# 1AC - ICCPR

#### The United States Federal Judiciary should restrict the war powers authority of the President of the United States to detain individuals indefinitely on the grounds that the International Covenant on Civil and Political Rights is self-executing.

### Legitimacy 1AC

#### Ending indefinite detention is CRITICAL in re-establishing US foreign policy credibility abroad AND discouraging Arab countries from using Guantanamo as a pre-text for repression

Randall 13 (Diane, executive secretary of the Friends Committee on National Legislation, "America Must Be Better Than Guantanamo," 7/18, http://www.popularresistance.org/america-must-be-better-than-guantanamo/)

If President Barack Obama and the U.S. Congress want to act immediately to bolster the flagging faith among the international community and among much-needed allies in the Arab World, there is one policy lever that could help: Guantanamo Bay.¶ Speaking as the head of a Quaker faith lobby in Washington DC, and as someone who just returned, this month, from the protested and politically active streets of Istanbul, I can attest to the urgency of this moment.¶ From Istanbul to Sana’a, from Beirut to Baghdad, and from Cairo to Kabul, the protests are becoming more common, calls for reform more frequent, and disregard for America’s role in the region more apparent.¶ Whatever moral authority America once commanded continues to wither as we violate our country’s cherished values of human rights and the rule of law with the continued operation of Guantanamo.¶ There, at Guantanamo, 166 detainees live in captivity; over 80 of those men have been on a hunger strike, many being force-fed against their will. Over half of the total detainees have been cleared of charges and await release. The world watches our government’s inaction to address this injustice.¶ Additionally, and in violation of international law prohibitions against “cruel, inhumane and degrading treatment,” several dozen inmates who remain on hunger strike are being force fed. After being physically immobilized, a two-foot long nasal tube is lodged into their bodies. The process ruptures the protective lining of their throats and stomachs and ruptures any sense of dignity, causing injury to body and soul.¶ The harm to these detainees is awful in the very action, but the fact that America — which considers itself the standard bearer for freedom and justice — is allowing this wound to fester harms our nation’s effectiveness with nations around the globe.¶ This Pentagon malpractice is fueling, quite fast and furiously, anti-American sentiment abroad. And while Sens. Diane Feinstein (D-CA) and Richard Durbin (D-IL) have called for the Pentagon to end force feedings and implement the same prisoner protections currently in place at federal prisons, the world isn’t seeing the nuance among America’s leadership.¶ Beyond the absolute illegality and the severe human rights implications here, the message America is sending to leaders in Yemen, Sudan, Egypt, Pakistan, Afghanistan, Syria, and Libya is one that encourages the contravening of the rule of law, criminal justice, and due process in a court.¶ This is hardly the message we want to send to leaders who may be keen to excuse a similar flouting of democratic governance and principles in their countries. This is especially poignant for a president who made a campaign promise to close the detention camp at Guantanamo Bay.¶ If America cannot keep its promises, how can we expect others, such as Egypt’s Mohamed Morsi, Afghanistan’s Hamid Karzai, or Iraq’s Nur al-Maliki, to keep theirs?¶ Despite President Obama’s recent re-focus on Guantanamo, which has garnered little in terms of a new tack, it is up to Congress to legally lift the restrictions on moving detainees to prisons in the U.S. or to foreign countries. While Obama could veto any forthcoming National Defense Authorization Act, if it includes those restrictions, that move is highly unlikely since Guantanamo is such a small portion of the defense-funding bill.¶ The real task, then, lies in the moral argument that must be made by our leaders and by the American people. We live in a country that believes in the rule of law. Yet, in practice, we are operating in direct, deplorable contradiction with this ethos through our continued and indefinite detention and treatment of persons who have not been charged and should have been released years ago from Guantanamo Bay.

#### And detention outweighs the alt causes

Welsh 11 (David, JD University of Utah, “Procedural Justice Post-9/11: The Effects of Procedurally

Unfair Treatment of Detainees on Perceptions of Global Legitimacy” University of New Hampshire Law Review, <http://law.unh.edu/assets/images/uploads/publications/unh-law-review-vol-09-no2-welsh.pdf>)

The Global War on Terror has been ideologically framed as a struggle between the principles of freedom and democracy on the one hand and tyranny and extremism on the other. 2 Although this war has arguably led to a short-term disruption of terrorist threats such as al-Qaeda, it has also damaged America’s image both at home and abroad. 3 Throughout the world, there is a growing consensus that America has “a lack of credibility as a fair and just world leader.” 4 The perceived legitimacy of the United States in the War on Terror is critical because terrorism is not a conventional threat that can surrender or can be defeated in the traditional sense. Instead, this battle can only be won through legitimizing the rule of law and undermining the use of terror as a means of political influence. 5 Although a variety of political, economic, and security policies have negatively impacted the perceived legitimacy of the United States, one of the most damaging has been the detention, treatment, and trial (or in many cases the lack thereof) of suspected terrorists. While many scholars have raised constitutional questions about the legality of U.S. detention procedures, 6 this article offers a psychological perspective of legitimacy in the context of detention.

#### Legitimacy is crucial to sustainable and effective US hegemony—judicial review is key

Knowles 9 [Spring, 2009, Robert, Acting Assistant Professor, New York University School of Law, “American Hegemony and the Foreign Affairs Constitution”, ARIZONA STATE LAW JOURNAL, 41 Ariz. St. L.J. 87]

American unipolarity has created a challenge for realists. Unipolarity was thought to be inherently unstable because other nations, seeking to protect their own security, form alliances to counter-balance the leading state. n322 But no nation or group of nations has yet attempted to challenge America's military predominance. n323 Although some realists predict that [\*140] counter-balancing will occur or is already in some ways occurring, n324 William Wohlforth has offered a compelling explanation for why true counter-balancing, in the traditional realist sense, will probably not happen for decades. n325 American unipolarity is unprecedented. n326 First, the United States is geographically isolated from other potential rivals, who are located near one another in Eurasia. n327 This mutes the security threat that the U.S. seems to pose while increasing the threats that potential rivals seem to pose to one another. n328 Second, the U.S. far exceeds the capabilities of all other states in every aspect of power - military, economic, technological, and in terms of what is known as "soft power." This advantage "is larger now than any analogous gap in the history of the modern state system." n329 Third, unipolarity is entrenched as the status quo for the first time since the seventeenth century, multiplying free rider problems for potential rivals and rendering less relevant all modern previous experience with balancing. n330 Finally, the potential rivals' possession of nuclear weapons makes the concentration of power in the United States appear less threatening. A war between great powers in today's world is very unlikely. n331 These factors make the current system much more stable, peaceful and durable than the past multi-polar and bipolar systems in which the United States operated for all of its history until 1991. The lack of balancing means that the United States, and by extension the executive branch, faces much weaker external constraints on its exercise of power than in the past. n332 Therefore, the internal processes of the U.S. matter now more than any other nations' have in history. n333 And it is these internal processes, as much as external developments, that will determine the durability of American unipolarity. As one realist scholar has argued, the U.S. can best ensure the [\*141] stability of this unipolar order by ensuring that its predominance appears legitimate. n334 Hegemonic orders take on hierarchical characteristics, with the preeminent power having denser political ties with other nations than in a unipolar order. n335 Stability in hegemonic orders is maintained in part through security guarantees and trade relationships that result in economic specialization among nations. n336 For example, if Nation X's security is supplied by Hegemon Y, Nation X can de-emphasize military power and focus on economic power. In a hegemonic system, the preeminent state has "the power to shape the rules of international politics according to its own interests." n337 The hegemon, in return, provides public goods for the system as a whole. n338 The hegemon possesses not only superior command of military and economic resources but "soft" power, the ability to guide other states' preferences and interests. n339 The durability and stability of hegemonic orders depends on other states' acceptance of the hegemon's role. The hegemon's leadership must be seen as legitimate. n340 [\*142] The United States qualifies as a global hegemon. In many ways, the U.S. acts as a world government. n341 It provides public goods for the world, such as security guarantees, the protection of sea lanes, and support for open markets. n342 After World War II, the U.S. forged a system of military alliances and transnational economic and political institutions - such as the United Nations, NATO, the International Monetary Fund, and the World Bank - that remain in place today. The U.S. provides security for allies such as Japan and Germany by maintaining a strong military presence in Asia and Europe. n343 Because of its overwhelming military might, the U.S. possesses what amounts to a "quasi-monopoly" on the use of force. n344 This prevents other nations from launching wars that would tend to be truly destabilizing. Similarly, the United States provides a public good through its efforts to combat terrorism and confront - even through regime change - rogue states. n345 The United States also provides a public good through its promulgation and enforcement of international norms. It exercises a dominant influence on the definition of international law because it is the largest "consumer" of such law and the only nation capable of enforcing it on a global scale. n346 The U.S. was the primary driver behind the establishment of the United Nations system and the development of contemporary treaties and institutional regimes to effectuate those treaties in both public and private international law. n347 Moreover, controlling international norms are [\*143] sometimes embodied in the U.S. Constitution and domestic law rather than in treaties or customary international law. For example, whether terrorist threats will be countered effectively depends "in large part on U.S. law regarding armed conflict, from rules that define the circumstances under which the President can use force to those that define the proper treatment of enemy combatants." n348 These public goods provided by the United States stabilize the system by legitimizing it and decreasing resistance to it. The transnational political and economic institutions created by the United States provide other countries with informal access to policymaking and tend to reduce resistance to American hegemony, encouraging others to "bandwagon" with the U.S. rather than seek to create alternative centers of power. n349 American hegemony also coincided with the rise of globalization - the increasing integration and standardization of markets and cultures - which tends to stabilize the global system and reduce conflict. n350 The legitimacy of American hegemony is strengthened and sustained by the democratic and accessible nature of the U.S. government. The American constitutional separation of powers is an international public good. The risk that it will hinder the ability of the U.S. to act swiftly, coherently or decisively in foreign affairs is counter-balanced by the benefits it provides in permitting foreigners multiple points of access to the government. n351 Foreign nations and citizens lobby Congress and executive branch agencies in the State, Treasury, Defense, and Commerce Departments, where foreign policy is made. n352 They use the media to broadcast their point of view in an effort to influence the opinion of decision-makers. n353 Because the United States is a nation of immigrants, many American citizens have a specific interest in the fates of particular countries and form "ethnic lobbies" for the purpose of affecting foreign policy. n354 The courts, too, are accessible to foreign nations and non-citizens. The Alien Tort Statute is emerging as an [\*144] important vehicle for adjudicating tort claims among non-citizens in U.S. courts. n355 Empires are more complex than unipolar or hegemonic systems. Empires consist of a "rimless-hub-and-spoke structure," with an imperial core - the preeminent state - ruling the periphery through intermediaries. n356 The core institutionalizes its control through distinct, asymmetrical bargains (heterogeneous contracting) with each part of the periphery. n357 Ties among peripheries (the spokes) are thin, creating firewalls against the spread of resistance to imperial rule from one part of the empire to the other. n358 The success of imperial governance depends on the lack of a "rim." n359 Stability in imperial orders is maintained through "divide and rule," preventing the formation of countervailing alliances in the periphery by exploiting differences among potential challengers. n360 Divide-and-rule strategies include using resources from one part of the empire against challengers in another part and multi-vocal communication - legitimating imperial rule by signaling "different identities ... to different audiences." n361 Although the U.S. has often been labeled an empire, the term applies only in limited respects and in certain situations. Many foreign relations scholars question the comparison. n362 However, the U.S. does exercise informal imperial rule when it has routine and consistent influence over the foreign policies of other nations, who risk losing "crucial military, economic, or political support" if they refuse to comply. n363 The "Status of Force Agreements" ("SOFAs") that govern legal rights and responsibilities of U.S. military personnel and others on U.S. bases throughout the world are typically one-sided. n364 And the U.S. occupations in Iraq and Afghanistan had a strong imperial dynamic because those regimes depended on American support. n365 [\*145] But the management of empire is increasingly difficult in the era of globalization. Heterogeneous contracting and divide-and-rule strategies tend to fail when peripheries can communicate with one another. The U.S. is less able control "the flow of information ... about its bargains and activities around the world." n366 In late 2008, negotiations on the Status of Force Agreement between the U.S. and Iraq were the subject of intense media scrutiny and became an issue in the presidential campaign. n367 Another classic imperial tactic - the use of brutal, overwhelming force to eliminate resistance to imperial rule - is also unlikely to be effective today. The success of counterinsurgency operations depends on winning a battle of ideas, and collateral damage is used by violent extremists, through the Internet and satellite media, to "create widespread sympathy for their cause." n368 The abuses at Abu Ghraib, once public, harmed America's "brand" and diminished support for U.S. policy abroad. n369 Imperial rule, like hegemony, depends on maintaining legitimacy. B. Constructing a Hegemonic Model International relations scholars are still struggling to define the current era. The U.S.-led international order is unipolar, hegemonic, and, in some instances, imperial. In any event, this order diverges from traditional realist assumptions in important respects. It is unipolar, but stable. It is more hierarchical. The U.S. is not the same as other states; it performs unique functions in the world and has a government open and accessible to foreigners. And the stability and legitimacy of the system depends more on successful functioning of the U.S. government as a whole than it does on balancing alliances crafted by elite statesmen practicing realpolitik. "World power politics are shaped primarily not by the structure created by interstate anarchy but by the foreign policy developed in Washington." n370 These differences require a new model for assessing the institutional competences of the executive and judicial branches in foreign affairs. [\*146] One approach would be to adapt an institutional competence model using insights from a major alternative theory of international relations - liberalism. Liberal IR theory generally holds that internal characteristics of states - in particular, the form of government - dictate states' behavior, and that democracies do not go to war against one another. n371 Liberalists also regard economic interdependence and international institutions as important for maintaining peace and stability in the world. n372 Dean Anne-Marie Slaughter has proposed a binary model that distinguishes between liberal, democratic states and non-democratic states. n373 Because domestic and foreign issues are "most convergent" among liberal democracies, Slaughter reasons, the courts should decide issues concerning the scope of the political branches' powers. n374 With respect to non-liberal states, the position of the U.S. is more "realist," and courts should deploy a high level of deference. n375 One strength of this binary approach is that it would tend to reduce the uncertainty in foreign affairs adjudication. Professor Nzelibe has observed that it would put courts in the difficult position of determining which countries are liberal democracies. n376 But even if courts are capable of making these determinations, they would still face the same dilemmas adjudicating controversies regarding non-liberal states. Where is the appropriate boundary between foreign affairs and domestic matters? How much discretion should be afforded the executive when individual rights and accountability values are at stake? To resolve these dilemmas, an institutional competence model should be applicable to foreign affairs adjudication across the board. In constructing a new realist model, it is worth recalling that the functional justifications for special deference are aimed at addressing problems of a particular sort of role effectiveness - which allocation of power among the branches will best achieve general governmental effectiveness in foreign affairs. In the twenty-first century, America's global role has changed, and the best means of achieving effectiveness in foreign affairs have changed as well. The international realm remains highly political - if not as much as in the past - but it is American politics that matters most. If the U.S. is truly an empire - [\*147] and in some respects it is - the problems of imperial management will be far different from the problems of managing relations with one other great power or many great powers. Similarly, the management of hegemony or unipolarity requires a different set of competences. Although American predominance is recognized as a salient fact, there is no consensus among realists about the precise nature of the current international order. n377 The hegemonic model I offer here adopts common insights from the three IR frameworks - unipolar, hegemonic, and imperial - described above. First, the "hybrid" hegemonic model assumes that the goal of U.S. foreign affairs should be the preservation of American hegemony, which is more stable, more peaceful, and better for America's security and prosperity, than the alternatives. If the United States were to withdraw from its global leadership role, no other nation would be capable of taking its place. n378 The result would be radical instability and a greater risk of major war. n379 In addition, the United States would no longer benefit from the public goods it had formerly produced; as the largest consumer, it would suffer the most. Second, the hegemonic model assumes that American hegemony is unusually stable and durable. n380 As noted above, other nations have many incentives to continue to tolerate the current order. n381 And although other nations or groups of nations - China, the European Union, and India are often mentioned - may eventually overtake the United States in certain areas, such as manufacturing, the U.S. will remain dominant in most measures of capability for decades**.** According to 2007 estimates, the U.S. economy was projected to be twice the size of China's in 2025. n382 The U.S. accounted for half of the world's military spending in 2007 and holds enormous advantages in defense technology that far outstrip would-be competitors. n383 Predictions of American decline are not new, and they have thus far proved premature. n384 [\*148] Third, the hegemonic model assumes that preservation of American hegemony depends not just on power, but legitimacy. n385 All three IR frameworks for describing predominant states - although unipolarity less than hegemony or empire - suggest that legitimacy is crucial to the stability and durability of the system. Although empires and predominant states in unipolar systems can conceivably maintain their position through the use of force, this is much more likely to exhaust the resources of the predominant state and to lead to counter-balancing or the loss of control. n386 Legitimacy as a method of maintaining predominance is far more efficient. The hegemonic model generally values courts' institutional competences more than the anarchic realist model. The courts' strengths in offering a stable interpretation of the law, relative insulation from political pressure, and power to bestow legitimacy are importantfor realizing the functional constitutional goal of effective U.S. foreign policy. This means that courts' treatment of deference in foreign affairs will, in most respects, resemble its treatment of domestic affairs. Given the amorphous quality of foreign affairs deference, this "domestication" reduces uncertainty. The increasing boundary problems caused by the proliferation of treaties and the infiltration of domestic law by foreign affairs issues are lessened by reducing the deference gap. And the dilemma caused by the need to weigh different functional considerations - liberty, accountability, and effectiveness - against one another is made less intractable because it becomes part of the same project that the courts constantly grapple with in adjudicating domestic disputes.

