# Sems vs ASU

## 1NC

### Off-1

#### Interpretation- Restrictions are direct and legally binding

Law.com, no date (“Restrict,” <http://dictionary.law.com/Default.aspx?selected=1835&bold=restrict>)

The noun ―restriction means direct, on-face limitation. restriction¶ n. any limitation on activity, by statute, regulation or contract provision. In multi-unit real estate developments, condominium and cooperative housing projects managed by homeowners' associations or similar organizations, such organizations are usually required by state law to impose restrictions on use. Thus, the restrictions are part of the "covenants, conditions and restrictions" intended to enhance the use of common facilities and property which are recorded and incorporated into the title of each owner.3

#### Violation- the aff doesn’t impose a legally binding restriction- they establish a new court which changes the conditions of authority for the president to detain indefinitely but does not restrict the authority of the president

William Conner 78, former federal judge for the United States District Court for the Southern District of New York United States District Court, S. D. New York, CORPORACION VENEZOLANA de FOMENTO v. VINTERO SALES, http://www.leagle.com/decision/19781560452FSupp1108\_11379

Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. Properly interpreted, the "conditions" that had been imposed by plaintiff's Board of Directors and by the Venezuelan Cabinet were not "restrictions" or "limitations" upon the authority of plaintiff's agents but rather conditions precedent to the granting of authority. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

#### Reasons to vote-

#### 1. Ground- they allow virtually anything that has the effect of making detentions or targeted killings more difficult- we force the aff to take a legally binding action that ONLY affects the given area

#### 2. Effects- allowing indirect restrictions allows the aff to base their restriction off of the result of the plan, not its direct language- makes it impossible to predict the plan’s actual action

#### 3. Topic coherence – the core controversy is what war powers the President has, not how he must use them – key to clash and literature

#### 4. Bidirectional – they allow the aff to endorse the status quo – Congressional oversight and approval become topical because they just shift where the authority is – not what authority exists

#### 5. Limits – hundreds of insignificant conditions or shifts Congress could impose on the courts

### Off-2

#### Text: The President of the United States should issue an Executive Order requiring indefinite detentions to be subject to prior legal review, and that such indefinite detentions should only be carried out if detainees lose their habeus corpus hearing. The Executive Order should include a clarification that “substantial support” cannot be an independent basis for detention, that “substantial support” should be defined as “core membership,” and “associated forces” should be defined as organizations who have “actual association in the current conflict with al Qaeda or the Taliban.”

#### **Sufficiently limited standards means that the habeas trials are legit – solves court disagreements**

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(Colby P., Captain, U.S. Army, participating in the Funded Legal Education Program, “SYMPOSIUM: THE GOALS OF ANTITRUST: NOTE: CREATING A MORE MEANINGFUL DETENTION STATUTE: LESSONS LEARNED FROM HEDGES V. OBAMA” April, 2013 Fordham Law Review 81 Fordham L. Rev. 2853, Lexis)

"Substantial Support" As a Basis for Detention Section 1021(b)(2) of the NDAA states that a "covered person" (who is subject to detention) includes not only those who were "part of" Al Qaeda, the Taliban, or associated forces but also those who "substantially [\*2879] supported" these groups. n210 Although most courts agree that an individual who is "part of" Al Qaeda or the Taliban can be lawfully detained, n211 courts disagree over whether providing "substantial support" to these organizations is a valid basis for detention. Thus, the "substantial support" category raises two issues that often intersect: first, is substantial support a valid basis for detention and, if so, what does it mean to provide substantial support? These questions are discussed in turn below. 1. Is Substantial Support a Valid Predicate for Detention? In 2009, two D.C. District Court opinions conflicted over whether substantial support could serve as an independent basis for detention. In Gherebi v. Obama, n212 the court held that substantial support was a valid basis for detention. n213 The court limited its holding, however, to individuals who provide substantial support as members of the enemy's armed forces and, therefore, mere "sympathizers, propagandists, and financiers" could not be detained. n214 The court also appeared to equate substantial support with the command structure test n215 - a test that the D.C. Circuit later rejected. n216 In contrast, in Hamlily v. Obama, n217 the court rejected the concept of support as an independent basis for detention. n218 The court decided that evidence of support could be used to demonstrate that an individual was "part of" Al Qaeda or the Taliban, but support was not its own distinct detention category. n219 This view was endorsed by another D.C. District Court opinion in 2009. n220 Although this court also held that detention based on substantial support "is simply not authorized by the AUMF itself or by the law of war," the court specifically stated that "future domestic legislation" might authorize detention based solely on substantial support. n221 Thus, the NDAA may have provided this legislative [\*2880] authorization when it specifically enumerated "substantial support" as an independent detention category. In 2010, the D.C. Circuit partially resolved this lower court split by holding that the Military Commissions Act of 2009 n222 provided congressional authority to detain those who "purposefully and materially supported hostilities." n223 Although this decision affirmed a separate detention category based on support, it did not specifically authorize detention based on "substantial support," n224 and no D.C. court has yet evaluated the meaning of "substantial support" under the NDAA. The D.C. Circuit had the opportunity to evaluate the meaning of "substantial support" in 2011. However, because the court found that the detainee was clearly "part of" Al Qaeda or the Taliban, it never reached the substantial support issue. n225 Additionally, lawyers in the Obama Administration appear divided over whether to use support as an independent legal justification for detention when defending against habeas petitions. The government lawyers try to avoid the issue, if possible, by first arguing that the detainee was "part of" Al Qaeda or the Taliban. n226 2. What Does It Mean To Provide Substantial Support? Even among courts that agree that support is a valid independent category for detention, there is little consensus about the meaning of support or what activities qualify as "substantial support." n227 The D.C. Circuit, while affirming detention based on material support, noted that it was a "standard whose outer bounds are not readily identifiable." n228 The meaning of "substantial support" is particularly unclear. n229 Absent a congressional definition of the term (which is lacking in the NDAA), courts are forced to evaluate "substantial support" on a case-by-case, ad hoc basis. n230 One judge noted that this is problematic because the term is [\*2881] "highly elastic" and could potentially cover everything from "core membership and support to vague affiliation and cheerleading." n231 C. What Is an "Associated Force"? The NDAA authorizes detention not only for persons who were a "part of" or "substantially supported" Al Qaeda or the Taliban, but also for those who were members of or substantially supported "associated forces" of these two organizations. Although there are some easy cases, determining whether a particular group (even an admitted terrorist organization) is an "associated force" of Al Qaeda or the Taliban can be difficult. This is especially true for Al Qaeda, a loosely organized group that has many affiliates and splinter groups. n232 In 2009, the D.C. District Court in Hamlily affirmed the government's power to detain members of associated forces and defined the concept of an associated force as a "co-belligerent," or a group that has become a "fully fledged belligerent fighting in association with one or more belligerent powers." n233 The court recognized that it was applying the term "co-belligerent" by analogy, because the concept came from the law of war and was usually applied in international armed conflicts involving nation-states. n234 The court also limited the definition of an associated force to those organizations that have an "actual association in the current conflict with al Qaeda or the Taliban," and excluded groups that only "share an abstract philosophy or even a common purpose with al Qaeda." n235 The Hamlily decision addressed threshold legal questions for a number of different detainees, and thus no specific organizations were identified as "associated forces." n236 Courts seem to faithfully apply the definition of "associated forces" established in Hamlily, limiting it those groups that actually fought alongside Al Qaeda or the Taliban. The 55th Arab Brigade n237 and the Hezb-i-Islami Gulbuddin, n238 for example, were found to be associated forces, and both organizations were actively involved in the conflict in Afghanistan. n239 Parhat v. Gates n240 is one of the only cases where the court [\*2882] determined that an organization was not an associated force. n241 In Parhat, the court held that the government failed to show that the East Turkistan Islamic Movement (ETIM) had any connection to Al Qaeda or the Taliban or that the ETIM was planning "terrorist activities against U.S. interests." n242 Thus, courts have limited the definition of an "associated force" to those groups that actually engage in joint activities with Al Qaeda and the Taliban.

### Off-3

#### Obamas foreign policy presidential powers are high but he will show strategic restraint if they decline

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#### In contrast to Bush, the crisis that Obama faced was economic rather than security related, but Obama’s temperament was different as well. While Obama had expounded a transformational vision in his campaign, his crisis responses were those of a pragmatist. Temperamentally, he was noted for his coolness in analysis under pressure, a term sometimes summed up by the phrase “no drama Obama.” For example, his reaction to success in the highly risky cross- border raid that killed Bin Laden in 2011 but could have destroyed his presidency “was self-contained to the extreme: ‘we got him,’ was all he said.” Political scientist George Edwards criticizes Obama as a man who presented himself as a “transformational leader who would fundamentally change the policy and politics of America” and then overreached by thinking his ability to communicate and educate the public could change more than he could. But this criticism is more telling in regard to Obama’s domestic program than in regard to his foreign policy.¶ Obama’s rhetoric both in the 2008 campaign and during the first months of his presidency was both inspirational in style and transformational in objective. As several experts describe the campaign, “This image of a new domestic agenda, a new global architecture, and a transformed world was crucial to his ultimate success as a candidate.” Of course, campaign rhetoric always sounds more transformational as challengers criticize the incumbents, but Obama continued the transformational rhetoric with a series of speeches in the first year of his presidency, including his inaugural address; a speech at Prague proclaiming the goal of a nuclear-free world; a speech in Cairo promising a new approach to the Muslim world; and his Nobel Peace Prize speech promising to “bend history in the direction of justice.” In part this series of speeches was tactical. Obama needed to meet his promise to set a new direction in foreign policy while simultaneously managing to juggle the legacy of issues left to him by Bush, any of which, if dropped, could cause a crisis for his presidency. Nonetheless, there is no reason to believe that Obama was being disingenuous about his objectives.¶ Obama had an “activist vision of his role in history,” intending to “refurbish America’s image abroad, especially in the Muslim world; end its involvement in two wars; offer an outstretched hand to Iran; reset relations with Russia as a step toward ridding the world of nuclear weapons; develop significant cooperation with China on both regional and global issues; and make peace in the Middle East.” As Martin S. Indyk, Kenneth G. Lieberthal, and Michael E. O'Hanlon have observed, his record of achievement on these issues in his first term was mixed. “Seemingly intractable circumstances turned him from the would-be architect of a new global order into a leader focused more on repairing relationships and reacting to crises—most notably global economic crisis.”¶

#### The plan establishes a system of judicial review which is designed to check unfettered exective powers

Wells, Law Professor at University of Missouri-Columbia Law, 4 (Christina, “Questioning Deference,” Missouri Law Review, Fall, 69 Mo. L. Rev. 903)

One can make a strong argument that judicial review is generally a viable mechanism for executive branch accountability during national security crises. n197 The judicial forum, with its fact-finding capabilities, requirements of proof, and requirement that the government justify incursions on civil liberties, fits well within the general definition of accountability as requiring a specific, public accounting of one's decisions. Consistent with the psychological definition, positive or negative consequences attach to executive officials' [\*940] accounting of their behavior in the form of a judicial ruling for or against the government.

#### Perception of Obama as a strong leader is key to climate negotiations – solves GHG

MARK LANDLER, 7-2-13 (Obama Seeks New U.S. Role in Climate Debate, NYT)

