate of the Earth, pages 136-137)

Implicit in everything that I have said so far about the nuclear predicament there has been a perplexity that I would now like to take up explicitly, for it leads, I believe, into the very heart of our response-or, rather, our lack of response-to the predicament. I have pointed out that our species is the most important of all the things that, as inhabitants of a common world, we inherit from the past generations, but it does not go far enough to point out this superior importance, as though in making our decision about ex- tinction we were being asked to choose between, say, liberty, on the one hand, and the survival of the species, on the other. For the species not only overarches but contains all the benefits of life in the common world, and to speak of sacrificing the species for the sake of one of these benefits involves one in the absurdity of wanting to destroy something in order to preserve one of its parts, as if one were to burn down a house in an attempt to redecorate the living room, or to kill someone to improve his character. ,but even to point out this absurdity fails to take the full measure of the peril of extinction, for mankind is not some invaluable object that lies outside us and that we must protect so that we can go on benefiting from it; rather, it is we ourselves, without whom everything there is loses its value. To say this is another way of saying that extinction is unique not because it destroys mankind as an object but because it destroys mankind as the source of all possible human subjects, and this, in turn, is another way of saying that extinction is a second death, for one's own individual death is the end not of any object in life but of the subject that experiences all objects. Death, how- ever, places the mind in a quandary. One of-the confounding char- acteristics of death-"tomorrow's zero," in Dostoevski's phrase-is that, precisely because it removes the person himself rather than something in his life, it seems to offer the mind nothing to take hold of. One even feels it inappropriate, in a way, to try to speak "about" death at all, as. though death were a thing situated some- where outside us and available for objective inspection, when the fact is that it is within us-is, indeed, an essential part of what we are. It would be more appropriate, perhaps, to say that death, as a fundamental element of our being, "thinks" in us and through us about whatever we think about, coloring our thoughts and moods with its presence throughout our lives.

#### And, we are hardwired to value survival above all else

Ratner ‘84

[Leonard G., Legion Lex Prof. Law @ USC, “The Utilitarian Imperative: Autonomy, Reciprocity, and Evolution,” 12 Hofstra L. Rev. 723, Spring, LN]]

The search for the ought is a search for the goals of human behavior. Underlying the ought of every goal is an implicit description of reality that predicts the consequences for humans of compliance or noncompliance with the ought. n49 Humans choose the goals. n50 And the perceived accuracy of the description, along with the perceived value of the consequences predicted by the description, influence the choice. Ought and is thus coalesce. The goal of enhanced human need/want fulfillment implies that such enhanced fulfillment is possible and will facilitate long-run human existence.Goals that facilitate human existence are persistently chosen by most humans, because human structure and function have evolved and are evolving to facilitate such existence. The decisionmaking organism is structured to generally prefer survival,

although some may trade long-term existence for short-term pleasure, and physiological malfunction or traumatic experience may induce the preference of a few for personal nonsurvival. Intermediate human goals change with human structure and function; long-run human survival remains the ultimate human goal as long as there are humans.

# 1NR

## China DA

### 1NR

#### China doesn’t perceive of the pivot as a threat in the status quo allowing us to maintain positive relations – however the aff mandates release of detainees which means that Uighurs would have to come to the US – the release as described in the context of detainees at Guantanamo MEANS release into the US.

#### This wrecks US-China relations as China has definitively announced that anyone who harbors Uighurs, and even more specifically release into the US, will be adamantly opposed by China. This guts the recent advances we’ve made and makes cooperation impossible – that’s Carpenter – China is key to contain North Korea and discourage reckless, destabilizing behavior. Absent these checks, nuclear war becomes a reality – even a limited nuclear war would rearrange our global climate drastically, causing extinction. That’s Hamel-Green 9.

### Uighur NB: China Lx—2NC

#### Letting Uighurs into the US is a game changer for US/China relations – it’s of huge importance to them

LA Times 09

(Uighur detainees at Guantanamo pose a problem for Obama, articles.latimes.com/2009/feb/18/world/fg-uighurs-gitmo18)

But freed to where? China is insisting that the Uighurs be sent home to face trial for separatist activities. It has further intimated that any country that offers them political asylum will in effect be harboring dangerous terrorists. "On the issue of the Chinese terrorist suspects detained in Guantanamo, we have repeatedly stated that we oppose any country receiving these people," Foreign Ministry spokeswoman Jiang Yu said this month. How the Uighurs are handled could play a role in defining what kind of relationship the Obama administration forges with Beijing in its early months. China has made it clear that it wants to be considered an ally in the battle against terrorism, which is coming closer to China's borders as the administration shifts focus from Iraq to Afghanistan.