**U.S. leadership is key to global stability and preventing great power wars**

Zhang and Shi 11 (Yuhan, 1-22, Carnegie Endowment for International Peace, and Lin Shi, Columbia University, “America’s Decline: A Harbinger of Conflcit and Rivalry,” EAST ASIA FORUM, <http://www.eastasiaforum.org/2011/01/22/americas-decline-a-harbinger-of-conflict-and-rivalry/>)

This does not necessarily mean that the US is in systemic decline, but it encompasses a trend that appears to be negative and perhaps alarming. Although the US still possesses incomparable military prowess and its economy remains the world’s largest, the once seemingly indomitable chasm that separated America from anyone else is narrowing. Thus, the global distribution of power is shifting, and the inevitable result will be a world that is less peaceful, liberal and prosperous, burdened by a dearth of effective conflict regulation. Over the past two decades, no other state has had the ability to seriously challenge the US military. Under these circumstances, motivated by both opportunity and fear, **many actors have bandwagoned with US hegemony** and accepted a subordinate role. Canada, most of Western Europe, India, Japan, South Korea, Australia, Singapore and the Philippines have all joined the US, **creating a status quo that has tended to mute great power conflicts**. However, **as** the **hegemony** that drew these powers together **withers,** so will the pulling power behind the US alliance. **The result will be an** international **order where power is more diffuse,** American interests and influence can be more readily challenged, **and conflicts or wars may be harder to avoid. As history attests, power decline and redistribution result in military confrontation.** For example, in the late 19th century America’s emergence as a regional power saw it launch its first overseas war of conquest towards Spain. By the turn of the 20th century, accompanying the increase in US power and waning of British power, the American Navy had begun to challenge the notion that Britain ‘rules the waves.’ Such a notion would eventually see the US attain the status of sole guardians of the Western Hemisphere’s security to become the order-creating Leviathan shaping the international system with democracy and rule of law. Defining this US-centred system are three key characteristics: enforcement of property rights, constraints on the actions of powerful individuals and groups and some degree of equal opportunities for broad segments of society. As a result of such political stability, free markets, liberal trade and flexible financial mechanisms have appeared. And, with this, many countries have sought opportunities to enter this system, proliferating stable and cooperative relations. However, what will happen to these advances as America’s influence declines? Given that America’s authority, although sullied at times, has benefited people across much of Latin America, Central and Eastern Europe, the Balkans, as well as parts of Africa and, quite extensively, Asia, the answer to this question could affect global society in a profoundly detrimental way. Public imagination and academia have anticipated that **a post-hegemonic world would return to** the problems of the 1930s: **regional blocs, trade conflicts and strategic rivalry.** Furthermore, multilateral institutions such as the IMF, the World Bank or the WTO might give way to regional organisations. For example, Europe and East Asia would each step forward to fill the vacuum left by Washington’s withering leadership to pursue their own visions of regional political and economic orders. **Free markets would become more politicised — and, well, less free — and major powers would compete for supremacy.** Additionally, such power plays have historically possessed a zero-sum element. In the late 1960s and 1970s, US economic power declined relative to the rise of the Japanese and Western European economies, with the US dollar also becoming less attractive. And, as American power eroded, so did international regimes (such as the Bretton Woods System in 1973). **A world without American hegemony is one where great power wars re-emerge,** the liberal international system is supplanted by an authoritarian one, and trade protectionism devolves into restrictive, anti-globalisation barriers. This, at least, is one possibility we can forecast in a future that will inevitably be devoid of unrivalled US primacy.

**Indefinite detention increases terrorism—multiple warrants**

Scheinin 12 (January 11, Martin, professor of international law and former UN Special Rapporteur on human rights and counter-terrorism from 2005 to 2011, “Should Human Rights Take a Back Seat in Wartime?” <http://www.realclearworld.com/articles/2012/01/11/national_defense_authorization_act_scheinin_interview-full.html>)

The National Defense Authorization Act (NDAA), signed by President Barack Obama December 31, 2011, codifies into law the post-9/11 practice of indefinite detention without charge of terrorist suspects. Martin Scheinin, professor of international law and former UN Special Rapporteur on human rights and counter-terrorism from 2005 to 2011, offered his thoughts on the new law and its potential implications for the global counter-terrorism struggle. Casey L. Coombs: First, Mr. Scheinin, could you provide your general impressions of the NDAA’s indefinite detention provisions vis-à-vis international legal standards governing civil liberties? Martin Scheinin: The NDAA builds upon the well-established rule in international humanitarian law (law of armed conflict) that during an international armed conflict combatants, i.e. soldiers of one of the states involved in the war, can be detained as prisoners of war until the end of hostilities. When there is an international armed conflict and when someone is a combatant, then such detention does not amount to arbitrary detention that would violate international human rights law. The NDAA extends the possibility - even presumption - of indefinite detention to terrorism, far beyond genuine situations of international or even non-international armed conflict. And it extends indefinite detention to persons who are not combatants, or analogously situated persons in a non-international armed conflict. For instance, persons who are held to have provided substantial support to terrorism would be subject to indefinite detention. This approach has no support in the laws of war and will unavoidably result in what human rights law considers arbitrary detention and hence a violation of international treaties legally binding upon the United States, such as the International Covenant on Civil and Political Rights. CLC: As a world leader and active promoter of universal human rights, the practice of indefinite detention without charge would seem to clash with U.S. ideals. Could you comment on this contradiction? MS: One of the main lessons learned in the international fight against terrorism is that counter-terrorism professionals have gradually come to learn and admit that human rights violations are not an acceptable shortcut in an effective fight against terrorism. Such measures tend to backfire in multiple ways. They result in legal problems by hampering prosecution, trial and punishment. The use of torture is a clear example here. They also tend to alienate the communities with which authorities should be working in order to detect and prevent terrorism. And they add to causes of terrorism, both by perpetuating "root causes" that involve the alienation of communities and by providing "triggering causes" through which bitter individuals make the morally inexcusable decision to turn to methods of terrorism. The NDAA is just one more step in the wrong direction, by aggravating the counterproductive effects of human rights violating measures put in place in the name of countering terrorism. CLC: Does the NDAA afford the U.S. a practical advantage in the fight against terrorism? Or might the law undermine its global credibility? MS: It is hard to see any practical advantage gained through the NDAA. It is just another form of what I call symbolic legislation, enacted because the legislators want to be seen as being "tough" or as "doing something." The law is written as just affirming existing powers and practices and hence not providing any meaningful new tools in the combat of terrorism. By constraining the choices by the executive, it nevertheless hampers effective counter-terrorism work, including criminal investigation and prosecution, as well as international counter-terrorism cooperation, markedly in the issue of closing the Guantanamo Bay detention facility. Hence, it carries the risk of distancing the United States from its closest allies and the international community generally. And of course these kinds of legal provisions are always open for bad faith copying by repressive governments that will use them for their own political purposes.

**Indefinite detention is the key internal link to recruitment and causes a resource trade off which shatters the ability to fight terrorism**

**Powell 8** (Catherine, Georgetown Law Visiting Professor for the 2012-13 academic year and teaches international law, constitutional law, and constitutional rights in comparative perspective. She has recently served in government on Secretary of State Hillary Clinton’s Policy Planning Staff and on the White House National Security Staff, where she was Director for Human Rights. “Scholars’ Statement of Principles for the New President on U.S. Detention Policy: An Agenda for Change\*” <http://www.law.yale.edu/documents/pdf/Alumni_Affairs/Scholars_Statement.pdf>)

Across the political spectrum, there is a growing consensus that the existing system of long term detention of terrorism suspects without trial through the network of facilities in Guantanamo and elsewhere is an unsustainable liability for the United States that must be changed. The current policies undermine the rule of law and our national security. The last seven years have seen a dangerous erosion of the rule of law in the United States through a disingenuous interpretation of the laws of war, the denial of ordinary legal process, the violation of the most basic rights, and the use of unreliable evidence (including secret and coerced evidence). The current detention policies also point to the inherent fallibility of “preventive” determinations that are based on assessment of future dangerousness (as opposed to past criminal conduct). Empirical studies demonstrate that “preventive” detention determinations that rely on assessment of future dangerousness generate unacceptably high levels of false positives (i.e., detention of innocent people).1 Indeed, while the Bush Administration once claimed the Guantanamo detainees were “the worst of the worst,” following minimal judicial intervention, it subsequently released more than 300 of them, as of the end of 2006.2 Because it is viewed as unprincipled, unreliable, and illegitimate, the existing detention system undermines our national security. Because the current system threatens our national security, we strongly oppose any effort to extend the status quo by establishing either (1) a comprehensive system of long-term “preventive” detention without trial for suspected terrorists, or (2) a specialized national security court to make “preventive” detention determinations and ultimately to try terrorism suspects.3 Despite dressed up procedures, these proposals would make some of the most notorious aspects of the current failed system permanent. To the extent such systems were established within the territorial United States as opposed to on Guantanamo or elsewhere, they would essentially bring the failed Guantanamo system home. Perhaps most fundamental is the fact that the supporters of these proposals typically fail to make clear who should be detained, much less how such individuals, once designated, can prove they are no longer a threat. Without a reasonably precise definition, not only is arbitrary and indefinite detention possible, it is nearly inevitable. Moreover, many of the proponents of a renewed “preventive” detention regime explicitly underscore the primacy of interrogation with respect to detainees’ otherwise-recognized rights. A detention system that permits ongoing interrogation inevitably treats individuals as means to an end, regardless of the danger they individually pose, thereby creating perverse incentives to prolonged, incommunicado, arbitrary (and indefinite) detention, minimized procedural protections, and coercive interrogation. Such **arrangements instill resentment and provide propaganda for recruitment of future terrorists, undermine our relationships with our allies, and embolden terrorists as “combatants” in a “war on terror”** (rather than delegitimizing them as criminals in the ordinary criminal justice system).4 Moreover, the current system of long term (and, essentially, **indefinite) detention diverts resources and attention away from other, more effective means of combating terrorism.** Reflecting what has now become a broad consensus around the need to use the full range of instruments of state power to combat terrorism, the bi-partisan 9/11 Commission pointed out that “long-term success [in efforts to pursue al Qaeda] demands the use of all elements of national power: diplomacy, intelligence, covert action, law enforcement, economic policy, foreign aid, public diplomacy, and homeland defense.”5 Thus, in addition to revamping the existing detention program to bring it within the rule of law, the incoming President should work with Congress to utilize this broad array of tools to vigorously prosecute terrorism.

**Al Qaeda is still a major threat—predictions of decline are premature and false**

Sinai 13 (Joshua, JINSA Fellow, Washington, DC-based consultant on national security studies, focusing primarily on terrorism, counterterrorism, and homeland security, 3-11-13, “Al Qaeda Threat to U.S. Not Diminished, Data Indicates” The Jewish Institute for National Security Affairs) http://www.jinsa.org/fellowship-program/joshua-sinai/al-qaeda-threat-us-not-diminished-data-indicates#.UbaiWvmsiSo

Conventional wisdom holds that the threat to America posed by al Qaeda and its affiliates is greatly diminished compared to 9/11. Today, it is claimed, al Qaeda is less well organized, with many of its top leaders eliminated, and is so broken into geographically disparate franchises that it is unable to recruit, train, and deploy a specialized cell to carry out a comparable catastrophic attack against America. The fact that no al Qaeda terrorist attacks have been carried out in America over the last two years, while some 20 individuals have plotted to carry out attacks but were arrested and convicted during the pre-incident phases, is seen as evidence that this terrorist threat is decreasing domestically. Therefore, according to this thesis, security authorities should prepare for more numerous and frequently occurring but low casualty attacks mounted by less well-trained and capable homegrown operatives, particularly by what are termed "lone wolves." When a more complete compilation of all the components involved in terrorism are taken into account, however, the magnitude of the threat becomes much clearer and includes a higher likelihood of attempts to carry out catastrophic attacks as well as evidence that al Qaeda continues to recruit and prepare terrorist operatives in the United States. Downplaying the terrorist threat posed by al Qaeda and its affiliates also has significant political implications due in part to the more than $70 billion that is spent annually on America's domestic counterterrorism programs (with larger amounts expended for overseas operations), all of which need to be continuously justified as cost effective by Administration planners and Congressional appropriators. Such purported decline in al Qaeda attacks domestically, however, is now being seized upon by those who favor reduced government funding for counterterrorism programs, including weakening the USA PATRIOT Act, to support their position that a reduced threat requires reduced funding and resources. When the trajectory of attacks by al Qaeda and its associates over the years are carefully studied, however, certain patterns recur. Specifically, every time the threat is underplayed, it is invariably followed by a major attack. In the months leading up to the November 2012 elections, the media was filled with pronouncements that al Qaeda's threat had greatly diminished as a result of the elimination of its leadership and the reduced operational role over attacks by what is termed "al Qaeda Central" in Pakistan's tribal areas. While accurate on one level, this did not stop al Qaeda and its affiliates from continuing to launch major terrorist attacks, including that by its Libyan affiliate against the U.S. consulate in Benghazi on September 11, 2012, which led to severe political repercussions for the Administration for its unpreparedness to anticipate such an attack. This was followed by the launching of the devastating cross-border attack against the natural gas facility in eastern Algeria in mid-January by another al Qaeda affiliate in Mali. Thirty-six foreign workers were murdered in that attack, which, again, was unanticipated.Moreover, the fact that a catastrophic attack against America comparable to 9/11 has not occurred over the past 11 years should not suggest that a future one is not being planned. In summer 2006, al Qaeda-linked operatives in London plotted to detonate liquid explosives on board 10 transatlantic airliners flying from the UK to America and Canada. In September 2009, Najibullah Zazi and his associates were arrested for plotting to conduct a suicide bombing attack against the New York City subway system. On Christmas Day, 2009, Umar Farouk Abdulmutallab failed to detonate plastic explosives while on board an airliner heading to Detroit. Anwar al Awlaki, a former American extremist cleric, reportedly masterminded Abdulmutallab's operation. Awlaki was killed in a drone attack in Yemen on September 30, 2011. The killings of al Awlaki and Samir Khan, another American extremist who had made his way to Yemen in 2009, could well trigger a catastrophic attack by al Qaeda to avenge their deaths.The recent capture of Osama Bin Laden's son-in-law, Sulaiman abu Ghaith, and the decision to try him in New York City, is also likely to trigger a major revenge attack against America. Finally, organizing catastrophic terrorist attacks requires extensive planning, funding and preparation. A terrorist group that feels itself strong will take its time to carefully plan a few but devastating attacks, while a group that regards itself as weak may feel compelled to carry out frequent, but low-casualty attacks to demonstrate its continued relevancy. Some incident databases, such asa recent compilation of data about American al Qaeda terrorists by the UK-based Henry Jackson Society, only account for completed attacks and convictions of those arrested. If such counting is expanded to include other factors, however, then the overall threat becomes much more severe. Other factors, therefore, should include the potential consequences ofthe thwarted attacks had they not been prevented, the number of radicalized Americans who travel overseas to join al Qaeda-affiliated insurgencies, and the extent of radicalized activity by al Qaeda's American sympathizers in jihadi website forums and chatrooms. A more complete accounting of the threat will now reveal that the supportive extremist infrastructure for al Qaeda in America is actually not diminishing and that the purported "lone wolf" actors have actual ties to al Qaeda operatives overseas. We should not, therefore, also be misled into complacencyif catastrophic attacks by al Qaeda do not occur for lengthy periods. Nor so by the comforting but false sense of security that comes with believing that "lone wolf" attacks in the United States are not a product of al Qaeda recruitment and support. It is also possible, nevertheless, that al Qaeda's terrorist planners are considering both types of attacks, infrequent catastrophic and frequent low casualty. This may explain why al Qaeda's propaganda organs are calling on its radicalized followers in the West to take matters into their own hands and embark on any sort of attacks that may be feasible at the moment, but with further surprise attacks of a catastrophic nature still ahead.

