# 1NC

## Offcase

### Counterplan

#### The United States federal government should ban torture and force feeding of detained individuals.

### Politics

#### The President of the United States should substantially increase lobbying and persuasion efforts, using available political resources, on behalf of Congressional enactment of Trade Promotion Authority.

#### TPA will pass with increased investment of Obama’s capital---key to the entire trade agenda and the Asia pivot

MarketWatch 2-17 – “Opinion: Stronger commitment could win bipartisan votes in Congress,” 2/17/14, http://www.truthabouttrade.org/2014/02/19/obamas-half-hearted-effort-on-trade-deals-not-enough/

Congressional Republicans generally favor freer trade and their support is vital for TPA to win. Experts say with decisive leadership the president could still build a winning bipartisan coalition. But as yet it isn’t happening. Gary Hufbauer, trade specialist at Washington’s Peterson Institute for International Economics, says in order for trade deals to get done the president needs TPA this spring, preferably before his April visit to Japan, South Korea, the Philippines and Malaysia. That delayed visit is intended to solidify the administration’s pivot to Asia, of which TPP, the Trans-Pacific Partnership, is the centerpiece. TPP would broaden market access and promote trade by standardizing disparate regulations on hundreds of products and services. The negotiations involving 12 Asia and Pacific nations are well advanced but the sensitive issues like opening up Japan’s rice market, say trade experts, won’t be put on the table without the U.S. administration having fast track. Japan’s reformist Prime Minister Shinzo Abe favors TPP as he views trade liberalization as a vital component of the structural reforms he is championing to boost Japan’s competitiveness against a rising China. The U.S. and Japan are the major players in TPP but South Korea is considering joining and the door is open for China to eventually join. TPP negotiators meet in Singapore on Feb. 22 and in the best-case scenario a deal could be struck soon thereafter. Michael Froman, the White House trade negotiator, says Obama is fully committed to both TTIP and TPP. Republicans and trade analysts doubt it. This year marks the 20th anniversary of NAFTA, the North American Free Trade Agreement, the last major trade liberalization measure to become law. Popular in Canada and Mexico, NAFTA remains fiercely controversial here and is loathed in the Rust Belt. Sold by Bush 41, who negotiated it and by Bill Clinton who signed it, as a job creation measure, its promise is unfulfilled. Twenty years afterwards there is still no consensus on NAFTA’s impact on U.S. jobs.Carla Hills, the U.S. NAFTA negotiator, points to Federal Reserve data showing a net job gain. Democrats and the AFL-CIO say nonsense. They claim that at least half a million manufacturing jobs have been lost to Mexico. They blame NAFTA for hollowing out Rust Belt cities and holding down U.S. wages that have been stagnant for a decade. Clyde Prestowitz, a Reagan administration official and trade policy maverick, says U.S. jobs will be lost under TPP just as they were with NAFTA and a smaller free trade deal with South Korea. “TPP,” says Prestowitz, “isn’t about trade, it’s about monopoly control.” He complains that TPP is being negotiated in secret with only U.S. corporate leaders privy to its provisions. Mack McLarty, President Clinton’s chief of staff until 1994, recently told a Washington forum that, “passing NAFTA was a very close call.” It required, he said, close bipartisan cooperation and extensive arm-twisting by the president. “We took Carla Hills’s advice,” he said, “of having every NAFTA proponent call five members of Congress to assure a yes vote.” Read McLarty’s op-ed in the WSJ. In today’s acrimonious milieu, it’s hard to envisage that kind of bipartisanship. Assuming the president gets TPA — a heroic assumption — will he emulate Bill Clinton and fight for TPP and perhaps TTIP in 2015? Some trade analysts, including Fred Bergsten and Jeffrey Schott, say yes. They argue that after the mid-term elections an administration short on big achievements will turn to freer trade with Europe and Asia as a positive and durable legacy of the Obama presidency. The jury is out and the debate is only now beginning. One by one the president will have to win the battle of the acronyms. And without vocal, decisive presidential leadership, even the first — TPA — is unlikely to be won.

#### Restrictions on war powers deplete political capital and trade off with the rest of the agenda

Douglas L. Kriner 10, Assistant Professor of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 68-69

Raising or Lowering Political Costs by Affecting Presidential Political Capital

Shaping both real and anticipated public opinion are two important ways in which Congress can raise or lower the political costs of a military action for the president. However, focusing exclusively on opinion dynamics threatens to obscure the much broader political consequences of domestic reaction—particularly congressional opposition—to presidential foreign policies. At least since Richard Neustadt's seminal work Presidential Power, presidency scholars have warned that costly political battles in one policy arena frequently have significant ramifications for presidential power in other realms. Indeed, two of Neustadt's three "cases of command"—Truman's seizure of the steel mills and firing of General Douglas MacArthur—explicitly discussed the broader political consequences of stiff domestic resistance to presidential assertions of commander-in-chief powers. In both cases, Truman emerged victorious in the case at hand—yet, Neustadt argues, each victory cost Truman dearly in terms of his future power prospects and leeway in other policy areas, many of which were more important to the president than achieving unconditional victory over North Korea."¶ While congressional support leaves the president's reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president's foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president's political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War.60¶ In addition to boding ill for the president's perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson's dream of a Great Society also perished in the rice paddies of Vietnam. Lacking both the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush's highest second-term domestic priorities, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.61

#### Pivot prevents nuclear war

Colby 11 – Elbridge Colby, research analyst at the Center for Naval Analyses, served as policy advisor to the Secretary of Defense’s Representative to the New START talks, expert advisor to the Congressional Strategic Posture Commission, August 10, 2011, “Why the U.S. Needs its Liberal Empire,” The Diplomat, online: http://the-diplomat.com/2011/08/10/why-us-needs-its-liberal-empire/2/?print=yes

But the pendulum shouldn’t be allowed to swing too far toward an incautious retrenchment. For our problem hasn’t been overseas commitments and interventions as such, but the kinds of interventions. The US alliance and partnership structure, what the late William Odom called the United States’ ‘liberal empire’ that includes a substantial military presence and a willingness to use it in the defence of US and allied interests, remains a vital component of US security and global stability and prosperity. This system of voluntary and consensual cooperation under US leadership, particularly in the security realm, constitutes a formidable bloc defending the liberal international order.¶ But, in part due to poor decision-making in Washington, this system is under strain, particularly in East Asia, where the security situation has become tenser even as the region continues to become the centre of the global economy.¶ A nuclear North Korea’s violent behaviour threatens South Korea and Japan, as well as US forces on the peninsula; Pyongyang’s development of a road mobile Intercontinental Ballistic Missile, moreover, brings into sight the day when North Korea could threaten the United States itself with nuclear attack, a prospect that will further imperil stability in the region.¶ More broadly, the rise of China – and especially its rapid and opaque military build-up – combined with its increasing assertiveness in regional disputes is troubling to the United States and its allies and partners across the region. Particularly relevant to the US military presence in the western Pacific is the development of Beijing’s anti-access and area denial capabilities, including the DF-21D anti-ship ballistic missile, more capable anti-ship cruise missiles, attack submarines, attack aircraft, smart mines, torpedoes, and other assets.¶ While Beijing remains a constructive contributor on a range of matters, these capabilities will give China the growing power to deny the United States the ability to operate effectively in the western Pacific, and thus the potential to undermine the US-guaranteed security substructure that has defined littoral East Asia since World War II. Even if China says today it won’t exploit this growing capability, who can tell what tomorrow or the next day will bring?¶ Naturally, US efforts to build up forces in the western Pacific in response to future Chinese force improvements must be coupled with efforts to engage Beijing as a responsible stakeholder; indeed, a strengthened but appropriately restrained military posture will enable rather than detract from such engagement. ¶ In short, the United States must increase its involvement in East Asia rather than decrease it. Simply maintaining the military balance in the western Pacific will, however, involve substantial investments to improve US capabilities. It will also require augmented contributions to the common defence by US allies that have long enjoyed low defence budgets under the US security umbrella. This won’t be cheap, for these requirements can’t be met simply by incremental additions to the existing posture, but will have to include advances in air, naval, space, cyber, and other expensive high-tech capabilities.¶ Yet such efforts are vital, for East Asia represents the economic future, and its strategic developments will determine which country or countries set the international rules that shape that economic future. Conversely, US interventions in the Middle East and, to a lesser degree, in south-eastern Europe have been driven by far more ambitious and aspirational conceptions of the national interest, encompassing the proposition that failing or illiberally governed peripheral states can contribute to an instability that nurtures terrorism and impedes economic growth. Regardless of whether this proposition is true, the effort is rightly seen by the new political tide not to be worth the benefits gained. Moreover, the United States can scale (and has scaled) back nation-building plans in Iraq, Afghanistan, and the Balkans without undermining its vital interests in ensuring the free flow of oil and in preventing terrorism.¶ The lesson to be drawn from recent years is not, then, that the United States should scale back or shun overseas commitments as such, but rather that we must be more discriminating in making and acting upon them. A total US unwillingness to intervene would pull the rug out from under the US-led structure, leaving the international system prey to disorder at the least, and at worst to chaos or dominance by others who could not be counted on to look out for US interests.¶ We need to focus on making the right interventions, not forswearing them completely. In practice, this means a more substantial focus on East Asia and the serious security challenges there, and less emphasis on the Middle East. ¶ This isn’t to say that the United States should be unwilling to intervene in the Middle East. Rather, it is to say that our interventions there should be more tightly connected to concrete objectives such as protecting the free flow of oil from the region, preventing terrorist attacks against the United States and its allies, and forestalling or, if necessary, containing nuclear proliferation as opposed to the more idealistic aspirations to transform the region’s societies. ¶ These more concrete objectives can be better met by the more judicious and economical use of our military power. More broadly, however, it means a shift in US emphasis away from the greater Middle East toward the Asia-Pacific region, which dwarfs the former in economic and military potential and in the dynamism of its societies. The Asia-Pacific region, with its hard-charging economies and growing presence on the global stage, is where the future of the international security and economic system will be set, and it is there that Washington needs to focus its attention, especially in light of rising regional security challenges. ¶ In light of US budgetary pressures, including the hundreds of billions in ‘security’ related money to be cut as part of the debt ceiling deal, it’s doubly important that US security dollars be allocated to the most pressing tasks – shoring up the US position in the most important region of the world, the Asia-Pacific. It will also require restraint in expenditure on those challenges and regions that don’t touch so directly on the future of US security and prosperity. ¶ As Americans debate the proper US global role in the wake of the 2008 financial crisis and Iraq and Afghanistan, they would do well to direct their ire not at overseas commitments and intervention as such, but rather at those not tied to core US interests and the sustainment and adaptation of the ‘liberal empire’ that we have constructed and maintained since World War II.¶ Defenders of our important overseas links and activities should clearly distinguish their cause from the hyperactive and barely restrained approach represented by those who, unsatisfied with seeing the United States tied down in three Middle Eastern countries, seek intervention in yet more, such as Syria. Indeed, those who refuse to scale back US interventions in the Middle East or call for still more are directly contributing to the weakening of US commitments in East Asia, given strategic developments in the region and a sharply constrained budgetary environment in Washington.¶ We can no longer afford, either strategically or financially, to squander our power in unnecessary and ill-advised interventions and nation-building efforts. The ability and will to intervene is too important to be so wasted.

### WOT DA

#### A – Uniqueness and Link --- current ev standards for military detention balance executive flexibility with judicial review --- the plan’s assertion of judicial supremacy wrecks war-fighting and risks future terrorist attacks

Gregory Jacob 12, partner at O’Melveny & Myers in Washington, D.C., Detention Policies: What Role for Judicial Review?, ABA Journal, 10-1-12, http://www.abajournal.com/magazine/article/detention\_policies\_what\_role\_for\_judicial\_review/

In arguing that the Supreme Court’s decision in Boumediene v. Bush has not “precipitated a shift away from detention and toward targeted killings,” Professor Vladeck knocks down an easily-dispensed-with straw man, but fails to tackle the more interesting question of whether the D.C. Circuit’s post-Boumediene jurisprudence has struck the right balance in establishing parameters for judicial review of executive branch decisions concerning the detention of captured enemy combatants. This short article suggests that, in at least two significant respects, it has. First, the D.C. Circuit’s decision in Maqaleh v. Gates avoids disruptive litigation over the military detention of most aliens who are (1) captured abroad, (2) designated by the military as enemy combatants and (3) held in a theater of active military operations. Second, the evidentiary burdens and presumptions applied by the D.C. Circuit in reviewing the habeas petitions of Guantanamo detainees have, by and large, struck an appropriate balance between the “practical considerations and exigent circumstances” of needing to avoid “judicial interference with the military’s efforts to contain ‘enemy combatants [and] guerilla fighters,’ ” on the one hand, and the need to “protect against the arbitrary [and unlawful] exercise of governmental power” on the other. Captured enemy combatants, whether lawful or unlawful, are not detained for the purpose of punishment, but rather to prevent them from rejoining enemy forces and engaging in further hostilities. Such detention authority is no less necessary in a guerilla war against covert terrorist elements than it is in large-scale conventional conflicts. If our military forces are competent—and they certainly are—circumstances will arise in which hard-pressed enemy forces will elect to lay down their arms and voluntarily surrender. And if we as a people are both moral and merciful—and we strive to be—rather than kill the surrendered enemy, we will instead offer to detain them. But what then? The Supreme Court’s decisions in Ex parte Quirin and Johnson v. Eisentrager, together with long-standing historical practice, establish the government’s authority to hold captured enemy combatants until the end of an armed conflict to prevent them from rejoining the fray and attempting to kill our forces. But does this well-established rule apply without limitation in an armed conflict that had no natural end? On the one hand, releasing an avowed enemy of the United States, whose hatred of our country can only have been inflamed by years of detention, and without any firm assurance that he or she will not seek to engage in future hostilities against us, seems the sheerest of folly. On the other hand, if it will never be assuredly safe to release such individuals, can we really preventively detain them indefinitely, possibly for decades, and perhaps even until the end of their natural life? Historical and legal precedents have almost all described the government’s authority to detain enemy combatants in absolute terms, but those precedents have seemed to assume that the underlying conflicts would eventually end, and that the government’s detention authority would thus come to a natural close. In the early cases related to the war on terror, the government subscribed to the absolute theory of detention authority that flowed from these precedents. And in the Supreme Court’s first examination of a war on terror case, Hamdi, it agreed, holding that “universal agreement and practice” support the military’s authority to capture and detain individuals who are “part of or supporting forces hostile to the United States … and engaged in armed conflict against the United States.” The Supreme Court expressly noted that the purpose of such detention is to prevent enemy combatants from “returning to the field of battle and taking up arms once again,” stating that combatants can accordingly be held “for the duration of the relevant conflict.” More than a decade into the war on terror, no federal court has seriously called into question the government’s potentially unending authority to detain captured combatants until the conflict “ends.” Whether there are or should be any temporal limitations to that authority is a question that future judges and political leaders may well address. Boumediene, however, demonstrates the judiciary’s concern that as the war on terror drags on, and with it the length of ongoing detentions (at the time of the Boumediene decision, some of the detainees had been held for more than six years), we need to at least be increasingly sure that the individuals we are detaining are in fact enemy combatants. Boumediene expressly declined to state how greater certainty concerning the validity of military detentions should be achieved, noting that “our opinion does not address the content of the law that governs [enemy combatant] detention” and directing the lower courts to establish a framework capable of reconciling “liberty and security … within the framework of the law.” This is what the D.C. Circuit has attempted to do.Probably the most important war on terror decision handed down by the D.C. Circuit since Boumediene was decided is Maqaleh, in which the court declined to extend the writ of habeas corpus to aliens captured abroad, designated enemy combatants and held at Bagram Air Force Base in Afghanistan. From the military’s perspective, the nightmare scenario has always been the prospect that the judiciary would assert the right to engage in a searching inquiry into the basis for every capture and detention of an alien abroad, even while active combat operations are ongoing. In World War II, such a rule could have required the government to litigate hundreds of thousands of habeas claims, costing the government significant expense and causing substantial disruption to military operations. Maqaleh puts such fears to rest. In declining to exercise habeas jurisdiction over Bagram, the Maqaleh court did not apply a bright-line territorial sovereignty test, but rather engaged in a multi-factor analysis drawn from Boumediene that examines (1) the citizenship and status of the detainee and the adequacy of the process through which the status determination was made, (2) the nature of the site of apprehension and the site of detention, and (3) the practical obstacles inherent in resolving the prisoner’s entitlement to the writ. The essential holding of the case seems to be that where the government apprehends an alien abroad, and then detains that alien at a location not within the de jure or de facto sovereignty of the United States and within an active theater of war, the writ of habeas corpus does not apply. There may be exceptions to this rule where the government has not engaged in any formal process for determining whether detained individuals are legitimately classified as enemy combatants, or where the government has deliberately transferred prisoners to an active theater of war for the purpose of avoiding habeas jurisdiction. Otherwise, however, Maqaleh requires the judiciary to exercise some humility and defer to most military detention decisions in active theaters of war. Does the Maqaleh rule create the possibility, and perhaps even the likelihood, of erroneous detentions? Certainly. Mankind has not yet devised a perfect system for correcting such errors. But the decision is founded on a principle long recognized by the courts: That absent extraordinary circumstances, the cost to security of judicial interference in active overseas military operations outweighs the liberty cost of potentially erroneous detentions pursuant to those operations. Thus, five years after World War II formally ended, the Supreme Court declined to extend the writ of habeas corpus to prisoners held in Germany, explaining that “such trials would hamper the war effort and bring aid and comfort to the enemy. … It would be difficult to devise more effective fettering of a field commander than to allow the very enemies he is ordered to reduce to submission to call him to account in his own civil courts and divert his efforts and attention from the military offensive abroad to the legal defensive at home.” Through Maqaleh, these legitimate concerns continue to govern the enemy combatant jurisprudence of today.