When President Obama barged into a meeting of leaders from Brazil, China, India and other countries at a climate conference in Copenhagen in December 2009, he managed to extract a last-minute agreement to set a goal to limit the rise in global temperatures.¶ It was the high-water mark of Mr. Obama’s leadership on climate change — even if the deal was less than the Americans or Europeans wanted — but it has been downhill ever since. Preoccupied with other problems, the president largely disappeared from the global debate.¶ Now he is trying to reclaim the spotlight.¶ Mr. Obama’s climate change speech at Georgetown University last week was aimed not just at a domestic audience, but also at foreigners convinced that a balky Congress had killed America’s commitment to tackling the issue. “Make no mistake,” he said, mopping his brow in the 90-degree heat, “the world still looks to America to lead.”¶ Mr. Obama has done more than talk: he recently reached a deal with President Xi Jinping of China to reduce the use of hydrofluorocarbons, known as HFCs, a particularly potent greenhouse gas. In a meeting long on atmosphere, it was the only achievement that actually cleared the air.¶ “We felt we needed to expand the discussion,” said Caroline Atkinson, deputy national security adviser for international economic affairs. “We’re working all the different international angles: multilaterally, bilaterally and actions on our own.”¶ That last point is crucial because at Georgetown, Mr. Obama reaffirmed the pledge he made in Copenhagen that the United States would reduce its emissions by about 17 percent from 2005 levels by 2020. Without mandated cuts in emissions from American power plants, which Mr. Obama announced he would address using his executive powers, there is little hope that the United States can meet that goal.¶ For a president who has been on the defensive over the National Security Agency’s surveillance operations and his failure to close the military prison at Guantánamo Bay, Cuba, the climate change plan offers a chance to reset his image overseas. It carries echoes of what once made him so popular, tempered with the pragmatism of a leader in his second term.¶ Yet skepticism about America’s resolve to lead runs deep after four years in which climate change took a back seat in Washington to the financial crisis, a new health care law, fiscal negotiations and an overhaul of the nation’s immigration laws — really, every other big-ticket item on Mr. Obama’s agenda.¶ Whether the president can erase those doubts is an open question. While the United States drifted, Europe and Australia have plowed ahead with their own ambitious initiatives to reduce emissions. Critics were quick to fault Mr. Obama’s speech for its lack of specifics.¶ “It’s no longer the case where everyone expects key decisions from the United States and are disappointed when they don’t come,” said Stephan Singer, director of global energy policy at the environmental group WWF in Brussels. “Many countries went ahead and did their own stuff, independent of the lack of action in the U.S.”¶ Still, Mr. Singer and other experts said a re-engaged United States would make a difference in global climate efforts, particularly with countries like China and India, the world’s first and third largest emitters of carbon dioxide. Both still point to the laggard No. 2, the United States, as the main reason they should not be obliged to do more.¶ Mr. Obama’s speech kindled hopes for a couple of reasons. The centerpiece of his plan does not require Congressional approval. And he announced that the United States would no longer finance the building of conventional coal-fired plants overseas, which would help curb emissions in developing countries.¶ Mr. Obama also argued that confronting climate change need not threaten economic growth: that investing in windmills, solar panels and other types of clean-energy technology could spur scientific innovation and generate jobs. That mollifies countries like India that often complain that the West lectures them about cutting emissions, even if it constricts their development and deprives them of a better lifestyle.¶ “The U.S. has become very sophisticated in its bilateral dealings with countries,” said Durwood Zaelke, who runs the Institute for Governance and Sustainable Development. “We are targeting things that India needs, like super-efficient air-conditioning.”¶ On a recent visit to New Delhi, Secretary of State John Kerry announced a loan-guarantee program by the United States Agency for International Development intended to generate at least $100 million in private financing to develop clean-energy technologies.¶ “The good news is that if we do this right, it’s not going to hurt our economies,” Mr. Kerry said. “It actually helps them. It won’t deny our children opportunity; it will actually create new ones.”¶ Chandra Bhushan, an Indian environmentalist, wrote in the online magazine Down to Earth that it was “hypocritical” for Mr. Kerry to call for India to cut emissions in its residential sector without discussing how the United States planned to do the same.¶ Still, Mr. Kerry got a warmer reception than his predecessor, Hillary Rodham Clinton, on her first visit to India four years earlier. After touring an energy-efficient building outside New Delhi that was meant to showcase American-Indian cooperation, she was caught off guard when an Indian minister warned the United States not to bully India into legally binding reductions of its carbon emissions.¶ With his long history as a champion of climate change legislation, Mr. Kerry could serve as a not-so-secret weapon for Mr. Obama. At his Senate confirmation hearing, Mr. Kerry said he intended to put climate change at the heart of his agenda at the State Department.¶ Mr. Kerry was at the table last month in Rancho Mirage, Calif., when Mr. Obama made his deal on HFCs with Mr. Xi. The administration is emphasizing these agreements, in part to work around the hurdles of negotiating a global deal to reduce emissions through the United Nations, an effort that has dragged on for years.¶ For all Mr. Obama’s efforts to forge side deals and clean-energy partnerships, his reaffirmation of his goal to reduce emissions 17 percent ties him to the United Nations process. Attention now turns to the next big climate conference, which is expected to be held in France in 2015. The question is what role the United States will play.¶ “There are still fears that the political issues in the U.S. could pull down the outcome in the 2015 meeting,” said Jennifer Morgan, director of climate and energy programs at the World Resources Institute. “But this breath of fresh air from the president could revive things.”

#### Warming is the largest risk of extinction

Deibel 7 (Terry L., professor of IR at National War College, *“Conclusion: American Foreign Affairs Strategy Today Anthropogenic – caused by CO2,”* Foreign Affairs Strategy, 2007)

Finally, there is one major existential threat to American security (as well as prosperity) of a nonviolent nature, which, though far in the future, demands urgent action. It is the threat of global warming to the stability of the climate upon which all earthly life depends. Scientists worldwide have been observing the gathering of this threat for three decades now, and what was once a mere possibility has passed through probability to near certainty. Indeed not one of more than 900 articles on climate change published in refereed scientific journals from 1993 to 2003 doubted that anthropogenic warming is occurring. “In legitimate scientific circles,” writes Elizabeth Kolbert, “it is virtually impossible to find evidence of disagreement over the fundamentals of global warming.” Evidence from a vast international scientific monitoring effort accumulates almost weekly, as this sample of newspaper reports shows: an international panel predicts “brutal droughts, floods and violent storms across the planet over the next century”; climate change could “literally alter ocean currents, wipe away huge portions of Alpine Snowcaps and aid the spread of cholera and malaria”; “glaciers in the Antarctic and in Greenland are melting much faster than expected, and…worldwide, plants are blooming several days earlier than a decade ago”; “rising sea temperatures have been accompanied by a significant global increase in the most destructive hurricanes”; “NASA scientists have concluded from direct temperature measurements that 2005 was the hottest year on record, with 1998 a close second”; “Earth’s warming climate is estimated to contribute to more than 150,000 deaths and 5 million illnesses each year” as disease spreads; “widespread bleaching from Texas to Trinidad…killed broad swaths of corals” due to a 2-degree rise in sea temperatures. “The world is slowly disintegrating,” concluded Inuit hunter Noah Metuq, who lives 30 miles from the Arctic Circle. “They call it climate change…but we just call it breaking up.” From the founding of the first cities some 6,000 years ago until the beginning of the industrial revolution, carbon dioxide levels in the atmosphere remained relatively constant at about 280 parts per million (ppm). At present they are accelerating toward 400 ppm, and by 2050 they will reach 500 ppm, about double pre-industrial levels. Unfortunately, atmospheric CO2 lasts about a century, so there is no way immediately to reduce levels, only to slow their increase, we are thus in for significant global warming; the only debate is how much and how serous the effects will be. As the newspaper stories quoted above show, we are already experiencing the effects of 1-2 degree warming in more violent storms, spread of disease, mass die offs of plants and animals, species extinction, and threatened inundation of low-lying countries like the Pacific nation of Kiribati and the Netherlands at a warming of 5 degrees or less the Greenland and West Antarctic ice sheets could disintegrate, leading to a sea level of rise of 20 feet that would cover North Carolina’s outer banks, swamp the southern third of Florida, and inundate Manhattan up to the middle of Greenwich Village. Another catastrophic effect would be the collapse of the Atlantic thermohaline circulation that keeps the winter weather in Europe far warmer than its latitude would otherwise allow. Economist William Cline once estimated the damage to the United States alone from moderate levels of warming at 1-6 percent of GDP annually; severe warming could cost 13-26 percent of GDP. But the most frightening scenario is runaway greenhouse warming, based on positive feedback from the buildup of water vapor in the atmosphere that is both caused by and causes hotter surface temperatures. Past ice age transitions, associated with only 5-10 degree changes in average global temperatures, took place in just decades, even though no one was then pouring ever-increasing amounts of carbon into the atmosphere. Faced with this specter, the best one can conclude is that “humankind’s continuing enhancement of the natural greenhouse effect is akin to playing Russian roulette with the earth’s climate and humanity’s life support system. At worst, says physics professor Marty Hoffert of New York University, “we’re just going to burn everything up; we’re going to heat the atmosphere to the temperature it was in the Cretaceous when there were crocodiles at the poles, and then everything will collapse.” During the Cold War, astronomer Carl Sagan popularized a theory of nuclear winter to describe how a thermonuclear war between the Untied States and the Soviet Union would not only destroy both countries but possible end life on this planet. Global warming is the post-Cold War era’s equivalent of nuclear winter at least as serious and considerably better supported scientifically. Over the long run it puts dangers from terrorism and traditional military challenges to shame. It is a threat not only to the security and prosperity to the United States, but potentially to the continued existence of life on this planet.

### Off-4

#### Security speech acts define difference as threatening otherness, to secure state identity, which causes a self-fulfilling prophecy based on false regimes of truth.

**Jæger** 20**00** (Øyvind @ Norwegian Institute of International Affairs and the Copenhagen Peace Research Institute. *Peace and Conflict Studies* 7.2 “Securitizing Russia: Discoursive Practice of the Baltic States” shss.nova.edu/pcs/journalsPDF/V7N2.pdf”, MT)

Security is a field of practice into which subject matters can be inserted as well as exempted. Security is a code for going about a particular business in very particular ways. By labeling an issue a security issue, that is, a threat to security, one legitimises the employment of extraordinary measures to counter the threat, because it threatens security. In other words, security is a self-referential practice that carries its own legitimisation and justification. Security issues are allotted priority above everything else because everything else is irrelevant if sovereignty is lost, the state loses independence and ceases to exist. This makes for the point that it is not security as an objective or a state of affairs that is the crux of understanding security, but rather the typical operations and modalities by which security comes into play, Wæver (1995) notes.15 The typical operations are speech-acts and the modality threat-defence sequences. That is, perceiving and conveying threats and calling upon defence hold back the alleged threat. This is also a self-referential practice with the dynamic of a security dilemma: Defensive measures taken with reference to a perceived threat cause increased sense of insecurity and new calls for defence, and so forth. Wæver’s argument is that this logic is at work also in other fields than those busying themselves with military defence of sovereignty. Moreover, viewing security as a speech act not only makes it possible to include different sectors in a study of security, and thus open up the concept. It also clears the way for resolving security concerns by desecuritising issues which through securitisation have raised the concern in the first place. Knowing the logic of securitisation and pinning it down when it is at work carries the possibility of reversing the process by advocating other modalities for dealing with a given issue unluckily cast as a matter of security. What is perceived as a threat and therefore invoking defence, triggering the spiral, might be perceived of otherwise, namely as a matter of political discord to be resolved by means of ordinary political conduct, (i.e. not by rallying in defence of sovereignty). A call for more security will not eliminate threats and dangers. It is a call for more insecurity as it will reproduce threats and perpetuate a security problem. As Wæver (1994:8)16 puts it:"Transcending a security problem, politicizing a problem can therefore not happen through thematization in terms of security, only away from it." That is what de-securitisation is about. David Campbell (1992) has taken the discursive approach to security one step further. He demonstrates that security is pretty much the business of (state) identity. His argument is developed from the claim that foreign policy is a discourse of danger that came to replace Christianity’s evangelism of fear in the wake of the Westphalian peace. But the effects of a "evangelism of fear" and a discourse of danger are similar – namely to produce a certitude of identity by depicting difference as otherness. As the Peace of Westphalia signified the replacement of church by state, faith by reason, religion by science, intuition by experience and tradition by modernity, the religious identity of salvation by othering evil ("think continually about death in order to avoid sin, because sin plus death will land you in hell"17 –so better beware of Jews, heretics, witches and temptations of the flesh) was replaced by a hidden ambiguity of the state. Since modernity’s privileging of reason erased the possibility of grounding social organisation in faith, it had to be propped up by reason and the sovereign state as a anthropomorphic representation of sovereign Man was offered as a resolution. But state identity cannot easily be produced by reason alone. The problem was, however, that once the "death of God" had been proclaimed, the link between the world, "man" and certitude had been broken (Campbell 1992: 53). Thus ambiguity prevailed in the modernist imperative that every presumption grounded in faith be revealed by reason, and on the other hand, that the privileging of modernity, the state, and reason itself is not possible without an element of faith. In Campbell’s (1992: 54) words: In this context of incipient ambiguity brought upon by an insistence that can no longer be grounded, securing identity in the form of the state requires an emphasis on the unfinished and endangered nature of the world. In other words, discourses of "danger" are central to the discourses of the "state" and the discourses of "man". In place of the spiritual certitude that provided the vertical intensity to support the horizontal extenciveness of Christendom, the state requires discourses of "danger" to provide a new theology of truth about who and what "we" are by highlighting who and what "we" are not, and what "we" have to fear. The mode through which the Campbellian discourse of danger is employed in foreign (and security) policy, can then be seen as practices of Wæverian securitisation. Securitisation is the mode of discourse and the discourse is a "discourse of danger" identifying and naming threats, thereby delineating Self from Other and thus making it clear what it is "we" are protecting, (i.e. what is "us", what is our identity and therefore – as representation – what is state identity). This is done by pointing out danger, threats and enemies, internal and external alike, and – by linking the two (Campbell 1992: 239): For the state, identity can be understood as the outcome of exclusionary practices in which resistant elements to a secure identity on the "inside" are linked through a discourse of danger (such as Foreign Policy) with threats identified and located on the "outside". To speak security is then to employ a discourse of danger inter-subjectively depicting that which is different from Self as an existential threat – and therefore as Other to Self. Securitisation is about the identity of that which is securitised on behalf of, a discursive practice to (re)produce the identity of the state. Securitising implies "othering" difference – making difference the Other in a binary opposition constituting Self (Neumann 1996b: 167). Turning to the Baltic Sea Region, one cannot help noting the rather loose fitting between the undeniable – indeed underscored – state focus in the works of both David Campbell and the Copenhagen School on the one hand, and the somewhat wishful speculations of regionality beyond the state – transcending sovereignty – on the other. Coupling the two is not necessarily an analytical problem. It only makes a rather weak case for regionality. But exactly that becomes a theoretical problem in undermining the very theoretical substance, and by implication – empirical viability – of regionality. There are of course indications that the role of states are relativised in late modern (or post- modern) politics. And there is reason to expect current developments in the security problematique of the Baltic states – firmly connected to the dynamic of NATO’s enlargement – to exert an impact on regional co-operation in the Baltic Sea Region, possibly even on regionality. NATO moving east, engaging Russia and carrying elements of the post-modernist security agenda with it in the process, is likely to narrow the gap between the two agendas. Moreover, since the Baltic states are not included in a first round of expansion, they might in this very fact (failure, some would say) find an incentive for shifting focus from international to regional levels. Involving Poland and engaging Russia, the enlargement of NATO will in fact bring the Alliance as such (not only individual NATO countries as the case has been) to bear increasingly on the regional setting as well as on regional activity. That might add significance to the regional level. It does not, however, necessarily imply that the state as actor and state centric approaches will succumb to regionality. Neither does it do away with the state as the prime referent for, and producer of, collective identity, so central to the approaches of both Wæver and Campbell. But it might spur a parallel to sovereignty. A way out of this theoretical impasse would then be not to stress the either or of regionality/sovereignty, but to see the two as organising principles at work side by side, complementing each other in parallelity rather than excluding one another in contrariety. The Discourse of Danger: The Russian war on Chechnya is one event that was widely interpreted in the Baltic as a ominous sign of what Russia has in store for the Baltic states (see Rebas 1996: 27; Nekrasas 1996: 58; Tarand 1996: 24; cf. Haab 1997). The constitutional ban in all three states on any kind of association with post-Soviet political structures is indicative of a threat perception that confuses Soviet and post- Soviet, conflating Russia with the USSR and casting everything Russian as a threat through what Ernesto Laclau and Chantal Mouffe (1985) call a discursive "chain of equivalence". In this the value of one side in a binary opposition is reiterated in other denotations of the same binary opposition. Thus, the value "Russia" in a Russia/Europe-opposition is also denoted by "instability", "Asia", "invasion", "chaos", "incitement of ethnic minorities", "unpredictability", "imperialism", "slander campaign", "migration", and so forth. The opposite value of these markers ("stability", "Europe", "defence", "order", and so on) would then denote the Self and thus conjure up an identity. When identity is precarious, this discursive practice intensifies by shifting onto a security mode, treating the oppositions as if they were questions of political existence, sovereignty, and survival. Identity is (re)produced more effectively when the oppositions are employed in a discourse of in-security and danger, that is, made into questions of national security and thus securitised in the Wæverian sense. In the Baltic cases, especially the Lithuanian National Security Concept is knitting a chain of equivalence in a ferocious discourse of danger. Not only does it establish "[t]hat the defence of Lithuania is total and unconditional," and that "[s]hould there be no higher command, self-controlled combat actions of armed units and citizens shall be considered legal." (National Security Concept, Lithuania, Ch. 7, Sc. 1, 2) It also posits that [t]he power of civic resistance is constituted of the Nation’s Will and self-determination to fight for own freedom, of everyone citizen’s resolution to resist to [an] assailant or invader by all possible ways, despite citizen’s age and [or] profession, of taking part in Lithuania’s defence (National Security Concept, Lithuania, Ch. 7, Sc. 4). When this is added to the identifying of the objects of national security as "human and citizen rights, fundamental freedoms and personal security; state sovereignty; rights of the nation, prerequisites for a free development; the state independence; the constitutional order; state territory and its integrity, and; cultural heritage," and the subjects as "the state, the armed forces and other institutions thereof; the citizens and their associations, and; non governmental organisations,"(National Security Concept, Lithuania, Ch. 2, Sc. 1, 2) one approaches a conception of security in which the distinction between state and nation has disappeared in all-encompassing securitisation. Everyone is expected to defend everything with every possible means.