**Terrorism goes nuclear---high risk of theft and attacks escalate**

**Dvorkin 12** (Vladimir Z., Major General (retired), doctor of technical sciences, professor, and senior fellow at the Center for International Security of the Institute of World Economy and International Relations of the Russian Academy of Sciences. The Center participates in the working group of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, 9/21/12, "What Can Destroy Strategic Stability: Nuclear Terrorism is a Real Threat," belfercenter.ksg.harvard.edu/publication/22333/what\_can\_destroy\_strategic\_stability.html)

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

#### Extinction – tech and poor response mechanisms

Myhrvold 13 (Nathan, Phd in theoretical and mathematical physics from Princeton, and founded Intellectual Ventures after retiring as chief strategist and chief technology officer of Microsoft Corporation , July 2013, "Stratgic Terrorism: A Call to Action," The Lawfare Research Paper Series No.2, <http://www.lawfareblog.com/wp-content/uploads/2013/07/Strategic-Terrorism-Myhrvold-7-3-2013.pdf>)

Several powerful trends have aligned to profoundly change the way that the world works. Technology now allows stateless groups to organize, recruit, and fund themselves in an unprecedented fashion. That, coupled with the extreme difficulty of finding and punishing a stateless group, means that stateless groups are positioned to be lead players on the world stage. They may act on their own, or they may act as proxies for nation-states that wish to duck responsibility. Either way, stateless groups are forces to be reckoned with. At the same time, a different set of technology trends means that small numbers of people can obtain incredibly lethal power. Now, for the first time in human history, a small group can be as lethal as the largest superpower. Such a group could execute an attack that could kill millions of people. It is technically feasible for such a group to kill billions of people, to end modern civilization—perhaps even to drive the human race to extinction. Our defense establishment was shaped over decades to address what was, for a long time, the only strategic threat our nation faced: Soviet or Chinese missiles. More recently, it has started retooling to address tactical terror attacks like those launched on the morning of 9/11, but the reform process is incomplete and inconsistent. A real defense will require rebuilding our military and intelligence capabilities from the ground up. Yet, so far, strategic terrorism has received relatively little attention in defense agencies, and the efforts that have been launched to combat this existential threat seem fragmented. History suggests what will happen. The only thing that shakes America out of complacency is a direct threat from a determined adversary that confronts us with our shortcomings by repeatedly attacking us or hectoring us for decades.

### 1AC – ICCPR [Women]

#### Squo detention jurisprudence misreads the ICCPR's mandates as non-self-executing - leads to treaty non-compliance

Loan 5 (Jeffrey, LLM @ Victoria University-Wellington, "SOSA v. ALVAREZ-MACHAIN: EXTRATERRITORIAL ABDUCTION AND THE RIGHTS OF INDIVIDUALS UNDER INTERNATIONAL LAW," 12 ILSA J Int'l & Comp L 253, lexis)

The Supreme Court did not seem particularly swayed by the rights afforded by the ICCPR. Although the ICCPR had not been ratified by the United States at the time of Alvarez's abduction, n102 it was in force when the Supreme Court had to consider his suit based on the violation of customary international law. The Court placed great weight on the Senate's decision not to make the Covenant directly enforceable in domestic law, stating that "Several times, indeed, the Senate has expressly declined to give the federal courts the task of interpreting and applying international human rights law, as when its ratification of the International Covenant on Civil and Political Rights declared that the substantive provisions of the document were not self-executing." n103 Such an assertion is to drastically misread the extent of the non-self-executing declaration and the relationship between the ICCPR and customary international law.¶ Under the Constitution of the United States a treaty is as much a part of domestic law as an Act passed by the legislature. n104 However, by attaching a non-self-executing declaration to the ratified treaty the legislature can either remove the standing of any individual to bring a claim under the treaty, remove the right of any individual to rely on the treaty in any form, or deny the existence of a cause of action in the absence of other incorporating legislation. n105 When the Senate ratified the ICCPR, a non-self- executing declaration was attached with the Senate Foreign Relations Committee accentuating that its "intent is to clarify that the Covenant will not create a private cause of action in US courts." n106¶ In Sosa v. Alvarez-Machain, the Court used the legislative desire that causes of action should not be directly founded on the ICCPR to dismiss any relevance that the ICCPR may have in creating customary international law. The implication of this approach is that Justice Souter viewed the non-self-executing declaration as taking precedence over the content of customary international law. The ICJ has declared that there are "no grounds for holding that when customary international law is comprised of rules identical to those of treaty law, the latter 'supervenes' the former, so that the customary international law has no further existence of its own." n107 However, it appears that this is precisely the basis of the Supreme Court's approach to examining the ICCPR: the Court used the fact that the prohibition on arbitrary detention under ICCPR was not directly enforceable in domestic law to undermine the applicability of the same right being enforceable through customary international law. n108 The Court placed too much weight on the status of the ICCPR under United States law rather than examining international practice concerning such rights. Alvarez was not seeking to create a cause of action based on the ICCPR, but merely claiming that multilateral instruments such as the ICCPR directly inform the content of customary international law.¶ Furthermore, the extent to which the ICCPR is self-executing in the domestic law of the United States is irrelevant as the ATS incorporates the "law of nations." The Court should have recognized the role that multilateral [\*275] conventions, such as the ICCPR, have in formulating customary international law and examined whether state practice and jurisprudence based on the rights under the Convention had developed into a binding international norm prohibiting abduction and arbitrary detention. Given the influence that the ICCPR has on the formation of customary international law and the fact that the United States is a party to the Convention, it is remarkable that the United States Supreme Court viewed itself as being prevented from "interpreting and applying" the ICCPR. n109 The Court's refusal to give adequate weight to the rights contained within the ICCPR essentially negates the principle purpose of the Covenant, which is to protect individuals from their own government.

#### Judicial enforcement of the ICCPR key to global promotion and enforcement

Kaye 13 (David, Assistant Clinical Professor of Law @ UC Irvine, "State Execution of the International

Covenant on Civil and Political Rights," http://www.law.uci.edu/lawreview/vol3/no1/kaye.pdf)

Second, state execution would provide individual citizens, judges, legislators, ¶ and others with a mechanism to engage with the norms of human rights law. ¶ Americans have very little connection or experience with international law ¶ generally and human rights law specifically, even though many of its core ¶ principles are a part of U.S. law and bind the United States under the Supremacy ¶ Clause. As Catherine Powell put it, “most Americans see international human ¶ rights law as an irrelevant offshore body of law.”128 Yet this perception of ¶ irrelevance misses the reality of an increasing dynamism of human rights discourse ¶ and litigation in Europe and the Americas that is informing American ¶ constitutional adjudication, as seen in Roper v. Simmons,¶ 129 Lawrence v. Texas,¶ 130 ¶ Hamdan v. Rumsfeld,¶ 131 and other decisions by the Supreme Court. Until litigants ¶ are provided with the tools themselves to deploy human rights treaty arguments, ¶ the ICCPR will continue to be seen as a distant, largely inapplicable body of law.132 ¶ With state execution of the ICCPR, the ability of the United States to ¶ influence the development of human rights law may change as well. That influence ¶ has decreased in the years since President Carter first submitted the ICCPR to the ¶ Senate in 1978. The United States has mechanisms to influence individual state ¶ behavior, through its domestic sanctions against serious human rights violators, ¶ visa denial programs, economic and military aid conditionality requirements, ¶ actions on the United Nations Security Council, and so forth.133 Yet its capacity to ¶ influence law and doctrine is weak because of its failure to engage human rights ¶ law qua human rights law. ¶ The doctrinal development of human rights law has advanced significantly ¶ since U.S. ratification, mainly in the context of the European and Inter-American ¶ human rights systems. The European Court of Human Rights, implementing ¶ norms of the European Convention on Human Rights that closely mirror those in ¶ the ICCPR, has adjudicated thousands of cases that touch on all areas of civil and ¶ political rights. The United States has limited impact over human rights ¶ jurisprudence in Europe in part because our courts do not engage the language of ¶ the ICCPR and other human rights treaties. As a result, human rights norms that ¶ may influence American law—as seen, for instance, in Supreme Court ¶ jurisprudence in Lawrence, Graham, Roper, and other recent cases—develop without the input of American legal institutions. State execution provides a direct ¶ opportunity for American judges to evaluate the provisions of the ICCPR in the ¶ context of the United States. To be sure, such consideration would require state ¶ actors to ensure that their behavior conforms to the requirements of the ¶ Covenant, but it would also allow judges considerable authority to influence the ¶ development of human rights norms abroad.

#### ICCPR is key to the global protection of internal self-determination

Fromherz 8 (Christopher, J.D. Candidate, 2008, University of Pennsylvania Law School, "INDIGENOUS PEOPLES' COURTS: EGALITARIAN JURIDICAL PLURALISM, SELF-DETERMINATION, AND THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES," 156 U. Pa. L. Rev. 1341, lexis)

In 1966, the ICCPR and ICESCR were opened for signature. Included among their conferred rights, as discussed earlier, was the Article 1 collective "right of self-determination" for "all peoples." n74 During drafting, Western countries fought the inclusion of the collective right to self-determination in both the ICCPR and the ICESCR, arguing that these foundational human rights treaties were focused on individual and not collective rights. n75 Meanwhile, the Soviet Union, along with many developing countries, strongly supported including the right on anticolonialist principles. n76 The right contained in Common Article 1 has been interpreted as containing rights to both "internal" and "external" self-determination, though the focus of the UN Human Rights Committee, which is charged with monitoring states' compliance with international human rights norms, n77 has historically been on the latter. n78¶ [\*1359] The concept of external self-determination has always been tied to the movement for colonial independence. Heavily influenced by the 1960 UN Declaration on Granting Independence to Colonial Countries and Peoples (the Colonial Peoples' Declaration), which, like the DRIP, reproduced Common Article 1(1) verbatim, n79 the International Court of Justice (ICJ) authoritatively laid down the rule of external self-determination for colonial peoples in two opinions: the Advisory Opinion on Namibia n80 and the Advisory Opinion on Western Sahara. n81¶ The Namibia and Western Sahara cases clearly affirmed the right of colonial peoples to self-determination, as declared in the Colonial Peoples' Declaration. n82 More interesting for our purposes, however, is what these cases (and international practice) confirm about the scope of the right to self-determination as it is applied to colonies. Despite using language identical to that of Common Article 1(1) of the ICCPR and ICESCR, the right declared in the Colonial Peoples' Declaration concerns only "external self-determination" and expires once it has been exercised, either by the choice to form a new state or to associate or integrate with an existing state. n83¶ [\*1360] The contours of the Article 1 right to internal self-determination - the right to self-government rooted in the Wilsonian conception - have been defined with reference to the specific political rights conferred by other substantive provisions of the ICCPR. n84 In other words, internal self-determination has generally been interpreted as the right to have the essential political rights conferred by the ICCPR protected, as a proxy for the existence of genuine self-government. In sharp contrast to the right to external self-determination for colonial peoples, the right to internal self-determination is a continuous right. n85 The right can be conceptualized as applying to three demographics within a state: (1) the whole population; (2) racial or religious minorities suffering gross discrimination; and (3) ethnic groups, indigenous peoples, and other minorities. n86

**Internal self-determination stops cascading ethnic conflicts which culminate in nuclear war – the alternative is global secessionism**

**Crawford 9**, Dr. Crawford is the Associate Director of the Institute of European Studies and Lecture of International and Area Studies at UC Berkeley, Ethnic Conflict in Georgia: What Lies Ahead, http://rpgp. berkeley.edu/node/87)

Ironically, **at the same time that the demands of exclusive cultural groups for state sovereignty and "national self-determination" escalate around the globe, support for the international legal norms of established state sovereignty and non-intervention has also disappeared**. Together, **these** two **trends are dangerously explosive. We are likely to see more oppression of minorities in ethnically defined states**, more **slaughter of** innocent **civilians** caught in cultural conflicts, the **continued** **violent breakup of sovereign countries**, and **more invasions and occupation of disputed territory, as powerful countries--nursing other resentments and fears against one another**--seize the opportunity to **take sides. It will** thus **not be long until nuclear powers end up confronting one another. The** absurd **trigger for** this **conflict will be** the **nationalist demands of ethnic and sectarian political entrepreneurs**--who are often just thugs in disguise. Note the timing of the U.S. announcement of a missile defense pact with Poland, as Russian tanks rolled through Georgia to halt Georgia's military incursion into Ossetian territory. **Unless we act quickly to reach wider international agreement on global solutions to violent cultural disputes, more exclusive territorial claims of small and distinct cultural groups and violent responses to those claims will suck nuclear powers into deadly international conflict**. The crisis in **Georgia is not** an **isolated** one. **Across the globe we hear** the **battle cry of Kosovars, Tibetans, South Ossetians, Abkhazians, Kurds, Kashmiris and** so many **others**: “Give us a state of our own.” With few exceptions, that battle cry long ago slashed the world up into separate homogeneous ethnic and religious states, dislocating millions of people, sparking mass atrocities and forced expulsions, and igniting bouts of ethnic cleansing and genocide. In the remaining multi-ethnic societies of the 21st century, that battle cry threatens again; and with the non-intervention norm in tatters, the consequences will be disastrous. Because the earth does not hold enough land for each and every ethnic or religious group to own the piece that it thinks it deserves, secessionist attempts and communal conflicts over territory will escalate. The morally indignant will respond to this escalation with calls for humanitarian military missions to free one group from the oppression of another and support its "right" to exclusive territory. Those missions will be mired in the deadly consequences of communal conflict for long periods of time. Small secessionist groups will seek the "protection" of neighboring states, who are often only too eager to challenge their rivals. Tossing aside international law and claiming that they are on the side of the angels, powerful countries will continue to see disputed terrain as a strategic outpost for themselves, and they will help one ethnic or religious group oust the other. Cynically citing the international legal principle of non-intervention in the territory of a sovereign state, Russia opposed the U.S. when NATO bombed Serbia on behalf of ethnic Albanians there and again when it recognized Kosovo’s independence. But Russia--long before it granted diplomatic recognition of their independence--assisted South Ossetia and Abkhazia in their bid for secession from Georgia, with the knowledge that these groups could not exist on their own and would seek Russian protection--even annexation. And in that process, many innocent Georgians suffered--just as innocent Serbs suffered in Kosovo--people who just happened to be of the "wrong" ethnicity and living in the "wrong" place. **That suffering is rarely reported**. In 1993, in a war that was barely recognized and in a gruesome ethnic cleansing that boggles the imagination, 240,000 Georgians were expelled from Abkhazia. 100,000 Serbs were forced to leave Kosovo after 1999--another unrecognized ethnic clensing. Today, the homes and churches of the remaining Serbs living there are being destroyed by the Kosovars, who want the land for themselves alone. Gangs of Ossetian militias regularly destroy the homes of Georgians who have lived in the region for decades. In March we saw angry Tibetans, led by Buddhist monks, destroying the homes and shops of Chinese people living in Lhasa. Instead of supporting the human rights of all who live in multi-ethnic states and seeking to bring about sustainable harmony and justice, we have reached for a tempting but poisonous antidote to cultural conflict: the separation of ethnic and religious groups into new independent nation states. And though separation is sometimes warranted to halt communal violence, it creates new problems, does not solve the old ones, and chips away at the value of human equality. The **secession that separation entails leads to more bloodshed, more refugees, and more entrenched ethnic and religious hatred, more "humanitarian" intervention, more drawn-out military conflicts, more dangerous confrontations between powerful, nuclear-armed countries**. The same scenario will be acted out when we piously support dominant states who claim sovereignty over disputed territory and repress the secessionists. Repression leads to more violence as those who are oppressed are swayed to join the separatist cause. Instead of supporting ethnonationalist separatism in the guise of the right of “national self-determination” or opposing the intervention of others only when it suits our strategic interests, we need to take a consistent stand in support of human rights and equal treatment of all cultural groups within multiethnic societies. Of course this means both opposing oppression on the part of powerful states and opposing violent responses to that oppression. We can pressure China to halt abuses of Tibetans without abetting Tibetan secessionists; we can oppose Russia’s invasion of Georgia and its support for Ossetian secession without condoning Georgia’s military incursions into Ossetian territory. We must revive and strengthen the principle of non-intervention and at the same time, provide even stronger support for human rights in contested territory. **Only** the **revitalization and enforcement of international legal norms can halt the coming spiral of violent global confrontation triggered by ethnic and sectarian conflicts**.