#### B --- Impact --- this type of judicial intrusion risks national survival --- there’s no prudent alternative to current detention policy

Gregory Jacob 12, partner at O’Melveny & Myers in Washington, D.C., Detention Policies: What Role for Judicial Review?, ABA Journal, 10-1-12, http://www.abajournal.com/magazine/article/detention\_policies\_what\_role\_for\_judicial\_review/

But of course, this standard does not measure the true cost of judicial review. It must be remembered that the kind of judicial review at issue here was not carefully constructed and balanced by our political leaders, but rather was imposed by the courts as a matter of constitutional requirement. The war on terror and the wars in Afghanistan and Iraq are wars of choice waged against vastly outmatched opponents, but constitutional requirements apply equally during wars of necessity in which the nation’s very survival is at stake. We held hundreds of thousands of prisoners of war during the Civil War and World War II—how is Professor Vladeck’s expansive judicial review supposed to be administered under such circumstances without seriously compromising our security interests? No practicable answer is even remotely suggested in my sparring partner’s essay. Until the new kind of war presented by the war on terror came along, the courts uniformly recognized that war is a matter best handled by the political branches, and that at least in active theaters of combat operations, the judiciary should stay out. That is why the D.C. Circuit’s decision in Maqaleh is so important: It recognizes there are times and places in which the substantial costs in time, energy and resources that necessarily accompany the judiciary’s error-correcting function simply aren’t worth it, and to which the framers accordingly never intended to extend constitutional habeas protections. To be sure, the circumstances in which constitutional habeas protections do not apply are carefully circumscribed; U.S. citizens, for example, will always be entitled to habeas review. And after Boumediene, most if not all aliens detained domestically will be as well. But within that narrow sphere from which the judiciary has been excluded—and has by and large accepted its exclusion—the time, energy and resources at stake can be a matter of life or death for our troops, and for the nation as a whole. Professor Vladeck does not believe the stakes could possibly be so high. And in a war of choice in which only a few hundred detainees being held an ocean away from the front lines are permitted access to our courts, perhaps they are not. But how could the military possibly have defended hundreds of thousands of habeas petitions in the midst of World War II? With the witnesses to captures primarily being front-line soldiers still engaged in fighting, should we pull half of Easy Company out of Operation Market Garden to type up detention affidavits? With military intelligence attempting to secure mission-critical information that could turn the tide of war, should we allow their operations to be chilled and disrupted by a stream of discovery requests? And having disarmed enemy troops on the battlefield and placed them in detention camps where they can do no further harm, should we rearm them with legal causes of action that will consume significant time and manpower to defend, and further provide them a public platform from which to denounce the United States? In light of these costs and disruptions, it is unsurprising that the Geneva Conventions, for example, do not even hint at any kind of judicial review requirement for the ordinary detention of military prisoners.

#### Indefinite detention reforms result in catastrophic terrorism---releases terrorists and kills intel gathering

Jack Goldsmith 09, Henry L. Shattuck Professor at Harvard Law School, 2/4/09, “Long-Term Terrorist Detention and Our National Security Court,” http://www.brookings.edu/~/media/research/files/papers/2009/2/09%20detention%20goldsmith/0209\_detention\_goldsmith.pdf

These three concerns challenge the detention paradigm. They do nothing to eliminate the need for detention to prevent detainees returning to the battlefield. But many believe that we can meet this need by giving trials to everyone we want to detain and then incarcerating them under a theory of conviction rather than of military detention. I disagree. For many reasons, it is too risky for the U.S. government to deny itself the traditional military detention power altogether, and to commit itself instead to try or release every suspected terrorist. ¶ For one thing, military detention will be necessary in Iraq and Afghanistan for the foreseeable future. For another, we likely cannot secure convictions of all of the dangerous terrorists at Guantánamo, much less all future dangerous terrorists, who legitimately qualify for non-criminal military detention. The evidentiary and procedural standards of trials, civilian and military alike, are much higher than the analogous standards for detention. With some terrorists too menacing to set free, the standards will prove difficult to satisfy. Key evidence in a given case may come from overseas and verifying it, understanding its provenance, or establishing its chain of custody in the manners required by criminal trials may be difficult. This problem is exacerbated when evidence was gathered on a battlefield or during an armed skirmish. The problem only grows when the evidence is old. And perhaps most importantly, the use of such evidence in a criminal process may compromise intelligence sources and methods, requiring the disclosure of the identities of confidential sources or the nature of intelligence-gathering techniques, such as a sophisticated electronic interception capability. ¶ Opponents of non-criminal detention observe that despite these considerations, the government has successfully prosecuted some Al Qaeda terrorists—in particular, Zacharias Moussaoui and Jose Padilla. This is true, but it does not follow that prosecutions are achievable in every case in which disabling a terrorist suspect represents a surpassing government interest. Moreover, the Moussaoui and Padilla prosecutions highlight an under-appreciated cost of trials, at least in civilian courts. The Moussaoui and Padilla trials were messy affairs that stretched, and some observers believe broke, our ordinary criminal trial conceptions of conspiracy law and the rights of the accused, among other things. The Moussaoui trial, for example, watered down the important constitutional right of the defendant to confront witnesses against him in court, and the Padilla trial rested on an unprecedentedly broad conception of conspiracy.15 An important but under-appreciated cost of using trials in all cases is that these prosecutions will invariably bend the law in ways unfavorable to civil liberties and due process, and these changes, in turn, will invariably spill over into non-terrorist prosecutions and thus skew the larger criminal justice process.16¶ A final problem with using any trial system, civilian or military, as the sole lawful basis for terrorist detention is that the trials can result in short sentences (as the first military commission trial did) or even acquittal of a dangerous terrorist.17 In criminal trials, guilty defendants often go free because of legal technicalities, government inability to introduce probative evidence, and other factors beyond the defendant's innocence. These factors are all exacerbated in terrorist trials by the difficulties of getting information from the place of capture, by classified information restrictions, and by stale or tainted evidence. One way to get around this problem is to assert the authority, as the Bush administration did, to use non-criminal detention for persons acquitted or given sentences too short to neutralize the danger they pose. But such an authority would undermine the whole purpose of trials and would render them a sham. As a result, putting a suspect on trial can make it hard to detain terrorists the government deems dangerous. For example, the government would have had little trouble defending the indefinite detention of Salim Hamdan, Osama Bin Laden's driver, under a military detention rationale. Having put him on trial before a military commission, however, it was stuck with the light sentence that Hamdan is completing at home in Yemen.¶ As a result of these considerations, insistence on the exclusive use of criminal trials and the elimination of non-criminal detention would significantly raise the chances of releasing dangerous terrorists who would return to kill Americans or others. Since noncriminal military detention is clearly a legally available option—at least if it is expressly authorized by Congress and contains adequate procedural guarantees—this risk should be unacceptable. In past military conflicts, the release of an enemy soldier posed risks. But they were not dramatic risks, for there was only so much damage a lone actor or small group of individuals could do.18 Today, however, that lone actor can cause far more destruction and mayhem because technological advances are creating ever-smaller and ever-deadlier weapons. It would be astounding if the American system, before the advent of modern terrorism, struck the balance between security and liberty in a manner that precisely reflected the new threats posed by asymmetric warfare. We face threats from individuals today that are of a different magnitude than threats by individuals in the past; having government authorities that reflect that change makes sense.

#### Nuclear terrorism is feasible --- high risk of theft and attacks escalate

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Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons. The use of “dirty bombs” will not cause many immediate casualties, but it will result into long-term radioactive contamination, contributing to the spread of panic and socio-economic destabilization.¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that well-trained terrorists may be able to penetrate nuclear facilities.¶ Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time.¶ Of all the scenarios, it is building an improvised nuclear device by terrorists that poses the maximum risk. **There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** Information on the design of such devices, as well as implosion-type devices, is available in the public domain. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that such materials can be bought on the black market. Theft of weapons-grade uranium is also possible. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).¶ A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is comparable to the yield of the bomb dropped on Hiroshima. The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures.¶ If a nuclear terrorist act occurs, nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act. We can imagine what would happen if they do so, given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause **violent protests in the Muslim world**. **Series of armed clashing terrorist attacks may follow**. The prediction that Samuel Huntington has made in his book “The Clash of Civilizations and the Remaking of World Order” may come true. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. This is especially dangerous for Russia because these fault lines run across its territory. To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

#### Extinction---equivalent to full-scale nuclear war

Owen B. Toon 7, chair of the Department of Atmospheric and Oceanic Sciences at CU-Boulder, et al., April 19, 2007, “Atmospheric effects and societal consequences of regional scale nuclear conflicts and acts of individual nuclear terrorism,” online: http://climate.envsci.rutgers.edu/pdf/acp-7-1973-2007.pdf

To an increasing extent, people are congregating in the world’s great urban centers, creating megacities with populations exceeding 10 million individuals. At the same time, advanced technology has designed nuclear explosives of such small size they can be easily transported in a car, small plane or boat to the heart of a city. We demonstrate here that a single detonation in the 15 kiloton range can produce urban fatalities approaching one million in some cases, and casualties exceeding one million. Thousands of small weapons still exist in the arsenals of the U.S. and Russia, and there are at least six other countries with substantial nuclear weapons inventories. In all, thirty-three countries control sufficient amounts of highly enriched uranium or plutonium to assemble nuclear explosives. A conflict between any of these countries involving 50-100 weapons with yields of 15 kt has the potential to create fatalities rivaling those of the Second World War. Moreover, even a single surface nuclear explosion, or an air burst in rainy conditions, in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades owing to infrastructure damage and radioactive contamination. As the aftermath of hurricane Katrina in Louisiana suggests, the economic consequences of even a localized nuclear catastrophe would most likely have severe national and international economic consequences. Striking effects result even from relatively small nuclear attacks because low yield detonations are most effective against city centers where business and social activity as well as population are concentrated. Rogue nations and terrorists would be most likely to strike there. Accordingly, an organized attack on the U.S. by a small nuclear state, or terrorists supported by such a state, could generate casualties comparable to those once predicted for a full-scale nuclear “counterforce” exchange in a superpower conflict. Remarkably, the estimated quantities of smoke generated by attacks totaling about one megaton of nuclear explosives could lead to significant global climate perturbations (Robock et al., 2007). While we did not extend our casualty and damage predictions to include potential medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchinson, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

### 1NC

#### The United States federal government should apply judicial restrictions on the president’s indefinite imprisonment authority, including burdens of proof and presumptions regarding evidence in habeas hearings that favor indefinitely imprisoned individuals.

#### Using the word “detain” is unethical and turns solvency—“imprison” is more accurate—hold the 1ac accountable

Margaret Sullivan 13, April 12, “‘Targeted Killing,’ ‘Detainee’ and ‘Torture’: Why Language Choice Matters,” http://publiceditor.blogs.nytimes.com/2013/04/12/targeted-killing-detainee-and-torture-why-language-choice-matters/?\_r=0

If it’s torture, why call it a “harsh interrogation technique”? If it’s premeditated assassination, why call it a “targeted killing”? And if a suspected terrorist has been locked up at Guantánamo Bay for more than a decade, why call him a “detainee”? Many of the complaints I get in the public editor’s in-box are about phrases that The Times uses. These writers complain that **language** choices make a **huge difference in perception**, **especially** when they accept and adopt government-speak. One reader, Donald Mintz, a professor emeritus at Montclair State University, objects to the unquestioning use of “defense” as in “defense budget,” and prefers “military.” He wrote: “Outside of direct or indirect quotation the term ‘defense’ should be used sparingly and with the greatest caution. Who, after all, could be against ‘defense’? But at least some of us are against excessive militarism.” Another reader, Roscoe Gort, commented on an article this week, “Targeted Killing Comes to Define War on Terror.” “Since 9/11 The New York Times has shown a great willingness to adopt the Newspeak (‘War Is Peace’) terminology from successive administrations in Washington,” he wrote. “War on terror” was just one example, he said, and wanted to know how The Times decides what terms to use. And, he wondered, “Do reporters like Scott Shane really write this way, or does some editor automatically change all the occurrences of “murder” or “assassination” in the stories they file into “targeted killing”? And Gene Krzyzynski, a veteran copy editor at The Buffalo News and a longtime New York Times reader, objected to the continued use of the term “detainee” to describe suspected terrorists who are being held indefinitely at the United States naval base at Guantánamo Bay, calling it “**accepting political spin** at face value.” Mr. Krzyzynski wrote: **To “detain” connotes brevity**, as in, say, a traveler detained at a border or an airport for further Immigration, Customs, T.S.A. or similar questioning-searching-processing. I’d go as far as to call it **language abuse** in the context of Gitmo, especially for anyone who has a healthy respect for plain, clear English or who remembers “detention” in high school. “**Prisoner**” and its variants **would be accurate**, of course, given the unusually long time behind bars or in cages (historically unprecedented, actually, for any P.O.W.’s, if one accepts that we’re in a “war,” albeit undeclared by Congress). Seven years ago, the Pulitzer Prize-winning cartoonist Steve Breen of The San Diego Union-Tribune came up with what’s probably the most precise term of all: “infinitee.” I asked Mr. Shane, a national security reporter in the Washington bureau, and Philip B. Corbett, the associate managing editor for standards, to respond to some of these issues. Mr. Shane addressed Mr. Gort’s question on “targeted killings,” noting that editors and reporters have discussed it repeatedly. He wrote: “Assassination” is banned by executive order, but for decades that has been interpreted by successive administrations as prohibiting the killing of political figures, not suspected terrorists. Certainly most of those killed are not political figures, though arguably some might be. Were we to use “assassination” routinely about drone shots, it would suggest that the administration is deliberately violating the executive order, which is not the case. This administration, like others, just doesn’t think the executive order applies. (The same issue arose when Ronald Reagan bombed Libya, and Bill Clinton fired cruise missiles at Sudan and Afghanistan.) “Murder,” of course, is a specific crime described in United States law with a bunch of elements, including illegality, so it would certainly not be straight news reporting to say President Obama was “murdering” people. This leaves “targeted killing,” which I think is far from a euphemism. It denotes exactly what’s happening: American drone operators aim at people on the ground and fire missiles at them. I think it’s a pretty good term for what’s happening, if a bit clinical. Mr. Shane added that he had only one serious qualm about the term. That, he said, was expressed by an administration official: “It’s not the targeted killings I object to — it’s the untargeted killings.” The official “was talking about so-called ‘signature strikes’ that target suspected militants based on their appearance, location, weapons and so on, not their identities, which are unknown; and also about mistaken strikes that kill civilians.” On the matter of “detainee,” Mr. Corbett called it “a legitimate concern” and agreed that the term might not be ideal. He said that it, not prisoner, was used because those being held “are in such an unusual situation – they are not serving a prison term, they are in an unusual status of limbo.” The debate over the word “torture,” he said, has similar implications to the one Mr. Shane described with assassination. “The word torture, aside from its common sense meaning, has specific legal meaning and ramifications,” Mr. Corbett said. “Part of the debate is on that very point.” The Times wants to “avoid making a legal judgment in the middle of a debate,” he added. Mr. Corbett also said that readers might have the wrong idea about The Times’s practices on word use. “People have this image that we set out a list of terms that must be used and those that must not be used — that there is a committee or cabal that sends out an edict,” he said. That’s far from true, he said. “In a vast majority of cases, we rely on our reporters to use their judgment,” he said. “Only rarely do we make a firm style rule.” Although individual words and phrases may not amount to very much in the great flow produced each day, **language matters**. When news organizations accept the government’s way of speaking, they seem to **accept the government’s way of thinking**. In The Times, these decisions carry even more weight. Word choices like these **deserve thoughtful consideration** – and, at times, some institutional **soul-searching**.

### Counterplan

#### The United States federal government should apply burdens of proof and presumptions regarding evidence in habeas hearings that favor indefinitely detained individuals.

### Deference DA

#### Court interference in war powers collapses effective military policy and exec flex

Stephen F. Knott 13, professor of National Security Affairs at the United States Naval War College, 8/22/13, War by Lawyer, www.libertylawsite.org/2013/08/22/war-by-lawyer/

Terrorist attacks directed from abroad are acts of war against the United States, requiring a response by the nation’s armed forces under the direction of the commander-in-chief. Unity in the executive is critical to the conduct of war, as Alexander Hamilton noted in The Federalist, and war by committee, especially a committee of lawyers, brings to armed conflict the very qualities that are the antithesis of Publius’s “decision, activity, secrecy, and dispatch.” The American military, with the assistance of the American intelligence community, fulfill the constitutional mandate to provide for the common defense. The nation’s defense establishment is not the Internal Revenue Service or the Department of Health and Human Services; if one dislikes the social welfare policies of the Obama administration or disagrees with President Obama for whatever reason, that is all well and good, but true conservatives should reject the principle that judicial review is applicable to the conduct of national defense. The founders understood that the decision to use force, the most important decision any government can make, were non-judicial in nature and were to be made by the elected representatives of the people.

Nonetheless, for those weaned during an era when “privacy” was elevated to the be-all and end-all of the American experiment, the war power and related national security powers granted by the Constitution to the elected branches are trumped by modern notions of a limitless “right to privacy.” The civil liberties violations of the War on Terror are considered so egregious as to require the intervention of an appointed judiciary lacking any Constitutional mandate, and lacking the wherewithal, including information and staff, to handle sensitive national security matters. This is judicial activism at its worst and further evidence that the “political questions doctrine,” the idea of deferring to the elected branches of government on matters falling under their constitutional purview, is, for all practical purposes, dead (See the case of Totten vs. U.S., 1875, for an example of judicial deference to the elected branches on intelligence matters. This deference persisted until the late 20th century). Simply put, according to the Constitution and to almost 220 years of tradition, Congress and the President are constitutionally empowered, among other things, to set the rules regarding the measures deemed necessary to gather intelligence and conduct a war.

One of the latest demands from advocates of increased judicial oversight is for a “targeted killing court.” In a similar vein, Senator Marco Rubio has called for the creation of a “Red Team” review of any executive targeting of American citizens, which would include a 15 day review process – “decision, activity, secrecy, and dispatch” be damned. A 15 day review process of targeting decisions would horrify Alexander Hamilton and all the framers of the Constitution. No doubt our 16th President would be horrified as well – imagine Abraham Lincoln applying for targeting permits on American citizens suspected of assisting the Confederacy. (“Today, we begin a 15 day review of case #633,721, that of Beauregard Birdwell of Paducah, Kentucky.”) War by lawyer might in the not too distant future include these types of targeting decisions, followed by endless appeals to unelected judges. All of this is a prescription for defeat.