Our alternative is to reject the security fetishism of the 1AC, their flawed methodology and discourse to eschew the logic of security.

**Critical praxis outweighs policy making- voting affirmative guarantees error replication. Only a radical break from dominant paradigms can avoid becoming a self fulfilling prophecy**

Cheeseman & Bruce 1996 (Graeme, Senior Lecturer at the University of New South Wales, and Robert, Associate Professor in social sciences at Curtin university, “Discourses of Danger & Dread Frontiers”, p. 5-8, MT)

This goal is pursued in ways which are still unconventional in the intellectual milieu of international relations in Australia, even though they are gaining influence worldwide as traditional modes of theory and practice are rendered inadequate by global trends that defy comprehension, let alone policy. The inability to give meaning to global changes reflects partly the enclosed, elitist world of professional security analysts and bureaucratic experts, where entry is gained by learning and accepting to speak a particular, exclusionary language. The contributors to this book are familiar with the discourse, but accord no privileged place to its ‘knowledge form as reality’ in debates on defence and security. Indeed, they believe that debate will be furthered only through a long overdue critical re-evaluation of elite perspectives. Pluralistic, democratically-oriented perspectives on Australia’s identity are both required and essential if Australia’s thinking on defence and security is to be invigorated. This is not a conventional policy book; nor should it be, in the sense of offering policy-makers and their academic counterparts sets of neat alternative solutions, in familiar language and format, to problems they pose. **This expectation is in itself a considerable part of the problem** to be analysed. It is, however, a book about policy, one that **questions how problems are framed by policy-makers**. It challenges the proposition that irreducible bodies of real knowledge on defence and security exist independently of their ‘context in the world’, and it demonstrates how security policy is articulated authoritatively by the elite keepers of that knowledge, experts trained to recognize enduring, universal wisdom. All others, from this perspective, must accept such wisdom or remain outside the expert domain, tainted by their inability to comply with the ‘rightness’ of the official line. But it is precisely the official line, or at least its image of the world, that needs to be problematised. If the critic responds directly to the demand for policy alternatives, without addressing this image, he or she is tacitly endorsing it. **Before engaging in the policy debate the critics need to reframe the basic terms of reference**. This book, then, reflects and underlines the importance of Antonio Gramsci and Edward Said’s ‘critical intellectuals’.15 The demand, tacit or otherwise, that the policy-maker’s frame of reference be accepted as the only basis for discussion and analysis ignores a three thousand year old tradition commonly associated with Socrates and purportedly integral to the Western tradition of democratic dialogue. More immediately, it ignores post-seventeenth century democratic traditions which insist that a good society must have within it some way of critically assessing its knowledge and the decisions based upon that knowledge which impact upon citizens of such a society. This is a tradition with a slightly different connotation in contemporary liberal democracies which, during the Cold War, were proclaimed different and superior to the totalitarian enemy precisely because there were institutional checks and balances upon power. In short, one of the major differences between ‘open societies’ and their (closed) counterparts behind the Iron Curtain was that the former encouraged the critical testing of the knowledge and decisions of the powerful and assessing them against liberal democratic principles. The latter tolerated criticism only on rare and limited occasions. For some, this represented the triumph of rational-scientific methods of inquiry and techniques of falsification. For others, especially since positivism and rationalism have lost much of their allure, it meant that for society to become open and liberal, sectors of the population must be independent of the state and free to question its knowledge and power. Though we do not expect this position to be accepted by every reader, contributors to this book believe that critical dialogue is long overdue in Australia and needs to be listened to. For all its liberal democratic trappings, Australia’s security community continues to invoke closed monological narratives on defence and security. This book also questions the distinctions between policy practice and academic theory that inform conventional accounts of Australian security. One of its major concerns, particularly in chapters 1 and 2, is to illustrate how theory is integral to the practice of security analysis and policy prescription. The book also calls on policy-makers, academics and students of defence and security to think critically about what they are reading, writing and saying; to begin to ask, of their work and study, difficult and searching questions raised in other disciplines; to recognise, no matter how uncomfortable it feels, that what is involved in theory and practice is not the ability to identify a replacement for failed models, but a realisation that terms and concepts – state sovereignty, balance of power, security, and so on – are contested and problematic, and that the world is indeterminate, **always becoming what is written about it.** Critical analysis which shows how particular kinds of theoretical presumptions can effectively exclude vital areas of political life from analysis **has direct practical implications for policy-makers**, academics and citizens who face the daunting task of steering Australia through some potentially choppy international waters over the next few years. There is also much of interest in the chapters for those struggling to give meaning to a world where so much that has long been taken for granted now demands imaginative, incisive reappraisal. The contributors, too, have struggled to find meaning, often despairing at the terrible human costs of international violence. This is why readers will find no single, fully formed panacea for the world’s ills in general, or Australia’s security in particular. There are none. Every chapter, however, in its own way, offers something more than is found in orthodox literature, often by exposing ritualistic Cold War defence and security mind-sets that are dressed up as new thinking. Chapters 7 and 9, for example, present alternative ways of engaging in security and defence practice. Others (chapters 3, 4, 5, 6 and 8) seek to alert policy-makers, academics and students to alternative theoretical possibilities which might better serve an Australian community pursuing security and prosperity in an uncertain world. All chapters confront the policy community and its counterparts in the academy with a deep awareness of the intellectual and material constraints imposed by dominant traditions of realism, but they avoid dismissive and exclusionary terms which often in the past characterized exchanges between policy-makers and their critics. This is because, as noted earlier, attention needs to be paid to the words and the thought processes of those being criticized. A close reading of this kind draws attention to underlying assumptions, showing they need to be recognized and questioned. A sense of doubt (in place of confident certainty) is a necessary prelude to a genuine search for alternative policies. First comes an awareness of the need for new perspectives, **then specific policies may follow.** As Jim George argues in the following chapter, we need to look not so much at **contending policies** as they are made for us **but at challenging ‘the discursive process which gives** [favoured **interpretations of “reality”] their meaning and which direct** [Australia’s] **policy**/analytical/**military responses**’. This process is not restricted to the small, official defence and security establishment huddled around the US-Australian War Memorial in Canberra. It also encompasses much of Australia’s academic defence and security community located primarily though not exclusively within the Australian National University and the University College of the University of New South Wales. These discursive processes are examined in detail in subsequent chapters as authors attempt to make sense of a politics of exclusion and closure which exercises disciplinary power over Australia’s security community. They also question the discourse of ‘regional security’, ‘security cooperation’, ‘peacekeeping’ and ‘alliance politics’ that are central to Australia’s official and academic security agenda in the 1990s. This is seen as an important task especially when, as is revealed, the disciplines of International Relations and Strategic Studies are under challenge from critical and theoretical debates ranging across the social sciences and humanities; debates that are nowhere to be found in Australian defence and security studies. The chapters graphically illustrate how Australia’s public policies on defence and security are informed, underpinned and legitimised by a narrowly-based intellectual enterprise which draws strength from contested concepts of realism and liberalism, which in turn seek legitimacy through policy-making processes. Contributors ask whether Australia’s policy-makers and their academic advisors are unaware of broader intellectual debates, or resistant to them, or choose not to understand them, and why?

### Leadership

#### NSA spying prevents U.S.-EU coop on terrorism – this outweighs all of their internal links

Feeny 10-25-13 (Matthew, “EU Leaders: Latest NSA Revelations Could Threaten Fight Against Terrorism,” <http://reason.com/blog/2013/10/25/eu-leaders-latest-nsa-revelations-could>, Mike)

The National Security Agency monitored the phone conversations of 35 world leaders after being given the numbers by an official in another US government department, according to a classified document provided by whistleblower Edward Snowden. The confidential memo reveals that the NSA encourages senior officials in its "customer" departments, such as the White House, State and the Pentagon, to share their "Rolodexes" so the agency can add the phone numbers of leading foreign politicians to their surveillance systems. The document notes that one unnamed US official handed over 200 numbers, including those of the 35 world leaders, none of whom is named. These were immediately "tasked" for monitoring by the NSA. The news comes days after the French newspaper Le Monde reported that the NSA spied on millions of French phone records, the German newspaper Der Spiegel reported that the NSA hacked into the Mexican president’s public email account, and German Chancellor Angela Merkel called President Obama over concerns that her cellphone was targeted by American intelligence. The timing of these revelations is not good for the Obama administration. European Union leaders recently began their latest summit in Brussels, and unsurprisingly both the French and the Germans are pushing for a “no-spying” agreement with the U.S. While the NSA revelations from this week make up only some of the latest embarrassing news facing the Obama administration, it is the only news that could have long-lasting diplomatic and national security implications. Ironically, the behavior of the NSA (which is supposedly tasked with helping keep the U.S. safe) could threaten the fight against terrorism. A statement from the heads of state and government of European Union nations reads in part: "Alongside our foreseen work, we had a discussion tonight about recent developments concerning possible intelligence issues and the deep concerns that these events have raised among European citizens. The Heads of State or government underlined the close relationship between Europe and the USA and the value of that partnership. They expressed their conviction that the partnership must be based on respect and trust, including as concerns the work and cooperation of secret services. They stressed that intelligence gathering is a vital element in the fight against terrorism. This applies to relations between European countries as well as to relations with the USA. A lack of trust could prejudice the necessary cooperation in the field of intelligence gathering.