#### Unchecked secessionism makes every impact inevitable

Gottlieb 93 (Gideon, Leo Spitz Professor of International Law and Diplomacy – University of Chicago, Nation Against State, p. 26-27)

Self-determination unleashed and unchecked by balancing principles constitutes a menace to the society of states. There is simply no way in which all the hundreds of peoples who aspire to sovereign independence can be granted a state of their own without loosening fearful anarchy and disorder on a planetary scale. The proliferation of territorial entities poses exponentially greater problems for the control of weapons of mass destruction and multiplies situations in which external intervention could threaten peace. It increases problems for the management of all global issues, including terrorism, AIDS, the environment, and population growth. It creates conditions in which domestic strife in remote territories can drag powerful neighbors into local hostilities, creating ever widening circles of conflict. Events in the aftermath of the breakup of the Soviet Union drove this point home. Like Russian dolls, ever smaller ethnic groups dwelling in larger units emerged to secede and to demand independence. Georgia, for example, has to contend with the claims of South Ossetians and Abkhazians for independence, just as the Russian Federation is confronted with the separatism of Tartaristan. An international system made up of several hundred independent territorial states cannot be the basis for global security and prosperity.

#### Judicial incorporation of the ICCPR is key to the effective protection of reproductive rights

Hammell 11 (Hilary, University of Washington School of Law, J.D. Class of 2012, "FROM PAGE TO PRACTICE: BROADENING THE LENS FOR REPRODUCTIVE AND SEXUAL RIGHTS: IS THE RIGHT TO HEALTH A NECESSARY PRECONDITION FOR GENDER EQUALITY?," 35 N.Y.U. Rev. L. & Soc. Change 131, lexis)

As mentioned in Part IV(A), the United States is not a party to any of the treaties that explicitly create a right to health, but it is a party to the ICCPR. The decision in K.L., along with Concluding Observations from the Human Rights Committee, suggest that the ICCPR constructs at least a minimal version of the right to health, and that right to health encompasses abortion. n336 While the United States has stated that the [\*186] ICCPR is not self-executing, n337 the fact that other bodies have interpreted its guarantee of "civil and political" rights as giving rise to a right to health could be useful for advocacy in the United States. Tysiac's reasoning might similarly be useful. In Tysiac, the European Convention was found to construct a right to health, at least in certain abortion-related circumstances, n338 even though the European Convention, like the ICCPR and the U.S. Constitution, is mainly a civil-and political-rights document that does not explicitly contain a right to health. Similarly, while the United States has not ratified the strongest gender-equality treaty, CEDAW, it has ratified CERD. CERD requires that state parties "guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality ... in the enjoyment of ... the right to public health, medical care, social security, and social services." n339 However, the U.S. Senate has declared that CERD, like the ICCPR, is "non-self-executing." n340¶ While Congress' declarations that these treaties are non-self-executing limits the effectiveness of some forms of advocacy, it may not be an insurmountable barrier. The "non-self-executing" doctrine is a judicially-created doctrine that requires courts to wait for Congress to specifically write legislation purporting to "give effect" to the treaties. n341 One option would be for advocates to challenge the "non-self-executing" doctrine [\*187] itself and to push for the ratification of other international human rights treaties, such as CEDAW and ICESCR. The doctrine seems to conflict with the text of Article VI of the U.S. Constitution, which states that treaties ratified by the Senate become the supreme law of the land. n342 Many have thus argued that this doctrine is problematic and perhaps itself unenforceable. n343 Those interested in pursuing a right-to-health approach to substantive equality in the United States arising from international human rights law as treaty law may have to scrutinize the boundaries, meanings, and validity of the "non-self-executing" doctrine. These tactics may in fact be the most promising - if long-term - vehicles for achieving a right to health in the United States along the lines of the model required by international human rights law and described in this Article. n344

#### That’s key to solving overpopulation

Ehrlich and Ehrlich 97 (Paul and Anne, Prof of Population Studies + Senior Research Associate in Biological Sciences @ Stanford, Winter, 27 Envtl. L. 1187, lexis)

**The key to any humane management of human population size is regulation of birth rates**. The objective is to avoid a death-rate solution to the population outbreak in which billions of people perish prematurely and in misery. This means that people **must have both the knowledge and means to control their reproduction**. Human beings have exercised some control over their reproduction for at least thousands and perhaps hundreds of thousands of years. 48 The techniques employed have ranged from crocodile dung suppositories in ancient Egypt 49 to infanticide from hunter-gatherer times up to 1979 in China, 50 and have varied in both their efficacy and social acceptability just as modern techniques do. In the 20th century, the story of birth control in the now-industrialized nations has been one of gradual acceptance of modern forms of contraception, strongly associated with the movement for women's liberation and an assertion of women's rights to determine the number and timing of children they bear. 51

#### Overpopulation results in extinction – optimists are wrong about Earth’s carrying capacity

Smail 4 (Ken, Prof of Anthropology at Kenyon College, Sept/Oct, "Population

AND ITS DISCONTENTS," http://www.worldwatch.org/system/files/EP175M.pdf)

Clearly, assertions that the Earth might be able to support¶ a population of 10, 15, or even 20 billion people for¶ an indefinite period of time at a standard of living superior¶ to the present are not only cruelly misleading but¶ almost certainly false. Notwithstanding our current addiction¶ to continued and uninterrupted economic growth,¶ humanity must recognize that there are finite physical, biological,¶ and ecological limits to the Earth’s long-term¶ sustainable carrying capacity. And to judge by the growing¶ concerns about maintaining the quality, stability,¶ and/or sustainability of the Earth’s atmosphere, water,¶ forests, croplands, fisheries, and so on, there is little if any¶ doubt that many of these limits will soon be reached, if¶ they haven’t already been surpassed. Since at some point¶ the damage stemming from the mutually reinforcing¶ effects of excessive human reproduction and overconsumption¶ of resources could well become irreversible, and¶ because there is only one Earth with which to experiment,¶ it would undoubtedly be better for our species to err on¶ the side of prudence, exercising wherever possible a cautious¶ and careful stewardship.¶ Perhaps it is time that the burden of proof on these¶ matters, so long shouldered by so-called neo-Malthusian¶ pessimists, be shifted to the “cornucopian optimists.” Let¶ them answer: What is the evidence that the Earth can¶ withstand, without irreparable damage, another two or¶ more centuries during which global human numbers and¶ per-capita consumption increasingly exceed the Earth’s¶ optimal (sustainable) carrying capacity?¶ In any event, having established a “quantifiable¶ and falsifiable” frame of reference, it is time to make the¶ case that current rhetoric about “slowing the growth¶ of” or even “stabilizing” global human numbers is¶ clearly insufficient. Both the empirical data and inexorable¶ logic suggest that our default position for the¶ next two or three centuries ought to seek a very significant¶ reduction in global human numbers.¶ Acknowledging Our Dilemma¶ Is it naive to hope that, once a critical mass of concerned¶ investigators begins to make a serious case for such a reduction, it would become much easier for scientists,¶ environmentalists, politicians, economists, moralists,¶ and other concerned citizens of the planet to speak¶ forthrightly about humanity’s critical need for population¶ stabilization and shrinkage? At the least, they¶ should not feel as though they are committing political,¶ professional, or moral suicide by raising these issues.¶ Time is increasingly precious, and our window of¶ opportunity for effective remedial action may not be¶ open much longer—assuming it has not already closed.¶ Until demonstrated otherwise, I would therefore¶ argue that insufficiently restrained population growth¶ should be considered the single most important feature¶ in a complex (and synergistic) physical, ecological, biocultural,¶ and sociopolitical landscape. Regulating human¶ population size, and confronting the numerous problems¶ that will be engendered by its eventual and¶ inevitable contraction, should thus be accorded a central¶ position within the modern dilemma, and as such¶ should be dealt with much more forthrightly, and¶ promptly, than has heretofore been the case.¶ More than half a century ago, at the dawn of the¶ nuclear age, Albert Einstein suggested that we would¶ require a new manner of thinking if ~~human~~kind were¶ to survive. Even though the population explosion is neither¶ as instantaneous nor as spectacular as its nuclear¶ counterpart, the ultimate consequences may be just as¶ real (and potentially just as devastating) as the so-called¶ nuclear winter scenarios promulgated in the early 1980s.¶ That there will be a large-scale reduction in global¶ human numbers over the next two or three centuries¶ appears to be inevitable. The primary issue seems to be¶ whether this process will be under conscious human¶ control and (hopefully) relatively benign, or whether it¶ will turn out to be unpredictably chaotic and (perhaps)¶ catastrophic. We must begin our new manner of¶ thinking about this critically important global issue¶ now, so that Einstein’s prescient and legitimate concerns¶ about human and civilizational survival into the 21st¶ century and beyond may be addressed as rapidly, fully,¶ and humanely as possible.

#### US policy is critical to the success of global efforts to slow population growth – overpop risks extinction and makes every impact inevitable

De Valk 03 (EJ, Expert on Biodiversity @ Population Connection, "Statement of Policy--Mission Statement," 5/3, http://www.populationconnection.org/About\_Us/policies.html)

Population Connection believes the well-being and even the survival of humanity **depend on the attainment of an equilibrium between population and the environment**. Just as the earth and its resources of land, air and water are limited, so are the demands that can be placed upon them.¶ Continued population growth is foremost among the factors aggravating deforestation, wildlife extinction, climate change and other critical environmental and social problems. It also erodes democratic government, multiplies urban problems, consumes agricultural land, increases volumes of waste, heightens competition for scarce resources and threatens the aspirations of the poor for a better life. ¶ **The only acceptable solution to the population problem is through** expanding educational, advocacy and service efforts that lower birth rates. Rather than support a larger population at a poorer level, we believe it is preferable to support a smaller population at adequate standards of living. ¶ Population Connection recognizes the gravity of global overpopulation and encourages citizens in every nation to work towards slowing population growth. Recognizing the interdependence of the nations of the earth, we support the development and growth of citizen organizations in other countries dedicated to those ends. ¶ As a U.S. based organization, Population Connection works primarily to educate and motivate Americans to help meet the global population challenge, and to mobilize this support for the adoption of policies and programs necessary to slow global population growth. Because the United States is the chief consumer of the world's resources, slowing its population growth is disproportionately important for protecting the global environment. **Because the United States has a major influence on international political, economic and military affairs**, reshaping its policies is important **for the success of international efforts to slow population growth.**

### Solvency

#### Huge controversial decisions coming now – abortion, establishment clause, campaign finance, aff action

Eastman 10/5/13 (John, professor and former dean at Chapman University's Dale E. Fowler School of Law, "Controversy again on docket for Supreme Court," http://www.latimes.com/opinion/commentary/la-oe-eastman-supreme-court-preview-20131006,0,5689006.story)

The Supreme Court convenes for its new term Monday, the first Monday in October. It is hard to imagine how the coming term could possibly compare with the highly contentious and high-profile decisions of the last two: Obamacare in 2012, and the same-sex marriage cases this June. Yet there are several cases among the 52 already on the court's docket that have landmark potential and will certainly be contentious, covering subjects such as abortion, campaign finance, legislative prayer and affirmative action. The court seems increasingly to be at the center of every national controversy.¶ On the second day of oral argument, for example, the court will consider in McCutcheon vs. FEC the constitutionality of aggregate donation caps on political donors. This is somewhat of a follow-on case to Citizens United, so all of the controversy still swirling around that case is likely to be repeated here.¶ Federal law limits contributions to candidates to $2,500, which the Supreme Court has previously upheld because of the important governmental interest in preventing quid-pro-quo corruption, but it also imposes an aggregate cap of $46,500 on total donations to all candidates, which does not further that interest at all (or at most only marginally). The aggregate cap simply prevents a donor from providing maximum $2,500 contributions to 20 or more candidates. The goal seems to be to lessen the political speech of wealthy donors, a "level-the-playing-field" purpose that has been repeatedly rejected by the Supreme Court, and rightly so; the 1st Amendment does not allow government to restrict the speech of some to enhance the relative weight of others' speech.¶ Two abortion cases may make this one of the most significant terms for the issue in decades. One, Cline vs. Oklahoma Center for Reproductive Justice, challenges Oklahoma's law requiring that abortion-inducing drugs be administered only according to the guidelines on FDA-approved labels. That case is on hold pending a request to the Oklahoma Supreme Court about the proper interpretation of the Oklahoma law.¶ Another, Horne vs. Isaacson, was filed last week. It asks the court to review the U.S. 9th Circuit Court of Appeals' decision holding unconstitutional Arizona's decision to regulate non-emergency abortions after 20 weeks because of legislative findings that a fetus feels pain by that point in a pregnancy. If the court accepts the case, we'll have oral argument in the spring and perhaps a dramatic abortion decision by June; the petition asks the court to revisit Roe vs. Wade, if existing precedent does not permit a state to protect against fetal pain.¶ The establishment clause is also again on the docket. Town of Greece vs. Galloway explores whether an invocation before a city council meeting that mentioned Jesus Christ violates the church/state separation. The Supreme Court has previously upheld legislative prayer but cautioned against prayer that proselytizes. The lower court in this case found that the mere mention of the name of Jesus Christ crossed that ephemeral line, contrary to a long historical tradition. The Supreme Court is poised to make significant revision of its establishment clause jurisprudence, which has become increasingly hostile to religion in recent years. This case provides a suitable vehicle to start moving away from that hostility, and the notorious case that engendered the hostility, Lemon vs. Kurtzman, may be on the chopping block. One can only hope.¶ And after the somewhat stillborn decision last term in the University of Texas affirmative action case, Schuette vs. Coalition to Defend Affirmative Action will give the court another opportunity to confront race-based admissions, albeit from the other side of the coin. After a University of Michigan Law School race-based admissions plan was upheld a decade ago as barely constitutional, voters in Michigan decided to ban the use of race in admissions altogether. The Coalition to Defend Affirmative Action By Any Means Necessary — its name reveals a lot about its tactics — contended that the state's requirement that every student be treated equally without regard to skin color violated the Constitution's requirement that everyone be treated equally. The 6th Circuit agreed with that "impeccable" logic, and it is now up to the Supreme Court to restore some semblance of sanity to its equal protection jurisprudence.