We are, sadly, almost at this point, for a new conception about war and national security has taken root in our increasingly legalistic society. We saw this during the Bush years when the Supreme Court for the first time in its history instructed the executive and legislative branches on the appropriate manner of treating captured enemy combatants. The Courts are now micromanaging the treatment of detainees at Guantanamo, to the point of reviewing standards for groin searches of captured Al Qaeda members. True conservatives understand the pitfalls of this legalism, especially of the ill-defined international variety. Conservatives should be especially alert to the dangers arising from elevating international law over the national interest as the standard by which to measure American conduct.

The legalistic approach to the war on terror now being endorsed by prominent conservatives would cede presidential authority to executive branch lawyers and to their brethren in the judiciary who are playing a role they were never intended to play. Michael Scheuer, the former head of the CIA’s unit charged with tracking down Osama bin Laden, observed that “at the end of the day, the U.S. intelligence community is palsied by lawyers, and everything still depends on whether the lawyers approve it or not.” This is as far removed from conducting war, as Hamilton described it, with decision and dispatch, and with the “exercise of power by a single hand,” as one can get. War conducted by the courts is not only unconstitutional, it is, to borrow a phrase from author Philip K. Howard, part of the ongoing drift toward the death of common sense.

#### That decks effective executive responses to prolif, terror, and the rise of hostile powers---link threshold is low

Robert Blomquist 10, Professor of Law, Valparaiso University School of Law, THE JURISPRUDENCE OF AMERICAN NATIONAL SECURITY PRESIPRUDENCE, 44 Val. U.L. Rev. 881

Supreme Court Justices--along with legal advocates--need to conceptualize and prioritize big theoretical matters of institutional design and form and function in the American national security tripartite constitutional system. By way of an excellent introduction to these vital issues of legal theory, the Justices should pull down from the library shelf of the sumptuous Supreme Court Library in Washington, D.C. (or more likely have a clerk do this chore) the old chestnut, The Legal Process: Basic Problems in the Making and Application of Law by the late Harvard University law professors Henry M. Hart and Albert M. Sacks. n7 Among the rich insights on institutional design coupled with form and function in the American legal system that are germane to the Court's interpretation of national security law-making and decision-making by the President are several pertinent points. First, "Hart and Sacks' intellectual starting point was the interconnectedness of human beings, and the usefulness of law in helping us coexist peacefully together." n8 By implication, therefore, the Court should be mindful of the unique [\*883] constitutional role played by the POTUS in preserving peace and should prevent imprudent judicial actions that would undermine American national security. Second, Hart and Sacks, continuing their broad insights of social theory, noted that legal communities establish "institutionalized[] procedures for the settlement of questions of group concern" n9 and regularize "different procedures and personnel of different qualifications . . . appropriate for deciding different kinds of questions" n10 because "every modern society differentiates among social questions, accepting one mode of decision for one kind and other modes for others-e.g., courts for 'judicial' decisions and legislatures for 'legislative' decisions" n11 and, extending their conceptualization, an executive for "executive" decisions. n12 Third, Professors Hart and Sacks made seminal theoretical distinctions between rules, standards, principles, and policies. n13 While all four are part of "legal arrangements [\*884] in an organized society," n14 and all four of these arrangements are potentially relevant in judicial review of presidential national security decisions, principles and policies n15 are of special concern because of the sprawling, inchoate, and rapidly changing nature of national security threats and the imperative of hyper-energy in the Executive branch in responding to these threats. n16

The Justices should also consult Professor Robert S. Summers's masterful elaboration and amplification of the Hart and Sacks project on enhancing a flourishing legal system: the 2006 opus, Form and Function in a Legal System: A General Study. n17 The most important points that [\*885] Summers makes that are relevant to judicial review of American national security presiprudence are three key considerations. First, a "conception of the overall form of the whole of a functional [legal] unit is needed to serve the founding purpose of defining, specifying, and organizing the makeup of such a unit so that it can be brought into being and can fulfill its own distinctive role" n18 in synergy with other legal units to serve overarching sovereign purposes for a polity. The American constitutional system of national security law and policy should be appreciated for its genius in making the POTUS the national security sentinel with vast, but not unlimited, powers to protect the Nation from hostile, potentially catastrophic, threats. Second, "a conception of the overall form of the whole is needed for the purpose of organizing the internal unity of relations between various formal features of a functional [legal] unit and between each formal feature and the complementary components of the whole unit." n19 Thus, Supreme Court Justices should have a thick understanding of the form of national security decision-making conceived by the Founders to center in the POTUS; the ways the POTUS and Congress historically organized the processing of national security through institutions like the National Security Council and the House and Senate intelligence committees; and the ways the POTUS has structured national security process through such specific legal forms as Presidential Directives, National Security Decision Directives, National Security Presidential Decision Directives, Presidential Decision Directives, and National Security Policy Directives in classified, secret documents along with typically public Executive Orders. n20 Third, according to Summers, "a conception of the overall form of the whole functional [legal] unit is needed to organize further the mode of operation and the instrumental capacity of the [legal] unit." n21 So, the Supreme Court should be aware that tinkering with national security decisions of the POTUS--unless clearly necessary to counterbalance an indubitable violation of the text of the Constitution--may lead to unforeseen negative second-order consequences in the ability of the POTUS (with or without the help of Congress) to preserve, protect, and defend the Nation. n22

[\*886] B. Geopolitical Strategic Considerations Bearing on Judicial Interpretation

Before the United States Supreme Court Justices form an opinion on the legality of national security decisions by the POTUS, they should immerse themselves in judicially-noticeable facts concerning what national security expert, Bruce Berkowitz, in the subtitle of his recent book, calls the "challengers, competitors, and threats to America's future." n23 Not that the Justices need to become experts in national security affairs, n24 but every Supreme Court Justice should be aware of the following five basic national security facts and conceptions before sitting in judgment on presiprudential national security determinations.

(1) "National security policy . . . is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice." n25 While "[y]esterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers" n26, the twenty-first century reality is that "[t]hreats are also more likely to be intertwined--proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers." n27

(2) "Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat--the Soviet Union--was brittle, most of the potential adversaries and challengers America now faces are resilient." n28

(3) "The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events." n29 Importantly, "[w]hen you hold [\*887] the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not." n30

(4) While "keeping the strategic advantage may not have the idealistic ring of making the world safe for democracy and does not sound as decisively macho as maintaining American hegemony," n31 maintaining the American "strategic advantage is critical, because it is essential for just about everything else America hopes to achieve--promoting freedom, protecting the homeland, defending its values, preserving peace, and so on." n32

(5) The United States requires national security "agility." n33 It not only needs "to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources." n34

[\*888] As further serious preparation for engaging in the jurisprudence of American national security presiprudence in hotly contested cases and controversies that may end up on their docket, our Supreme Court Justices should understand that, as Walter Russell Mead pointed out in an important essay a few years ago, n35 the average American can be understood as a Jacksonian pragmatist on national security issues. n36 "Americans are determined to keep the world at a distance, while not isolating ourselves from it completely. If we need to take action abroad, we want to do it on our terms." n37 Thus, recent social science survey data paints "a picture of a country whose practical people take a practical approach to knowledge about national security. Americans do not bother with the details most of the time because, for most Americans, the details do not matter most the time." n38 Indeed, since the American people "do know the outlines of the big picture and what we need to worry about [in national security affairs] so we know when we need to pay greater attention and what is at stake. This is the kind of knowledge suited to a Jacksonian." n39

Turning to how the Supreme Court should view and interpret American presidential measures to oversee national security law and policy, our Justices should consider a number of important points. First, given the robust text, tradition, intellectual history, and evolution of the institution of the POTUS as the American national security sentinel, n40 and the unprecedented dangers to the United States national security after 9/11, n41 national security presiprudence should be accorded wide latitude by the Court in the adjustment (and tradeoffs) of trading liberty and security. n42 Second, Justices should be aware that different presidents [\*889] institute changes in national security presiprudence given their unique perspective and knowledge of threats to the Nation. n43 Third, Justices should be restrained in second-guessing the POTUS and his subordinate national security experts concerning both the existence and duration of national security emergencies and necessary measures to rectify them. "During emergencies, the institutional advantages of the executive are enhanced", n44 moreover, "[b]ecause of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times." n45 Fourth, Supreme Court Justices, of course, should not give the POTUS a blank check--even during times of claimed national emergency; but, how much deference to be accorded by the Court is "always a hard question" and should be a function of "the scale and type of the emergency." n46 Fifth, the Court should be extraordinarily deferential to the POTUS and his executive subordinates regarding questions of executive determinations of the international laws of war and military tactics. As cogently explained by Professors Eric Posner and Adrian Vermeule, n47 "the United States should comply with the laws of war in its battle against Al Qaeda"--and I would argue, other lawless terrorist groups like the Taliban--"only to the extent these laws are beneficial to the United States, taking into account the likely response of [\*890] other states and of al Qaeda and other terrorist organizations," n48 as determined by the POTUS and his national security executive subordinates.

## Case

### AT: Doubling

Experts reject the doubling hypothesis---it’s objectively impossible

Freyhofer 4 – Horst H. Freyhofer, Professor Emeritus of History A.A., Santa Monica Community College, 2004, The Nuremberg Medical Trial: The Holocaust and the Origin of The Nuremberg Medical Code, p. 5-6

Trying to understand what motivated German physicians such as Josef Mengele to pursue their bloody work the way they did is still a controversial undertaking. Some explanations have been offered by scholars such as Robert Proctor, Benno Mueller-Hill, George Annas and others. But so far there has only been one author who has written a major work focusing exclusively on this question. Robert Jay Lifton’s The Nazi Doctors, published in 1986, leaves no doubt that most of the camp physicians committed the most condemnable atrocities imaginable.7 But he offers an explanation. He argues that they were able to do so only by separating the humanitarian side of their personality from its demonic side, thereby living a double existence. He bases this Jekyll and Hyde explanation on personal interviews he had with surviving camp physicians, many of them members of the SS. The book was well received by the general public, but it generated some sharp criticism from a number of scholars in the field.

Norman Ravitch, an expert on the subject, rejects the possibility of such “doubling.” To him, the categorical distinction between the humanitarian principles that sustain the medical profession and the totalitarian principles that sustain such fascist views as espoused by the Nazis are irreconcilable under any circumstances. He is particularly disturbed by Lifton’s argument that there were indeed some camp physicians who had managed to remain decent human beings. Referring to such a physician named in Lifton’s book, Ravitch concludes that “the only failure of Dr. Lifton’s method and analysis lies in his inability to convince us how this SS doctor could be at the same time a humane medical man and a true believer in the Nazi program.”8

Thomas Kohut, also an expert on the subject, agrees that this combination is indeed an objective impossibility. But he also thinks it was possible for Nazi doctors to somehow skirt the issue of morality, mainly by dismissing it altogether. Kohut believes that Lifton’s analysis is weak on a number of points. “Lifton’s model of doubling,” he writes, “fails to comprehend the motives of the Nazi doctors; it does not explain the psychological attraction of the Nazi ideology or why doctors and others committed to that ideology participated enthusiastically in the extermination of millions of helpless people.”9 Kohut further warns that the idea of “doubling” can be used to justify unconscionable acts retroactively. Also, he argues, understanding Nazi physicians requires one to have a certain measure of empathy, if not sympathy, for them. Lifton seems to show some empathy, but not enough for the task. While Kohut finds this refreshing, it also means that he thinks Lifton’s study is seriously flawed because it is not objective.

### V2L Inevitable

#### Value to life is subjective --- life is a prerequisite

Lisa Schwartz, Chair at the Centre for Health Economics and Policy Analysis, 2002

“Medical Ethic: A Case Based Approach” Chapter 6, www.fleshandbones.com/readingroom/pdf/399.pdf

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.

### Extinction First

#### Extinction outweighs structural violence

Bostrum 12 (Nick, Professor of Philosophy at Oxford, directs Oxford's Future of Humanity Institute and winner of the Gannon Award, Interview with Ross Andersen, correspondent at The Atlantic, 3/6, “We're Underestimating the Risk of Human Extinction”, <http://www.theatlantic.com/technology/archive/2012/03/were-underestimating-the-risk-of-human-extinction/253821/>)

Bostrom, who directs Oxford's Future of Humanity Institute, has argued over the course of several papers that human extinction risks are poorly understood and, worse still, severely underestimated by society. Some of these existential risks are fairly well known, especially the natural ones. But others are obscure or even exotic. Most worrying to Bostrom is the subset of existential risks that arise from human technology, a subset that he expects to grow in number and potency over the next century.¶ Despite his concerns about the risks posed to humans by technological progress, Bostrom is no luddite. In fact, he is a longtime advocate of transhumanism---the effort to improve the human condition, and even human nature itself, through technological means. In the long run he sees technology as a bridge, a bridge we humans must cross with great care, in order to reach new and better modes of being. In his work, Bostrom uses the tools of philosophy and mathematics, in particular probability theory, to try and determine how we as a species might achieve this safe passage. What follows is my conversation with Bostrom about some of the most interesting and worrying existential risks that humanity might encounter in the decades and centuries to come, and about what we can do to make sure we outlast them.¶ Some have argued that we ought to be directing our resources toward humanity's existing problems, rather than future existential risks, because many of the latter are highly improbable. You have responded by suggesting that existential risk mitigation may in fact be a dominant moral priority over the alleviation of present suffering. Can you explain why? ¶ Bostrom: Well suppose you have a moral view that counts future people as being worth as much as present people. You might say that fundamentally it doesn't matter whether someone exists at the current time or at some future time, just as many people think that from a fundamental moral point of view, it doesn't matter where somebody is spatially---somebody isn't automatically worth less because you move them to the moon or to Africa or something. A human life is a human life. If you have that moral point of view that future generations matter in proportion to their population numbers, then you get this very stark implication that existential risk mitigation has a much higher utility than pretty much anything else that you could do. There are so many people that could come into existence in the future if humanity survives this critical period of time---we might live for billions of years, our descendants might colonize billions of solar systems, and there could be billions and billions times more people than exist currently. Therefore, even a very small reduction in the probability of realizing this enormous good will tend to outweigh even immense benefits like eliminating poverty or curing malaria, which would be tremendous under ordinary standards.

### Bare Life

### 1NC No Bare Life Impact

#### The prisoners are not bare life—there are rules that prevent true reduction

Halit Tagma 09, Professor of Political Science, Arizona State , “Homo Sacer vs. Homo Soccer Mom: Reading Agamben and Foucault in the War on Terror,” Alternatives: Global, Local, Political, Vol. 34, No. 4 (Oct.-Dec. 2009), pp. 407-435

Thus in some respects, prisoners of the "war on terror" might be understood as homo sacer. However, there are also particularities in the way the prisoners are handled that call for a critical re-evaluation of the (non) space of Guántanamo. If in the classical Foucauldian teminology sovereign power is about "taking or granting life," and biopower is about "letting live and making life," then what can be said about the power operating in Guántanamo that "forces to live" when prisoners are carefully controlled to prevent them from committing suicide. Indeed, the prisoners of Guántanamo are force fed and even given mandatory health checks so as to insure they are kept, barely, alive. Unlike the homo sacer who may be killed but not sacrificed, the prisoners in Guantánamo may not be killed or sacrificed. In fact, extensive efforts are spent to keep the prisoners at Guantánamo alive, such as the creation of operating rooms for major health emergencies as well as facilities for dentistry. The prisoners are given health treatment similar to that provided to the troops at the base.60 No doubt the display of such "health benefits" could be read as window dressing conducted by the camp administrators. However, it is important to note that there are indeed serious efforts to keep the prisoners (often barely, but nevertheless) alive. Furthermore, punishment and interro- gation are orchestrated so that the use of violence does not result in death. Extensive efforts are made to prevent the prisoners from com- mitting suicide. In other cases, hunger-striking inmates have met with brutal forced feeding.61 Thus, in a striking unclassified army document that outlines procedures in Guántanamo Bay, guards are ordered to "defend detainees as you would yourself against a hostile act or intent, death, or serious bodily harm."62 Therefore it is correct to say that what goes in Guantánamo Bay is neither "letting live" nor "taking life," but instead "making live," or even "forcing to live."¶ Agamben argues that camps are places where sovereign "power confronts nothing but pure life."63 Guantánamo Bay, declared as being beyond the reach of law, is, in fact, regulated by many petty regulations that are characteristic of disciplinary power. Reading the re- ports of the Joint Task Force and prisoner testimonies, one comes to the conclusion that there is a plethora of rules and procedures that govern the treatment of Guántanamo prisoners.64 Whereas Agamben's statement on "zones of indistinction" would lead us to think that any- thing goes in the camp, this is far from the reality of Guántanamo. Every minuscule element of the lives of Guántanamo prisoners been planned and is, for the most part, regulated by a written a code of conduct. Many foreseeable and probable occurrences that would be expected in a prison population have been forethought and written into a manual. Titled Standard Operating Procedures this 250-page manual outlines the rules, regulations, and procedures for treatment of prisoners in many probable circumstances.65 The manual outlines, for example, what to do if there is a petty riot, when and how to spray pepper spray on rioters, religious burials rituals for prisoners, and so on.66 This clearly hints that it is not just an exceptional sovereign power at work in Guántanamo, as exemplified in Rumsfeldian rhetorical salvos on "exceptional times requiring exceptional measures." In- stead, there are multiple technologies of power that are at work in the day-to-day administration of this space.67

### Drone Shift

#### Turn --- Drones --- providing habeas relief for detainees prompts the executive to strike instead of detain

Cully Stimson 10, Manager, National Security Law Program and Senior Legal Fellow, “Capture of Baradar Shows Need for Legal Framework for Treatment of Detainees,” Heritage,” February 18, 2010, http://www.heritage.org/research/reports/2010/02/capture-of-baradar-shows-need-for-legal-framework-for-treatment-of-detainees

For starters, the Obama Administration decided from day one not to transfer any detainees to Guantanamo Bay, Cuba. Second, the Administration has been reluctant to send detainees captured outside of Afghanistan to the U.S. detention facility in Bagram, Afghanistan. The reason is simple: A federal judge ruled that such detainees could contest their detention in U.S. federal court through the habeas corpus process. Thus, it is no coincidence that the Administration has increased Predator drone strikes on suspected terrorists, as reported recently in The Washington Post. It is indisputable that by killing terrorists, the U.S. government obtains less intelligence from them than if they were captured and lawfully interrogated. But as Andy McCarthy correctly points out, “Dead terrorists don’t recidivate, don’t rejoin the jihad, and don’t kill more innocent people.” Drone strikes have effectively put al-Qaeda on the run and disrupted their ability to plan, coordinate, and carry out terrorist attacks against the U.S. According to news reports, the U.S. has taken out at least 17 senior Taliban and al-Qaeda leaders through the targeted use of drones. Even so, there are terrorists that, because of who they are and what they know, the U.S. will want to capture and interrogate—e.g. Osama bin Laden, amongst others. However, in the absence of a comprehensive detention and interrogation framework—and a place to detain terrorists that the Administration is willing to use—it is easier to contend with terrorists from 30,000 feet.