#### 1. No motivation for nuclear terror

Francis J. Gavin 10, Professor of International Affairs and Director of the Robert S. Strauss Center for International Security and Law, Lyndon B. Johnson School of Public Affairs, University of Texas at Austin, “Same As It Ever Was,” International Security, Vol. 34, No. 3 (Winter 2009/10), pp. 7–37

A recent study contends that al-Qaida’s interest in acquiring and using nuclear weapons may be overstated. Anne Stenersen, a terrorism expert, claims that “looking at statements and activities at various levels within the al-Qaida network, it becomes clear that the network’s interest in using unconventional means is in fact much lower than commonly thought.”55 She further states that “CBRN [chemical, biological, radiological, and nuclear] weapons do not play a central part in al-Qaida’s strategy.”56 In the 1990s, members of al-Qaida debated whether to obtain a nuclear device. Those in favor sought the weapons primarily to deter a U.S. attack on al-Qaida’s bases in Afghanistan. This assessment reveals an organization at odds with that laid out by nuclear alarmists of terrorists obsessed with using nuclear weapons against the United States regardless of the consequences. Stenersen asserts, “Although there have been various reports stating that al-Qaida attempted to buy nuclear material in the nineties, and possibly recruited skilled scientists, it appears that al-Qaida central have not dedicated a lot of time or effort to developing a high-end CBRN capability. . . . Al-Qaida central never had a coherent strategy to obtain CBRN: instead, its members were divided on the issue, and there was an awareness that militarily effective weapons were extremely difficult to obtain.” 57 Most terrorist groups “assess nuclear terrorism through the lens of their political goals and may judge that it does not advance their interests.”58 As Frost has written, “The risk of nuclear terrorism, especially true nuclear terrorism employing bombs powered by nuclear fission, is overstated, and that popular wisdom on the topic is significantly flawed.”59

#### 2. No chance of a terrorist attack

Mueller 11—IR prof at Ohio State. PhD in pol sci from UCLA (2 August 2011, John, The Truth about Al Qaeda, http://www.foreignaffairs.com/articles/68012/john-mueller/the-truth-about-al-qaeda?page=show)

As a misguided Turkish proverb holds, "If your enemy be an ant, imagine him to be an elephant." The new information unearthed in Osama bin Laden's hideout in Abbottabad, Pakistan, suggests that the United States has been doing so for a full decade. Whatever al Qaeda's threatening rhetoric and occasional nuclear fantasies, its potential as a menace, particularly as an atomic one, has been much inflated. The public has now endured a decade of dire warnings about the imminence of a terrorist atomic attack. In 2004, the former CIA spook Michael Scheuer proclaimed on television's 60 Minutes that it was "probably a near thing," and in 2007, the physicist Richard Garwin assessed the likelihood of a nuclear explosion in an American or a European city by terrorism or other means in the next ten years to be 87 percent. By 2008, Defense Secretary Robert Gates mused that what keeps every senior government leader awake at night is "the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear." Few, it seems, found much solace in the fact that an al Qaeda computer seized in Afghanistan in 2001 indicated that the group's budget for research on weapons of mass destruction (almost all of it focused on primitive chemical weapons work) was some $2,000 to $4,000. In the wake of the killing of Osama bin Laden, officials now have more al Qaeda computers, which reportedly contain a wealth of information about the workings of the organization in the intervening decade. A multi-agency task force has completed its assessment, and according to first reports, it has found that al Qaeda members have primarily been engaged in dodging drone strikes and complaining about how cash-strapped they are. Some reports suggest they've also been looking at quite a bit of pornography. The full story is not out yet, but it seems breathtakingly unlikely that the miserable little group has had the time or inclination, let alone the money, to set up and staff a uranium-seizing operation, as well as a fancy, super-high-tech facility to fabricate a bomb. It is a process that requires trusting corrupted foreign collaborators and other criminals, obtaining and transporting highly guarded material, setting up a machine shop staffed with top scientists and technicians, and rolling the heavy, cumbersome, and untested finished product into position to be detonated by a skilled crew, all the while attracting no attention from outsiders. The documents also reveal that after fleeing Afghanistan, bin Laden maintained what one member of the task force calls an "obsession" with attacking the United States again, even though 9/11 was in many ways a disaster for the group. It led to a worldwide loss of support, a major attack on it and on its Taliban hosts, and a decade of furious and dedicated harassment. And indeed, bin Laden did repeatedly and publicly threaten an attack on the United States. He assured Americans in 2002 that "the youth of Islam are preparing things that will fill your hearts with fear"; and in 2006, he declared that his group had been able "to breach your security measures" and that "operations are under preparation, and you will see them on your own ground once they are finished." Al Qaeda's animated spokesman, Adam Gadahn, proclaimed in 2004 that "the streets of America shall run red with blood" and that "the next wave of attacks may come at any moment." The obsessive desire notwithstanding, such fulminations have clearly lacked substance. Although hundreds of millions of people enter the United States legally every year, and countless others illegally, no true al Qaeda cell has been found in the country since 9/11 and exceedingly few people have been uncovered who even have any sort of "link" to the organization. The closest effort at an al Qaeda operation within the country was a decidedly nonnuclear one by an Afghan-American, Najibullah Zazi, in 2009. Outraged at the U.S.-led war on his home country, Zazi attempted to join the Taliban but was persuaded by al Qaeda operatives in Pakistan to set off some bombs in the United States instead. Under surveillance from the start, he was soon arrested, and, however "radicalized," he has been talking to investigators ever since, turning traitor to his former colleagues. Whatever training Zazi received was inadequate; he repeatedly and desperately sought further instruction from his overseas instructors by phone. At one point, he purchased bomb material with a stolen credit card, guaranteeing that the purchase would attract attention and that security video recordings would be scrutinized. Apparently, his handlers were so strapped that they could not even advance him a bit of cash to purchase some hydrogen peroxide for making a bomb. For al Qaeda, then, the operation was a failure in every way -- except for the ego boost it got by inspiring the usual dire litany about the group's supposedly existential challenge to the United States, to the civilized world, to the modern state system. Indeed, no Muslim extremist has succeeded in detonating even a simple bomb in the United States in the last ten years, and except for the attacks on the London Underground in 2005, neither has any in the United Kingdom. It seems wildly unlikely that al Qaeda is remotely ready to go nuclear. Outside of war zones, the amount of killing carried out by al Qaeda and al Qaeda linkees, maybes, and wannabes throughout the entire world since 9/11 stands at perhaps a few hundred per year. That's a few hundred too many, of course, but it scarcely presents an existential, or elephantine, threat. And the likelihood that an American will be killed by a terrorist of any ilk stands at one in 3.5 million per year, even with 9/11 included.

#### NATO doesn’t have the military to do anything- it’s totally irrelevant

Alexander Melikishvili- research associate with the James Martin Center for Nonproliferation Studies- 1/26/09, YaleGlobal, NATO’s Double Standards Make for a Hollow Alliance, http://yaleglobal.yale.edu/content/nato%E2%80%99s-double-standards-make-hollow-alliance

The lack of adequate military preparedness is the third factor that makes NATO irrelevant. Russia’s actions in Georgia had direct implications for the European security and underscored the importance of contingency planning on the part of NATO. Since 1995, as a matter of official policy doctrine, NATO has not considered Russia a potential source of military threat. Ironically by bullying Georgia, Russia made its perennial fear of Western military encirclement a self-fulfilling prophecy as NATO is taking steps to ensure the security of its most vulnerable members – the Baltic states of Estonia, Latvia and Lithuania. It’s long been an open secret that airspace above these countries is protected by only four fighter jets. NATO planners belatedly scramble to devise plans to defend these countries from possible Russian military incursion. Unburdened by the toxic legacy of disagreements over the invasion of Iraq, the Obama administration will have an opportunity to reinvigorate Euro-Atlantic ties by launching a comprehensive overhaul of the alliance. Unless NATO undergoes radical internal consolidation, it risks becoming increasingly vulnerable and ultimately extinct. An integral part of this process must be emphasis on increasing force projection capabilities to strengthen NATO’s deterrent potential. Ever respectful of brute force, the Kremlin should know that the costs of tempering with the tripwires along Russia’s European periphery will outweigh any benefits, both imagined and real.

#### No compliance – states ignore punishments

**Thakore 09 (Neil, “The Failure of International Law: Why the Department of Justice Will Not Prosecute at Guantanamo”** [**http://www.associatedcontent.com/article/2084995/the\_failure\_of\_**](http://www.associatedcontent.com/article/2084995/the_failure_of_) **international\_law\_why\_pg4.html?cat=17”)**

Furthermore, while international law, specifically Geneva Conventions provide specific and clear standards as to what is a violation of international law and what is not, the Conventions do not mention what the appropriate punishment should be. According to the Human Rights Watch World Report, the Convention leaves it to the state to "enact laws to investigate and punish those responsible for war crimes," (Human Rights Watch World Report, International Humanitarian Law and War Crimes). The Geneva Convention leaves it to the administration committing the violation to prosecute themselves. Thus, if the country hypothetically chooses not to prosecute the aggressors in the country, or even hinder the prosecution, it can with fairly easily. The reason, once again, is because not one country has sovereignty over another; therefore, not one country has the right to prosecute another. Therefore, when the government feels the need to commit "enhanced interrogation techniques" in order to protect its citizens, such as the Bush Administration, it does without hesitation.

#### Risk of bioterrorism is extremely low – several constraints

Keller 13 (3-7, Rebecca – Analyst at Stratfor, Post-Doctoral Fellow at University of Colorado at Boulder, 2013, "Bioterrorism and the Pandemic Potential," http://www.stratfor.com/weekly/bioterrorism-and-pandemic-potential)

It is important to remember that the risk of biological attack is very low and that, partly because viruses can mutate easily, the potential for natural outbreaks is unpredictable. The key is having the right tools in case of an outbreak, epidemic or pandemic, and these include a plan for containment, open channels of communication, scientific research and knowledge sharing. In most cases involving a potential pathogen, the news can appear far worse than the actual threat. Infectious Disease Propagation Since the beginning of February there have been occurrences of H5N1 (bird flu) in Cambodia, H1N1 (swine flu) in India and a new, or novel, coronavirus (a member of the same virus family as SARS) in the United Kingdom. In the past week, a man from Nepal traveled through several countries and eventually ended up in the United States, where it was discovered he had a drug-resistant form of tuberculosis, and the Centers for Disease Control and Prevention released a report stating that antibiotic-resistant infections in hospitals are on the rise. In addition, the United States is experiencing a worse-than-normal flu season, bringing more attention to the influenza virus and other infectious diseases. The potential for a disease to spread is measured by its effective reproduction number, or R-value, a numerical score that indicates whether a disease will propagate or die out. When the disease first occurs and no preventive measures are in place, the reproductive potential of the disease is referred to as R0, the basic reproduction rate. The numerical value is the number of cases a single case can cause on average during its infectious period. An R0 above 1 means the disease will likely spread (many influenza viruses have an R0 between 2 and 3, while measles had an R0 value of between 12 and 18), while an R-value of less than 1 indicates a disease will likely die out. Factors contributing to the spread of the disease include the length of time people are contagious, how mobile they are when they are contagious, how the disease spreads (through the air or bodily fluids) and how susceptible the population is. The initial R0, which assumes no inherent immunity, can be decreased through control measures that bring the value either near or below 1, stopping the further spread of the disease. Both the coronavirus family and the influenza virus are RNA viruses, meaning they replicate using only RNA (which can be thought of as a single-stranded version of DNA, the more commonly known double helix containing genetic makeup). The rapid RNA replication used by many viruses is very susceptible to mutations, which are simply errors in the replication process. Some mutations can alter the behavior of a virus, including the severity of infection and how the virus is transmitted. The combination of two different strains of a virus, through a process known as antigenic shift, can result in what is essentially a new virus. Influenza, because it infects multiple species, is the hallmark example of this kind of evolution. Mutations can make the virus unfamiliar to the body's immune system. The lack of established immunity within a population enables a disease to spread more rapidly because the population is less equipped to battle the disease. The trajectory of a mutated virus (or any other infectious disease) can reach three basic levels of magnitude. An outbreak is a small, localized occurrence of a pathogen. An epidemic indicates a more widespread infection that is still regional, while a pandemic indicates that the disease has spread to a global level. Virologists are able to track mutations by deciphering the genetic sequence of new infections. It is this technology that helped scientists to determine last year that a smattering of respiratory infections discovered in the Middle East was actually a novel coronavirus. And it is possible that through a series of mutations a virus like H5N1 could change in such a way to become easily transmitted between humans. Lessons Learned There have been several influenza pandemics throughout history. The 1918 Spanish Flu pandemic is often cited as a worst-case scenario, since it infected between 20 and 40 percent of the world's population, killing roughly 2 percent of those infected. In more recent history, smaller incidents, including an epidemic of the SARS virus in 2003 and what was technically defined as a pandemic of the swine flu (H1N1) in 2009, caused fear of another pandemic like the 1918 occurrence. The spread of these two diseases was contained before reaching catastrophic levels, although the economic impact from fear of the diseases reached beyond the infected areas. Previous pandemics have underscored the importance of preparation, which is essential to effective disease management. The World Health Organization lays out a set of guidelines for pandemic prevention and containment. The general principles of preparedness include stockpiling vaccines, which is done by both the United States and the European Union (although the possibility exists that the vaccines may not be effective against a new virus). In the event of an outbreak, the guidelines call for developed nations to share vaccines with developing nations. Containment strategies beyond vaccines include quarantine of exposed individuals, limited travel and additional screenings at places where the virus could easily spread, such as airports. Further measures include the closing of businesses, schools and borders. Individual measures can also be taken to guard against infection. These involve general hygienic measures -- avoiding mass gatherings, thoroughly washing hands and even wearing masks in specific, high-risk situations. However, airborne viruses such as influenza are still the most difficult to contain because of the method of transmission. Diseases like noroviruses, HIV or cholera are more serious but have to be transmitted by blood, other bodily fluids or fecal matter. The threat of a rapid pandemic is thereby slowed because it is easier to identify potential contaminates and either avoid or sterilize them. Research is another important aspect of overall preparedness. Knowledge gained from studying the viruses and the ready availability of information can be instrumental in tracking diseases. For example, the genomic sequence of the novel coronavirus was made available, helping scientists and doctors in different countries to readily identify the infection in limited cases and implement quarantine procedures as necessary. There have been only 13 documented cases of the novel coronavirus, so much is unknown regarding the disease. Recent cases in the United Kingdom indicate possible human-to-human transmission. Further sharing of information relating to the novel coronavirus can aid in both treatment and containment. Ongoing research into viruses can also help make future vaccines more efficient against possible mutations, though this type of research is not without controversy. A case in point is research on the H5N1 virus. H5N1 first appeared in humans in 1997. Of the more than 600 cases that have appeared since then, more than half have resulted in death. However, the virus is not easily transmitted because it must cross from bird to human. Human-to-human transmission of H5N1 is very rare, with only a few suspected incidents in the known history of the disease. While there is an H5N1 vaccine, it is possible that a new variation of the vaccine would be needed were the virus to mutate into a form that was transmittable between humans. Vaccines can take months or even years to develop, but preliminary research on the virus, before an outbreak, can help speed up development. In December 2011, two separate research labs, one in the United States and one in the Netherlands, sought to publish their research on the H5N1 virus. Over the course of their research, these labs had created mutations in the virus that allowed for airborne transmission between ferrets. These mutations also caused other changes, including a decrease in the virus's lethality and robustness (the ability to survive outside the carrier). Publication of the research was delayed due to concerns that the results could increase the risk of accidental release of the virus by encouraging further research, or that the information could be used by terrorist organizations to conduct a biological attack. Eventually, publication of papers by both labs was allowed. However, the scientific community imposed a voluntary moratorium in order to allow the community and regulatory bodies to determine the best practices moving forward. This voluntary ban was lifted for much of the world on Jan. 24, 2013. On Feb. 21, the National Institutes of Health in the United States issued proposed guidelines for federally funded labs working with H5N1. Once standards are set, decisions will likely be made on a case-by-case basis to allow research to continue. Fear of a pandemic resulting from research on H5N1 continues even after the moratorium was lifted. Opponents of the research cite the possibility that the virus will be accidentally released or intentionally used as a bioweapon, since information in scientific publications would be considered readily available. The Risk-Reward Equation The risk of an accidental release of H5N1 is similar to that of other infectious pathogens currently being studied. Proper safety standards are key, of course, and experts in the field have had a year to determine the best way to proceed, balancing safety and research benefits. Previous work with the virus was conducted at biosafety level three out of four, which requires researchers wearing respirators and disposable gowns to work in pairs in a negative pressure environment. While many of these labs are part of universities, access is controlled either through keyed entry or even palm scanners. There are roughly 40 labs that submitted to the voluntary ban. Those wishing to resume work after the ban was lifted must comply with guidelines requiring strict national oversight and close communication and collaboration with national authorities. The risk of release either through accident or theft cannot be completely eliminated, but given the established parameters the risk is minimal. The use of the pathogen as a biological weapon requires an assessment of whether a non-state actor would have the capabilities to isolate the virulent strain, then weaponize and distribute it. Stratfor has long held the position that while terrorist organizations may have rudimentary capabilities regarding biological weapons, the likelihood of a successful attack is very low. Given that the laboratory version of H5N1 -- or any influenza virus, for that matter -- is a contagious pathogen, there would be two possible modes that a non-state actor would have to instigate an attack. The virus could be refined and then aerosolized and released into a populated area, or an individual could be infected with the virus and sent to freely circulate within a population. There are severe constraints that make success using either of these methods unlikely. The technology needed to refine and aerosolize a pathogen for a biological attack is beyond the capability of most non-state actors. Even if they were able to develop a weapon, other factors such as wind patterns and humidity can render an attack ineffective. Using a human carrier is a less expensive method, but it requires that the biological agent be a contagion. Additionally, in order to infect the large number of people necessary to start an outbreak, the infected carrier must be mobile while contagious, something that is doubtful with a serious disease like small pox. The carrier also cannot be visibly ill because that would limit the necessary human contact. As far as continued research is concerned, there is a risk-reward equation to consider. The threat of a terrorist attack using biological weapons is very low. And while it is impossible to predict viral outbreaks, it is important to be able to recognize a new strain of virus that could result in an epidemic or even a pandemic, enabling countries to respond more effectively. All of this hinges on the level of preparedness of developed nations and their ability to rapidly exchange information, conduct research and promote individual awareness of the threat.\