#### Multiple incentives to comply – no circumvention

Pildes 12 (Richard H. Pildes 12, Sudler Family Professor of Constitutional Law at NYU School of Law and Co-Director of the NYU Center on Law and Security, April 2012, “Law and the President,” NYU School of Law Public Law & Legal Theory Research Paper Series, Working Paper No. 12-13, <http://ssrn.com/abstract=2012024>)

But as Levinson’s work helps to show, even on its own terms, Posner and Vermeule’s approach offers an incomplete account of the role of law. Levinson’s work, for example, is devoted to showing why constitutional law will be followed, even by disappointed political majorities, for purely instrumental reasons, even if those majorities do not experience any internal sense of duty to obey. He identifies at least six rational-choice mechanisms that will lead rational actors to adhere to constitutional law decisions of the Supreme Court: coordination, reputation, repeat-play, reciprocity, asset- specific investment, and positive political feedback mechanisms.76 No obvious reason exists to explain why all or some of these mechanisms would fail to lead presidents similarly to calculate that compliance with the law is usually important to a range of important presidential objectives. At the very least, for example, the executive branch is an enormous organization, and for internal organizational efficacy, as well as effective cooperation with other parts of the government, law serves an essential coordination function that presidents and their advisors typically have an interest in respecting. There is a reason executive branch departments are staffed with hundreds of lawyers: while Posner and Vermeule might cynically speculate that the reason is to figure out how to circumvent the law artfully, the truth, surely, is that law enables these institutions to function effectively, both internally and in conjunction with other institutions, and that lawyers are there to facilitate that role. In contrast to Posner and Vermeule, who argue that law does not constrain, and who then search for substitute constraints, scholars like Levinson establish that rational-choice theory helps explain why law does constrain. Indeed, as Posner and Vermeule surely know, there is a significant literature within the rational-choice framework that explains why powerful political actors would agree to accept and sustain legal constraints on their power, including the institution of judicial review.77¶ That Posner and Vermeule miss the role of legal compliance as a powerful signal, perhaps the most powerful signal, in maintaining a President’s critical credibility as a well-motivated user of discretionary power is all the more surprising in light of the central role executive self-binding constraints play in their theory. After asserting that “one of the greatest constraints on [presidential] aggrandizement” is “the president’s own interest in maintaining his credibility” (p. 133), they define their project as seeking to discover the “social-scientific microfoundations” (p. 123) of presidential credibility: the ways in which presidents establish and maintain credibility. One of the most crucial and effective mechanisms, in their view, is executive self-binding, “whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors” (p. 137). As they also put it, “a well-motivated president can distinguish himself from an ill-motivated president by binding himself to a policy position that an ill-motivated president would reject” (p. 135). ¶ By complying with these constraints, presidents signal their good faith and accrue more trust to take further action. Most importantly from within Posner and Vermeule’s theory, these constraints, many self-generated through executive self-binding, substitute for the constraints of law. Law does not, or cannot, or should not constrain presidents, in their view, but rational-actor presidents recognize that complying with constraints is in their own self-interest; presidents therefore substitute or accept other constraints.¶ Thus, Posner and Vermeule recognize the importance of “enabling constraints”78 in effective mobilization and maintenance of political power; that is, they recognize that what appear to be short-term constraints on the immediate preferences of actors like presidents might actually enable longterm marshaling of effective presidential power. Yet they somehow miss that law, too, can work as an enabling constraint; when it comes to law, Posner and Vermeule seem to see nothing but constraint. Indeed, this failing runs even deeper. For if presidents must signal submission to various constraints to maintain and enhance their credibility — as Posner and Vermeule insist they must — Posner and Vermeule miss the fact that the single most powerful signal of that willingness to be constrained, particularly in American political culture, is probably the President’s willingness to comply with law.¶In theoretical terms, then, Posner and Vermeule emerge as inconsistent or incomplete consequentialists. Even if law does not bind presidents purely for normative reasons, presidents will have powerful incentives to comply with law — even more powerful than the incentives Posner and Vermeule rightly recognize presidents will have to comply with other constraints on their otherwise naked power. To the extent that Posner and Vermeule mean to acknowledge this point but argue that it means presidents are not “really” complying with the law and are only bowing to these other incentives, they are drawing a semantic distinction that seems of limited pragmatic significance, as the next Part shows.

# 2AC

## T

## ICCPR

#### The periodic review for US ICCPR compliance is coming in March – concrete action on indefinite detention signals our commitment to the treaty and enables us to push for global enforcement

Ward et al 13 (Joann, Douglas Cantwell, Victoria Gilcrease-Garcia, Ami Shah and Caroline Stover, Associate Director of the Human Rights in the U.S. Project at Columbia Law School’s Human Rights Institute and Acting Co-Director of the Law School’s Human Rights Clinic, "Human Rights on Hold," http://webcache.googleusercontent.com/search?q=cache:OFdCPUMZzygJ:law.scu.edu/ihrcblog/human-rights-on-hold/+&cd=10&hl=en&ct=clnk&gl=us)

Last week should have marked an important milestone for U.S. engagement with the international community on human rights. The United States was scheduled to appear before the United Nations Human Rights Committee as part of a compliance review mandated by the International Covenant on Civil and Political Rights (ICCPR), a human rights treaty ratified under President George H.W. Bush in 1992. But, at the eleventh hour,the U.S. postponed the review, marking it as yet another casualty of the government shutdown.¶ The periodic review process is the backbone of accountability under the ICCPR, and a core commitment of the 167 countries that have ratified the treaty. The ICCPR itself protects universal human rights including the right to life, to a fair trial, and to equality before the law. It also guarantees core individual rights such as freedom of expression, religion, and assembly.¶ The U.S. review, conducted by a committee of experts, is informed by a report prepared by the U.S. government. Civil and human rights organizations also play a key role, contributing data and analysis to supplement the government’s perspective and present a more complete picture of human rights on-the-ground. Ultimately, the review aims to uncover gaps in human rights protections and offer a roadmap for improvement.¶ The ICCPR review is one of the rare opportunities where the U.S. discusses its human rights record and can be held accountable for its international commitments. Postponing the review has negative repercussions both domestically and internationally.¶ First, it highlights a long existing tension between U.S. human rights ideals and our practices. While the U.S. has been a global leader in the arena of human rights, playing a crucial role in establishing the international human rights system and shaping key documents like the Universal Declaration of Human Rights, we have an inconsistent record of realizing these rights at home.¶ U.S. absence from the review delays an essential first step in addressing pressing human rights concerns, including immigration reform, solitary confinement, domestic violence and voting rights. While the review itself is not a panacea, it is a pre-requisite for domestic accountability and making progress on our own human rights record.¶ Postponement of the review also poses significant implications for international protection of human rights. For one, it sets a potentially dangerous precedent for other countries. U.S. postponement signals that government indecision and infighting are valid reasons for a country to put human rights accountability on hold. If the U.S. shirks its own commitments, our voice will increasingly ring hollow when we seek to hold others to account. We also open the door for other countries to opt out. When the richest country in the world — which claims to lead by example — postpones its review due to political gridlock, what message do we send to other countries?¶ Finally, U.S. postponement impacts our diplomatic engagement abroad. The review would have covered a number of U.S. policies currently at the center of international debate –NSA surveillance, use of the death penalty, and conditions of detention in Guantanamo - to name a few. The review offered a missed opportunity to speak to these issues on the world stage and address criticisms head on. ¶ The federal government is now back to work. This means the U.S. has the chance to embrace the role of a global human rights leader during the rescheduled review, slated for March 2014. The U.S. should take full advantage of this opportunity by re-committing to human rights and taking concrete action to strengthen human rights protections. Human rights should no longer be put on hold — they should be the fundamental principles upon which our policies are based.¶ Unfortunately, the path forward is not so clear. Even though the shutdown is officially over, it continues to stymie critical conversations on human rights — conversations taking place in Washington, D.C. On Friday, the U.S. sent a formal request to the Inter-American Commission on Human Rights requesting that hearings involving the United States be postponed until 2014. The request was not granted and the Commission’s upcoming session will proceed as planned. U.S. organizations will appear to discuss issues that include indefinite detention and U.S. surveillance practices. Governments from across the Americas will appear before the Commission too. The U.S. should be front and center in these conversations. Instead, it is likely that the government will continue to be seated on the sidelines, signaling that human rights remain on hold.

## Legitimacy

## Off

### 2AC Legal/Security

#### Framework- the role of the ballot is to weigh the plan against a competitive policy option

#### Net benefits-

#### First- Fairness- they moot the entirety of the 1ac, makes it impossible to be affirmative

#### Second – Education- Policy education is good- it teaches future decisionmaking

#### Incorporation of international law is the most effective means of eradicating legal forms of violence – it effectuates protections for racial minorities and open space for structural change in domestic law

Saito 2 (Natsu Taylor, Professor of Law, Georgia State University, "Asserting Plenary Power Over the "Other": Indians, Immigrants, Colonial Subjects, and Why U.S. Jurisprudence Needs To Incorporate International Law," 20 Yale L. & Pol'y Rev. 427, lexis)

If the United States complied with international law, it would both allow for real self-determination, and would provide all peoples within its jurisdiction protections similar to, but more extensive than those provided by the Constitution. These are embodied in the general provisions for human rights included in the U.N. Charter n300 and the Universal Declaration of Human Rights, n301 the Convention on the Prevention and Punishment of the Crime of Genocide, n302 the International Covenant on Civil and Political Rights n303 and the International Covenant on Economic, Social and Cultural Rights, n304 and the Convention on the Rights of the Child, n305 among other instruments. Put most succinctly, the incorporation of international law into U.S. jurisprudence is the most promising way to ensure the end of genocidal and ecocidal policies and practices, the adherence to existing treaties, the return of unceded land, and the implementation of political self-determination. n306¶ The integration of international law into U.S. jurisprudence would also dramatically improve the legal posture of African Americans and other "minorities" who have been treated as Other, but are not officially subject to the plenary power doctrine, as has been recognized by advocates of racial justice from Frederick Douglass and W.E.B. DuBois to Martin Luther King, Jr. and Malcolm X. n307 In 1947, the National Association for the Advancement of Colored People (NAACP) denounced U.S. racial discrimination in a petition to the United Nations and in 1951, the Civil Rights Congress filed another petition entitled "We Charge Genocide." The potential impact of international human [\*476] rights law on racial justice in the United States can be seen by considering one of many possible examples, the United States' systematic use of "law enforcement" to crush political dissent.¶ In 1975, a lengthy investigation by the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the "Church Committee") revealed that since the mid-1950s federal intelligence and law enforcement agencies had engaged in concerted efforts "to disrupt, ... discredit, or otherwise neutralize" organizations which challenged the social, political or racial hierarchy. n308 The groups targeted included all of the civil rights organizations, from King's Southern Christian Leadership Conference to the Black Panther Party, the American Indian Movement, the Puerto Rican Young Lords and others who advocated Puerto Rican independence, and the Chicano Brown Berets. n309 The emergence of leadership of color was perceived as a threat to the government, and multiracial coalitions were particularly targeted. n310 Government tactics included intentional dissemination of misleading information about the groups and their leaders, repeated arrests of activists on false charges, wrongful convictions and imprisonment, use of infiltrators and agents provocateur to disrupt organizations, orchestration of military and police actions to erode community support, physical assaults, and outright assassinations. n311¶ The Church Committee hearings were suspended in 1975, just before testimony was to be heard about attacks on American Indian and Latino organizations, and they have never been resumed. n312 Despite the Committee's harsh condemnation of the agencies' practices as constituting a "record of abuse," n313 many similar programs continue to be implemented today. n314 Some who were wrongfully incarcerated as a result of these programs have been released but others remain in prison, and no acknowledgment of or redress for these actions has been extended to the victims or their families. n315 Intraconstitutional responses [\*477] to these violations of both the Constitution and international law have proven ineffective, in large measure because these programs were carried out by the very agencies charged with upholding the law and the Constitution, with the specific intent of preventing the expression of political dissent or the implementation of meaningful social change. n316¶ International law, particularly as articulated in the Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), n317 specifically prohibits such conduct by a government towards its citizens. If American courts would enforce these treaties, both of which have been ratified by the United States, the abuses documented by the Church Committee and others could be fully investigated, legislation implemented to prevent such practices, and victims identified and compensated to the extent possible. This, in turn, would make the constitutional guarantees that are supposed to protect those who work for racial and economic justice actually effective. n318¶ Generally, compliance with international law would require adherence to international standards of civil and political rights, thus opening up the polity to the possibility of structural change. It would also mean abolishing the de facto existence of separate systems of law for different groups, n319 and complying with the provisions of the Racial Discrimination Convention, as well as other international law concerning the treatment of ethnic, racial, religious, and linguistic minorities. It would require something the United States has fought since the formation of the United Nations n320 - acknowledging that U.S. domestic policies with respect to race are not consistent with international norms and genuinely participating in international fora such as the 2001 U.N. Conference on Racism in Durban, South Africa rather than walking out of them, literally or figuratively. n321

#### No impact– prefer topic specific ev

**Posner and** **Vermeule 3** (Eric and Adrian, law profs at Chicago and Harvard, Accommodating Emergencies, September, <http://www.law.uchicago.edu/files/files/48.eap-av.emergency.pdf>)

Against the view that panicked government officials overreact to an emergency, and unnecessarily curtail civil liberties, we suggest a more constructive theory of the role of fear. Before the emergency, government officials are complacent. They do not think clearly or vigorously about the potential threats faced by the nation. After the terrorist attack or military intervention, their complacency is replaced by fear. Fear stimulates them to action. Action may be based on good decisions or bad: fear might cause officials to exaggerate future threats, but it also might arouse them to threats that they would otherwise not perceive. **It is impossible to say in the abstract whether decisions and actions provoked by fear are likely to be better than decisions and actions made in a state of calm**. But our limited point is that there is no reason to think that the fear-inspired decisions are likely to be worse. For that reason, the existence of fear during emergencies does not support the antiaccommodation theory that the Constitution should be enforced as strictly during emergencies as during non-emergencies. C. The Influence of Fear during Emergencies Suppose now that the simple view of fear is correct, and that it is an unambiguously negative influence on government decisionmaking. Critics of accommodation argue that this negative influence of fear justifies skepticism about emergency policies and strict enforcement of the Constitution. However, this argument is implausible. It is doubtful that fear, so understood, has more influence on decisionmaking during emergencies than decisionmaking during non-emergencies. The panic thesis, implicit in much scholarship though rarely discussed in detail, holds that citizens and officials respond to terrorism and war in the same way that an individual in the jungle responds to a tiger or snake. The national response to emergency, because it is a standard fear response, is characterized by the same circumvention of ordinary deliberative processes: thus, (i) the response is instinctive rather than reasoned, and thus subject to error; and (ii) the error will be biased in the direction of overreaction. While the flight reaction was a good evolutionary strategy on the savannah, in a complex modern society the flight response is not suitable and can only interfere with judgment. Its advantage—speed—has minimal value for social decisionmaking. No national emergency requires an immediate reaction—except by trained professionals who execute policies established earlier—but instead over days, months, or years people make complex judgments about the appropriate institutional response. And the asymmetrical nature of fear guarantees that people will, during a national emergency, overweight the threat and underweight other things that people value, such as civil liberties. But if decisionmakers rarely act immediately, then the tiger story cannot bear the metaphoric weight that is placed on it. Indeed, the flight response has nothing to do with the political response to the bombing of Pearl Harbor or the attack on September 11. The people who were there—the citizens and soldiers beneath the bombs, the office workers in the World Trade Center—no doubt felt fear, and most of them probably responded in the classic way. They experienced the standard physiological effects, and (with the exception of trained soldiers and security officials) fled without stopping to think. It is also true that in the days and weeks after the attacks, many people felt fear, although not the sort that produces a irresistible urge to flee. **But this kind of fear is not the kind in which cognition shuts down**. (Some people did have more severe mental reactions and, for example, shut themselves in their houses, but these reactions were rare.) The fear is probably better described as a general anxiety or jumpiness, an anxiety that was probably shared by government officials as well as ordinary citizens.53 While, as we have noted, there is psychological research suggesting that normal cognition partly shuts down in response to an immediate threat, we are aware of no research suggesting that people who feel anxious about a non-immediate threat are incapable of thinking, or thinking properly, or systematically overweight the threat relative to other values. Indeed, it would be surprising to find research that clearly distinguished “anxious thinking” and “calm thinking,” given that anxiety is a pervasive aspect of life. People are anxious about their children; about their health; about their job prospects; about their vacation arrangements; about walking home at night. No one argues that people’s anxiety about their health causes them to take too many precautions—to get too much exercise, to diet too aggressively, to go to the doctor too frequently—and to undervalue other things like leisure. So it is hard to see why anxiety about more remote threats, from terrorists or unfriendly countries with nuclear weapons, should cause the public, or elected officials, to place more emphasis on security than is justified, and to sacrifice civil liberties. Fear generated by immediate threats, then, causes instinctive responses that are not rational in the cognitive sense, not always desirable, and not a good basis for public policy, but it is not this kind of fear that leads to restrictions of civil liberties during wartime. The internment of Japanese Americans during World War II may have been due to racial animus, or to a mistaken assessment of the risks; it was not the direct result of panic; indeed there was a delay of weeks before the policy was seriously considered.54 Post-9/11 curtailments of civil liberties, aside from immediate detentions, came after a significant delay and much deliberation. The civil libertarians’ argument that fear produces bad policy trades on the ambiguity of the word “panic,” which refers both to real fear that undermines rationality, and to collectively harmful outcomes that are driven by rational decisions, such as a bank run, where it is rational for all depositors to withdraw funds if they believe that enough other depositors are withdrawing funds. Once we eliminate the false concern about fear, it becomes clear that the panic thesis is indistinguishable from the argument that during an emergency people are likely to make mistakes. But if the only concern is that during emergencies people make mistakes, there would be no reason for demanding that the constitution be enforced normally during emergencies. Political errors occur during emergencies and nonemergencies, but the stakes are higher during emergencies, and that is the conventional reason why constitutional constraints should be relaxed.