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

Roberts 13 (Kristen, News Editor at National Journal, “When the Whole World Has Drones”, 3/22/13, <http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321>)

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

#### South China Sea conflicts cause extinction

Wittner 11 (Lawrence S. Wittner, Emeritus Professor of History at the State University of New York/Albany, Wittner is the author of eight books, the editor or co-editor of another four, and the author of over 250 published articles and book reviews. From 1984 to 1987, he edited Peace & Change, a journal of peace research., 11/28/2011, "Is a Nuclear War With China Possible?", www.huntingtonnews.net/14446)

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

## Decision Making

### 1n – Extreme Events

#### Probabalistic thinking fails to account or respond adequately to worst case scenarios, leading to policy failure --- evidence-based possibilistic thinking is vital for preventing catastrophes, while avoiding their offense

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

People are worried, now, about terror and catastrophe in ways that a short time ago would have seemed merely fantastic. Not to say that horror and fear suffuse the culture, but they are in the ascendant. And for good reason. There are possibilities for accident and attack, disease and disaster that would make September 11 seem like a mosquito bite. I think we have all become more alert to some of those possibilities, and it is wise to face them down. The idea of worst cases isn’t foreign to us. We have not, however, been given enough useful insight or guidance, either from academics or political leaders, regarding how to do that.

In this book I look the worst full in the face. What I see is frightening but enlightening. I believe that knowing a thing permits more comfort with that thing. Sometimes the comfort comes from greater control. Sometimes it comes from knowing the enemy, or the scary thing, which proffers a way forward, toward greater safety. There is horror in disaster. But there is much more, for we can use calamity to glean wisdom, to find hope.

Tragedy is with us now as never before. But that does not mean we need be consumed with fear and loathing. We can learn a lot about how society works, and fails to work, by looking at the worst. We can learn about the imagination, about politics, and about the wielding of power. We can learn about people’s capacities for despair and callousness, and for optimism and altruism. As we learn, our possibilities for improvement increase. Worst Cases is about the human condition in the modern world.

Some say that September 11 changed everything. That’s not true. But it did imprint upon our imaginations scenes of horror that until then had been the province of novels and movies. We now imagine ourselves in those images, and our wide-awake nightmares are worse than they used to be. We must name, analyze, and talk about the beast. That’s our best hope, as a society, to come to terms with the evil, the human failings, the aspects of nature, and just plain chance that put us in harm’s way.

Of course, talking about the worst can be a way to scare people into accepting programs that have other ends, and that they might not otherwise accept. The image of a nuclear mushroom cloud, for example, can be used to justify war because the possibility is so frightening that we would do almost anything to prevent it. The dark side of worst case thinking is apparent even at the level of personal relationships. Unleavened by evidence or careful thought it can lead to astonishingly poor policy and dumb decisions. No organizational culture can prevent or guard against it. The only response that will effectively mute such abuses is one that is organized and possessed of courage and vision. So warnings that the worst is at hand should be inspected closely, particularly if they call for actions that would serve ends the speaker cannot or does not freely acknowledge. I acknowledge my ends in this book. For better or worse, I always have.

Worst Cases is a book full of stories about disasters. But it is not a disaster book. It is a book about the imagination. We look back and say that 9/11 was the worst terrorist attack ever in the United States, that the Spanish Flu of 1918, the Black Death, or AIDS was the worst epidemic ever, or that the 1906 San Francisco earthquake was the Great Earthquake. Nothing inherent to the events requires that we adorn them with superlatives. People’s imaginations make that happen. Similarly, we construct possible futures of terror and calamity: what happens if the nation’s power grid goes down for six months? what if smallpox sweeps the world? what if nuclear power has a particularly bad day? what if a monster tsunami slams southern California? These too are feats of imagination.

There are those who say we shouldn’t worry about things that are unlikely to happen. That’s what your pilot means in saying, after a turbulent cross-country flight, “You’ve just completed the safest part of your trip.” We hear the same thing when officials tell us that the probability of a nuclear power plant melting down is vanishingly small. Or that the likelihood of an asteroid striking the earth is one in a million, billion, or trillion. There is similar advice from academics who complain that people are unreasonable because their fears don’t jibe with statistics. Chance, they reckon, is in our favor.

But chance is often against us. My view is that disasters and failures are normal, that, as a colleague of mine puts it, things that have never happened before happen all the time. A fair number of those things end up being events we call worst cases. When they happen we’re given opportunities to learn things about society and human nature that are usually obscured.

Worst case thinking hasn’t been given its due, either in academic writings or in social policy. We’re not paying enough attention to the ways we organize society that make us vulnerable to worst cases. We’re not demanding enough responsibility and transparency from leaders and policy makers. I am not an alarmist, but I am alarmed. That’s why I wrote Worst Cases. It is also why my tone and language are not technical. I am a sociologist, but I wrote Worst Cases so that nonsociologists can read it.

#### Possibilistic thinking is vital in response to terrorism

Lee Clarke 6, Ph.D., Associate Professor of Sociology at Rutgers University, Worst Cases: Terror and Catastrophe in the Popular Imagination, 2006, p. 21-22

The idea of the worst case draws our attention to the past and pushes it into the future. For thinking about worst cases involves both thinking about negative futures and evaluating past events as superlatively bad. “What’s the worst than can happen?” we ask children. Most people can look back and say, “That was the worst day of my life.” Such thinking and evaluating is fundamentally about the expansion and contraction of imagination. Labeling something “the worst” involves both prospective and retrospective orientations to disaster. Let me say a few more words about that. Sometimes we imagine futures that are particularly awful or construct scenarios that are overwhelmingly bad or sad, then attach the worst case moniker to them. Since the 9/11 terrorist attacks many people and organizations have created projections of that sort. Government leaders have made solemn announcements regarding when another attack might be coming—especially after it was discovered that officials actually had pretty good indications that something big was coming before September 11. Everyone has been urged to go on “high alert.” Reporters and others have set off to assess preparedness levels at nuclear plants, water treatment facilities, and key points on the electric power grid. Some of the 9/11 terrorists were reported to have asked questions of airport personnel in the small south Florida town of Belle Glade. Belle Glade is a farming community and crop dusters are a common sight there. Those reports were probably false, but at the time they prompted worst case projections about the use of crop dusters to distribute chemical or biological weapons. Similar speculation followed reports of a March 2001 visit by Mohammed Atta, a key player in the September 11 attacks, to a small town in Tennessee. Tanks at a nearby plant hold 250 tons of sulfur dioxide, and the plant’s worst case scenario said that perhaps sixty thousand people could be killed or hurt if it were sabotaged. Recall the EPA-required scenarios I mentioned earlier. Journalists looked through some of those scenarios after 9/11 and discovered that many of America’s most populated areas are next to facilities with large amounts of toxic chemicals. For example, in Kearny, New Jersey—which is very close to Manhattan—there’s a facility that has 180,000 pounds of sulfur dioxide which, if released in a toxic cloud, could kill or injure twelve million people. Similar scenarios exist for Los Angeles, Detroit, and Philadelphia. Officials of the companies responsible for these dangerous chemicals say they’re taking precautions that make such a catastrophe “unlikely”—there’s that short risk ruler again. That’s not very reassuring, though, because terrorists aim precisely to create unlikely horrors, which is to say they aim to make worst cases. To construct prospective worst cases, like the ones I just mentioned, we must somehow imagine the unimaginable. That isn’t easy to do. Before they built the Tacoma Narrows Bridge, engineers calculated that it would perform well under its own weight and the weight of the traffic it was to carry. That sort of projection often gets us into trouble, because once people convince themselves that they have imagined the worst then they stop imagining more possibilities. The engineers didn’t consider the possibility that wind could set up a wave in the deck of the suspension bridge that would, if sustained, shake the thing apart, but that’s exactly what happened on November 7, 1940, only four months after it opened to traffic. Their thinking was trapped in experience, depending on past successes and failures for models of what could go wrong. I’ll explore later how worst case thinking expands and contracts the imagination. For now, I just want to make the point that prospective worst case thinking is doomed to failure, in an absolute sense, because the mere act of imagining a worst case renders it something less of one. An emergency planner captured the idea well when he said, “People who are terrorists and sociopaths don’t have the normal thinking we have, so they would imagine things that would never occur to most of us. I would never say, ‘Oh, yeah, we’re as prepared as we can be.’ ”13 Forward-looking worst case creation isn’t just about terrorists. Millennialists, millenarians, and other religiously inspired apocalyptics do it when they look forward to the end of the world. Organizations do it too, when they make plans and scenarios for chemical facilities, such as those noted above or the contingency plans the U.S. Army has developed in case of a major mishap at its facilities for destroying our chemical weapons stockpile. To look at prospective worst cases is to look at how people think about and judge the future and their place in it.

# 2NC

## Politics

### 2NC---Asia Impact Calculus

#### Loss of Asian regional hegemony is the only existential risk---their wars pale in comparison

Layne 7 – Christopher Layne, associate professor of International Affairs at the Bush School of Government and Public Service at Texas A&M University, Fall 2007, “Who Lost Iraq and Why It Matters: The Case for Offshore Balancing,” online: http://www.worldpolicy.org/blog/who-lost-iraq-and-why-it-matters-case-offshore-balancing

The war’s ideological supporters are wrong. The United States is not failing in Iraq because “mistakes were made.” Rather, the decision to go to war was itself mistaken. From its inception, the invasion of Iraq was fated to be mission impossible, not mission accomplished, because the strategy was based on faulty assumptions and its objectives exceeded America’s grasp. The U.S. failure in Iraq should be a strong warning against provoking a military conflict with Iran, and the catalyst for a new regional strategy: offshore balancing.1 The key assumption underlying offshore balancing is that the most vital U.S. interests are preventing the emergence of an dominant power in Europe and East Asia—a “Eurasian hegemon”—and forestalling the emergence of a regional (“oil”) hegemon in the Middle East. Only a Eurasian hegemon could pose an existential threat to the United States. A regional hegemon in the Middle East could imperil the flow of oil upon which the U.S. economy and the economies of the advanced industrial states depend. As an offshore balancer, the U.S. would rely on the dynamics of the balance of power to thwart any states with hegemonic ambitions. An offshore balancing strategy would permit the United States to withdraw its ground forces from Eurasia (including the Middle East) and assume an over-the-horizon military posture. If—and only if—regional power balances crumbled would the United States re-insert its troops into Eurasia.

#### Turns and outweighs the case---Asia’s key to global leadership, risk of miscalc and war’s high now

Auslin 11 – Michael Auslin, Resident Scholar at the American Enterprise Institute, August 15, 2011, “Build, Hold, and Clear: An American Strategy for Asia ,” online: http://www.aei.org/print?pub=article&pubId=103997&authors=%3Ca%20href=scholar/127%3EMichael%20Auslin%3C/a%3E

Ultimately, the U.S. must be serious about its willingness to deal with elements that precipitate conflict. The steady erosion of stability caused by North Korea's ongoing provocations and China's growing assertiveness may lead to miscalculation or such heightened tensions that military conflict erupts. For example, South Korea has made clear that it will respond to any further attacks on its territory, and U.S. war planning must be willing to take action to degrade North Korean capability to carry out such actions. We must also be ready to exploit weaknesses in China's military systems and command structures so as to ensure decisive victory in any confrontation, in part as a way to reduce the likelihood of conflict breaking out. As serious as such steps would be, even worse would be to reach a tipping point where U.S. credibility is lost, and a more Machtpolitik competition among regional powers leads to long-term instability.

A Build, Hold, and Clear strategy is the most flexible and realistic approach to maintaining American influence and protecting our interests in the Indo-Pacific region. No doubt some, especially those in Beijing, will see this as a plan to contain China. In reality, this approach is not anti-China, but pro-Asia. Our goal should be an unreserved commitment to defending against the slow deterioration of security in the Indo-Pacific region, leading the continuing growth in economic production and trade, and furthering the trend of political liberalization.

America's economic health and global leadership in the next generation depend on maintaining our role in the world's most dynamic region. It means deepening the liberal order that has driven Asia's growth over the past half century. It also means providing a viable alternative to China's growing political, economic, and military influence. By promoting a more prosperous and more stable Indo-Pacific region, not just we, but our allies and partners, will benefit, and China, too, eventually may decide to play a more constructive role in upholding a system from which it has benefited as much as any other nation.

### Link

#### Empirics prove---fighting restrictions on Iraq destroyed the rest of Bush’s domestic agenda

Douglas L. Kriner 10, Assistant Professor of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 267-277

By contrast, measuring the domestic political costs of congressional opposition, while still difficult, is at least a tractable endeavor. Chapter 2 posited two primary pathways through which congressional opposition could raise the political costs of staying the course militarily for the president. First, high-profile congressional challenges to a use of force can affect real or anticipated public opinion and bring popular pressures to bear on the president to change course. Second, congressional opposition to the president's conduct of military affairs can compel him to spend considerable political capital in the military arena to the detriment of other major items on his programmatic agenda. On both of these dimensions, congressional opposition to the war in Iraq appears to have had the predicted effect.

### AT: Death Cult

#### Death reps cause an empathetic shift --- motivates human compassion and makes political action to resolve harms more likely

Recuber 11 Timothy Recuber is a doctoral candidate in sociology at the Graduate Center of the City. University of New York. He has taught at Hunter College in Manhattan "CONSUMING CATASTROPHE: AUTHENTICITY AND EMOTION IN MASS-MEDIATED DISASTER" gradworks.umi.com/3477831.pdf

Perhaps, then, what distant consumers express when they sit glued to the television **watching a disaster** replayed over and over, when they buy t-shirts or snow globes, when they mail teddy bears to a memorial, or when they tour a disaster site, is a deep, maybe subconscious, longing for **those age-old forms of community** and real human compassion that emerge in a place when disaster has struck. It is a longing in some ways so alien to the world we currently live in that it requires catastrophe **to call it forth**, even in our imaginations. Nevertheless, the actions of unadulterated goodwill that become commonplace in harrowing conditions represent the truly authentic form of humanity **that all of us**, to one degree or another, **chase after** in contemporary consumer culture every day. And while it is certainly a bit foolhardy to seek authentic humanity through disaster-related media and culture, **the** sheer strength of that desire **has been** evident in the public’s response to all **the** disasters**,** crises and catastrophes to hit the United States in the past decade. The millions of television viewers who cried on September 11, or during Hurricane Katrina and the Virginia Tech shootings, and the thousands upon thousands who volunteered their time, labor, money, and even their blood, as well as the countless others who created art, contributed to memorials, or adorned their cars or bodies with disaster-related paraphernalia— despite the fact that many knew no one who had been personally affected by any of these disasters—all attest to a **desire for real human community and compassion** that is woefully unfulfilled by American life under normal conditions today. ¶ In the end, **the** consumption of disaster doesn’t make us unable or unwilling to engage with disasters on a communal level**, or** towards progressive political ends—it makes us feel as if we already have, simply by consuming. It is ultimately less a form of political anesthesia than a simulation of politics, a Potemkin village of communal sentiment, that fills our longing for a more just and humane world with disparate acts of cathartic consumption. Still, the positive political potential **underlying such consumption**—**the desire for real forms of connection and community**—remains the **most** redeeming feature of disaster consumerism**.** Though that desire is frequently warped when various media lenses refract it, diffuse it, or reframe it to fit a political agenda, its overwhelming strength should nonetheless serve notice that people want a different world than the one in which we currently live, with a different way of understanding and responding to disasters. They want a world where risk is not leveraged for profit or political gain, but sensibly planned for with the needs of all socio-economic groups in mind. **They want a world where** preemptive strategies **are used to anticipate the real threats posed by global climate change and global inequality, rather than to invent fears of ethnic others and justify unnecessary wars**. They want a world where people can come together **not simply as a market, but as a public**, **to exert real agency over the policies made** in the name of their safety and security. And, when disaster does strike, they want a world where the goodwill and compassion shown by their neighbors, by strangers in their communities, and even by distant spectators and consumers, will be **matched by their own government**. **Though this vision of the world is utopian,** it is not unreasonable, and if contemporary American culture is ever to give us more than just an illusion of safety, or empathy, or authenticity, **then** it is this vision that we must advocate **on a daily basis, not only when disaster strikes.**

#### K causes genocide

**Dollimore 98** (Jonathan, Sociologist at University of Sussex, 1998 Death, Desire and Loss in Western Culture. Page 221)

The ideology of death is the corollary of the ideology of God, in that it is invoked to justify not only **unfreedom**, (renunciation, quietism, defeatism), but also, and inseparably, **domination: the ‘masochistic’** exaltation of one’s own death, says Marcuse, entails also the death of others. Moreover, the ideology of death implies acceptance of an existing repressive political order, and marks the birth of a philosophical morality which rationalizes it.In this respect, although Marcuse implausibly imagines that the ontological affirmation of death comes to a close in the philosophy of Heidegger, he anticipates a prolonged later debate when he discerns in Heidegger’s work an ‘ideological exhortation to death’ appearing ‘at the very time when the political ground was prepared for the corresponding reality of death – the gas chambers and concentration camps of Auschwitz, Buchenwald, Dachau, and Bergen-Belsen’ (p.69)

### UQ/CP Solvency---2NC

#### Increasing Obama’s lobbying efforts is key to build Democratic support for TPA---that can overcome Reid’s opposition---it’s key to competitiveness and the Asia pivot

FT 2-10 – Financial Times, 2/10/14, “Trade: Pacts of strife,” http://www.ft.com/intl/cms/s/0/c1254a20-8ff3-11e3-aee9-00144feab7de.html#axzz2tuqJqFDZ

To supporters of trade liberalisation, the TPP deal across the Pacific, and the Transatlantic Trade and Investment Partnership with the EU, will spur growth across economies covering almost 70 per cent of global gross domestic product. The new rules would put pressure on those large emerging-market countries left outside the deals, led by China, to adapt or suffer the consequences. The effort is being cheered on by many US blue-chip companies and even some smaller businesses that see liberalised trade as essential to bolstering their exports, global market share and competitive edge.