### Judicial Activism

#### Here’s evidence – their internal link article is about Hedges vs. Obama – that case is specifically about capture policy – they don’t legally affect the definition of “support” or “forces”

Davidson 8-18-13 (Lawrence, “In the Matter of Hedges v. Obama,” <http://www.counterpunch.org/2013/08/16/in-the-matter-of-hedges-v-obama/>, Mike)

Back in January of 2012 former war correspondent Christ Hedges and others, including Noam Chomsky and Daniel Ellsberg, filed a lawsuit in federal court challenging the constitutionality of the 2012 National Defense Authorization Act (NDAA) and specifically the Act’s Section 1021(b)(2), which allows for indefinite detention by the U.S. military of people “who are part of or substantially support Al Qaeda, the Taliban or associated forces engaged in hostilities against the United States.” This detention denies those held of the ability to “contest the allegations against them because they have no right to be notified of the specific charges against them.” In this suit filed by Hedges et al., the issue in question was the vagueness of the terms “substantially support” and “associated forces.” For instance, could this vagueness lead to apprehension and detention of journalists who publish interviews with members of Al Qaeda or the Taliban? Could it lead to the same treatment against political activists protesting U.S. policies against these or “associated” groups? The case, now designated Hedges v. Obama, was initially heard in New York District Court by Judge Katherine Forrest. The plaintiffs claimed that the NDAA violated the 1st (free speech), 5th (due process as well as the stipulation that people must be able to understand what actions break the law) and 14th (equal protection) Amendments to the Constitution. To address the question Judge Forrest asked the government lawyers if they could assure the court that the activities of the plaintiffs would not result in indefinite detention under the act. If they could give such assurances it would, as far as the judge was concerned, eliminate the plaintiff’s “standing” to challenge the law. The government lawyers refused to give those assurances, and as a result, the judge concluded, “The definitions of ‘substantially supported’ and ‘associated forces’ were so vague that a reporter or activist could not be sure they would not be covered under the provision.” This, in turn, would result in what the plaintiffs considered a “chilling effect on free speech and freedom of the press.” Therefore, in September 2012, the Judge granted a permanent injunction against the practice of indefinite detention as put forth in NDAA.

#### Framing issue—we obviously don’t shift drone policy. Obama will most likely avoid that

#### **U.S. drone use doesn’t cause prolif – no international precedent.**

Etzioni 13, Professor of International Relations @ George Washington University

(Aimtai Etzioni, adviser to the Carter administration, “The Great Drone Debate”, Military Review, 4/2013, http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview\_20130430\_art004.pdf)

Other critics contend that by the United States ¶ using drones, it leads other countries into making and ¶ using them. For example, Medea Benjamin, the cofounder of the anti-war activist group CODEPINK ¶ and author of a book about drones argues that, “The ¶ proliferation of drones should evoke reﬂection on the ¶ precedent that the United States is setting by killing ¶ anyone it wants, anywhere it wants, on the basis of ¶ secret information. Other nations and non-state entities are watching—and are bound to start acting in ¶ a similar fashion.”60 Indeed scores of countries are ¶ now manufacturing or purchasing drones. There can ¶ be little doubt that the fact that drones have served ¶ the United States well has helped to popularize them. ¶ However, it does not follow that United States ¶ should not have employed drones in the hope that such a show of restraint would deter others. First ¶ of all, this would have meant that either the United ¶ States would have had to allow terrorists in hard-to-reach places, say North Waziristan, to either ¶ roam and rest freely—or it would have had to use ¶ bombs that would have caused much greater collateral damage. ¶ Further, the record shows that even when the ¶ United States did not develop a particular weapon, ¶ others did. Thus, China has taken the lead in the ¶ development of anti-ship missiles and seemingly ¶ cyber weapons as well. One must keep in mind ¶ that the international environment is a hostile ¶ one. Countries—and especially non-state actors—¶ most of the time do not play by some set of selfconstraining rules

. Rather, they tend to employ ¶ whatever weapons they can obtain that will further ¶ their interests. The United States correctly does ¶ not

assume that it can rely on some non-existent ¶ implicit gentleman’s agreements that call for the ¶ avoidance of new military technology by nation X ¶ or terrorist group Y—if the United States refrains ¶ from employing that technology. I am not arguing that there are no natural norms ¶ that restrain behavior. There are certainly some ¶ that exist, particularly in situations where all parties beneﬁt from the norms (e.g., the granting of ¶ diplomatic immunity) or where particularly horrifying weapons are involved (e.g., weapons of ¶ mass destruction). However drones are but one ¶ step—following bombers and missiles—in the ¶ development of distant battleﬁeld technologies. ¶ (Robotic soldiers—or future ﬁghting machines—¶ are next in line). In such circumstances, the role ¶ of norms is much more limited.

#### China won’t use drones to resolve territorial disputes – fears backlash

**Erickson and Strange 13** [Andrew Erickson, associate professor at the Naval War College and Associate in Research at Harvard University's Fairbank Centre, and Austin Strange, researcher at the Naval War College's China Maritime Studies Institute and graduate student at Zhejiang University, 5-29-13 China has drones. Now how will it use them? Foreign Affairs, McClatchy-Tribune, 29 May 2013, http://www.nationmultimedia.com/opinion/China-has-drones-Now-how-will-it-use-them-30207095.html, da 8-3-13]

Drones, able to dispatch death remotely, without human eyes on their targets or a pilot's life at stake, make people uncomfortable - even when they belong to democratic governments that presumably have some limits on using them for ill. (On May 23, in a major speech, US President Barack Obama laid out what some of those limits are.) An even more alarming prospect is that unmanned aircraft will be acquired and deployed by authoritarian regimes, with fewer checks on their use of lethal force.¶ Those worried about exactly that tend to point their fingers at China. In March, after details emerged that China had considered taking out a drug trafficker in Myanmar with a drone strike, a CNN blog post warned, "Today, it's Myanmar. Tomorrow, it could very well be some other place in Asia or beyond." Around the same time, a National Journal article entitled "When the Whole World Has Drones" teased out some of the consequences of Beijing's drone programme, asking, "What happens if China arms one of its remote-piloted planes and strikes Philippine or Indian trawlers in the South China Sea?"¶ Indeed, the time to fret about when China and other authoritarian countries will acquire drones is over: they have them. The question now is when and how they will use them. But as with its other, less exotic military capabilities, Beijing has cleared only a technological hurdle - and its behaviour will continue to be constrained by politics.¶ China has been developing a drone capacity for over half a century, starting with its reverse engineering of Soviet Lavochkin La-17C target drones that it had received from Moscow in the late 1950s. Today, Beijing's opacity makes it difficult to gauge the exact scale of the programme, but according to Ian Easton, an analyst at the Project 2049 Institute, an American think-tank devoted to Asia-Pacific security matters, by 2011 China's air force alone had over 280 combat drones. In other words, its fleet of unmanned aerial vehicles is already bigger and more sophisticated than all but the United States'; in this relatively new field Beijing is less of a newcomer and more of a fast follower. And the force will only become more effective: the Lijian ("sharp sword" in Chinese), a combat drone in the final stages of development, will make China one of the very few states that have or are building a stealth drone capacity.¶ This impressive arsenal may tempt China to pull the trigger. The fact that a Chinese official acknowledged that Beijing had considered using drones to eliminate the Myanmar drug trafficker, Naw Kham, makes clear that it would not be out of the question for China to launch a drone strike in a security operation against a non-state actor. Meanwhile, as China's territorial disputes with its neighbours have escalated, there is a chance that Beijing would introduce unmanned aircraft, especially since India, the Philippines and Vietnam distantly trail China in drone funding and capacity, and would find it difficult to compete. Beijing is already using drones to photograph the Senkaku/Diaoyu islands it disputes with Japan, as the retired Chinese major-general Peng Guangqian revealed earlier this year, and to keep an eye on movements near the North Korean border.¶ Beijing, however, is unlikely to use its drones lightly. It already faces tremendous criticism from much of the international community for its perceived brazenness in continental and maritime sovereignty disputes. With its leaders attempting to allay notions that China's rise poses a threat to the region, injecting drones conspicuously into these disputes would prove counterproductive. China also fears setting a precedent for the use of drones in East Asian hotspots that the United States could eventually exploit. For now, Beijing is showing that it understands these risks, and to date it has limited its use of drones in these areas to surveillance, according to recent public statements from China's Defence Ministry.

## 2NC

### OV

#### Try or die for cp – we are the only ones that clarify

CP Solves the plan better than the aff

Singer, director – Center for 21st Century Security and Intelligence @ Brookings, and Wright, senior fellow – Brookings, 2/7/’13

(Peter W. and Thomas, "Obama, own your secret wars", www.nydailynews.com/opinion/obama-secret-wars-article-1.1265620)