#### K’s not prior – policy relevant debate is critical

Ewan E. Mellor 13, European University Institute, Political and Social Sciences, Graduate Student, Paper Prepared for BISA Conference, “Why policy relevance is a moral necessity: Just war theory, impact, and UAVs”, <http://www.academia.edu/4175480/Why_policy_relevance_is_a_moral_necessity_Just_war_theory_impact_and_UAVs>

This section of the paper considers more generally the need for just war theorists to engage with policy debate about the use of force, as well as to engage with the more fundamental moral and philosophical principles of the just war tradition. It draws on John Kelsay’s conception of just war thinking as being a social practice,35 as well as on Michael Walzer’s understanding of the role of the social critic in society.36 It argues that the just war tradition is a form of “practical discourse” which is concerned with questions of “how we should act.”37¶ Kelsay argues that:¶ [T]he criteria of jus ad bellum and jus in bello provide a framework for structured participation in a public conversation about the use of military force . . . citizens who choose to speak in just war terms express commitments . . . [i]n the process of giving and asking for reasons for going to war, those who argue in just war terms seek to influence policy by persuading others that their analysis provides a way to express and fulfil the desire that military actions be both wise and just.38¶ He also argues that “good just war thinking involves continuous and complete deliberation, in the sense that one attends to all the standard criteria at war’s inception, at its end, and throughout the course of the conflict.”39 This is important as it highlights the need for just war scholars to engage with the ongoing operations in war and the specific policies that are involved. The question of whether a particular war is just or unjust, and the question of whether a particular weapon (like drones) can be used in accordance with the jus in bello criteria, only cover a part of the overall justice of the war. Without an engagement with the reality of war, in terms of the policies used in waging it, it is impossible to engage with the “moral reality of war,”40 in terms of being able to discuss it and judge it in moral terms.¶ Kelsay’s description of just war thinking as a social practice is similar to Walzer’s more general description of social criticism. The just war theorist, as a social critic, must be involved with his or her own society and its practices. In the same way that the social critic’s distance from his or her society is measured in inches and not miles,41 the just war theorist must be close to and must understand the language through which war is constituted, interpreted and reinterpreted.42 It is only by understanding the values and language that their own society purports to live by that the social critic can hold up a mirror to that society to¶ demonstrate its hypocrisy and to show the gap that exists between its practice and its values.43 The tradition itself provides a set of values and principles and, as argued by Cian O’Driscoll, constitutes a “language of engagement” to spur participation in public and political debate.44 This language is part of “our common heritage, the product of many centuries of arguing about war.”45 These principles and this language provide the terms through which people understand and come to interpret war, not in a deterministic way but by providing the categories necessary for moral understanding and moral argument about the legitimate and illegitimate uses of force.46 By spurring and providing the basis for political engagement the just war tradition ensures that the acts that occur within war are considered according to just war criteria and allows policy-makers to be held to account on this basis.¶ Engaging with the reality of war requires recognising that war is, as Clausewitz stated, a continuation of policy. War, according to Clausewitz, is subordinate to politics and to political choices and these political choices can, and must, be judged and critiqued.47 Engagement and political debate are morally necessary as the alternative is disengagement and moral quietude, which is a sacrifice of the obligations of citizenship.48 This engagement must bring just war theorists into contact with the policy makers and will require work that is accessible and relevant to policy makers, however this does not mean a sacrifice of critical distance or an abdication of truth in the face of power. By engaging in detail with the policies being pursued and their concordance or otherwise with the principles of the just war tradition the policy-makers will be forced to account for their decisions and justify them in just war language. In contrast to the view, suggested by Kenneth Anderson, that “the public cannot be made part of the debate” and that “[w]e are necessarily committed into the hands of our political leadership”,49 it is incumbent upon just war theorists to ensure that the public are informed and are capable of holding their political leaders to account. To accept the idea that the political leadership are stewards and that accountability will not benefit the public, on whose behalf action is undertaken, but will only benefit al Qaeda,50 is a grotesque act of intellectual irresponsibility. As Walzer has argued, it is precisely because it is “our country” that we are “especially obligated to criticise its policies.”51

#### Perm do both - Critical approaches to the law fail – working within legal restrictions is key to positive jurisprudence

Litowitz 97 (Douglas, Prof of Law @ Ohio Northern University College of Law, Postmodern philosophy and law, p. 5-6)

In chapter 8 I argue that although the postmodern treatment of law is useful as a critique or "check" against the existing terms and concepts within both the practice of law and the enterprise of mainstream legal scholarship, it nevertheless fails to offer a positive jurisprudence. Although various postmodern thinkers have met with varying degrees of success, none have set forth a workable, normative vision for the reform of the legal system. I argue that postmodern legal theory correctly points out that we can no longer naively rely on the foundations once offered in support of our legal system, and that we must perform a genealogy and deconstruction of our existing legal concepts. But this interesting critical effort is accompanied by a less successful effort to build a new vision for the law. When postmodern antifoundationalism is wedded to an external perspective on the legal system, the result is a line of thought which is of limited value to the players within the legal system, who must decide cases and enact statutes from an internal perspective. While I am generally critical of postmodern legal theory, I nevertheless attempt to explain four significant contributions postmodernism can make to legal theory.

#### Reps don't shape reality.

**Balzacq 5** (Thierry, Professor of Political Science and International Relations at Namur University, “The Three Faces of Securitization: Political Agency, Audience and Context” European Journal of International Relations, London: Jun 2005, Volume 11, Issue 2)

However, despite important insights, this position remains highly disputable. The reason behind this qualification is not hard to understand. With great trepidation my contention is that one of the main distinctions we need to take into account while examining securitization is that between 'institutional' and 'brute' threats. In its attempts to follow a more radical approach to security problems wherein threats are institutional, that is, mere products of communicative relations between agents, the CS has neglected the importance of 'external or brute threats', that is, threats that **do not depend** on language mediation to be what they are - hazards for human life. In methodological terms, however, any framework over-emphasizing either institutional or brute threat risks losing sight of important aspects of a **multifaceted phenomenon**. Indeed, securitization, as suggested earlier, is successful when the securitizing agent and the audience reach a common structured perception of an ominous development. In this scheme, there is no security problem except through the language game. Therefore, how problems are 'out there' is exclusively contingent upon how we linguistically depict them. This is not always true. For one, language **does not construct** reality; at best, it shapes our perception of it. Moreover, it is **not theoretically useful** nor is it **empirically credible** to hold that what we say about a problem would determine its essence. For instance, what I say about a typhoon would not change its essence. The consequence of this position, which would require a deeper articulation, is that some security problems are the attribute of the development itself. In short, threats are not only institutional; some of them can actually wreck entire political communities **regardless of** the use of language. Analyzing security problems then becomes a matter of understanding how external contexts, including external objective developments, affect securitization. Thus, far from being a departure from constructivist approaches to security, external developments are central to it.

#### Ceding legal restriction leads to authoritarianism – turns their impact

Scheuerman 6 (William, Prof of Poli Sci @ Indiana, “Survey Article: Emergency Powers and the Rule of

Law After 9/11\*” The Journal of Political Philosophy: Volume 14, Number 1 p. 73-74\_

By the conclusion of Tushnet’s argument, however, it remains unclear what remains of the rule of law. Like Cole, Tushnet accurately identifies a key tension in Gross’ argument: Gross insists on the extra-legality of emergency action while simultaneously suggesting how various legal mechanisms (e.g., a retrospective judicial condemnation) might work to restrain the executive. Tushnet resolves this tension, however, by systematically eliminating Gross’ residual legalistic impulses. Contra Gross, courts “can neither endorse nor condemn” emergency action, since “extra-constitutional powers are ‘reviewed’—and disciplined—not by law but by a mobilized citizenry.”51 Because Schmitt was right to argue that emergency power and legality do not mix, the only effective restraints on their exercise are somehow non-legal: only “the vigilance of the public acting, as it was put in the era of the American Revolution, ‘out of doors,’” can protect us from potentially abusive forms of emergency rule.52 Tushnet’s proposal is even more vulnerable to some of the criticisms directed against Gross. Most obviously, a model which condones executive crisis measures beyond the bounds of the law while disparaging the possibility of legal controls altogether hardly seems supportive of the rule of law. Tushnet’s radical democratic allusions to a “mobilized citizenry” obviously distinguishes him from Schmitt. Yet his sharp conceptual juxtaposition of democratic politics to traditional elements of liberal legality (e.g., the idea of a people acting “out of [legal] doors”) echoes Schmitt’s attempt to draw a bright line between democracy and liberalism. As has been widely noted in the secondary literature in Schmitt, however, this leaves Schmitt with a portrayal of democracy amounting to little more than mass-based authoritarian rule**,** in which “the people” become a plaything of their rulers. Democracy without civil liberties, the rule of law, or constitutionalism is not, in fact, democracy, but instead most likely rule of the mob by politically manipulative elites. The same can probably be expected of a democracy in which the citizenry lacks effective legal restraints on executive emergency action. Given Tushnet’s endorsement of some of Schmitt’s ideas, it might be useful for him better to explain how his model of crisis government would help secure us from yet another variety of executive-centered mass rule. Recent political history provides examples galore of political leaders relying on the specter of crises—real or otherwise—to generate “vigilant” public support while undertaking illegal and unconstitutional action. Authoritarian emergency government and some measure of popular mobilization are by no means necessarily opposed.

#### Appeals for legal restraint are a crucial supplement to political resistance to executive power – political restraints alone fail

**Cole 12 (**David, Prof of Law @ Georgetown, “The Politics of the Rule of Law: The Role of Civil Society in the Surprising Resilience of Human Rights in the Decade after 9/11” http://www.law.uchicago.edu/files/files/Cole%201.12.12.pdf p. 51-53)

As I have shown above, while political forces played a significant role in checking President Bush, what was significant was the particular substantive content of that politics; it was not just any political pressure, but pressure to maintain fidelity to the **rule of law**. Politics standing alone is as likely to fuel as to deter executive abuse; consider the lynch mob, the Nazi Party in Germany, or xenophobia more generally. What we need if we are to check abuses of executive power is a politics that **champions the rule of law**. Unlike the politics Posner and Vermeule imagine, this type of politics cannot be segregated neatly from the law. On the contrary, it will often coalesce around a distinctly legal challenge, objecting to departures from **distinctly legal norms**, heard in a court case, as we saw with Guantanamo. Congress’s actions make clear that had Guantanamo been left to the political process, there would have been few if any advances. The litigation generated and **concentrated** **political pressure** on claims for a **restoration** of the values of **legality**, and, as discussed above, that pressure then played a critical role in the litigation’s outcome, which in turn affected the political pressure for reform. There is, to be sure, something paradoxical about this assessment. The rule of law, the separation of powers, and human rights are designed to discipline and constrain politics, out of a concern that pure majoritarian politics, focused on the short term, is likely to discount the long-term values of these principles. Yet without a critical mass of political support for these legal principles, they are unlikely to be effective checks on abuse, for many of the reasons Posner andVermeule identify. The answer, however, is not to abandon the rule of law for politics, but to develop and nurture a political culture that values the rule of law itself. Civil society organizations devoted to such values, such as Human Rights Watch, the Center for Constitutional Rights, and the American Civil Liberties Union, play a central role in facilitating, informing, and generating that politics. Indeed, they have no alternative. Unlike governmental institutions, civil society groups have no formal authority to impose the limits of law themselves. Their recourse to the law’s limits is necessarily indirect: they can file lawsuits seeking judicial enforcement, lobby Congress for statutory reform or other legislative responses, or seek to influence the executive branch. But they necessarily and simultaneously pursue these goals through political avenues – by appealing to the public for support, educating the public, exposing abuses, and engaging in public advocacy around rule-of-law values. Unlike ordinary politics, which tends to focus on the preferences of the moment, the politics of the rule of law is committed to a set of long-term principles. Civil society organizations are uniquely situated to bring these long-term interests to bear on the public debate. Much like a constitution itself, civil society groups are institutionally designed to emphasize and reinforce our long-term interests. When the ordinary political process is consumed by the heat of a crisis, organizations like the ACLU, Human Rights First, and the Center for Constitutional Rights, designed to protect the rule of law, are therefore especially important. While Congress and the courts were at best compromised and at worst complicit in the abuses of the post-9/11 period, civil society performed admirably. The Center for Constitutional Rights brought the first lawsuit seeking habeas review at Guantanamo, and went on to coordinate a nationwide network of volunteer attorneys who represented Guantanamo habeas petitioners. The ACLU filed important lawsuits challenging secrecy and government excesses, and succeeded in disclosing many details about the government’s illegal interrogation program. Both the ACLU and CCR filed lawsuits and engaged in public advocacy on behalf of torture and rendition victims, and challenging warrantless wiretapping. Human Rights Watch and Human Rights First wrote important reports on detention, torture, and Guantanamo, and Human Rights First organized former military generals and admirals to speak out in defense of humanitarian law and human rights. These efforts are but a small subset of the broader activities of civil society, at home and abroad, that helped to bring to public attention the Bush administration’s most questionable initiatives, and to portray the initiatives as contrary to the rule of law. At their best, civil society organizations help forge a politics of the rule of law, in which there is a symbiotic relationship between politics and law: the appeal to law informs a particular politics, and that politics reinforces the law’s appeal, in a mutually reinforcing relation. Posner and Vermeule understand the importance of politics as a checking force in the modern world, but fail to see the critical qualification that the politics must be organized around a commitment to fundamental principles of liberty, equality, due process, and the separation of powers – in short, the rule of law. Margulies and Metcalf recognize that politics as much as law determines the reality of rights protections, but fail to identify the unique role that civil society organizations play in that process. It is not that the “rule of politics” has replaced the “rule of law,” but that, properly understood, a politics of law is a critical supplement to the rule of law. We cannot survive as a constitutional democracy true to our principles without both. And our survival turns, not only on a vibrant constitution, but on a vibrant civil society dedicated to reinforcing and defending constitutional values

### CP – Not Ruling on I-lAw

#### Doesn’t solve any of the i-law advantages

#### Links to your circumvention evidence – your Pyle evidence does not make a distinction about ilaw

#### Links to politics and the court DA – there is NO distinction in your link ev, it’s not even about the aff

#### Perm do the Counterplan - Topical counterplans bad – means that we only ever discuss aff mechanisms and don’t actually argue negative positions – key to aff predictability and negative critical thinking

#### Perm do both

#### Conditionality is a voter-

#### A – it results in argument irresponsibility because it encourages contradictory positions

#### B – creates time and strat skews by making the neg a moving target

#### no cost options in the 1nc make the 2ac impossible- one condo advocacy/ dispo solves your offense

#### Uniquely worse with multiple worlds – forces us into strategic double binds and tradeoffs

### EPA DA

#### Supreme court rules for EPA inevitably

The Economist 9/7/13 ("Smother my neighbour," http://webcache.googleusercontent.com/search?q=cache:ptYF5R64gT0J:www.economist.com/news/united-states/21585001-how-much-should-upwind-states-care-if-their-filth-blows-next-door-smother-my-neighbour+&cd=7&hl=en&ct=clnk&gl=us)