There are also strategic arguments to be made in favour of both pacts: to reinforce Mr Obama’s “pivot to Asia” and to rekindle what often seems to be a tired transatlantic relationship.

But the American public appears more focused on the slow economic recovery. Unemployment is high and wages remain stagnant. Twenty years after Nafta, there are still doubts that globalisation and more open trade is a solution to middle-class woes.

Critics say that free trade agreements will only lead to a regulatory “race to the bottom”, a flood of cheap imports, an expansion of the US trade deficit and job losses. Some of the arguments mirror the quip by Nafta opponent and former presidential candidate Ross Perot about the “giant sucking sound” of jobs moving to Mexico as a result of the deal.

“These deals cost jobs and depress wages in the United States. They have also contributed to rising corporate profits and growing inequality,” said Robert Scott, director of trade and manufacturing policy research at the Economic Policy Institute, a liberal think-tank, in a paper last week.

With the trade sceptics gaining momentum, and midterm congressional elections looming in November, it is far from certain that Mr Obama can win the political support he needs for the deals – at least this year.

Last month Harry Reid, the Democratic Senate majority leader, said he opposed “fast track” legislation – or “Trade Promotion Authority” – and that “everyone would be well advised to not push this right now”.

His comments, just a day after Mr Obama had called on Congress to endorse his trade agenda in the State of the Union address, echoed across Washington but not just because it was an unexpected rebuke to the president. It also appeared to signal that no trade bill would move through the Senate until at least after the midterm elections, in which Mr Reid is facing an uphill battle to preserve the Democratic majority in the upper chamber.

“At this point I think it’s going to be difficult to get either the transpacific or the transatlantic trade bills done on the schedule those of us who are free traders would prefer,” says Jim Moran, a veteran Democratic congressman from northern Virginia.

Trade negotiators around the world – from Brussels to Tokyo to Mexico City – are scrambling to weigh the implications of the imperilled domestic support for Mr Obama’s plans. The TPP agreement is close to being finalised after several years of talks but is the most controversial in the US because it includes a number of lower-wage countries such as Vietnam. The TTIP is about halfway to completion, with a crucial “stocktaking” session set for this month, so it is less vulnerable to US political uncertainty for the time being. On both counts, the Obama administration insists the talks are on track and is adamant that it will secure the backing it needs from Congress. But many believe there will be repercussions.

“It sucks oxygen out of the negotiations,” says Simon Evenett, a professor of economics at St Gallen University in Switzerland and co-ordinator of the Global Trade Alert, which monitors protectionism around the world.

Susan Schwab, former US trade representative (USTR) under George W Bush and now a professor at the University of Maryland, says: “US negotiators could still close an agreement but may feel the need to pull their punches, and then end up with a lesser deal.”

Fredrik Erixon, a trade expert at the European Centre for International Political Economy in Brussels, puts it another way. “If the USTR now wants to push negotiations to the final point . . . they are not going to get what they want. Why on earth would [Japanese prime minister Shinzo] Abe start to agree to difficult agricultural reform at this time when he is going to have a hard time of it in Japan?”

To critics, Mr Obama’s domestic troubles with his trade agenda result from his “lukewarm” attitude to the issue – and lack of passion in defending trade as beneficial to America’s middle class.

But, internationally, he has perhaps done more than any other leader to re-energise trade talks. Soon after he took office in 2009 he asked aides to come up with new approaches towards trade. One result was a push led by Mr Obama to rethink the long-stalled Doha Round launched in 2001 within the World Trade Organisation. In December, WTO ministers agreed in Bali to mount a global attack on red tape at borders. The Obama administration is also leading talks in Geneva on services and information technology products. And in Davos it launched negotiations to liberalise trade in solar panels and other “environmental goods”.

White House officials argue that they have been guided in part by the need to update a system that does not reflect the rise of large emerging economies over the past decade. “If you take a look at what happened to manufacturing over the course of the 2000s and competition with China and others, our view was that we are still an open economy but we want there to be a greater commitment to openness by everybody. It’s not going to be a one-way street,” says Michael Froman, the USTR.

The Obama administration says it can forge a political consensus in favour of trade liberalisation by striking deals that are less divisive than earlier ones, such as Nafta. These “21st-century” deals will have stricter environmental and labour standards, while setting rules that protect intellectual property rights and the role of state-owned enterprises.. . .

But that vision is colliding with a sobering domestic reality. Passing big trade bills though Congress has always been difficult, relying on a coalition of a majority of pro-business Republicans and a strong minority of Democrats willing to buck their base. The first part of that equation is shakier than usual, with Tea Party and conservative Republicans shying away from giving Mr Obama any victory. Securing the second part remains a big challenge.

Obama administration officials – including cabinet members, Mr Froman and the White House chief of staff – have stepped up efforts to stoke political momentum for trade on Capitol Hill. According to people familiar with the meetings, the president made strong pitches in favour of his trade agenda at private gatherings of congressional Democrats last week. But many believe he will have to do a lot more private arm-twisting and even deliver some high-profile speeches on trade to the American public if he really wants to change the political dynamic in his favour.

“If the president wants to get these trade deals done . . . he is going to have to work harder to pick up Democratic votes,” says Jim Manley, a former senior aide to Mr Reid. “People up for [re-election] in 2014 don’t want to deal with this, and many rank-and-file Democrats have a hard time supporting trade deals that may lead to job losses at home.”

Despite Mr Reid’s comments, there is a path to congressional approval of trade legislation to which optimists can point. A bipartisan fast-track bill introduced last month by Max Baucus, a Democratic senator, and Orrin Hatch, a Republican senator, is on hold because of Mr Baucus’s looming departure to become ambassador to Beijing. Ron Wyden, Mr Baucus’s successor as Senate finance committee chairman, may well want to make a few changes to the legislation to make it more palatable to the Democratic base. But if he succeeds, the finance committee could vote to advance it, sending it to Mr Reid and putting pressure on him to at least bring it to the floor for a final vote. At that point the business community lobbying would kick into gear and help carry the legislation over the finishing line.

### Pivot Good

#### Loss of Asia Pacific causes war over Taiwan, and seizure of the Strait of Malacca

Spinetta 6 Major Lawrence, “The Malacca Dilemma-Countering China’s String of Pearls with Land Based Air Power”, <http://www.dtic.mil/cgi-bin/GetTRDoc?Location=U2&doc=GetTRDoc.pdf&AD=ADA476931>

With regard to Japan, China has made repeated incursions into Japanese territorial waters and the country's economic zones in order to warn its neighbor in unusually blunt terms that any interference with Beijing's designs over disputed territory will be met with force.30 Tensions between China and Japan over the enforcement of territorial claims and the exploitation of disputed natural resources could erupt in a conflict with wide regional repercussions.31 Japan's unilateral declaration of an exclusive economic zone in the East China Sea, the site of intensive hydrocarbon prospecting, may spark military confrontation. Energy as a Driver of China’s National Security Policy 32 No longer inward looking, China shifted its foreign policy focus towards achieving regional dominance, bolstering national prestige, ensuring diplomatic ascension, and safeguarding economic interests. With regard to the last, economic considerations are intimately intertwined with Chinese security strategy. As such, energy concerns loom large in Chinese foreign policy calculations. China’s desire to secure energy imports to fuel its economy remains a prime driver of its security policy. China’s demand for energy grew by more than 30 percent in 2003, and Chinese automobile ownership increased 80 percent during the past four years. China is the second largest consumer of oil in the world and the third largest importer of oil. Importing 60 percent of its oil from the Middle East, China is heavily dependent on foreign oil, particularly Middle Eastern sources.33 As China’s economy expands, its dependence on foreign oil will increase, exacerbating pressures to secure energy resources. In the near term, China is projected to remain the fastest growing energy consumer in the world. Oil industry experts expect Chinese imports to rise from 6 million barrels in 2004 to 16-20 million barrels per day in 2020. If this projection proves accurate, China will have to import eighty percent of its total oil consumption. Even if both China’s economy and oil consumption grows at a rate below expectations, many experts agree that China “faces acute and unavoidable energy vulnerabilities.”34 The specter of an impending energy crisis is not remote; China is already experiencing oil shortages. In 2004, 24 of China’s 31 provinces experienced power cuts as demand surpassed energy grid capacities. The Chinese government introduced energy rationing in industrial centers near Guangzhou and Shanghai, ordered six thousand factories to take a one-week break or operate at non-peak hours, and mandated shopping malls in Beijing reduce their air conditioning by one-third to conserve energy.35 The Chinese government recognizes “a growing reliance on Middle Eastern suppliers for stable energy supplies is problematic and must be mitigated through a comprehensive diversification strategy.”36 But, its diversification strategy has made little progress. China lost bids to buy stakes in oil fields outside the Middle East, such as its July 2005 failed attempt to buy UNOCAL.37 Similarly, a deal to build a land pipeline from Russia to China collapsed after Japan entered the competition and offered more money to reroute the pipeline. Because regional energy grids in Southeast Asia have been built in a piecemeal fashion, Chinese efforts to connect grids and facilitate regional energy interdependence have produced only marginal benefits. China’s dependence on sea lanes to import oil is a critical strategic vulnerability. Almost all of the oil that China imports passes through maritime chokepoints and hence, is susceptible to disruption. Eighty percent of China’s oil imports pass through the Strait of Malacca. In a 2003 speech to the Chinese Communist Party leadership, President Hu Jintao identified this dependence on sea lanes as a critical vulnerability and directed national security officials to figure out a solution for the “Malacca Dilemma.” Predictably, China is allocating substantial resources to its military, buying sophisticated weapons, and seeking to expand its influence in the Western Pacific and Indian Ocean based on fears that the United States will exploit this economic vulnerability in a potential conflict. A Strategic Crossroads China’s aggressive strategy to challenge US maritime superiority suggests traditionalists who view national security as a zero-sum game with the United States are triumphing over integrationists who favor cooperation. Traditionalists view security issues more narrowly through a military filter, whereas integrationists emphasize cooperation and interdependence.38 Traditionalists and integrationists advocate different methods of securing access to energy imports. Traditionalists support a policy of direct physical control. They advocate the resolution of territorial disputes with force if necessary and encourage Chinese companies to acquire equity in foreign natural resources.39 In contrast, integrationists argue China “must expand ties to foreign supplies through diverse market arrangements, encourage foreign suppliers to pursue ‘linking’ projects in China, expand cooperation with the International Energy Agency to better anticipate and respond to international energy crises, and increase reliance on markets.”40 Although China seems to be pursuing elements of both the traditionalist and integrationist approaches, its weight of effort and magnitude of military spending suggests the government is prioritizing a military approach over cooperation. China is at a strategic crossroads. China’s break-neck military build-up has given it the capability to increasingly threaten its neighbors and US regional influence.41 The government can either choose a martial path to an expanded sphere of influence, or it can broaden its definition of security and focus on economic growth through commercial rather than military means. Based on recent antagonistic actions, it is far from a forgone conclusion that the integrationists will eventually triumph in the policy debate and China will embark upon a path of benign competition. Ideological differences with the United States increase the risk that China will choose a martial path. Additionally, the 2005 Department of Defense annual report to Congress on Chinese military power identifies other factors that could lead to conflict. These include: ƒ Nationalistic fervor bred by expanding economic power and political influence ƒ Structural economic weakness and inefficiencies that undermine economic growth ƒ An inability to accommodate the forces of an open, transparent market economy ƒ A government that is still adapting to great power roles ƒ An expanding military-industrial complex that proliferates advanced weapons.42 The interactions of complex political, economic, and social forces within China and their influence on Chinese strategic behavior are difficult to predict. For example, economic stagnation could aggravate domestic political problems for Communist Party leaders, leading Beijing to reduce military spending. Conversely, Chinese leaders could shift investments to the military in a bid to sustain domestic support through nationalistic assertions abroad.43 An economic downturn and demographic change may catalyze the government to focus on internal rather than external threats to regime survival. Alternatively, an economic downturn may cause Chinese leaders to advocate the acquisition by force of natural resources to fuel their economy. The unpredictability of Taiwanese politics may provoke China to act militarily despite a willingness of certain factions within the Chinese government to negotiate a settlement. The point is that US action will not be the sole determinant or driver of Chinese foreign policy. The United States needs to be prepared for the contingency that China follows a less than friendly path. The Need for US Action The stakes are high; the United States cannot cede control of the region’s strategic waterways without incurring immeasurable risk to vital US interests. First, failure to respond to China’s “String of Pearls” strategy threatens US power projection capability. Emphasizing preparations to fight and win short-duration, high-intensity conflicts, China hopes to negate the United States’ ability to intervene in the region, especially during a conflict with Taiwan. The US military cannot perform its primary missions—peacetime engagement, deterrence and conflict prevention, and fighting and winning the nation’s wars—unless it maintains the ability to deploy forces in a timely and effective manner. China enjoys the enduring advantage of proximity and interior lines of communication in Asia.44 The United States must overcome the tyranny of distance to project power and to protect the region’s sea lines of communication. In a China-Taiwan conflict, delaying or harassing a US carrier task force may create conditions sufficient for PRC victory. Unimpeded access through the South China Sea is strategically important not only in the event of conflict in the region, but also as a route to the Persian Gulf. Sixty-four percent of the known global oil reserves are concentrated in the Middle East. Surrendering maritime control to China would effectively give it a vote in US foreign policy. Even if China did not actively oppose US forces transiting through strategic chokepoints, it could impose significant time delays and costs. For example, a naval battle group proceeding from Yokosuka, Japan to Bahrain forced to sail around Australia would require an additional 15 days of transit. The extra fuel costs alone would amount to almost $10 million.45 More critical than the monetary cost, the loss of speed and responsiveness may prove difficult to overcome.46 Second, failure to respond to China’s “String of Pearls” strategy would jeopardize freedom of navigation through chokepoints that are critically important to global economic interests. One quarter of the world’s trade passes through the Strait of Malacca. Over 1,100 fully laden supertankers, many with only a meter or two of clearance between their keels and the channel bottom, pass eastbound through the Strait each year.47 If China succeeds in gaining control of the Strait, then half of the world’s merchant fleet would be required to seek alternative routes. This situation would result in huge economic losses, delays in shipping, and generate a substantial increase in the requirement for vessel capacity. If the Chinese threaten to close the Strait of Malacca and merchant ships are re-routed, commercial transportation costs will increase by 60 percent.48 More importantly, China would be able to harm the economies of close allies, most notably Japan and South Korea. Threats to exert control over sea lanes would have an enormous impact, giving Beijing tremendous bargaining leverage. Japan and South Korea rely on US naval power to help protect the transit of their goods to market and the flow of resources. Seventy percent of Japan’s trade passes through the Strait of Malacca. The Japanese and South Korean economies are heavily dependent on the free passage of commercial traffic through the Strait of Malacca, yet neither country has the naval forces necessary to adequately protect its long-haul commercial shipping in the region. Not only does it benefit the United States to protect the vital interests of its close allies, the United States is bound by treaty to secure Japanese and South Korean sea lines of communication.49 An American failure to protect Japanese and South Korean interests would weaken strategic alliances and encourage those nations to take their own defensive measures, potentially setting the conditions for a spiraling arms race. Ross Terrill, a national security expert at Harvard’s Asia Center says, “A Japan that saw China eclipse the U.S. -- its major ally and whose primacy in East Asia explains six decades of Japanese restraint -- would surely challenge China.”50 If a regional arms race does not come to fruition and Japan chooses a conciliatory approach, then Japan may be forced into political accommodation as a result of overt Chinese threats or soft power influence. Developing a Hedge Strategy A Chinese national security strategist closely tied to the People’s Liberation Army stated, “When a nation embarks upon a process of shifting from an ‘inward-leaning economy’ to an ‘outward-leaning economy,’ the arena of national security concerns begins to move to the oceans. Consequently, people start to pay attention to sea power. This is a phenomenon in history that occurs so frequently that it has almost become a rule rather than an exception.”51 In an Atlantic Monthly article, “How We Would Fight China,” Robert Kaplan predicts a future conflict as the Chinese navy increasingly seeks to project power and control the region’s sea lanes. He warns, “Given the stakes, and given what history teaches us about the conflicts that emerge when great powers all pursue legitimate interests, the result is likely to be the defining military conflict of the twenty-first century: if not a big war with China, then a series of Cold War-style standoffs that stretch out over years and decades.”52 Many political scientists argue it’s a question of “when,” not “if” US-China relations sour (i.e., relations are defined by more than benign competition). As a result, some neo-conservatives advocate the United States follow a strategy that seeks to prevent or at least moderate China’s rise. Max Boot chides the Pentagon for failing to recognize China’s nefarious plotting and accuses “Chinese strategists, in the best tradition of Sun Tzu, [of] working on crafty schemes to topple the American hegemon.”53 In response, Richard Haas, president of the Council on Foreign Relations, points out, “One problem with this thinking is that the rise and fall of countries is largely beyond the ability of the United States or any other outsider to control. The performance of states is mostly the result of demographics, culture, natural resources, educational systems, economic policy, political stability, and foreign policy. It is not clear the United States could prevent China's rise even if it wanted to.”54 Either way, strained relations between the two countries are likely. While war with China is not inevitable, it would be a serious mistake for the United States not to protect its vital interests and create a hedge against the risk of some sort of conflict—military and/or diplomatic. China stands at a strategic crossroads, and the United States must be prepared to respond to the uncertainties of any Chinese course of action. The dispute over Taiwan is an obvious flashpoint, but countering Chinese soft power requires strategic considerations beyond preparing against direct military confrontation. The United States must be prepared to fully engage China, but also capable of responding to potential Chinese attempts to attain regional hegemony through force or intimidation. The United States has little influence over the pace and scope of Chinese military spending, but it can strive to maintain a strategic advantage in the region to protect trade, preserve regional influence, and threaten China’s strategic vulnerabilities if required. China’s ultimate goal is to control strategic chokepoints in the South China Sea and Indian Ocean. China’s “String of Pearls” strategy supports efforts to exclude the United States from the region. To offset the ability of Beijing to leverage its emergent military capabilities, the United States needs a sustained and robust naval and air presence in the region to prevent China from having the option of threatening US and allied interests. The United States should take steps to encourage a peaceful and prosperous China while pursuing a hedge strategy to reduce the risks associated with a China that chooses a belligerent attitude in the realm of foreign policy. Ross Terrill remarked, “The expansionist claims of Beijing are unique among today's powers. But the Chinese regime is a rational dictatorship that has, for the past quarter century, been patient in fulfilling its goals. It surely realizes that others -- such as the U.S., Japan, Russia and India -- have a variety of reasons for denying China the opportunity to be a 21st century Middle Kingdom. If Beijing continues to be faced with a countervailing equilibrium that keeps the peace in East Asia, it will probably act prudently.”55