It is time for a new approach. And all that is required of the President is to do the thing that he does perhaps best of all: to speak.¶ Obama has a unique opportunity — in fact, an urgent obligation — to create a new doctrine, unveiled in a major presidential speech, for the use and deployment of these new tools of war.¶ While the Republicans tried to paint the President as weak on security issues in the 2012 elections, history will record instead that his administration pushed into new frontiers of war, most especially in the new class of technologies that move the human role both geographically and chronologically further from the point of action on the battlefield.¶ The U.S. military’s unmanned systems, popularly known as “drones,” now number more than 8,000 in the air and 12,000 on the ground. And in a parallel development, the U.S. Cyber Command, which became operational in 2010, has added an array of new (and controversial) responsibilities — and is set to quintuple in size.¶ This is not just a military matter. American intelligence agencies are increasingly using these technologies as the tips of the spear in a series of so-called “shadow wars.” These include not only the more than 400 drone strikes that have taken place from Pakistan to Yemen, but also the deployment of the Stuxnet computer virus to sabotage Iranian nuclear development, the world’s first known use of a specially designed cyber weapon.¶ Throughout this period, the administration has tried to have it both ways — leaking out success stories of our growing use of these new technologies but not tying its hands with official statements and set policies.¶ This made great sense at first, when much of what was happening was ad hoc and being fleshed out as it went along.¶ But that position has become unsustainable. The less the U.S. government now says about our policies, the more that vacuum is becoming filled by others, in harmful ways.¶ By acting but barely explaining our actions, we’re creating precedents for other states to exploit. More than 75 countries now have military robotics programs, while another 20 have advanced cyber war capacities. Rest assured that nations like Iran, Russia and China will use these technologies in far more crude and indiscriminate ways — yet will do so while claiming to be merely following U.S. footsteps.¶ In turn, international organizations — the UN among them — are pushing ahead with special investigations into potential war crimes and proposing new treaties.¶ Our leaders, meanwhile, stay mum, which isolates the U.S. and drains its soft power.¶ The current policy also makes it harder to respond to growing concerns over civilian casualties. Indeed, Pew polling found 96% levels of opposition to U.S. drones in the key battleground state of Pakistan, a bellwether of the entire region. It is indisputable than many civilians have been harmed over the course of hundreds of strikes. And yet it is also indisputable that various groups have incentives to magnify such claims.¶ Yet so far, U.S. officials have painted themselves into a corner — either denying that any collateral losses have occurred, which no one believes, or reverting to the argument that we cannot confirm or deny our involvement, which no one believes, either.¶ Finally, the domestic support and legitimacy needed for the use of these weapons is in transition. Polling has found general public support for drone strikes, but only to a point, with growing numbers in the “not sure” category and growing worries around cases of targeting U.S. citizens abroad who are suspected of being terrorists.¶ The administration is so boxed in that, even when it recently won a court case to maintain the veil of semi-silence that surrounds the drone strike program, the judge described the current policy as having an “Alice in Wonderland” feel.¶ The White House seems to be finally starting to realize the problems caused by this disconnect of action but no explanation. After years of silence, occasional statements by senior aides are acknowledging the use of drones, while lesser-noticed working level documents have been created to formalize strike policies and even to explore what to do about the next, far more autonomous generation of weapons.¶ These efforts have been good starts, but they have been disjointed and partial. Most important, they are missing the much-needed stamp of the President’s voice and authority, which is essential to turn tentative first steps into established policy.¶ Much remains to be done — and said — out in the open.¶ This is why it’s time for Obama’s voice to ring loud and clear. Much as Presidents Harry Truman and Dwight Eisenhower were able keep secret aspects of the development of nuclear weapons, even as they articulated how and when we would use them, Obama should publicly lay out criteria by which the United States will develop, deploy and use these new weapons.¶ The President has a strong case to make — if only he would finally make it. After all, the new weapons have worked. They have offered new options for military action that are more accurate and proportionate and less risky than previously available methods.¶ But they have also posed many new complications. Explaining our position is about embracing both the good and the bad. It is about acknowledging the harms that come with war regardless of what technology is being used and making clear what structures of accountability are in place to respond.¶ It’s also about finally defining where America truly stands on some of the most controversial questions. These include the tactics of “signature” strikes, where the identity is not firmly identified, and “double tap” strikes, where rescuers aiding victims of a first attack are also brought under fire. These have been reported as occurring and yet seem to run counter to the principles under which the programs have been defended so far.¶ The role of the President is not to conduct some kind of retrospective of what we have done and why, but to lay out a course of the future. What are the key strategic goals and ethical guidelines that should drive the development and use of these new technologies? Is current U.S. and international law sufficient to cover them?¶ There are also crucial executive management questions, like where to draw the dividing line between military and civilian intelligence agency use of such technologies, and how to keep a growing range of covert actions from morphing into undeclared and undebated wars.¶ And, finally, the President must help resolve growing tensions between the executive branch and an increasingly restive Congress, including how to handle situations where we create the effect of war but no U.S. personnel are ever sent in harm’s way.¶ Given the sprawling complexity of these matters, only the President can deliver an official statement on where we stand. If only we somehow had a commander in chief who was simultaneously a law professor and Nobel Peace Prize winner!¶ The President’s voice on these issues won’t be a cure-all. But it will lay down a powerful marker, shaping not just the next four years but the actions of future administrations

Solves drone modeling

Twomey, JD candidate – Trinity College Dublin, 3/14/’13

(Laura, “Setting a Global Precedent: President Obama's Codification of Drone Warfare,” Cambridge Journal of International and Comparative Law Blog)

It is clear that, as the first State to deploy remote targeting technology in a non international armed conflict, the legal framework forged by the US during President Obama's second term will set significant precedent for the future practice of the estimated 40 States developing their own drone technology. On 7 March 2013, members of the European Parliament expressed deep concern about the “unwelcome precedent” the programme sets, citing its “destabilising effect on the international legal framework” that “destroys ... our common legal heritage.” This 'destabilising effect' arises from the classified and seemingly amorphous substantive legal basis for the programme and the apparent lack of procedural standards in place. It remains to be seen if the classified 'rulebook' will be released for public scrutiny, and allay these concerns. Reliance on international law in world order is based on consent, consensus, good faith and, crucially in this instance, reciprocity. The US programme may harbour short term gains in the pursuit of al-Qaeda operatives, however, if the aforementioned substantive legal justifications continue to be invoked, it risks engendering long term disadvantages. Pursuing this policy encourages other States to adopt similar policies. Administration officials have cited particular concern about setting precedent for Russia, Iran and China, all of which are developing their own remote targeting technology. It is therefore suggested that the Administration should take this opportunity to codify the rules, clarify terms where ambiguity may currently allow for broader interpretations, and to bring its regulations in line with the existing framework of international law. This legal framework should then be made available to the public, with covert operational necessities redacted. This could set a valuable legal precedent, of particular importance at this turning point wherein international law must adapt to the 21st century model of warfare, a model which lacks a clear enemy and a demarcated battlefield.

**We solve the net benefit – XO’s aren’t external restrictions so the president still perceives himself as retaining executive authority – this is key to push climate legislation**

### AT PDB – Congress

#### 6. Disad to the perm, it destroys SOP

Paulsen(Michael Stokes, Assoc. Prof. Of Law, Univ. Of Minn. Law School, The Merryman

Power And The Dilemma of Autonomous Executive Branch Interpretation, 15 Cardozo L. Rev.

81, October) **19**93

The premise underlying autonomous executive branch interpretation is the ¶ coordinacy of the three branches of the federal government - a premise based on ¶ no less an authority than James Madison and The Federalist No. 49: [\*85] ¶ The people are the only legitimate fountain of power, and it is from them that ¶ the constitutional charter, under which the several branches of government hold ¶ their power, is derived .... The several departments being perfectly co-ordinate ¶ by the terms of their common commission, neither of them, it is evident, can ¶ pretend to an exclusive or superior right of settling the boundaries between ¶ their respective powers. n7 ¶ The premise of coordinacy, as articulated by Madison, implies that no branch has ¶ final interpretive authority, but that each branch has interpretive authority ¶ within the sphere of its other constitutional powers; the resolution of disputed ¶ points depends on the pull-and-tug of the different branches, just as the ¶ Constitution's separation of powers in other respects works to preserve a system ¶ of checks and balances. The coordinacy principle thus implies that the executive ¶ branch - that is, the Presidency n8 - has completely independent interpretive ¶ authority within the sphere of its powers.

#### 7. Nuclear War

Redish and Cisar 91, (Martin H. Redish, Professor, law, Northwestern University and Elizabeth J., Cleark Chief Judge William Bauer, U.S. Court of Appeals, Seventh Circuit, DUKE LAW JOURNAL, 1991, LN.)

In summary, no defender of separation of powers can prove with certitude that, but for the existence of separation of powers, tyranny would be the inevitable outcome. But the question is whether we wish to take that risk, given the obvious severity of the harm that might result. Given both the relatively limited cost imposed by use of separation of powers and the great severity of the harm sought to be avoided, one should not demand a great showing of the likelihood that the feared harm would result. For just as in the case of the threat of nuclear war, no one wants to be forced into the position of saying, "I told you so."

### Solvency

#### NSC’s relaxed procedural and evidentiary rules undermine commitment to the rule of law – turns the aff

Cole 08, Professor of Law at Georgetown

(David, A CRITIQUE OF “NATIONAL SECURITY COURTS, www.constitutionproject.org/pdf/Critique\_of\_the\_National\_Security\_Courts.pdf)

Most importantly, there is the intrinsic and inescapable problem of definition. Whereas the argument for specialized courts for tax and patent law is that expert judges are particularly necessary given the complex subject-matter, proposals for specialized courts for terrorism trials are based on the asserted need for relaxed procedural and evidentiary rules and are justified on the ground that terrorists do not deserve full constitutional protections. This creates two fundamental constitutional problems. First, justifying departures from constitutional protections on the basis that the trials are for terrorists undermines the presumption of innocence for these individuals. Second, if a conviction were obtained in a national security court using procedural and evidentiary rules that imposed a lesser burden on the government, then the defendant would be subjected to trial before a national security court based upon less of a showing than would be required in a traditional criminal proceeding. The result would be to apply less due process to the question of guilt or innocence, which, by definition, would increase the risk of error. And, if the government must make a preliminary showing that meets traditional rules of procedure and evidence in order to trigger the jurisdiction of a national security court, such a showing would also enable it to proceed via the traditional criminal process.

#### NSC due process deprivations spillover to the rest of the judicial system – magnifies rule of law degradation

Cole 08, Professor of Law at Georgetown

(David, A CRITIQUE OF “NATIONAL SECURITY COURTS, www.constitutionproject.org/pdf/Critique\_of\_the\_National\_Security\_Courts.pdf)

National security courts for criminal prosecutions are not just unnecessary; they are also dangerous. They run the risk of creating a separate and unequal criminal justice system for a particular class of suspects, who will be brought before such specialized courts based on the very allegations they are contesting. Such a system undermines the presumption of innocence for these defendants, and risks a broader erosion of defendants’ rights that could spread to traditional Article III trials. It was Justice Frankfurter who wrote that “It is a fair summary of history to say that the safeguards of liberty have frequently been forged in controversies involving not very nice people.” Committee members strongly believe that the shadow of terrorism must not be the basis for abandoning these fundamental tenets of justice and fairness.

#### NSC’s discriminatory policy undermines international perception of legal legitimacy and devastates soft power

Shulman 09, Law Prof at Pace

(Mark, NATIONAL SECURITY COURTS: STAR CHAMBER OR SPECIALIZED JUSTICE?, ssrn.com/abstract=1328427)

National security or terrorist courts in other countries offer troubling lessons, mostly because of their implications for the respect for civil liberties generally—not only of the accused, but of the wider population. Existing proposals to create such a court in the United States inadequately account for this risk, or explain how it would be minimized or mitigated. Emergency systems in other countries have invariably reduced civil liberties for the general population. It is understandable that governments wish to be seen to be responding to the urgent threats posed by those who use violence to affect policy. However, it is important to recognize that these emergency systems in such diverse jurisdictions as Great Britain, Malaysia, and South Africa have diminished freedoms for society as a whole. This principle lesson derived of foreign experiences is not particularly surprising. Examples abound of domestic emergency measures taken to promote national security that have undermined the base norm presumption of innocence that lies at the center of America’s constitutional order. The largescale internment of Japanese-Americans during the Second World War provides a notorious example. In that case, the federal courts deferred to the Executive’s misguided policy and thereby created a new and heinous rule allowing for internment, displacement, and forced sales of property based on no more than the notion that citizens of a given race might seek to harm the United States. Although the United States has officially apologized for this shameful episode, Korematsu has not been overruled in the two generations since the Supreme Court handed down its 6-3 decision. The Korematsu precedent may have given some legal cover for the large scale detention of Americans of Moslem, Arab, or Middle-Eastern background in the months following September 11.62 These discriminatory policies undermine the soft power America otherwise derives from its role as a leader in promoting respect for human rights. In other countries, emergency powers have had a similarly deleterious effect on civil liberties. In the United Kingdom, in order to address violence originating in troubled Northern Ireland, the government revoked the right to trial by jury for criminal offenses; denied access to legal counsel; held prisoners without charge; and allowed coercive interrogation techniques and admitted confessions elicited because of them, among other measures. In Malaysia, the government transferred judges from their positions to avoid judicial review of its decisions or release of suspects arrested without even probable cause—in violation of well-established constitutional law. In apartheid South Africa, judicial review was revoked for interrogation purposes. These extra-judicial detentions lasted weeks. In addition to radical nationalists, they swept up completely harmless nuns and pastors urging more widespread equality and access to education. Three cases, of course, do not constitute a comprehensive survey or prove the point. Even the Akin Gump survey of 123 domestic cases can lead only to limited conclusions. However, these three examples do offer insights into the threats to liberty posed by special purpose terrorism courts. IV. QUO VADIS? Would a system of national security courts offer the kind of specialized justice necessary for addressing the threat posed by radical Islamists or others who seek to use terrorist means? Or, in a tragic parallel to the Stuart kings’ infamous Star Chamber, would these courts ultimately undermine the nation’s security by degrading both its legal system and the soft power derived from its cherished reputation as a model for justice? On the eve of the inauguration of Barack Obama, these critical questions remain unresolved in the court of “public opinion which alone can here protect the values of democratic government.”

#### Illegitimate NSC detention trials turn the case because they will be seen as worse than the status quo:

#### a) Relaxed evidentiary rules

Vladeck 09, Law Prof at American

(Stephen, THE CASE AGAINST NATIONAL SECURITY COURTS, willamette.edu/wucl/resources/journals/review/pdf/Volume%2045/WLR45-3\_Vladeck.pdf)

A national security court, in contrast, would be marked by relaxed evidentiary rules, including the ability to introduce hearsay testimony and perhaps even evidence that is produced by governmental coercion. As importantly, the government would also be able, under most proposals, to use classified information as evidence without fully disclosing such to the defendant. Otherwise, as McCarthy and Velshi describe in their proposal: [P]eople who commit mass murder, who face the death penalty or life imprisonment, and who are devoted members of a movement whose animating purpose is to damage the United States, are certain to be relatively unconcerned about violating court orders (or, for that matter, about being hauled into court at all). Our congenial rules of access to attorneys, paralegals, investigators and visitors make it a very simple matter for accused terrorists to transmit what they learn in discovery to their confederates—and we know that they do so.