#### US support for Uighurs trades off with Chinese pressure on North Korea

Kirk 09, Reporter covering Korea for over 30 years

(Donald, Asia Times Online, Washington funds its Uyghur 'friends', www.atimes.com/atimes/China/KG18Ad01.html)

For now, the question is how is China likely to view the NED support for a Uyghur organization that actively opposes Chinese policies and Chinese control. Doug Bandow of the Cato Institute in Washington sees officials in Beijing as responding by lack of cooperation with the US on restraining North Korea. Upset that the United States might play a role, however small, on behalf of Uyghurs, the Chinese already see North Korea as a buffer against the United States and Japan. Although China may not want North Korea to test missiles or explode nuclear devices, the Chinese may also be asking themselves what's the point of pressuring North Korea to stop what it's doing when the United States seems to be our enemy. United States support of the Uighur cause, on top of support of Tibetan dissidents may be all the more disturbing to China in view of the large ethnic Korean minority across the Tumen River in Manchuria. Might ethnic Koreans some day rebel against rule from Beijing? And would the United States stand by them, possibly extending them funding? China already is under heavy pressure to view defectors from North Korea as true refugees rather than round them up periodically and send them back to face execution, torture, beatings and imprisonment in the North. Any sign of US intervention in Manchuria is sure to drive China closer to North Korea. The result could be Chinese refusal to enforce the resolution adopted by the United Nations Security Council after North Korea's nuclear test on May 25. China could ignore, or partly ignore, sanctions imposed against North Korean firms that stop them from exporting missiles, nukes and their components. The gulf between China and the United States would deepen with the Korean Peninsula caught between these lumbering national giants. Gershman downplays the suggestion that the NED might be responsible for China's hardening its policy on North Korea. "China is not going to be influenced by a few grants that NED makes," he remarked. "China needs to be a player" - playing the role of influencing North Korea to abandon an increasingly confrontational policy. It might seem unfair to suggest maybe the US Congress should stop funding NED just because China objects to some of its activities. The problem remains, however, that the US response to Uyghur protest may have an adverse impact on US-Chinese relations. Under the circumstances, China may be all the more reluctant to talk some sense into the North Koreans at a time when Chinese pressure is needed.

### Uighur NB: China Ix—Global Stability

#### Relations are a prerequisite to global peace

**Zhou 8**— Assistant Professor in the Department of Asian Languages and Cultures at Hobart and William Smith Colleges – NY -- Dr. Jinghao, Does China’s Rise Threaten the United States? Asian Perspective, Vol. 32, No. 3, 2008, pp. 171-182

Third, there are many common interests between China and the United States.26On the one hand, China-U.S. relations are critical not only to both countries but also to the entire international community. David M. Lamptonnotes that “there is **no global issue** that can be effectively tackled without Sino-American cooperation.”27On the other hand, it is one of the greatest challenges for the United States to coexist with China in the new century.28To be sure, they share many opportunities for mutual benefit. Economically, the Chinese economy heavily relies on Western expertise, Chinese foreign trade largely depends on foreign-invested companies, and about 60 percent of China’s total exports are produced by foreign-funded enterprises. All of this makes China sensitive to the ups and downs of the international economy, and in particular that of the U.S. economy. If the U.S. economy has troubles, it hurts China’s economic growth. In turn, China is the largest market of the United States. Sara Bongiorni has recounted the story of how her family wanted to spend a year without buying anything made in China. In fact, Bongiorni discovered it was not only difficult but also not worthwhile to do so, because she found that there are vast consumer areas that are nearly all Chinese-dominated. Thus, it is really difficult to exclude China from economic globalization.29 Politically, China and Western societies need to work closely together in order to maintain the **global peace.** In fact, China has successfully worked with Western governments on several key international issues. China hosted the Six Party Talks. As a result, North Korea agreed to disable its nuclear programs by the end of 2007.30 China took tough actions on Iran’s nuclear program, showing the seriousness of China’s commitment to nonproliferation. The United States and China also share common interests in energy, global warming, human rights, anti-corruption, social welfare, the role of nongovernmental organizations,AIDS and other disease prevention, United Nations reform, and counterterrorism. China and the United States recently signed an agreement to open a military hot line between their defense departments. Fourth, a hostile U.S. relationship with China would damage both countries’ interests and make it impossible for them to work jointly on global issues. As early as 60 years ago, an Australian ambassador warned the United States that it was very dangerous to be hostile to China and suggested that it keep China as a friend, because China might easily become a very powerful military nation in 50 years. Likewise, John Ikenberry advised that the United States cannot stop China’s rise.31 If the United States tries to keep China weak, it would increase China’s domestic instability, which would negatively affect global peace and development.The most important thing for the United States to do is not to block China from becoming a powerful country, but to understand China and learn to live with a rising China. In the meantime, the United States should urge the Chinese government to become a responsible, accountable, and democratic stakeholder.32 If China moves in that direction, the United States can focus on shared interests such as fighting terrorism and promoting world peace.