## Ban Torture CP

### Solves

### Solves

#### Counterplan solves cred and the case

Adrian Vermeule 7, Harvard law prof - AND - Eric Posner - U Chicago law, The Credible Executive, 74 U. Chi. L. Rev. 865

\*We do not endorse gendered language

The Madisonian system of oversight has not totally failed. Some- times legislators overcome the temptation to free ride; sometimes they invest in protecting the separation of powers or legislative preroga- tives. Sometimes judges review exercises of executive discretion, even during emergencies. But often enough, legislators and judges have no real alternative to letting executive officials exercise discretion un- checked. The Madisonian system is a partial failure; compensating mechanisms must be adopted to fill the area of slack, the institutional gap between executive discretion and the oversight capacities of other institutions. Again, the magnitude of this gap is unclear, but plausibly it is quite large; we will assume that it is. It is often assumed that this partial failure of the Madisonian sys- tem unshackles and therefore benefits ill-motivated executives. This is grievously incomplete. The failure of the Madisonian system harms the well-motivated executive as much as it benefits the ill-motivated one. Where Madisonian oversight fails, the well-motivated executive is a victim of his own power. Voters, legislators, and judges will be wary of granting further discretion to an executive whose motivations are un- certain and possibly nefarious. The partial failure of Madisonian over- sight thus threatens a form of inefficiency, a kind of contracting failure that makes potentially everyone, including the voters, worse off. Our central question, then, is what the well-motivated executive can do to solve or at least ameliorate the problem. The solution is for the executive to complement his (well-motivated) first-order policy goals with second-order mechanisms for demonstrating credibility to other actors. We thus do not address the different question of what voters, legislators, judges, and other actors should do about an executive who is ill motivated and known to be so. That project involves shoring up or replacing the Madisonian system to block executive dictatorship. Our project is the converse of this, and involves finding new mechanisms to help the well-motivated executive credibly distinguish himself as such. ¶ IV. EXECUTIVE SIGNALING: LAW AND MECHANISMS ¶ We suggest that the executive’s credibility problem can be solved by second-order mechanisms of executive signaling. In the general case, well-motivated executives send credible signals by taking actions that are more costly for ill-motivated actors than for well- motivated ones, thus distinguishing themselves from their ill- motivated mimics. Among the specific mechanisms we discuss, an important subset involves executive self-binding, whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors. Commitments themselves have value as signals of benign motivations. ¶ This departs from the usual approach in legal scholarship. Legal theory has often discussed self-binding by “government” or govern- ment officials. In constitutional theory, it is often suggested that consti- tutions represent an attempt by “the people” to bind “themselves” against their own future decisionmaking pathologies, or relatedly, that constitutional prohibitions represent mechanisms by which govern- ments commit themselves not to expropriate investments or to exploit their populations.72 Whether or not this picture is coherent,73 it is not the question we examine here, although some of the relevant consid- erations are similar.74 We are not concerned with binding the president so that he cannot abuse his powers, but with how he might bind himself or take other actions that enhance his credibility, so that he can generate support from the public and other members of the government. ¶ Furthermore, our question is subconstitutional: it is whether a well-motivated executive, acting within an established set of constitu- tional and statutory rules, can use signaling mechanisms to generate public trust. Accordingly, we proceed by assuming that no constitutional amendments or new statutes will be enacted. Within these con- straints, what can a well-motivated executive do to bootstrap himself to credibility? The problem for the well-motivated executive is to credibly signal his benign motivations. In general, the solution is to engage in actions that are less costly for good types than for bad types. ¶ We begin with some relevant law, then examine a set of possible mechanisms—emphasizing both the conditions under which they might succeed and the conditions under which they might not—and conclude by examining the costs of credibility. ¶ A. A Preliminary Note on Law and Self-Binding ¶ Many of our mechanisms are unproblematic from a legal per- spective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self- binding.75 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is yes, at least to the same extent that a legislature can. Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo.76 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future. A president might commit himself to a long-term project of defense pro- curement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies. More schematically, we may speak of formal and informal means of self-binding:

## PIC

### CP Solves their Ethic---AT: K of Having Reading a NB---1NC/2NC

#### If we win that our CP solves the aff, it accesses their entire ethics framework. --- it’s irresponsible to refuse our CP if it solves the aff and we have a net-benefit.

John Finnis, Professor of Law and Legal Philosophy, 1980, Natural Law and Natural Rights, p. 111-112

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

#### Their framing argument doesn’t square with real-world policymaking – the motivations behind passing legislation are not relevant in determining the legitimacy of a new policy – Chief Justice Earl Warren explains in US v. O’Brien, a landmark decision on free speech, in 1968

Earl Warren, Chief Justice of the US Supreme Court, 5-27-1968 United States v. O’Brien, 391 U.S. 367

O'Brien finally argues that the 1965 Amendment is unconstitutional as enacted because what he calls the "purpose" of Congress was "to suppress freedom of speech." We reject this argument because under settled principles the purpose of Congress, as O'Brien uses that term, is not a basis for declaring this legislation unconstitutional. It is a familiar principle of constitutional law that this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive. Inquiries into congressional motives or purposes are a hazardous matter. When the issue is simply the interpretation of legislation, the Court will look to statements by legislators for guidance as to the purpose of the legislature, because the benefit to sound decision-making in this circumstance is thought sufficient to risk the possibility of misreading Congress' purpose. It is entirely a different matter when we are asked to void a statute that is, under well-settled criteria, constitutional on its face, on the basis of what fewer than a handful of Congressmen said about it. What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guesswork. We decline to void essentially on the ground that it is unwise legislation which Congress had the undoubted power to enact and which could be reenacted in its exact form if the same or another legislator made a "wiser" speech about it.

## Case

### AT: Doubling

Doubling theory is wrong

Goldhagen 86 – Daniel Jonah Goldhagen, former Associate Professor of Political Science and Social Studies at Harvard University, December 1986, “Healers as Killers,” Commentary Magazine, online: http://www.commentarymagazine.com/viewarticle.cfm/the-nazi-doctors--by-robert-jay-lifton-7224

Finally, Lifton's theory of doubling, although it does seem plausible when applied to the Nazi doctors, is, I believe, wrong. The theory is wholly dependent on the assumption that the doctors understood that what they were doing was evil, an assumption Lifton not only fails to justify, but one which he also undercuts. As his analysis of the Nazi biomedical vision and of Nazi anti-Semitism makes clear, the Nazis understood the extermination of the Jews to be necessary, just, and good. Since the Nazi doctors failed to conceive of their deeds as fundamentally evil, why would they need to double?

Moreover, the theory of doubling posits a radical discontinuity in the psychological organization of the Nazi doctors' minds before and after their murderous deeds began. This seems at odds with the material on which the theory of doubling is based. It is precisely because the killings accorded with their anti-Semitic “prior selves” that so many people could quickly and easily be turned into executioners. This is not to say that being in Auschwitz did not require of the doctors all sorts of psychological stratagems to make bearable their gruesome tasks. (Lifton's discussion of these stratagems, by the way, is generally good.) But the systematic creation of two psychodynamically separate selves in each doctor seems unlikely. Lifton has certainly not succeeded in sustaining such a speculative assertion.

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### Deference DA

#### We are NOT hegemonic politics--rejecting sovereignty CAUSES more intervention

Tara McCormack 10, Lecturer in International Politics at the University of Leicester, PhD in IR from the University of Westminster, “Critique, Security and Power: The Political Limits to Emancipatory Approaches,” p138, google books

It seems clear that since the 1990s and the shift away from formal framework for international affairs in terms of formal sovereign equality and non intervention, weak and troubled states have become increasingly opened up to interference and intervention by great powers. There is no global political constituency in existence and the world order as it currently is one in which power is unevenly distributed. Shifting away from even formal prohibitions against intervention and formal sovereign equality simply gives more powerful states greater power. This cannot represent a step towards greater emancipation for the citizens of those states, in fact it represents an increasing lack of freedom. For contemporary critical theorists, there is a failure to understand that rights are not things in themselves that can create freedom. In certain concrete situations human rights can easily become their opposite, a system in which external powers become sovereign. For this reason, a critical approach must entail an engagement with the here and now and the exercise of contemporary power relations, but this is exactly what contemporary critical and emancipatory theorists are not doing.

#### Squo solves --- Obama rejected the Bush doctrine

Aziz 13 (Omer, graduate student at Cambridge University, is a researcher at the Center for International and Defense Policy at Queen’s University, “The Obama Doctrine's Second Term,” Project Syndicate, 2-5, <http://www.project-syndicate.org/blog/the-obama-doctrine-s-second-term--by-omer-aziz>)

The Obama Doctrine’s first term has been a remarkable success. After the $3 trillion boondoggle in Iraq, a failed nation-building mission in Afghanistan, and the incessant saber-rattling of the previous Administration, President Obama was able to reorient U.S. foreign policy in a more restrained and realistic direction. He did this in a number of ways. First, an end to large ground wars. As Defense Secretary Robert Gates put it in February 2011, anyone who advised future presidents to conduct massive ground operations ought “to have [their] head examined.” Second, a reliance on Secret Operations and drones to go after both members of al Qaeda and other terrorist outfits in Pakistan as well as East Africa. Third, a rebalancing of U.S. foreign policy towards the Asia-Pacific — a region neglected during George W. Bush's terms but one that possesses a majority of the world’s nuclear powers, half the world’s GDP, and tomorrow’s potential threats. Finally, under Obama's leadership, the United States has finally begun to ask allies to pick up the tab on some of their security costs. With the U.S. fiscal situation necessitating retrenchment, coupled with a lack of appetite on the part of the American public for foreign policy adventurism, Obama has begun the arduous process of burden-sharing necessary to maintain American strength at home and abroad. What this amounted to over the past four years was a vigorous and unilateral pursuit of narrow national interests and a multilateral pursuit of interests only indirectly affecting the United States. Turkey, a Western ally, is now leading the campaign against Bashar al-Assad’s regime in Syria. Japan, Korea, India, the Philippines, Myanmar, and Australia all now act as de facto balancers of an increasingly assertive China. With the withdrawal of two troop brigades from the continent, Europe is being asked to start looking after its own security. In other words, the days of free security and therefore, free riding, are now over. The results of a more restrained foreign policy are plentiful. Obama was able to assemble a diverse coalition of states to execute regime-change in Libya where there is now a moderate democratic government in place. Libya remains a democracy in transition, but the possibilities of self-government are ripe. What’s more, the United States was able to do it on the cheap. Iran’s enrichment program has been hampered by the clandestine cyber program codenamed Olympic Games. While Mullah Omar remains at large, al Qaeda’s leadership in Afghanistan and Pakistan has been virtually decimated. With China, the United States has maintained a policy of engagement and explicitly rejected a containment strategy, though there is now something resembling a cool war — not yet a cold war — as Noah Feldman of Harvard Law School puts it, between the two economic giants. The phrase that best describes the Obama Doctrine is one that was used by an anonymous Administration official during the Libya campaign and then picked up by Republicans as a talking point: Leading From Behind. The origin of the term dates not to weak-kneed Democratic orthodoxy but to Nelson Mandela, who wrote in his autobiography that true leadership often required navigating and dictating aims ‘from behind.’ The term, when applied to U.S. foreign policy, has a degree of metaphorical verity to it: Obama has led from behind the scenes in pursuing terrorists and militants, is shifting some of the prodigious expenses of international security to others, and has begun the U.S. pivot to the Asia-Pacific region. The Iraq War may seem to be a distant memory to many in North America, but its after-effects in the Middle East and Asia tarnished the United States' image abroad and rendered claims to moral superiority risible. Leading From Behind is the final nail in the coffin of the neoconservatives' failed imperial policies.

#### Impossible to mobilize support for lashout

Mandelbaum 11 (Michael Mandelbaum, A. Herter Professor of American Foreign Policy, the Paul H. Nitze School of Advanced International Studies, Johns Hopkins University, Washington DC; and Director, Project on East-West Relations, Council on Foreign Relations, “CFR 90th Anniversary Series on Renewing America: American Power and Profligacy,” Jan 2011) <http://www.cfr.org/publication/23828/cfr_90th_anniversary_series_on_renewing_america.html?cid=rss-fullfeed-cfr_90th_anniversary_series_on-011811&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed:+cfr_main+(CFR.org+-+Main+Site+Feed>

HAASS: Michael, I think I know the answer to this question, but let me ask you anyhow, which is, the last 10 years of American foreign policy has been dominated by two extremely expensive interventions, one in Iraq, one now in Afghanistan. Will this sort of pressure both accelerate the end, particularly of Afghanistan? But, more important, will this now -- is this the end of that phase of what we might call "discretionary American interventions?" Is this basically over?¶ MANDELBAUM: Let's call them wars of choice. (Laughter.)¶ HAASS: I was trying to be uncharacteristically self-effacing here. But clearly it didn't hold. Okay.¶ MANDELBAUM: I think it is, Richard. And I think that this period really goes back two decades. I think the wars or the interventions in Somalia, in Bosnia, in Kosovo, in Haiti belong with the interventions in Afghanistan and Iraq, although they were undertaken by different administrations for different reasons, and had different costs. But all of them ended up in the protracted, unexpected, unwanted and expensive task of nation building. ¶ Nation building has never been popular. The country has never liked it. It likes it even less now. And I think we're not going to do it again. We're not going to do it because there won't be enough money. We're not going to do it because there will be other demands on the public purse. We won't do it because we'll be busy enough doing the things that I think ought to be done in foreign policy. And we won't do it because it will be clear to politicians that the range of legitimate choices that they have in foreign policy will have narrowed and will exclude interventions of that kind. So I believe and I say in the book that the last -- the first two post-Cold War decades can be seen as a single unit. And that unit has come to an end.

### WOT DA

**Terror is a real threat driven by forces the aff can’t resolve---we should reform the war on terror, not surrender---any terror attack turns the entire case**

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

APPLYING THAT TRADITION today is not easy. Cold war liberals devel- oped their narrative of national greatness in the shadow of a totalitarian ¶ superpower. **Today, the U**nited **S**tates **faces** no such unified threat. Rather, it faces **a web of dangers**—from disease to environmental degradation to weapons of mass destruction—all **fueled by globalization, which leaves America increasingly vulnerable to pathologies bred in distant corners of the world**. And **at the center of this nexis sits** jihadist terrorism, a new totalitarian movement that lacks state power but harnesses the power of globalization instead. ¶ Recognizing that the United States again faces a totalitarian foe does not provide simple policy prescriptions, because today’s totalitarianism takes such radically different form. But **it reminds** **us** of something more basic, **that liberalism does not find its enemies only on the right**—**a lesson** sometimes **forgotten in the age of** George W. **Bush**. ¶ Indeed, it is because liberals so despise this president that they increasingly reject his trademark phrase, the “war on terror.” Were this just a semantic dispute, it would hardly matter; **better alternatives to war on terror abound**. But the rejection signifies something deeper: a turn away from the very idea that anti-totalitarianism should sit at the heart of the liberal project. **For too many liberals today,** George W. **Bush’s war on terror is the only one they can imagine**. This alienation may be understand- able, but that does not make it any less disastrous, for it is liberalism’s principles—even more than George W. Bush’s—that jihadism threatens. **If today’s liberals cannot rouse** as much **passion for fighting a movement that** flings acid at unveiled women as they do for taking back the Senate in 2006, **they have strayed far from liberalism’s best traditions.** And **if they believe it is** only George W. **Bush who threatens America’s freedoms, they should ponder what will happen if the U**nited **S**tates **is hit with a nuclear** or contagious biological **attack**. **No matter who is president**, Republican or Democrat, the reaction will make John Ashcroft look like the head of the ACLU.