The Supreme Court may soon weigh in, however. It has accepted appeals by the Environmental Protection Agency (EPA) and the American Lung Association concerning the agency’s 2011 Cross-State Air Pollution Rule (CSAPR), which controls interstate emissions that cause ozone and fine-particle pollution.¶ Under the law states are responsible for cleaning their own air. They must also reduce emissions that “contribute significantly” to another state’s dirty air. The CSAPR is the latest attempt to give teeth to this “good neighbour” requirement. The rule’s scope is vast, covering 28 eastern and midwestern states. Power plants there were found to emit too much sulphur dioxide and nitrogen oxides, pollutants that can travel long distances and harm people.¶ The agency told these states how much pollution to cut and how to do it. By 2014 emissions were to fall to less than half of what they were in 2005. Proponents of the rule claimed it would prevent 400,000 asthma cases each year and save nearly 2m work and school days lost to respiratory illness. Detractors griped at the costs, estimated at $800m in 2014, and worried that the rule would drive up energy prices. Greg Abbott, the attorney-general of Texas, predicted that the CSAPR would kill jobs and make the power supply less reliable.¶ Aggrieved states, cities and power companies sued (the case is called EPA v EME Homer City Generation). A panel of appeals-court judges decided by two to one to strike down the CSAPR for going beyond the EPA’s legal authority. The judges reasoned that the rule might force states to cut pollution more drastically than is required by law. The court was also troubled by how the EPA went about rule-making: telling states how to reduce pollution without first letting them draw up their own plans. The upshot is that the EPA must tell states the exact proportion that each contributes to downwind pollution. Until then, the states need not cut emissions as the EPA has ordered them to.¶ On appeal, the EPA contends that the lower court’s reasoning ignores the reality of interstate air pollution. The agency argues that emissions move in complicated channels; polluters can send different quantities to multiple downwind areas. States can even be upwind for some emissions and downwind for others. Determining every state’s proportional responsibility is therefore impractical.¶ It is now up to the Supreme Court to clarify the extent to which states must be clean neighbours. It has agreed to consider whether the lower court exceeded its jurisdiction and whether the EPA reasonably interpreted what it means to “contribute significantly”. The court will also examine whether the CSAPR upset the delicate federalist balance underlying the Clean Air Act. Its decision could affect how the EPA regulates other pollutants, including greenhouse gases.¶ Court-watchers predict that the CSAPR will survive its grilling. Share prices of coal companies plunged when the justices accepted the case. But the nine are unpredictable and, until they rule, the nation’s leading green regulator will be mired in confusion.

#### We get new answers if this becomes an argument – you have zero link ev to the aff or internal link about why a solicitor general push is necessary to the vote or why the plan messes with the DA – your ev says LEGISLATION messes with the solicitor general, that’s not the aff

#### judges vote based on ideology for controversies

Feldman 08

[Stephen, Jerry W. Housel/Carl F. Arnold Distinguished Professor of Law and Adjunct Professor of Political Science, University of Wyoming, Southern California Interdisciplinary Law Journal, Fall 2008, L/N]

So, did Roberts and Alito lie during their confirmation hearings? n4 Did they duplicitously proclaim dedication to the rule of law while secretly planning to implement their political agendas? While I disagree with the justices' votes in practically every controversial case, Roberts and Alito most likely answered senators' questions sincerely, and the justices have probably applied the rule of law in good faith during their initial terms. But, one might ask, how is this possible when they repeatedly vote for the conservative judicial outcome? Most simply, law and politics are not opposites. Roberts, Alito, and the other justices do not necessarily disregard the law merely because they vote to decide cases con**sistent with their respective political ideologies.** As a general matter, Supreme Court justices can decide legal disputes in accordance with law while simultaneously following their political preferences. [\*18] I elaborate this thesis by critiquing the theories of Judge Richard Posner n5 and Professor Ronald Dworkin, n6 two of the most prominent jurisprudents of this era. Embattled opponents, Posner and Dworkin have, for years, relentlessly attacked each other while developing strikingly different depictions of law and adjudication. n7 Despite their opposition, however, Posner and Dworkin together challenge a primary assumption of traditional jurisprudence - an assumption featured during Roberts's and Alito's Senate confirmation hearings. Most senators, jurists, and legal scholars assume that legal interpretation and judicial decision making can be separated from politics, that a judge or justice who decides according to political ideology skews or corrupts the judicial process. n8 Posner and Dworkin reject this traditional approach, particularly for hard cases at the level of the Supreme Court. Each in his own way asserts and explains the power of politics in adjudication: the justices self-consciously vote and thus decide cases according to their political ideologies. Posner and Dworkin agree that the justices do not, and should not, decide hard cases by applying an ostensibly clear rule of law in a mechanical fashion. The justices must be political in an open and expansive manner. n9 Supreme Court adjudication is, in other words, politics writ large. The conflicts between Posner and Dworkin stem from their distinct views of politics. Posner views politics as a pluralist battle among self-interested individuals and groups. He therefore argues that Supreme Court adjudication, manifesting politics writ large, should (and in fact does) entail a pragmatic focus on consequences. The justices should resolve cases by looking to the future and by aiming to do what is best in both the short and long term. n10 Dworkin, repudiating a pragmatic politics of self-interest, favors instead a politics of principles. Thus, according to Dworkin, the justices should resolve hard cases by applying law as integrity. They should theorize about the political-moral principles that fit the doctrinal history - including [\*19] case precedents and constitutional provisions - and that cast the history in its best moral light. n11 Consequently, although Posner and Dworkin both describe the Supreme Court as a political institution - as engaging in politics writ large - their theories otherwise clash tumultuously. Posner sees an adjudicative politics of interest and unmitigated practicality, while Dworkin sees an adjudicative politics of principles and coherent theory. Unfortunately, both Posner and Dworkin - like Roberts, Alito, and the senators who questioned them - remain stuck within the magnetic field of the traditional law-politics dichotomy. While most jurists, legal scholars, and senators are pulled to the law pole - maintaining that law mandates case results - Posner and Dworkin are pulled to the opposite pole. If politics matter to adjudication, they seem to say, then politics must become the overriding determinant of judicial outcomes. Supreme Court adjudication must be politics writ large. If their view is true, then Supreme Court nominees who declare their fidelity to the rule of law do, in fact, lie: current and future justices decide cases by hewing to their political ideologies, not to legal doctrines and precedents. But in their struggle against the forces of the law-politics dichotomy, Posner and Dworkin overcompensate. They neglect another possibility: namely, that Supreme Court adjudication is politics writ small. As Posner and Dworkin emphasize, the Court is a political institution: the justices' political ideologies always and inevitably influence their votes and decisions. But usually the justices do not self-consciously attempt to impose their politics in an expansive manner. To the contrary, the justices sincerely interpret and apply the law. Yet, because legal interpretation is never mechanical, the justices' political ideologies necessarily shape how they understand the relevant legal texts, whether in constitutional or other cases.

#### No Arctic War

Bartsch 12 (Golo, Associate at Ecologic Institute, “Arctic Security”, 7/30, http://arcticsummercollege.org/sites/default/files/Security%20Policy%20Brief\_Arctic%20Summer%20College\_July%2030%202012\_0.pdf)

As the Russian flag was planted underneath the North Pole in 2007, media predicted an uncontrolled “gold rush” or even a “new Cold War” in the region. This interpretation of military presence in the North, in combination with diminishing sea ice and territorial and resource claims of the riparian nations, created the image of imminent conflict. In fact, the probability of armed conflict in the North was not significantly higher during the last years than it was from 1990 to 2007. The nations involved, especially the Arctic Five, are affiliated with several overlapping international institutions, such as the United Nations or the Arctic Council, which provide arenas for peaceful conflict management. Furthermore, all those nations are aware that any armed escalation is counterproductive to their future interests and to exploitation of Arctic resources. In the official Northern strategies or White Papers of the Arctic Five, the commitment to peaceful cooperation and compliance with international law is a common and fundamental element. The current deployment, modernization, and reorganisation of the military in the Arctic takes place mostly to support the constabulary functions of those forces: Due to the harsh conditions of weather and terrain, it is foremost the military which has the equipment and personnel capacities to operate in the North at all. This includes not only the sovereign rights of border patrolling, coast guarding, and air policing, but also the provision of Search-and-Rescue (SAR) capabilities. Since an SAR agreement has been negotiated through the Arctic Council during the Conference of Nuuk in 2011, this task is of particular importance.

#### No impact to warming

**Barrett** **‘7** professor of natural resource economics – Columbia University, (Scott, Why Cooperate? The Incentive to Supply Global Public Goods, introduction)

First, **climate change does not threaten the survival of the human species**.5 If unchecked, it will cause other species to become extinction (though biodiversity is being depleted now due to other reasons). It will alter critical ecosystems (though this is also happening now, and for reasons unrelated to climate change). It will reduce land area as the seas rise, and in the process displace human populations. “Catastrophic” climate change is possible, but not certain. Moreover, and unlike an asteroid collision, large changes (such as sea level rise of, say, ten meters) **will likely take centuries to unfold, giving societies time to adjust.** “Abrupt” climate change is also possible, and will occur more rapidly, perhaps over a decade or two. However, **abrupt climate change** (such as a weakening in the North Atlantic circulation), though potentially very serious, **is unlikely to be ruinous.** Human-induced climate change is an experiment of planetary proportions, and we cannot be sur of its consequences. Even in a worse case scenario, however, global climate change is not the equivalent of the Earth being hit by mega-asteroid. Indeed, if it were as damaging as this, and if we were sure that it would be this harmful, then our incentive to address this threat would be overwhelming. The challenge would still be more difficult than asteroid defense, but we would have done much more about it by now.

### 2AC Iran Sanctions

#### Town of Greece decks the DA – overturns precedent and highly controversial

Hudson Nov 13 (David, Contributor @ ABA Journal, "Another Look at '10 Tortured Words': The establishment clause is still a contentious battle among the justices," 99 A.B.A.J. 15, lexis)

The establishment clause arguably has generated more controversy than any other phrase in the First Amendment--or perhaps even in the rest of the Bill of Rights. As a result, the U.S. Supreme Court's church-state jurisprudence is labyrinthine and complex. In 2011, Justice Clarence Thomas bluntly declared establishment clause law to be "in shambles." Designed to provide a degree of separation between church and state, the clause has generated a litany of 5-4 or 6-3 Supreme Court decisions since the late 1940s.¶ Nevertheless, the Supreme Court once again will wade into the rocky waters of the establishment clause Nov. 6 when it hears oral arguments in Town of Greece v. Galloway. The court will determine whether a New York town's practice of having prayer before town board meetings violates the establishment clause. For years the town of Greece, near Rochester, began town meetings with a moment of silence. But in 1999, the town began offering clergy-led prayer. The clergy were almost always of the Christian faith.¶ Two town residents, Susan Galloway and Linda Stephens, complained to town officials about the practice in September 2007. The town continued the prayer practice but expanded the range of prayer givers to include a Wiccan priestess, a chairman of the local Baha'i congregation and a lay Jewish man. But the vast majority of the prayers were Christian.¶ Galloway and Stephens sued in federal district court in February 2008, contending the prayer practice affiliated the town with Christianity and promoted sectarian beliefs. A federal district court dismissed the plaintiffs' claims in August 2010, writing that "the town's willingness to rotate the prayer opportunity amongst various denominations, each with their own particular beliefs, belies any attempt to proselytize or advance any one, or to disparage any other, faith or belief."¶ However, in May 2012 a three-judge panel of the 2nd U.S. Circuit Court of Appeals at New York City unanimously reversed the decision. "We conclude, on the record before us, that the town's practice must be viewed as an endorsement of a particular religious viewpoint," wrote Appellate Judge Guido Calabresi for the panel. "We conclude that an objective, reasonable observer would believe that the town's prayer practice had the effect of affiliating the town with Christianity."¶ ¶ NEW GROUND FOR SOME¶ Town of Greece represents the first opportunity for several justices to address an establishment clause case. Neither Chief Justice John G. Roberts Jr. nor Justices Elena Kagan, Sonia Sotomayor or Samuel A. Alito Jr. were on the court for the last major establishment clause cases, Van Orden v. Perry and McCreary County v. ACLU. Those cases, on displaying the Ten Commandments on municipal grounds, were decided in 2005.¶ "It is hard to anticipate the breakdown of the court's ruling since many members of the current court have not had a chance to opine on an establishment clause case involving something like legislative prayer," says Luke Goodrich, deputy general counsel for the conservative Becket Fund for Religious Liberty.¶ The case relies on the Supreme Court's 1983 decision in Marsh v. Chambers, in which the high court upheld the Nebraska legislature's policy of beginning legislative sessions with chaplain-led prayer. "The opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country," wrote Chief Justice Warren Burger for the majority.¶ "This is a very different factual situation than Marsh, where it was one minister delivering nonsectarian prayers," says First Amendment expert Erwin Chemerinsky, dean of the University of California at Irvine School of Law. "Here, the town invited ministers who routinely gave prayers that were explicitly Christian. Marsh does not permit this; I always read Marsh as permitting nonsectarian prayers. That is not this case. Virtually every prayer had been delivered by a Christian minister, and the prayers usually had an explicit Christian content."¶ Jeremy Learning, director of communications at the progressive American Constitution Society, agrees with Chemerinsky's assessment. "The town of Greece's policy on prayer at its public meetings was carried out in a way that clearly was all about Christian prayer," he says. "Judge Calabresi noted there was nothing neutral about the town officials' preference for invocations--they were all practically Christian."¶ Instead of Marsh, respondents Galloway and Stephens would prefer to use a different establishment clause test, such as the endorsement test, which asks whether a reasonable observer familiar with the history of the town board's prayer practice would view the town as impermissibly endorsing Christianity.¶ However, other experts view the case much differently. "The 2nd Circuit in this case seemed clearly hostile to the idea of legislative prayer," says Goodrich of the Becket Fund, which filed an amicus brief in support of the town. "The court's decision did not provide clear guidance for towns and cities. If the Supreme Court adopted a rationale like the 2nd Circuit, it would be very damaging to religious freedom."¶ Another key question is what the word affiliate means in Calabresi's statement that prayer practice affiliates the town with Christianity, says John W. Whitehead, founder and president of the Rutherford Institute, a Charlottesville, Va.-based group that provides legal services in the defense of religious and civil liberties and that also filed an amicus brief in support of the town. "I agree that the government should not promote a particular religion, but the facts in this case do not indicate that occurred."¶ He adds, "I think there is a good chance that the U.S. Supreme Court will rule in favor of the town in this case unless the justices just reverse precedent. If the court follows Marsh, the town's practice will be upheld."¶ ¶ BIG CHANGE POSSIBLE¶ The court could also speak more broadly and shape its establishment clause jurisprudence quite differently.¶ "I think that there are five votes on the current court to change the law of the establishment clause," Chemerinsky says. "Town of Greece and its amici are using this case as the vehicle for urging the court to do so. I am very concerned that there are five votes to shift to the 'coercion test'--that the government violates the establishment clause only if it coerces religious participation."¶ Goodrich hopes the court will use the case as a vehicle to expand the role of history and tradition in establishment clause cases, rather than use it as a test that asks whether a reasonable observer would find that a town endorsed or affiliated itself with a particular religion.¶ At the founding, he says, establishment of religion consisted of whether the government would financially support the church, control its doctrine and personnel, coerce religious beliefs and practices, and assign its important civil functions.¶ "Because legislative prayer does not fall within any of these categories, it is not an establishment of religion," Goodrich says. "By basing its decision on the historical meaning of the establishment clause, rather than the endorsement test, the Supreme Court would place its church-state jurisprudence on much firmer legal grounds, and would give badly needed guidance to the lower courts."¶ But Leaming of the American Constitution Society wonders why the Supreme Court decided to hear this case. "Was it to uphold Judge Calabresi's decision on a New York town's prayer policy or slightly tweak it? I would guess not. I think instead you may have a chief justice who sees enough votes to change federal court precedent on prayer or religious activity in the public square."¶ He adds that "the Roberts court is a radically right-wing court and has shown little concern with tossing precedent aside in numerous areas, such as First Amendment jurisprudence. So at the end of the day, I think we are looking at a disappointment for those who support a sound separation between government and religion. It could be a decision that redefines neutrality or at least broadens it a bit, to find other types of religious expression in the public square, and in particular at government functions, to be innocuous expressions or nods to majority whims or tastes."