#### b) No jury trial or adequate defense counsel

Rittgers 09, Attorney, decorated former Army Special Forces officer, and legal policy analyst at Cato

(David, National Security Court: Reinventing the Wheel, Poorly, www.cato.org/publications/commentary/national-security-court-reinventing-wheel-poorly)

In Sulmasy’s proposed “national security court,” suspected terrorists would be tried in front of a panel of three federal judges, violating their Sixth Amendment right to a jury trial. Defendants would be detained, tried, and imprisoned on military bases, a practice out of step with a federal statutory bar to the military’s direct participation in domestic law enforcement. The Bush administration kept its military commissions more palatable for the public by keeping American citizens and aliens detained in the United States out of Guantanamo. Sulmasy proposes that we bring Gitmo home and open its doors to citizens and non-citizens alike. Sulmasy does endeavor to solve one perceived problem with the military commissions that military lawyers have expressed to me: few courts-martial deal with contested felony charges, so most military lawyers have little courtroom experience. We are now entrusting them with the biggest trials of our time. Sulmasy proposes to fix this by using veteran federal prosecutors instead. The catch? The defense counsel would be those same military lawyers he says are not up to the task of prosecuting the case, unless the defendant could afford his own attorney with a high-level security clearance. Sulmasy also reduces the core protections of defendants by barring the use of the exclusionary rule, the doctrine that bars evidence collected illegally or otherwise in violation of the law. Without the prospect of excluding evidence collected in ways barred by federal courts, there is no incentive for law enforcement officers to follow any rules. Looking for terrorists? No warrant? No problem.

#### c) Judge selection

Cole 08, Professor of Law at Georgetown

(David, A CRITIQUE OF “NATIONAL SECURITY COURTS, www.constitutionproject.org/pdf/Critique\_of\_the\_National\_Security\_Courts.pdf)

In addition, these proposals are alarmingly short on details with respect to the selection of judges for these national security courts. Although there is a history of creating specialized federal courts to handle particular substantive areas of the law (e.g., taxation; patents), unlike tax and patent law, there is simply no highly specialized expertise that would form relevant selection criteria for the judges. Establishing a specialized court solely for prosecutions of alleged terrorists might also create a highly politicized process for nominating and confirming the judges, focusing solely on whether the nominee had sufficient “tough on terrorism” credentials — hardly a criterion that lends itself to the appearance of fairness and impartiality.

### Case

**Single instances don’t affect credibility**

Christopher **Fettweis**, professor of political science at Tulane, Credibility and the War on Terror, Winter **2008**, Political Science Quarterly, Ingenta.

**There is** actually **scant evidence that other states ever learn the right lessons**. **ColdWar history contains little reason to believe that the credibility of the superpowers had very much effect on their ability to influence others**. Over the last decade, **a series of major scholarly studies have cast further doubt upon the fundamental assumption of interdependence across foreign policy actions.** **Employing methods borrowed from social psychology** rather than the economics-based models commonly employed by deterrence theorists, Jonathan **Mercer argued that threats are far more independent than is commonly believed and**, therefore, **that reputations are not likely to be formed on the basis of individual actions**. **While policymakers** may **feel** that **their** **decisions send messages about** their basic **dispositions to others, most of the evidence from social psychology suggests otherwise**. **Groups** tend to **interpret the actions of their rivals as situational, dependent upon the constraints of place and time**. Therefore, **they are not likely to form lasting impressions** of irresolution **from single,** independent **events**. Mercer argued that **the interdependence assumption had been accepted on faith, and rarely put to a coherent test; when it was,** it **almost inevitably failed**.

**Zero data supports the resolve or credibility thesis**

Jonathan **Mercer 13**, associate professor of political science at the University of Washington in Seattle and a Fellow at the Center for International Studies at the London School of Economics, 5/13/13, “Bad Reputation,” <http://www.foreignaffairs.com/articles/136577/jonathan-mercer/bad-reputation>

Since then, **the debate about** what to do in **Syria has been sidetracked by discussions of** **how central reputation is to deterrence**, and whether protecting it is worth going to war.

There are two ways to answer those questions: through evidence and through logic. The first approach is easy. **Do leaders assume** that **other leaders who have been irresolute in the past** **will be irresolute in the future** **and that**, therefore, **their threats are not credible?** **No; broad and deep evidence dispels that notion**. In studies of the various political crises leading up to World War I and of those before and during the Korean War, I found that leaders did indeed worry about their reputations. But their worries were often mistaken.

For example, when North Korea attacked South Korea in 1950, U.S. Secretary of State Dean Acheson was certain that America’s credibility was on the line. He believed that the United States’ allies in the West were in a state of “near-panic, as they watched to see whether the United States would act.” He was wrong. When one British cabinet secretary remarked to British Prime Minister Clement Attlee that Korea was “a rather distant obligation,” Attlee responded, “Distant -- yes, but nonetheless an obligation.” For their part, the French were indeed worried, but not because they doubted U.S. credibility. Instead, they feared that American resolve would lead to a major war over a strategically inconsequential piece of territory. Later, once the war was underway, Acheson feared that Chinese leaders thought the United States was “too feeble or hesitant to make a genuine stand,” as the CIA put it, and could therefore “be bullied or bluffed into backing down before Communist might.” In fact, Mao thought no such thing. He believed that the Americans intended to destroy his revolution, perhaps with nuclear weapons.

Similarly, Ted **Hopf, a professor of political science** at the National University of Singapore, has **found** that **the Soviet Union did not think the U**nited **S**tates **was irresolute for abandoning Vietnam**; instead, **Soviet officials were surprised that Americans would sacrifice so much for something the Soviets viewed as tangential to U.S. interests**. And, **in his study of Cold War showdowns**, **Dartmouth** College **professor** Daryl **Press found reputation to have been unimportant**. During the Cuban Missile Crisis, the Soviets threatened to attack Berlin in response to any American use of force against Cuba; **despite a long record of Soviet bluff and bluster over Berlin**, **policymakers in the U**nited **S**tates **took these threats seriously**. As **the record shows**, **reputations do not matter**.

#### 1. No bio attack

**Biederbick, head of the Federal Information Centre on Biological Safety at the Robert Koch Institute of Germany; 9**

(Walter, “Terrorism and potential biological warfare agents”) <http://d.scribd.com/docs/1481o5vjxkw29bi3vw02.pdf>, accessed 4/7/09

Compared to chemical warfare agents or nuclear weapons, BW agents require relatively little logistical support for production. However, the capability to disseminate BW agents as an aerosol requires profound knowledge not only in microbiology, but also in aerosol techniques. This limits the threat of BW agents because only state-run programs or groups supported by states seem be capable of mastering these technical challenges up to now. Not even Saddam Hussein’s regime in Iraq shared its knowledge in this field with terror groups. In the media it is reported from time to time that terrorists consider combining improvised explosive devices with BW agents as a method of dissemination. This makes little sense. Most BW agents are very sensitive to heat and would not survive the high temperatures of an explosion.

#### **2. No global pandemic impact**

Lind Policy Director of the New America Foundation’s Economic Growth Program 3/25 (Michael, “So Long, Chicken Little,” Foreign Policy March/April pg. 25-27, Mike)

5. The coming global pandemic There's nothing like a good plague to get journalists and pundits in a frenzy. Although the threat of global pandemics is real, it's all too often exaggerated. In the last few years, the world has experienced two such pandemics, the avian flu (H5N1) and swine flu (H1N1). Both fell far short of the apocalyptic vision of a new Black Death cutting huge swaths of mortality with its remorseless scythe. Out of a global population of more than 6 billion people, 8,768 are estimated to have died from swine flu, 306 from avian flu. And yet it was not just the BBC ominously informing us that "the deadly swine flu … cannot be contained." Like warnings about the proliferation of nuclear weapons, the good done by mobilizing people to address the problem must be weighed against the danger of apocalypse fatigue on the part of a public subjected to endless Chicken Little scares.

#### **3. Disease pandemics won’t lead to human extinction**

Posner, federal judge, 5 – [Richard, 7th Circuit Court of Appeals, “Catastrophe,” 11:3, Proquest]

AIDS illustrates the further point that despite the progress made by modern medicine in the diagnosis and treatment of diseases, developing a vaccine or cure for a new (or newly recognized or newly virulent) disease may be difficult, protracted, even impossible. Progress has been made in treating ATDS, but neither a cure nor a vaccine has yet been developed. And because the virus's mutation rate is high, the treatments may not work in the long run.7 Rapidly mutating viruses are difficult to vaccinate against, which is why there is no vaccine for the common cold and why flu vaccines provide only limited protection.8 Paradoxically, a treatment that is neither cure nor vaccine, but merely reduces the severity of a disease, may accelerate its spread by reducing the benefit from avoiding becoming infected. This is an important consideration with respect to AIDS, which is spread mainly by voluntary intimate contact with infected people. Yet the fact that Homo sapiens has managed to survive every disease to assail it in the 200,000 years or so of its existence is a source of genuine comfort, at least if the focus is on extinction events. There have been enormously destructive plagues, such as the Black Death, smallpox, and now AIDS, but none has come close to destroying the entire human race. There is a biological reason. Natural selection favors germs of limited lethality; they are fitter in an evolutionary sense because their genes are more likely to be spread if the germs do not kill their hosts too quickly. The AIDS virus is an example of a lethal virus, wholly natural, that by lying dormant yet infectious in its host for years maximizes its spread. Yet there is no danger that AIDS will destroy the entire human race. The likelihood of a natural pandemic that would cause the extinction of the human race is probably even less today than in the past (except in prehistoric times, when people lived in small, scattered bands, which would have limited the spread of disease), despite wider human contacts that make it more difficult to localize an infectious disease. The reason is improvements in medical science. But the comfort is a small one. Pandemics can still impose enormous losses and resist prevention and cure: the lesson of the AIDS pandemic. And there is always a first time.

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### Overview

#### Turns terrorism

Dallas Morning News 8 [June 26 http://www.dallasnews.com/sharedcontent/dws/news/healthscience/stories/DN-warming\_26nat.ART.State.Edition2.4e1b40a.html ]

Global warming is likely to have a series of destabilizing effects around the world, causing humanitarian crises as well as surges in ethnic violence and illegal immigration, according to a U.S. intelligence assessment debated Wednesday. "Logic suggests the conditions exacerbated [by climate change] would increase the pool of potential recruits for terrorism," said Tom Fingar, deputy director of national intelligence, who testified Wednesday before a joint hearing of two House committees. Climate change alone would not topple governments, but it could worsen problems such as poverty, disease, migration and hunger that could destabilize already vulnerable areas, Mr. Fingar said. But he warned that efforts to reduce global warming by changing energy policies "may affect U.S. national security interests even more than the physical impacts of climate change itself. "The operative word there is 'may.' We don't know," he said. The national intelligence assessment on the national security implications of global climate change through 2030 was requested by Congress last year. It represents the consensus judgment of top analysts at all 16 U.S. spy agencies. The report is classified but was given to senior lawmakers on the two committees. Rep. Edward Markey, D-Mass., chairs the House Select Committee on Energy Independence and Global Warming. On Tuesday night, he accused the White House of trying to "bury the future security realities of global warming" in Mr. Fingar's prepared statement. But on Wednesday, he said the report itself is "first-class" and its findings are "a clarion call to action from the heart of our nation's security establishment." The report was criticized by skeptics of global warming and opponents of using U.S. intelligence resources to track something as amorphous as the environment. "I think it was a pathetic use of intelligence resources," said Rep. Peter Hoekstra, R-Mich., the ranking Republican on the House Intelligence Committee. Mr. Hoekstra complained that the report did little to expand government officials' understanding of global warming and its consequences. The document, he said in an interview, "didn't add anything I didn't already know." The assessment relied on climate calculations and projections made by the United Nations' Intergovernmental Panel on Climate Change. In April 2007, the Center for Naval Analyses issued a similar report, written by 11 top retired military leaders, that drew a direct correlation between global warming and the conditions that lead to failed states becoming the breeding grounds for extremism and terrorism. "Weakened and failing governments, with an already thin margin for survival, foster the conditions for internal conflicts, extremism and movement toward increased authoritarianism and radical ideologies," the 2007 report said. "The U.S. will be drawn more frequently into these situations."

#### Presidential leadership is necessary to prevent loose nuclear material falling into the hands of terrorist organizations

Daryl G. Kimball, 12-4-12 (Executive Director of the Arms Control Association , “Obama Underscores Need for Further Progress to Reduce Nuclear Dangers”, Armscontrolnow.org)

In his first foreign policy-related address since his reelection, on Monday Dec. 3 President Obama praised the architects of the highly-successful Nunn-Lugar Cooperative Threat Reduction Program, he reaffirmed his commitment to the action plan toward a world without nuclear weapons, and he underscored his commitment to achieve further progress to reduce the threats posed by nuclear, chemical and biological weapons.¶ While Obama did not break new ground, his remarks are an important signal to his national security team, the Congress, the American public, and the world that he intends to complete unfinished nuclear risk reduction tasks that he set out in his historic Prague address in April 2009.¶ In the speech which capped a day-long conference titled “Nunn-Lugar Cooperative Threat Reduction: Partnering for a More Secure World” at the National Defense University, Obama praised former Senator Sam Nunn (D-Ga.) and Dick Lugar (R-Ind.) for their visionary and bipartisan leadership to conceive of and support the program.¶ Begun in 1991, the program has deactivated over 7,600 warheads and destroyed over 900 intercontinental ballistic missiles. It has dismantled 33 submarines that carried nuclear weapons and 155 bombers. It also has funded security measures to safeguard facilities housing weapons of mass destruction and destroy chemical and biological weapons.¶ However, the President said, “…even with all your success — the thousands of missiles destroyed, bombers and submarines eliminated, the warheads that have been deactivated — we’re nowhere near done. Not by a long shot. And you all know this. There’s still much too much material -— nuclear, chemical, biological -— being stored without enough protection. There are still terrorists and criminal gangs doing everything they can to get their hands on it.”¶ “And make no mistake,” Obama said, “if they get it, they will use it; potentially killing hundreds of thousands of innocent people, perhaps triggering a global crisis. That’s why I continue to believe that nuclear terrorism remains one of the greatest threats to global security. That’s why working to prevent nuclear terrorism is going to remain one of my top national security priorities as long as I have the privilege of being President of the United States.”¶ Significant progress has been achieved to lock-down vulnerable nuclear material worldwide, but the to-do list is long, its underfunded, and its unfinished, as the March 2012 ACA-PGS status report on the 2010 and 2012 Nuclear Security Summits explains.¶ One key step that Congress could take in the bipartisan tradition of Nunn-Lugar would be to finally approve the implementing legislation for two nuclear terrorism prevention conventions: the International Convention for the Suppression of Acts of Nuclear Terrorism, and the 2005 amendment to the Convention on the Physical Protection of Nuclear Materials, are common sense measures that enhance the world’s ability to prevent incidents of nuclear terrorism and punish those responsible.¶ As ACA Senior Fellow Greg Thielmann wrote in a recent ACA Issue Brief, “Time Is Now to Act on Treaties to Guard Against Nuclear Terrorism,” the legislation for these treaties has been delayed as a result of an impasse on the Senate Judiciary Committee between chairman Patrick Leahy (D-Vt.) and Charles Grassley (R-Iowa).¶ Second Term Nuclear Risk Reduction Opportunities¶ Obama said “Nunn-Lugar is the foundation for the vision that I laid out, once I was elected President, in travel to Prague — where nations come together to secure nuclear materials, as we’re doing with our Nuclear Security Summits, where we build on New START and continue to work to reduce our arsenals; where we strengthen the Nuclear Non-Proliferation Treaty and prevent the spread of the world’s most deadly weapons; where, over time, we come closer to our ultimate vision — a world without nuclear weapons.”¶ Continuing to reduce the nuclear threat, strengthen the nuclear Nonproliferation Treaty, and move closer toward a world without nuclear weapons will require stronger presidential leadership on the objectives that Obama and his team laid out in his first term.¶

#### Turns china, strong president key to future arms control

James Graybeal, Science Applications International Corporation, with McFate, PRESIDENTS AND ARMS CONTROL: W. ALTON JONES FOUNDATION SERIES ON THE PRESIDENCY AND ARMS CONTROL, ed. K.W. Thompson, 1994, p. 63-64.