**Terror attack turns the entire case---fear would cause public acquiescence to rights-violations and government crackdowns that outweigh the case by an order of magnitude**

Peter **Beinart 8**, associate professor of journalism and political science at CUNY, The Good Fight; Why Liberals – and only Liberals – Can Win the War on Terror and Make America Great Again, 110-1

Indeed, **while the Bush administration bears the blame** for these hor- rors, **White House officials exploited a shift in public values after 9/11**. When asked by Princeton Survey Research Associates in 1997 whether stopping terrorism required citizens to cede some civil liberties, less than one-t hird of Americans said yes. By the spring of 2002, that had grown to almost three- quarters. **Public support for the government’s right to wire- tap phones and read people’s mail also grew exponentially.** In fact, **polling** in the months after the attack **showed Americans less concerned that the Bush administration was violating civil liberties than that it** wasn’t violating them enough. **What will happen the next time?** It is, of course, impossible to predict the reaction to any particular attack. But **in 2003, the Center for Public Integrity got a draft of** something called **the** Domestic Security Enhance- ment Act, quickly dubbed **Patriot II.** According to the center’s executive director, Charles Lewis, **it expanded government power** five or ten times **as much as its predecessor**. **One provision permitted the government to strip** native-born **Americans of their citizenship, allowing them to be** indefinitely imprisonedwithout legal recourse if they were deemed to have provided any support—even nonviolent support—to groups designated as terrorist. After an outcry, the bill was shelved. But **it offers a hint of what** this administration—or any administration**—might do if the United States were hit again**. ¶ When the CIA recently tried to imagine how the world might look in 2020, it conjured four potential scenarios. One was called the “cycle of fear,” and it drastically inverted the assumption of security that C. Vann Woodward called central to America’s national character. The United States has been attacked again and the government has responded with “large- scale intrusive security measures.” In this dystopian future, two arms dealers, one with jihadist ties, text- message about a potential nuclear deal. One notes that terrorist networks have “turned into mini-s tates.” The other jokes about the global recession sparked by the latest attacks. And he muses about how terrorism has changed American life. “**That new Patriot Act**,” he writes, “**went way beyond anything imagined after 9/11**.” “**The** **fear cycle generated by an increasing spread of WMD and terrorist attacks**,” comments the CIA report, “**once under way, would be** one of **the hardest to break**.” And the more entrenched that fear cycle grows, the less free America will become. **Which is why a new generation of American liberals must make the fight against this new totalitarianism their own.**

#### Their critique is based on a poorly-researched caricature of terrorism studies --- they over-focus on minute biases while ignoring our overwhelming, objective, and self-reflexive evidence

Schmid 9 - Chair in International Relations; the Director of the Centre for the Study of Terrorism and Political Violence at St. Andrews University(Alex, Perspectives on Terrorism, v.3, issue 4, Book Review of “Critical Terrorism Studies. A new research agenda. by Richard Jackson”, <http://www.terrorismanalysts.com/pt/index.php?option=com_rokzine&view=article&id=96>

\*We do not endorse ableist language

The editors accuse, in their introduction  “the orthodox field” of orthodox terrorism studies of functioning “ideologically in the service of existing power structures”, with their academic research. Furthermore, they claim that orthodox scholars are frequently being used “to legitimise coercive intervention in the global South….” (p.6). The present volume is edited by three authors associated with the Centre for the Study of Radicalisation and Contemporary Political Violence (CSRV) in the Department of International Politics in Aberystwyth (Wales, UK). They also happen to be editors of a new Routledge journal “Critical Studies on Terrorism’ . The “critical” refers principally but not exclusively to the “Frankfurt-via-Welsh School Critical Theory Perspective”. The twelve contributors are not all equally “critical” in aHabermasian sense. The programmatic introduction of the editors is followed by two solid chapters from Magnus Ranstorp (former Director of CSTPV, St. Andrews, and currently Director of the Centre for Asymmetric Threat Studies at the Swedish National Defence College) and Andrew Silke (formerly with the UK Home Office and now Field Leader for Criminology at the University of East London). They both rightfully criticize some of the past sins and present shortcomings of the field of Terrorism Studies. One of them approvingly quotes Marc Sageman who observed that “disagreements among experts are the driving force of the scientific enterprise”. Such disagreements, however, exist among “orthodox” scholars like Sageman and  Hoffman or Pape and Abrams. In that sense, the claim by some critical theorists that the field of traditional Terrorism Studies is ossified without them, is simply is not true. One of the problems with many of the adherents of the “critical” school is that the focus is almost exclusively on the strawman they set up to shoot – “orthodox” terrorism discourse rather than on the practitioners of terrorism. Richard Jackson claims that “…most of what is accepted as well-founded ‘knowledge’ in terrorism studies is, in fact, highly debatable and unstable” (p.74), dismissing thereby almost four decades of scholarship as “based on a series of ‘virulent myths’, ‘half-truths’ and contested claims…biased towards Western state priorities” (p.80). For him “terrorism is…a social fact rather than a brute fact” and “…does not exist outside of the definitions and practices which seek to enclose it, including those of the terrorism studies field” (pp.75-76). He objects to prevailing “problem-solving theories of terrorism” in favour of an approach that questions “ the status quo and the dominant acts within it” (p.77). Another contributor, J.A. Sluka, argues, without offering any proof,  that “terrorism is fundamentally a product of social inequality and state politics” (p. 139). Behind many of the critical theorists who blame mainstream terrorism research for taking ‘the world as it finds it’ there is an agenda for changing the status quo and overthrowing existing power structures. There is, in itself, nothing wrong with wanting a new and better world order. However, it is not going to be achieved by using an alternative discourse on terrorism and counter-terrorism. Toros and Gunning, contributors of another chapter, state that “the sine qua non of Critical Theory is emancipation” (p. 99) and M. McDonald als puts “emancipation as central to the study of terrorism” (p.121). However, there is not a single word on the non-emancipated position of women under Islam in general or among the Taliban and their friends from al-Qaeda in particular. One of the strength (some argue weakness) of Western thinking is its ability for self-criticism – something largely absent in the Muslim world. In that sense, this volume falls within a Western tradition. However, self-criticism should not come at the cost of not criticising   adversaries by using the same yardstick. In this sense, this volume is strangely silent about the worldview of those terrorists who have no self-doubts and attack the Red Cross,  the United Nations, NGOs and their fellow Muslims with equal lack of scruples. A number of authors in the volume appear to equate terrorism uncritically with political violence in general while in fact it is more usefully thought of as one of some twenty sub-categories of  political violence - one characterized by deliberate attacks on civilians and non-combatants in order to intimidate, coerce or otherwise manipulate  various audiences and parties to a conflict. Part of the volume advocates reinventing the wheel. J. Gunning, for instance, recommends to employ Social Movement Theory for the study of terrorism. However, that theory has been employed already explicitly or implicitly by a number of more orthodox scholars, e.g. Donatella della Porta. Many “critical” statements in the volume are unsupported by convincing evidence, e.g. when C. Sylvester and S. Parashar state “The September 11 attacks and the ongoing war on terror reinforce gender hierarchy and power in international relations” (p.190). Jackson claims that the key question  for critical terrorism theory is “who is terrorism research for and how does terrorism knowledge support particular interests?” (p.224) It does not seem to occur to him that he could have studied this question by looking at the practitioners of terrorism and study al-Qaeda’s ideological writings and its training  and  recruiting manuals. If CTS is a call for “making a commitment to emancipatory praxis central to the research enterprise” (R. Jackson et al, p. 228), CTS academics should be the first on the barricades against jihadists who treat women not as equals and who would, if they get their way, eradicate freedom of thought and religion for all mankind. It is sad that some leading proponents of Critical Terrorism Studies appear to be in fact uncritical and blind on one eye.

#### Terrorism studies are epistemologically and methodologically valid --- our authors are self-reflexive

Michael J. Boyle 8, School of International Relations, University of St. Andrews, and John Horgan, International Center for the Study of Terrorism, Department of Psychology, Pennsylvania State University, April 2008, “A Case Against Critical Terrorism Studies,” Critical Studies On Terrorism, Vol. 1, No. 1, p. 51-64

Jackson (2007c) calls for the development of an explicitly CTS on the basis of what he argues preceded it, dubbed ‘Orthodox Terrorism Studies’. The latter, he suggests, is characterized by: (1) its poor methods and theories, (2) its state centricity, (3) its problemsolving orientation, and (4) its institutional and intellectual links to state security projects. Jackson argues that the major defining characteristic of CTS, on the other hand, should be ‘a skeptical attitude towards accepted terrorism “knowledge”’. **An implicit presumption from this is that terrorism scholars have laboured for all of these years without being aware that their area of study has an implicit bias, as well as definitional and methodological problems.** In fact, **terrorism scholars are** not only well aware of these problems, but also have provided their own searchingcritiques of the field at various points during the last few decades (e.g. Silke 1996, Crenshaw 1998, Gordon 1999, Horgan 2005, esp. ch. 2, ‘Understanding Terrorism’). **Some of those scholars** most associated with the critique of empiricismimplied in ‘Orthodox Terrorism Studies’ **have also engaged in** deeply critical examinations **of the nature of sources, methods, and data in the study of terrorism**. For example, Jackson (2007a) regularly cites the handbook produced by **Schmid and Jongman** (1988) to support his claims that theoretical progress has been limited. But this fact was well recognized by the authors; indeed, in the introduction of the second edition they **point out** that they have not revised their chapter on theories of terrorism from the first edition, because the **failure to address** persistent conceptual and **data problems** has undermined progress in the field. The point of their handbook was to sharpen and make more comprehensive the result of research on terrorism, not to glide over its methodological and definitional failings (Schmid and Jongman 1988, p. xiv). Similarly, **Silke’s** (2004) **volume on the state of the field of terrorism research performed a similar function**, highlighting the shortcomings of the field, in particular the lack of rigorous primary data collection. **A non-reflective community of scholars does not produce such scathing indictments of its own work.**

#### Their argument essentializes terror scholarship – it’s not a monolithic entity – defer to specific research

Michael J. Boyle 8, School of International Relations, University of St. Andrews, and John Horgan, International Center for the Study of Terrorism, Department of Psychology, Pennsylvania State University, April 2008, “A Case Against Critical Terrorism Studies,” Critical Studies On Terrorism, Vol. 1, No. 1, p. 51-64

Some CTS advocates have positioned the CTS project against something usually called ‘terrorism studies’, ‘Orthodox terrorism studies’ or, alternatively, ‘terrorology’. Whatever these bodies of literature are (or at least are imagined by those who have created them as such), they are recent intellectual constructions, the product of an over-generalization that has emerged from the identification of (1) the limitations associated with terrorism research to date, coupled with (2) a less than complete understanding of the nature of research on terrorism. **A cursory review of the terrorism literature reveals that attempts to generalize about something called Orthodox Terrorism Studies are deeply problematic. Among terrorism scholars, there are wide disagreements about, among others, the definition of terrorism, the causes of terrorism, the role and value of the concept of ‘radicalization’ and ‘extremism’, the role of state terror, the role that foreign policy plays in motivating or facilitating terrorism, the ethics of terrorism, and the proper way to conduct ‘counter-terrorism’**. A cursory examination of the contents of the two most well-known terrorism journals Terrorism and Political Violence and Studies in Conflict and Terrorism quickly reveals this. **These differences, and the concomitant disagreements that result in the literature, cut across disciplines** – principally political science and psychology, but also others, such as anthropology, sociology, theology, and philosophy – **and even within disciplines wide disagreements about methods** (for example, discourse analysis, rational choice, among others) **persist. To suggest that they can be lumped together as something called ‘terrorology’ or ‘Orthodox Terrorism Studies’ belies a narrow reading of the literature. This is, in short, a ‘straw man’ which helps position CTS in the field but is not based on a well-grounded critique of the current research on terrorism.**

#### Debating risk analysis solves psychotic lashouts

Langford 3 (Ian, Centre for Social and Economic Research on the Global Environment School of Environmental Sciences University of East Anglia and University College London, AN EXISTENTIAL APPROACH TO RISK PERCEPTION)

The above case studies show that other perspectives on risk perception can be gained by examining underlying existential anxieties, and existential analysis can provide a link between widely differing risk issues and across very different methodologies. Existential analysis is, of course, only one of a number of theoretical and practical approaches that can be taken towards risks, but it is potentially capable of transcending the difference between cultures and histories. Whilst the challenges and risks posed by living today in a techno-logically advanced society are very different from those faced a thousand years ago in the same geographical locations, the existential anxieties remain the same, as they are a common property of being human, although coping strategies may change somewhat. ‘Millenium anxiety’ in 1999 was not so different from that displayed in 999 AD.¶ Further, existential analysis can reflect on the societal challenges posed by ‘modern’ risks as well as the individual adaptations required in order to survive in the 21st century. Giddens (1991) links existential anxiety to loss of trust, and Beck (1999) comments on how the World Risk Society brings people together as well as separating them though the operation of the global political economy. There are winners and losers, but all are beginning to play on the same field. Although cross-cultural comparisons are not the focus of this paper, it is worth mentioning that from research conducted in the UK, and also in Greece (Kontogianni et al., 2001), it is possible to see the commonalities between at least these two cultures, as well as the differences. With regard to risks, respondents in the UK generally took a more individualistic ‘personal specialness’ approach, for example, in the research on perceptions of climate change, whilst in Greece respondents still held more belief in the divine order of things. Greek respondents often expressed a belief in θεοπρωνια (theo-pronia), which has no direct English translation, but can be interpreted as meaning that ‘if you do the right thing, God will give you luck’. So, for example, if you fish according to ‘natural laws’, God will make sure the fish don’t run out.……....in general, Greeks favoured the ‘ultimate rescuer’ defense.¶ In terms of the World Risk Society, and individual coping mechanisms, it appears that death anxiety is particularly prevalent when people consider their fears of the unknown and unknowable. The unknown is represented by uncertainties over the future, given the current rate of technological change, and conflicting messages received from the scientists, government and the media about a wide range of risk issues. The unknowable is represented by fear of the complexity of scientific knowledge, and its inaccessibility to lay people, as well as the complex and interwoven nature of many environmental and health risks. With many ‘20th century diseases’, such as allergic and immunocompetence conditions, traditional epidemiological methods of finding a single cause for a single disease fail because the 26 causes are multiple and synergistic, and the conditions ill-defined and variable between individuals.¶ Existential isolation anxiety is characterized by feelings of hopelessness and helplessness in the face of the global political economy, and the striving for ‘community’ or ‘togetherness’ is often founded on making joint protests or opting out of conventional lifestyles and discourses. This can sometimes lead to ‘idealistic tribalism’, which replaces ‘geographical tribalism’ via the sharing and reinforcement of common ideas amongst similar thinking people via the ease of modern day travel and information/communication technologies such as email and the internet. Alienation is often a matter of scale, with individuals feeling powerless in the face of world markets and international agreements. However, modern forms of communication and lifestyles and the social structures they support may themselves be alienating in containing little face-to-face human contact or ‘quality time’. Freedom and responsibility are again often framed in terms of not being subjugated by the global political economy or the discourses it promotes – the modern equivalent of Hiedegger’s impersonal ‘They-Self’. Individuals and groups can choose to opt out, give up, try their best, or carry on regardless – but it is always in opposition to or in collusion with political and economic forces seen as being at a scale beyond the individual’s power to change, and individual action is hence usually framed in terms of personal lifestyle choice to reduce risks, protect the environment or promote social equity.¶ Meaninglessness anxiety seems to be a common response in the World Risk Society. Identity and self-esteem are either maintained by small-scale successes, or reliance on being informed and using common sense, but pessimism, crusad-ism, nihilism and vegetativeness are all common responses to technological and environmental risks. Unfortunately, the great increase in information in techno-logical societies has created more confusion and, in the opinion of many people, devalued all information – leading to more reliance on ‘folklore’, lay epidemiology and ‘common sense’ to evaluate uncertain and ill-defined risks. Rebellion against political and institutional structures has often been reduced to stigmatization of particular organizations (such as the privatized water companies, see Langford et al., 1999a; Georgiou et al., 1998) or products (such as GM foods). This atomization of protest increases the sense of meaningless-ness, where one can only hope to achieve something small – and hence potentially meaningless – or else give up hope of things ever being different and merely find a comfortable way to survive the inevitable.¶ In conclusion, this paper has attempted, via theoretical argument, case studies and discussion, to present a different analysis of risk perception by individuals within social and political systems. Existential issues and anxieties, that are common to being human across space and time, have been explored whilst at the same time examining the relationship between humans and risk in contemporary post-industrial society. One conclusion that can be drawn from this analysis is that the range of individual and social responses to risk are symptomatic of far more global anxieties about the functioning and future of the world in general. Risk issues and conflicts are therefore not merely a product of a risk society, but an integral part of its operation. Only by providing people with a genuine chance to understand, have hope and believe in the possibility of instigating change, can risk managers provide risk communication strategies that actually communicate about risk. This is because of the complex and profound role that risk perception plays in structuring identities, defining discourses and bringing order and sense to the world. Otherwise, fear of the unknown, alienation, helplessness and reactions to these states of mind will always win the day.