### A2 Textual impact

#### Chinese relations solve peace and bioweapons

Wenzhong 04, PRC Ministry of Foreign Affairs, 2-7-2K4 (Zhou, “Vigorously Pushing Forward the Constructive and Cooperative Relationship Between China and the United States,” http://china-japan21.org/eng/zxxx/t64286.htm)

China's development needs a peaceful international environment, particularly in its periphery. We will continue to play a constructive role in global and regional affairs and sincerely look forward to amicable coexistence and friendly cooperation with all other countries, the United States included. We will continue to push for good-neighborliness, friendship and partnership and dedicate ourselves to peace, stability and prosperity in the region. Thus China's development will also mean stronger prospect of peace in the Asia-Pacific region and the world at large. China and the US should, and can, work together for peace, stability and prosperity in the region. Given the highly complementary nature of the two economies, China's reform, opening up and rising economic size have opened broad horizon for sustained China-US trade and economic cooperation. By deepening our commercial partnership, which has already delivered tangible benefits to the two peoples, we can do still more and also make greater contribution to global economic stability and prosperity. Terrorism, cross-boundary crime, proliferation of advanced weapons, and spread of deadly diseases pose a common threat to mankind. China and the US have extensive shared stake and common responsibility for meeting these challenges, maintaining world peace and security and addressing other major issues bearing on human **survival** and development. China is ready to keep up its coordination and cooperation in these areas with the US and the rest of the international community. During his visit to the US nearly 25 years ago, Deng Xiaoping said, "The interests of our two peoples and those of world peace require that we view our relations from the overall international situation and a long-term strategic perspective." Thirteen years ago when China-US relations were at their lowest ebb, Mr. Deng said, "In the final analysis, China-US relations have got to get better." We are optimistic about the tomorrow of China-US relations. We have every reason to believe that so long as the two countries view and handle the relationship with a strategic perspective, adhere to the guiding principles of the three joint communiqués and firmly grasp the common interests of the two countries, we will see even greater accomplishments in China-US relations.

### A2 k of da

#### Total rejection of security discourse causes war.

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The conclusion, then, is that the probability of major war declines for some states, but increases for others. And it is very difficult to argue that it has disappeared in any significant or reliable or hopeful sense. Moreover, a problem with arguing a position that might be described as utopian is that such arguments have policy implications. It is worrying that as a thesis about the obsolescence of major war becomes more compelling to more people, including presumably governments, the tendency will be to forget about the underlying problem, which is not war per Se, but security. And by neglecting the underlying problem of security, the probability of war perversely increases: as governments fail to provide the kind of defence and security necessary to maintain deterrence, one opens up the possibility of new challenges. In this regard it is worth recalling one of Clauswitz’s most important insights: A conqueror is always a lover of peace. He would like to make his entry into our state unopposed. That is the underlying dilemma when one argues that a major war is not likely to occur and, as a consequence, one need not necessarily be so concerned about providing the defences that underlie security itself. History shows that surprise threats emerge and rapid destabilising efforts are made to try to provide that missing defence, and all of this contributes to the spiral of uncertainty that leads in the end to war.