Kissinger believed that the role of the NSC staff was to develop a set of options for the President. Kissinger restructured the staff, creating interdepartmental groups to study problem areas and formulate policy choices; the groups would develop and assess alternatives. he [or she]created a verification panel and a senior review group at the undersecretary level-which he [or she]chaired-to deal with recommendations coming up the ladder from the interdepartmental groups, various departments, and various government agencies. In this manner the control of national security decision making was centered in the White House, which dearly the President wanted, as well as Kissinger, because President Nixon, like President Kennedy, without question gave top priority to foreign affairs. Kissinger also created various special groups that were subordinate to the NSC-such as the Vietnam Special Studies Group-which strengthened the NSC and helped the NSC staff attempt to dominate the Department of State. Kissinger's success in this regard can be seen in a statement made at that time by President Nixon to the effect that, "Kissinger covers not only foreign policy, but national security policy-the coordination of those policies." Of course, Kissinger remained a key player in the Ford administration. During both administrations, while Kissinger's personal influence was virtually unassailable, the NSC staff had markedly less power during the Ford administration, with no direct access to the president. Arms control during this period, while conducted by ACDA negotiators, was not removed from the intervention of the powerful Henry Kissinger. Although career diplomats might have felt neglected during the Kissinger era, or indeed stung by it, it can be argued that the positive outcome of that period was an extraordinary set of arms control agreements based on the premise that arms control really worked. Only a strong president could have brought such an ambitious arms control agenda through congressional ratification. During the height of the Nixon years, the agreements reflected the power of the President, his [or her] international interests, and the power of Henry Kissinger.Presidents Ford and Carter, who for very different reasons had single-term presidencies, were **unable to achieve the depth and the span** of the Nixon arms control initiatives. As an example, the SALT I agreements represented the first U.S.-Soviet agreements to place limits and restraints on some of those countries' central and most important strategic offensive and defensive weapons. The agreements were a diplomatic achievement because there were large asymmetries in the Soviet and American weapon systems, and material differences in the two countries'defense needs and defense commitments.

#### A Strong Presidency Is Vital To U.S. Leadership

Thomas E. Cronin, scholar, THE PARADOXES OF THE AMERICAN PRESIDENCY, 1998, p. 128.

In the wake of the wounded or imperiled presidency of the Watergate era, could Congress furnish the leadership necessary to govern the country? Most scholars and writers said no. Even in the wake of the Gingrich-led Republican House of the mid-1990s, most commentators questioned the ability of Congress to present coherent national policies. The conventional answer was that “we will need a presidency of substantial power if we are to get on top of our domestic problems and maintain our leadership position in foreign affairs. Defenders of a powerful Presidency such as Samuel Huntington and others wonder how a government could conduct a coherent foreign policy if legislative ascendancy really meant the development of a Congress into a second U.S. government. Could the United States afford to have two foreign policies? A nation cannot retain for long a leadership role in the world unless it is both clear and decisive. In the absence of those cherished Hamiltonian virtues, chaos would reign. They feared, too, that in establishing its foreign policy decisions, congressional government would operate almost entirely on the basis of domestic politics, a purview that limits its competence in the field of foreign affairs.

#### Also causes rollback

Laura Young 13, Ph.D., Purdue University Associate Fellow, June, Unilateral Presidential Policy Making and the Impact of Crises, Presidential Studies Quarterly, Volume 43, Issue 2

A president looks for chances to increase his power (Moe and Howell 1999). Windows of opportunity provide those occasions. These openings create an environment where the president faces little backlash from Congress, the judicial branch, or even the public. Though institutional and behavioral conditions matter, domestic and international crises play a pivotal role in aiding a president who wishes to increase his power (Howell and Kriner 2008, 475). These events overcome the obstacles faced by the institutional make-up of government. They also allow a president lacking in skill and will or popular support the opportunity to shape the policy formation process. In short, focusing events increase presidential unilateral power.

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#### Prez powers are high but Obama is still finding the right balance

Philip Rucker and Peter Wallsten, 3-18-13 (“President Obama exercises a fluid grip on the levers of power”, Washington Post)

President Obama’s professed ignorance of the targeting of conservatives by one government agency and his support of tracking journalists’ sources by another highlight one of the great paradoxes of his presidency: Sometimes he uses his office as aggressively as anyone who’s held it; other times he seems unacquainted with the work of his own administration. The controversies over the Internal Revenue Service’s scrutiny of tea party and other conservative groups and the Justice Department’s surveillance of Associated Press journalists are only the latest examples of Obama’s a la carte governing style.Obama has been willing to push the bounds of executive power when it comes to making life-and-death decisions about drone strikes on suspected terrorists or instituting new greenhouse gas emission standards for cars. But at other times he has been skittish. When immigration activists first urged him to halt deportations of many illegal immigrants, for instance, Obama said he didn’t have the authority to do so. He eventually gave in after months of public protest and private pressure from immigrant and Hispanic advocates, granting relief to certain people who had been brought to the United States as children.And at key moments, Obama has opted against power plays. In the 2011 debt-ceiling fight, Obama ruled out unilaterally raising the country’s borrowing limit even though some constitutional scholars, as well as many of his political allies, believed doing so was well within his authority.The president’s inconsistency is so befuddling that not even his critics can get it straight. They simultaneously charge that he is “leading from behind” and that he is displaying, in the words of House Speaker John A. Boehner (R-Ohio), “the arrogance of power.”Some of his friends are a bit confused, as well. “He’s a smart guy, a scholarly guy, but I can’t figure him out,” said Rep. Steve Cohen (D-Tenn.), who has been unsuccessfully pushing for Obama to use his pardoning powers more aggressively to release nonviolent drug offenders from prison. Obama’s current and former advisers said the president’s approach is deliberate and coherent: On national security, he exercises power to keep the country safe, whereas on domestic issues, he acts strategically on a case-by-case basis.Still, the advisers acknowledge, Obama’s sometimes-yes, sometimes-no approach can give the appearance that he’s all over the map. Four-and-a-half years in, they said, he still is figuring out how to strike the right balance.¶ “He is deeply concerned both that his office . . . never violate its primary duty to abide by the Constitution’s checks and balances and that he nonetheless exercise those powers to the limit as needed to protect the nation and its people,” said Laurence Tribe, a Harvard Law professor who has been a mentor of Obama’s for two decades and served briefly in Obama’s Justice Department.¶ Still, Tribe expressed concern that Obama, himself a former law instructor, “is being a bit too much the constitutional lawyer in some of these matters and not enough the ordinary citizen, sharing the anger that ordinary citizens understandably feel but flexing the muscles that no citizen other than Barack Obama possesses.”¶ Exerting power¶ Obama came into office promising to rein in what he and other Democrats charged were frequent overreaches of executive authority by George W. Bush’s administration. He vowed to strive for non-ideological, bipartisan solutions to problems. In practice, Obama followed Bush’s lead when it came to executive power in fighting terrorism and other areas. His administration invoked the state-secrets privilege to avoid disclosing information when challenged in court, and Obama asserted executive privilege to withhold information from Congress amid questions about the Fast and Furious gun-tracking operation. He adopted a more aggressive stance on domestic policy after Republicans won control of the House in 2010, directing staff to look for ways to use administrative actions as end runs around a polarized Congress. Obama’s advisers said the president thinks about executive power strategically and is willing to exert it fully — such as on environmental regulation — if doing so helps him move past obstacles on Capitol Hill and achieve specific objectives. “The president is always looking for ways to use his executive authority to advance his policy agenda,” White House senior adviser Dan Pfeiffer said.For instance, Obama has forced changes in state-level education policy in a way past presidents have not. His Race to the Top program awarded billions of dollars in federal grants to select states that agreed to seek reforms based on administration standards for increasing school assessments, using data and improving teacher quality. The administration gained additional leverage on education by laying out specific requirements for states to receive waivers from penalties required by the No Child Left Behind Act, giving Obama a say in how states designed new programs to monitor and fix low-performing schools. And Obama is likely to exert his power again in the coming months, when he decides whether to add new regulations on greenhouse gas emissions from power plants.

#### Prez powers are high but the direction is reversible

Simon Waxman is managing editor of Boston Review, 5-3-13 (“Obama’s power grab threatens FDA”, The Boston Globe)

The FDA is chartered and empowered by Congress. And while the agency operates within the executive branch, Sebelius, as Korman points out, “overruled the FDA in an area which Congress entrusted primarily to the FDA.” Congress intended that the FDA, not the White House, would determine which drugs are safe and effective and which may be sold without a prescription. The executive branch does not have a say in those determinations. Pulling rank, as Sebelius did with the president’s blessing, is an affront to Congress’s authority. The power vested in the FDA is the power of Congress, and the president cannot simply usurp that power.¶ In the latest twist, the administration’s appeal is itself centered on a separation-of-powers claim. The Department of Justice now argues, dubiously, that by demanding that the FDA follow its own procedures, Korman has commandeered the agency’s role. The irony here could not be starker.¶ The tug of war between the executive and legislative branches is one of the means by which the founders of our government sought to prevent tyranny. Citizens — and courts — should be ever vigilant in ensuring that neither Congress nor the president gains the upper hand.¶ During the past two administrations, we have for the most part stood by as the executive branch exercised its lust for power, especially in the arenas of civil liberties and national security. Acquiescing to the White House’s political whims on Plan B would tip the scales further in the wrong direction.

### Link

#### Presidential power is psychological- Making Obama feel weak in one area undermines his ability to act unilaterally in another

Young, L. (2013), Unilateral Presidential Policy Making and the Impact of Crises. Presidential Studies Quarterly, 43: 328–352. doi: 10.1111/psq.12026 Gendered language said in contest

The President is aware of the environment in which he [SIC] operates and will capitalize on those moments that present the biggest opportunity to increase his power. As a result, he seeks out and exploits those times that are most advantageous to exert or expand his authority. The results indicate foreign policy crises present the best opportunity. In addition, I find economic crises and natural disasters have no impact on unilateral power. Epidemics are the exception. These events increase a president's authority, though not in the same magnitude as a foreign policy crisis or institutional variables.¶ Second, the division in government and the size of the majority party also impact the president's ability to act unilaterally in some of the models. These results are consistent with other authors who find these factors matter. A foreign policy crisis, however, is the only variable that remains significant regardless of whether fixed effects are included hinting at the power of these types of events.¶ In sum, a foreign policy crisis does increase the unilateral power of the president. In addition, when controlling for a crisis, the importance of the institutional variables typically argued to influence unilateral presidential power decrease. Though the remaining hypotheses were incorrect and economic hardships and natural disasters have no effect on unilateral power, this is still an important finding. It suggests foreign policy crises create a very favorable environment for presidents to expand their power. Other types of crises, for whatever reason, do not have the same impact.

#### Congressional regulation snowballs—creates a precedent to expand control into other executive areas

Sofaer 89 (Abraham, former legal advisor to the Department of State, The Fettered Presidency, pg. 20-1)

To accept the War Power Resolution’s pattern of regulating military activities, moreover, would justify in principle the same form of regulation in other areas of governmental activity. Instead of an executive

capable of protecting the nation’s interests, in the absence of legislative direction, the vacuum that exists when Congress is inert, indifferent, or quiescent would remain a vacuum. Real consequences would occur by default, with neither the president nor the Congress accepting clear responsibility for the policy reflected by inaction.  Finally, changes of this sort in the basic structure of our government jeopardize the president’s ability to withstand congressional control over all executive powers, making possible the legislative tyranny that Madison, Hamilton, and the other framers worked to prevent. In considering arrangements such as the War Powers Resolution—to the extent they are effective—a great deal more is at stake than whether we should act militarily in one situation or another. Our legislators are no less aggressive in the endless battle for power than are presidents and those who serve the executive branch. Nothing has happened in history to suggest that the unflattering view of human nature shared by men as diverse in their views as Madison and Hamilton is no longer justified. To the contrary, we now realize that our moral perversity goes beyond even our conscious capacity to perceive.