#### High risk of nuclear terror --- they have the motivation and capability --- default to consensus of experts

Bunn et al. 10/2/13 ("Steps to Prevent Nuclear Terrorism," Paper, Belfer Center for Science and International Affairs, Harvard Kennedy School, October 2, 2013, Matthew Bunn. Professor of the Practice of Public Policy at Harvard Kennedy School and Co-Principal Investigator of Project on Managing the Atom at Harvard University’s Belfer Center for Science and International Affairs. • Vice Admiral Valentin Kuznetsov (retired Russian Navy). Senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, Senior Military Representative of the Russian Ministry of Defense to NATO from 2002 to 2008. • Martin Malin. Executive Director of the Project on Managing the Atom at the Belfer Center for Science and International Affairs. • Colonel Yuri Morozov (retired Russian Armed Forces). Professor of the Russian Academy of Military Sciences and senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, chief of department at the Center for Military-Strategic Studies at the General Staff of the Russian Armed Forces from 1995 to 2000. • Simon Saradzhyan. Fellow at Harvard University’s Belfer Center for Science and International Affairs, Moscow-based defense and security expert and writer from 1993 to 2008. • William Tobey. Senior fellow at Harvard University’s Belfer Center for Science and International Affairs and director of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, deputy administrator for Defense Nuclear Nonproliferation at the U.S. National Nuclear Security Administration from 2006 to 2009. • Colonel General Viktor Yesin (retired Russian Armed Forces). Leading research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences and advisor to commander of the Strategic Missile Forces of Russia, chief of staff of the Strategic Missile Forces from 1994 to 1996. • Major General Pavel Zolotarev (retired Russian Armed Forces). Deputy director of the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, head of the Information and Analysis Center of the Russian Ministry of Defense from1993 to 1997, section head - deputy chief of staff of the Defense Council of Russia from 1997 to 1998,<http://belfercenter.ksg.harvard.edu/publication/23430/steps_to_prevent_nuclear_terrorism.html>)

I. Introduction In 2011, Harvard’s Belfer Center for Science and International Affairs and the Russian Academy of Sciences’ Institute for U.S. and Canadian Studies published “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism.” The assessment analyzed the means, motives, and access of would-be nuclear terrorists, and concluded that the threat of nuclear terrorism is urgent and real. The Washington and Seoul Nuclear Security Summits in 2010 and 2012 established and demonstrated a consensus among political leaders from around the world that nuclear terrorism poses a serious threat to the peace, security, and prosperity of our planet. For any country, a terrorist attack with a nuclear device would be an immediate and catastrophic disaster, and the negative effects would reverberate around the world far beyond the location and moment of the detonation. Preventing a nuclear terrorist attack requires international cooperation to secure nuclear materials, especially among those states producing nuclear materials and weapons. As the world’s two greatest nuclear powers, the United States and Russia have the greatest experience and capabilities in securing nuclear materials and plants and, therefore, share a special responsibility to lead international efforts to prevent terrorists from seizing such materials and plants. The depth of convergence between U.S. and Russian vital national interests on the issue of nuclear security is best illustrated by the fact that bilateral cooperation on this issue has continued uninterrupted for more than two decades, even when relations between the two countries occasionally became frosty, as in the aftermath of the August 2008 war in Georgia. Russia and the United States have strong incentives to forge a close and trusting partnership to prevent nuclear terrorism and have made enormous progress in securing fissile material both at home and in partnership with other countries. However, to meet the evolving threat posed by those individuals intent upon using nuclear weapons for terrorist purposes, the United States and Russia need to deepen and broaden their cooperation. The 2011 “U.S. - Russia Joint Threat Assessment” offered both specific conclusions about the nature of the threat and general observations about how it might be addressed. This report builds on that foundation and analyzes the existing framework for action, cites gaps and deficiencies, and makes specific recommendations for improvement. “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism” (The 2011 report executive summary): • Nuclear terrorism is a real and urgent threat. Urgent actions are required to reduce the risk. The risk is driven by the rise of terrorists who seek to inflict unlimited damage, many of whom have sought justification for their plans in radical interpretations of Islam**;** by the spread of information about the decades-old technology of nuclear weapons; by the increased availability of weapons-usable nuclear materials; and by globalization, which makes it easier to move people, technologies, and materials across the world. • Making a crude nuclear bomb would not be easy, but is potentially within the capabilities of a technically sophisticated terrorist group, as numerous government studies have confirmed. Detonating a stolen nuclear weapon would likely be difficult for terrorists to accomplish, if the weapon was equipped with modern technical safeguards (such as the electronic locks known as Permissive Action Links, or PALs). Terrorists could, however, cut open a stolen nuclear weapon and make use of its nuclear material for a bomb of their own. • The nuclear material for a bomb is small and difficult to detect, making it a major challenge to stop nuclear smuggling or to recover nuclear material after it has been stolen. Hence, a primary focus in reducing the risk must be to keep nuclear material and nuclear weapons from being stolen by continually improving their security, as agreed at the Nuclear Security Summit in Washington in April 2010. • Al-Qaeda has sought nuclear weapons for almost two decades. The group has repeatedly attempted to purchase stolen nuclear material or nuclear weapons, and has repeatedly attempted to recruit nuclear expertise. Al-Qaeda reportedly conducted tests of conventional explosives for its nuclear program in the desert in Afghanistan. The group’s nuclear ambitions continued after its dispersal following the fall of the Taliban regime in Afghanistan. Recent writings from top al-Qaeda leadership are focused on justifying the mass slaughter of civilians, including the use of weapons of mass destruction, and are in all likelihood intended to provide a formal religious justification for nuclear use. While there are significant gaps in coverage of the group’s activities, al-Qaeda appears to have been frustrated thus far in acquiring a nuclear capability; it is unclear whether the the group has acquired weapons-usable nuclear material or the expertise needed to make such material into a bomb. Furthermore, pressure from a broad range of counter-terrorist actions probably has reduced the group’s ability to manage large, complex projects, but has not eliminated the danger. However, there is no sign the group has abandoned its nuclear ambitions. On the contrary, leadership statements as recently as 2008 indicate that the intention to acquire and use nuclear weapons is as strong as ever.

#### Weak detention responses emboldens terrorists

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

#### Courts and the courts have preserved detention powers

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Through a growing series of habeas challenges, the D.C. Circuit has fleshed out habeas requirements in these wartime cases, addressing a number of procedural, definitional and evidentiary considerations. In Al-Bihani v. Obama, the Circuit Court considered the definition under which a person may be detained pursuant to the AUMF. The D.C. Circuit accepted the earlier definition offered: "an individual who was part of or supporting Taliban or al-Qaeda force, or associated forces ... and [\*51] the modified definition offered by the Obama administration requiring "substantial support." n311 Regarding the boundaries of who qualifies under the definition, the Circuit observed that "wherever the outer bounds may lie" they include individuals who engage in "traditional food operations essential to a fighting force and the carrying of arms." They concluded that "Al-Bihani was part of and supported a group--prior to and after September 11-- that was affiliated with al-Qaeda and Taliban forces and engaged in hostilities against a U.S. Coalition partner. Al-Bihani, therefore, falls squarely within the scope of the President's statutory detention powers. n312¶ Al-Bihani next argued that law of war detention authority exists only until the end of hostilities and in this instance, he asserted relevant hostilities had ended. The Circuit cogently rejected this argument. If the election of President Karzai or the installation of a post-Taliban regime required the release of detainees, then¶ . . . each successful campaign of a long war [would be] but a Pyrrhic prelude to defeat. The initial success of the United States and its Coalition partners in ousting the Taliban from the seat of government and establishing a young democracy would trigger an obligation to release Taliban fighters captured in earlier clashes. Thus, the victors would be commanded to constantly refresh the ranks of the fledgling democracy's most likely saboteurs. n313¶ Further, the D.C. Circuit concluded that the determination of when hostilities have ceased is fundamentally a political decision, at least absent a congressional declaration terminating the war. n314 The recent Congressional affirmation of the AUMF's detention authority confirms Congress's view that hostilities against al-Qaeda remain ongoing and constitute a persistent, global military threat.¶ Regarding procedural safeguards, Al Bihani raised a host of issues ranging from the standard of proof to the requirement for a separate evidentiary hearing. n315 [\*52] The D.C. Circuit found that habeas review for military detainees "need not match the procedures developed by Congress and the courts specifically for habeas challenges to criminal convictions." n316 Relying on Boumediene, the court instead embraced innovative, pragmatic procedures that would not unduly burden the military. n317 Further, the D.C. Circuit rejected the contention that proof beyond a reasonable doubt or proof by clear and convincing evidence was necessary to hold a detainee. The court expressly declined to articulate the minimum proof standard required, but found the preponderance standard constitutionally permissible. n318¶ Other cases demonstrate the D.C. Circuit's pragmatic approach. In Bensayah v. Obama, the court recognized the amorphous nature of the al-Qaeda threat and rejected formalistic criteria for determining whether a person is part of al-Qaeda. n319 In Barhoumi v. Obama, the court upheld Barhoumi's detention as a member of an "associated force" based on diary records singling him out as a member of Zubaydah's associated militia organization. n320 In Awad v. Obama, the D.C. Circuit reviewed the district court's factual finding for "clear error," weighing each piece of evidence, not in isolation, but "taken as a whole." n321 In reversing the lower court's ruling in Al-Adahi v. Obama, the court found the district judge failed to take into account the "conditional probability" of the evidence, n322 leading the lower court to reject evidence erroneously because each particular fact did not by itself prove the ultimate fact that Al-Adahi was part of al-Qaeda. The mistake of requiring each [\*53] piece of evidence to bear independent weight constituted a "fundamental mistake that infected the lower court's entire analysis." n323¶ The D.C. Circuit addressed discovery issues in Al Odah v. U.S. n324 For habeas purposes, the touchstone for discovery it developed was enabling a "meaningful review"; thus, access to classified material by detainees' counsel must be necessary to facilitate such a review. n325 A naked declaration or mere certification by the government regarding sensitive information will not suffice. n326 The D.C. Circuit supported a presumption favoring release of most classified information to detainees' counsel and rejected the contention that submission of classified evidence to the court for in camera, ex parte review, in itself, resolved the discovery burden. n327 The court suggested that its opinion in Bismullah v. Gates requiring the district court's ex parte review of "highly sensitive information" n328 did not end the inquiry regarding release to detainees' counsel. In Al Odah, the court concluded that habeas court should proceed further by determining whether "classified information is material and counsel's access to it is necessary to facilitate meaningful review." n329 If no alternatives would afford a detaining the meaningful review required by Boumediene, even sensitive classified information may need to be released to counsel.¶ Much has been written about hearsay in relation to war crimes trials and military commissions. Post-Boumediene, the D.C. Circuit determined hearsay evidence is not automatically invalid, nor is a traditional Confrontation Clause objection sustainable because habeas reviews are not criminal prosecutions. n330 The court explained, "hearsay is always admissible." The issue is what "probative weight to ascribe" to the evidence and whether there is "sufficient indicia of reliability." n331 The D.C. Circuit applied similar logic in Parhat v. Gates, a case involving a Chinese citizen of Uighur heritage. There it required evaluation of the raw evidence, which must be sufficiently reliable and probative to demonstrate the truth of the asserted proposition. n332¶ In summary, the D.C. Circuit has carved out a tailored, pragmatic approach in these detainee cases. Habeas proceedings for law of war detainees are not criminal [\*54] trials. Each habeas-eligible detainee enjoys the benefit of an independent judicial review, but the parameters differ categorically from a criminal trial. The definition of who may be detained is not dependent on formalistic criteria. Proof beyond a reasonable doubt is not required. There is no jury. Confrontation is different--hearsay, for example, is admissible when reliable. The process of weighing evidence must account for the exigencies of military operations. Through this evolving process, some detainees have been released. Others have been continued in law of war detention consistent with the AUMF. Ardent proponents of habeas may find this promised panacea somewhat unsatisfying. Those who feared judicial meddling in military affairs likely would agree habeas has not been the disaster some feared. Thus far, the D.C. Circuit has taken its duty seriously and made some tough calls designed to balance the inevitable tension between liberty and security. The next section briefly considers application of a purely civilian criminal law framework in law of war detainee cases.

### Risk Analysis

#### Probabalism fails to adequately account for extreme events --- possibilism is necessary for preventing worst case scenarios

Lee Clarke 7, Ph.D., Associate Professor of Sociology at Rutgers University, “Thinking Possibilistically in a Probabalistic World,” Significance, December, 2007, <http://leeclarke.com/docs/clarke%20thinking%20possibilistically%20-%20Significance.pdf>

Disastrous extreme events are increasing in frequency and in their consequences, in modern times at least, but we are poorly prepared to deal with them. We are poorly prepared organisationally and we are poorly prepared cognitively. Consider how the US government, or at least parts of it, failed to respond to hurricane Katrina or to prevent even some of the disastrous events of 9/11. The problem in those cases—and many others could be recounted with ease—was not ignorance or lack of resources. Rather the problem was that bureaucratic organisations are best suited to responding to routine problems. They are not good at dealing with the unusual. Similarly, but more generally, we need a vocabulary that allows us to talk sensibly about extremes.

Such phenomena—commercial aeroplane crashes, tornadoes in London, a nuclear explosion in Paris—are, after all, rare oddities, unfamiliar challenges to individuals and organisations alike. Statistically, we might say they are out near the fourth or fifth standard deviation from the mean, although it must be said that trying to imagine a “mean” for such outsized events may make little sense. A normal or Gaussian curve does not exist for category 5 hurricanes (called typhoons in the Northern Pacific Ocean, west of the dateline), but we still need a way to think about them.

One reason we lack the cognitive tools necessary to make sense of extreme events is that people cannot live on the knife edge of disaster all the time—it is too frightening, too exciting. Most of daily life must be fairly boring: it is human nature to assume that today is going to be just like yesterday, because most days are like that. True, there are individuals and organisations whose expertise is explicitly in dealing with non-standard conditions—trauma surgeons, smoke jumpers (who parachute in to fight forest fi res) or special terrorist units within MI5, for example—but these are rare.

Our favoured tool for understanding aggregations of events, probability theory, has insufficient flexibility for extreme events; indeed, it is often quite misleading. Yet, over the past 200–300 years we have come to equate thinking probabilistically with thinking rationally. This happens in academic fields (most obviously in economics) and in policy arguments (e.g. about how to allocate money for regulation or terrorist threats). The great thinkers in the history of probability, Quetelet and Johann Bernoulli, for example, struggled to conceptualise sampling, populations, normal curves, regression to the mean and so on. Their efforts led to wondrous advancements in thinking about causes and effects as matters of likelihood and contingency, rather than mystical forces that were (and are) unavailable for scientific inquiry. And probabilism, as an approach to the future, clearly aids decision making and otherwise helps us get through the day.

But it is not enough to help us understand extreme events. Consider the strange case of Pascal’s wager, which is sometimes held to be the first time that probability was used in a fairly formal way to make an important decision. Cross-classifying the proposition that God exists (or not) and belief in God (or not), the wager leads to the inarguable conclusion that the best bet is to believe in God. If a believer errs, she has only wasted time, but if a nonbeliever errs he faces, it is said, the probability of eternal damnation. In fact, the classical interpretation of Pascal’s calculus is only partially correct. The bet that God exists is a sensible one to take because of the consequences of being wrong. Pascal’s wager is not about the likelihood of being right or wrong, it is about burning in hell.

Possibilistic thinking Pascal’s recommendation is an example of “possibilistic thinking”, and it suggests a new approach, a new way of talking about the future. Possibilistic thinking draws our attention to the consequences of events in a more emphatic way than does probabilistic thinking. Probability theory is often too sensitive to the extremely low likelihoods of rare events, and might even counsel that we not worry too much about chlorine rail cars trundling through London, because the likelihood of an unplanned release (either by accident or by terrorist) is low. Possibilistic thinking, however, leads us to wonder, “yes, but what if the trains have a particularly bad day?”

#### Balancing probabalism and possibilism is essential --- their aff crowds out the possibilistic thinking that’s necessary for responding to risks

Lee Clarke 6, Ph.D., Associate Professor of Sociology at Rutgers University, Worst Cases: Terror and Catastrophe in the Popular Imagination, 2006, p. 41-43

The arguments of the anti-Cassandras, whatever their political predilections, rest on the idea of probabilism. More than that, they actually equate probabilistic thinking with reason and rationality: people who don’t think the way they do are labeled irrational, or worse. Don’t get me wrong. We need probabilistic thinking. We need to think in terms of chances and odds and likelihoods. But we shouldn’t concentrate so much on probabilities that we forget the possibilities. Failing to keep a proper balance skews our vision; as a result our ability to learn about danger, and safety, is stunted

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or at least hampered.

It must be acknowledged, though, that thinking in terms of worst cases is a peculiar way of thinking about the future. At least it’s peculiar for modern people. We’ve grown so used to approaching the future probabilistically that it seems natural. But it’s been only a few hundred years that we’ve known what probability is! A huge amount of early mathematical effort was spent on thinking through the throwing of dice. Mathematicians were most concerned to figure out how to conceptualize causes, as a repudiation of determinism, and to decrease uncertainty about the physical and social universe. Stephen Stigler, a noted statistician from the University of Chicago, says that one of seventeenthcentury Swiss mathematician Jacob Bernoulli’s great contributions was to puzzle out “the vague notion that the greater the accumulation of evidence about the unknown proportion of cases, the closer we are to certain knowledge about that proportion.” That is, the bigger the sample size of some thing, the closer to knowing something true about that thing. Today, this idea is taken for granted.9

Adolphe Quetelet, a gifted mathematical thinker of the 1800s, created several fascinating ideas that we now take for granted. One of those was the notion of the “average man,” which he thought could be used to establish what was normal for a particular group of people. Quetelet put forth the idea that “the greater the number of individuals observed, the more do individual peculiarities, whether physical or moral, become effaced, and allow the general facts to predominate, by which society exists and is preserved.” These great thinkers were conceptualizing sampling, populations, and other, related ideas, all of which are indispensable in the modern world. More important, they, along with others, were gradually creating the modern conception of probability.

What they created was a collection of ideas about how things happen. These ideas are ones that even nonspecialists have heard of: the normal curve, the average man or event, regression to the mean. Taken together, these ideas comprise what we call probability. It is certainly an advance to think of causes and effects as matters of contingencies and likelihoods, rather than mystical actions of gods and magic. But, like other aspects of modernity, the consequences of probabilism are not all good.

One problem is that when it comes to worst cases there are no average events. There’s no real equivalent to the “average man.” How could we talk about a normal distribution of extreme events? Even though they happen a lot, I don’t think trying to plot them on a curve would be very helpful. That’s one reason we see them as odd or rare—it’s hard to see common elements and to apply the usual broadly familiar concepts of statistics.

But the key problem is that equating probabilism with reason crowds out consequential thinking. If we imagine the future in terms of probabilities, then risks look safe. That’s because almost any future big event is unlikely. You’re probably not going to die tomorrow. Terrorists probably won’t destroy the White House, the Sears Tower, and Harvard University all in the same day. Four tornadoes probably won’t converge on Toledo at the same time. Thinking in terms of probabilities will usually

lead to the conclusion that most actions are safe.

If we imagine the future in terms of possibilities, however, horrendous scenarios appear. Could there be an accidental detonation of a nuclear weapon? Yes, there could. Could a hurricane stall over Miami, slip back out to sea, then loop back into Miami again? Definitely. Could an asteroid obliterate Los Angeles? No doubt about it. Of course, the future we imagine doesn’t have to be filled with doom and gloom. It could just as readily be one of hope and achievement. Could enlightenment and equality spread throughout the world? Could war be eliminated? Could we eliminate hunger? The answer is yes to all of these. The point is not, then, that thinking in terms of the possible is necessarily negative: worst cases are generically similar to best cases. Still, there is an affinity between worst case approaches and possibilism.