Chemerinsky = Dean @ UC-Irvine School of Law

#### Obama is already spending PC on ending indefinite detention – state of the union

Gerstein 1/28 [,Josh. White House reporter for POLITICO, specializing in legal and national security issues. “State of the Union Guantanamo Bay Prison” January 28, 2014. http://www.politico.com/story/2014/01/state-of-the-union-guantanamo-bay-prison-102765.html

President Barack Obama used his State of the Union address Tuesday to put new urgency behind his drive to close the Guantanamo Bay prison, raising the issue before a joint session of Congress for the first time in nearly five years. “With the Afghan war ending, this needs to be the year Congress lifts the remaining restrictions on detainee transfers and we close the prison at Guantanamo Bay – because we counter terrorism not just through intelligence and military action, but by remaining true to our Constitutional ideals, and setting an example for the rest of the world,” Obama was to say, according to his prepared remarks. His high-profile mention of the issue was notable not just because he did not bring up the issue during his four previous State of the Union addresses, but because any discussion of the subject is a reminder of one of the most obvious broken promises of Obama’s early presidency: his vow to close the prison within his first year in office. “Guantanamo will be closed no later than one year from now,” Obama declared as he signed an executive order in the Oval Office on the subject on the first full day of his presidency. Obama never made that one-year pledge in front of Congress, but did speak in his February 2009 speech there — one not considered a State of the Union — of having ordered the closing of the prison. The president announced the plan to close the prison in a year confidently and with little controversy, but essentially abandoned it after lawmakers put up resistance to bringing detainees to the U.S and White House aides decided to focus on other priorities like health care reform and the sluggish economy. During his first term, Obama grudgingly signed a series of bills containing language making it virtually impossible to move detainees from Guantanamo to the U.S. and making it difficult to transfer detainees to other countries without extraordinary confidence they would not later engage in terrorism. This essentially stalled the closure process. However, late last year, Congress passed a defense bill that slightly eased the transfer restrictions. The effort to shrink Gitmo’s ranks has also gained a small amount of momentum in recent months, with eight prisoners sent home or elsewhere abroad since August. Obama’s comments Tuesday were in line with those of some legal scholars, who’ve argued that the legal basis for holding the men at Guantanamo will erode or disappear after the U.S. is no longer involved in active combat in Afghanistan —something the president has pledged to bring to an end this year. Courts have upheld the detentions at Guantanamo under the Authorization for Use of Military Force passed by Congress three days after the Sept. 11, 2001, terrorist attacks. That resolution refers to the “nations, organizations, or persons he determines planned, authorized, committed, or aided” those strikes.

#### No strikes

**Rubin, ‘12** – professor at the Interdisciplinary Center in Herzliya, Israel, the Director of the Global Research and International Affairs (GLORIA) Center, and a Senior Fellow at the International Policy Institute for Counterterrorism (Barry, “[Israel Isn’t Going to Attack Iran and Neither Will the United States](http://pjmedia.com/barryrubin/2012/01/26/israel-is-not-about-to-attack-iran-and-neither-is-the-united-states-get-used-to-it/).” http://pjmedia.com/barryrubin/2012/01/26/israel-is-not-about-to-attack-iran-and-neither-is-the-united-states-get-used-to-it/)

The radio superhero The Shadow had the power to “cloud men’s minds.” But nothing clouds men’s minds like anything that has to do with Jews or Israel. This year’s variation on that theme is the idea that Israel is about to attack Iran. Such a claim repeatedly appears in the media. Some have criticized Israel for attacking Iran and turning the Middle East into a cauldron of turmoil (not as if the region needs any help in that department) despite the fact that it hasn’t even happened. On the surface, of course, there is apparent evidence for such a thesis. Israel has talked about attacking Iran and one can make a case for such an operation. Yet any serious consideration of this scenario — based on actual research and real analysis rather than what the uninformed assemble in their own heads or Israeli leaders sending a message to create a situation where an attack isn’t necessary — is this: It isn’t going to happen. Indeed, the main leak from the Israeli government, by an ex-intelligence official who hates Prime Minister Benjamin Netanyahu, has been that the Israeli government already decided not to attack Iran. He says that he worries this might change in the future but there’s no hint that this has happened or will happen. Defense Minister Ehud Barak has publicly denied plans for an imminent attack as have other senior government officials. Of course, one might joke that the fact that Israeli leaders talk about attacking Iran is the biggest proof that they aren’t about to do it. But Israel, like other countries, should be subject to rational analysis. Articles written by others are being spun as saying Israel is going to attack when that’s not what they are saying. I stand by my analysis and before December 31 we will see who was right. I’m not at all worried about stating very clearly that Israel is not going to go to war with Iran. So why are Israelis talking about a potential attack on Iran’s nuclear facilities? Because that’s a good way – indeed, the only way Israel has — to pressure Western countries to work harder on the issue, to increase sanctions and diplomatic efforts. If one believes that somehow pushing Tehran into slowing down or stopping its nuclear weapons drive is the only alternative to war, that greatly concentrates policymakers’ minds. Personally, I don’t participate — consciously or as an instrument — in disinformation campaigns, even if they are for a good cause. Regarding [Ronen Bergman’s article in the New York Times](http://www.nytimes.com/2012/01/29/magazine/will-israel-attack-iran.html?pagewanted=all), I think the answer is simple: Israeli leaders are not announcing that they are about to attack Iran. They are sending a message that the United States and Europe should act more decisively so that Israel does not feel the need to attack Iran in the future. That is a debate that can be held but it does not deal with a different issue: Is Israel about to attack Iran? The answer is “no.”

OR

#### No internal link – no risk of Iranian breakout proliferation – they lack the capability and cash

Lambers 14 (William Lambers, graduate of the College of Mount St. Joseph in Ohio, writer for The Huffington Post, “Nuclear Peace Emerging in the Middle East,” 1-2-14, http://www.huffingtonpost.com/william-lambers/nuclear-peace-middle-east\_b\_4485847.html)

Last year ended with some momentum toward ending the standoff over Iran's nuclear program. If a comprehensive agreement can be forged this year, it will be a major step toward freeing the world of the costly and dangerous burden of nuclear weapons. Iran has suffered from sanctions for failing to live up to obligations under the Nuclear Non-Proliferation Treaty. A report from the International Federation of Human Rights stated the consequences for the Iranian people: "Unemployment is on the rise, inflation is at unprecedented levels and most people have to combine several jobs because the minimum wage is insufficient to counterbalance inflation. Iran's population is experiencing an increasing income gap between rich and poor." Iran cannot afford to be diverting precious resources to the pursuit of nuclear weapons. As President Obama said, "Iran must know that security and prosperity will never come through the pursuit of nuclear weapons -- it must be reached through fully verifiable agreements that make Iran's pursuit of nuclear weapons impossible."

#### No link – no ev about the aff

#### Aff allows Obama to shift blame onto the court

Whittington 5 (Keith E., Cromwell Professor of Politics – Princeton University, ““Interpose Your Friendly Hand”: Political Supports for the Exercise of Judicial Review by the United States Supreme Court”, American Political Science Review, 99(4), November, p. 585, 591-592)

Political leaders in such a situation will have reason to support or, at minimum, tolerate the active exercise of judicial review. In the American context, the presidency is a particularly useful site for locating such behavior. The Constitution gives the president a powerful role in selecting and speaking to federal judges. As national party leaders, presidents and presidential candidates are both conscious of the fragmented nature of American political parties and sensitive to policy goals that will not be shared by all of the president’s putative partisan allies in Congress. We would expect political support for judicial review to make itself apparent in any of four fields of activity: (1) in the selection of “activist” judges, (2) in the encouragement of specific judicial action consistent with the political needs of coalition leaders, (3) in the congenial reception of judicial action after it has been taken, and (4) in the public expression of generalized support for judicial supremacy in the articulation of constitutional commitments. Although it might sometimes be the case that judges and elected officials act in more-or-less explicit concert to shift the politically appropriate decisions into the judicial arena for resolution, it is also the case that judges might act independently of elected officials but nonetheless in ways that elected officials find congenial to their own interests and are willing and able to accommodate. Although Attorney General Richard Olney and perhaps President Grover Cleveland thought the 1894 federal income tax was politically unwise and socially unjust, they did not necessarily therefore think judicial intervention was appropriate in the case considered in more detail later (Eggert 1974, 101– 14). If a majority of the justices and Cleveland-allies in and around the administration had more serious doubts about the constitutionality of the tax, however, the White House would hardly feel aggrieved. We should be equally interested in how judges might exploit the political space open to them to render controversial decisions and in how elected officials might anticipate the utility of future acts of judicial review to their own interests.

[CONTINUES]

There are some issues that politicians cannot easily handle. For individual legislators, their constituents may be sharply divided on a given issue or overwhelmingly hostile to a policy that the legislator would nonetheless like to see adopted. Party leaders, including presidents and legislative leaders, must similarly sometimes manage deeply divided or cross-pressured coalitions. When faced with such issues, elected officials may actively seek to turn over controversial political questions to the courts so as to circumvent a paralyzed legislature and avoid the political fallout that would come with taking direct action themselves. As Mark Graber (1993) has detailed in cases such as slavery and abortion, elected officials may prefer judicial resolution of disruptive political issues to direct legislative action, especially when the courts are believed to be sympathetic to the politician’s own substantive preferences but even when the attitude of the courts is uncertain or unfavorable (see also, Lovell 2003). Even when politicians do not invite judicial intervention, strategically minded courts will take into account not only the policy preferences of well-positioned policymakers but also the willingness of those potential policymakers to act if doing so means that they must assume responsibility for policy outcomes. For cross-pressured politicians and coalition leaders, shifting blame for controversial decisions to the Court and obscuring their own relationship to those decisions may preserve electoral support and coalition unity without threatening active judicial review (Arnold 1990; Fiorina 1986; Weaver 1986). The conditions for the exercise of judicial review may be relatively favorable when judicial invalidations of legislative policy can be managed to the electoral benefit of most legislators. In the cases considered previously, fractious coalitions produced legislation that presidents and party leaders deplored but were unwilling to block. Divisions within the governing coalition can also prevent legislative action that political leaders want taken, as illustrated in the following case.

#### Obama already won – Iran sanctions aren’t a thing, AIPAC and bill supporters threw in the towel

Parsi 2/19/14 (Trita, founder and president of the National Iranian American Council and an expert on US-Iranian relations, Iranian politics, and the balance of power in the Middle East., "The Illusion of AIPAC’s Invincibility," http://www.fairobserver.com/article/illusion-aipac-invincibility-52678)

The defeat of the American Israel Public Affairs Committee's (AIPAC) ill-advised push for new sanctions on Iran in the midst of successful negotiations is nothing short of historic. The powerful and hawkish pro-Israeli lobby's defeats are rare and seldom public. But in the last year, it has suffered three major public setbacks, of which the sanctions defeat is the most important one.¶ Defeats?¶ AIPAC's first defeat was over the nomination of Senator Chuck Hagel for secretary of defense. In spite of a major campaign defaming Hagel, even accusing him of anti-Semitism, his nomination won approval in the Senate.¶ The second was over President Barack Obama's push for military action against Syria. AIPAC announced that it would send hundreds of citizen lobbyists to the Hill to help secure approval for authorization of the use of force. But AIPAC and Obama were met with stiff resistance.¶ The American people quickly mobilized and ferociously opposed the idea of yet another war in the Middle East. By some accounts, AIPAC failed to secure the support of a single member of Congress.¶ The third defeat was over new Iran sanctions. Now, AIPAC and the president were on opposite sides. The interim nuclear agreements from last November explicitly stated that no new sanctions could be imposed.¶ Yet backed by Senators Mark Kirk and Robert Menendez, AIPAC pushed for new sanctions, arguing that it would enhance America's negotiating position. The White House strongly disagreed, fearing that new sanctions would cause the collapse of diplomacy and make America look like the intransigent party.¶ The international coalition the president had carefully put together against Iran would fall apart, and the US and Iran would once again find themselves on a path towards military confrontation.¶ But AIPAC insisted. Its immense lobbying activities secured 59 cosponsors for the bill, including 16 Democrats. Its aim was first to reach over 60 cosponsors to force the bill to the floor, and then more than 67 cosponsors to make it veto proof.¶ But 59 cosponsors turned out to be a magical ceiling AIPAC could not break through. Supporters of diplomacy put up an impressive defense of the negotiations policy, building both from years of careful development of a pro-diplomacy constituency and coalition machinery as well as the grassroots muscle of more recent additions to the pro-diplomacy camp. (To get a hint of who these forces are, see the coalition letter against new sanctions signed by more than 70 organizations and organized by Win Without War, FCNL and the author's own organization, the National Iranian American Council.)¶ The watershed moment came when the White House raised the temperature and called out the sanctions supporters for increasing the likelihood of war.¶ "If certain members of Congress want the United States to take military action, they should be up front with the American public and say so," Bernadette Meehan, National Security Council spokeswoman, said in a statement. "Otherwise, it's not clear why any member of Congress would support a bill that possibly closes the door on diplomacy and makes it more likely that the United States will have to choose between military options or allowing Iran's nuclear program to proceed."¶ The prospect of coming across as "warmongers" incensed AIPAC and its supporters. But the White House knew exactly what it was doing. It was tapping into the only force that could stop AIPAC – the war-wariness of the American public.¶ The very same energy among the public that put a stop to the White House's war plans for Syria, would now be used to put a stop to AIPAC's efforts to sabotage the last best chance to avoid war with Iran.¶ AIPAC on the Defensive¶ The angry reaction of the sanctions supporters only confirmed the effectiveness of the White House's strategy. AIPAC was put on the defensive and it could never explain how imposing diplomacy-killing sanctions were good for the negotiations. Chemi Shalev of the Israeli daily Haaretz put it best:¶ "Some of [AIPAC's] supporters claimed that it was meant to strengthen Obama's hand in the nuclear negotiations with Iran, when it was clear that they meant just the opposite: to weaken the president and to sabotage the talks. They couldn't speak this truth outright, so they surrounded it, as Churchill once said, with a bodyguard of lies."¶ AIPAC finally threw in the towel on new sanctions on February 6. The defeat was an undeniable fact.

#### Iran talks will inevitably fail – even former Obama officials concede

Mideast Mirror 2/19/14 ("Clouds over Vienna," lexis)

TRUTH BE TOLD: Writing in Israel Hayom, Boaz Bismuth says that the chances of the talks between the six world powers and Iran ending in success are very slim indeed, given that both sides are benefiting from this diplomatic ceasefire.¶ "In December, U.S. President Barack Obama said there was a 50-50 chance that Iran and the world powers would reach a deal on the Islamic Republic's nuclear program - despite the euphoria that engulfed the entire world (including Obama's own administration) after the interim agreement was inked in Geneva.¶ The negotiations between Iran and the rest of the world resumed yesterday in Vienna and this time the sides are talking about a permanent deal. It seems that Obama was being extremely optimistic when he gave the talks a 50 percent chance of success. That is certainly the case if we are to believe Gary Samore, who served as the White House Coordinator for Arms Control and Weapons of Mass Destruction (WMD) and was commonly referred to as the 'WMD czar.' Samore, who played a key role in the earlier talks with Tehran, said in an interview with Jeffrey Goldberg in Bloomberg View, that the Iran nuclear talks have an almost zero chance of success. Of course, this is something that Jerusalem has been saying for months, if not years, but when such a pessimistic outlook comes from Israeli officials the international community has a tendency to write it off. Perhaps now the world will understand why Prime Minister Binyamin Netanyahu refused to join in the celebrations at the United Nations when Iranian President Hassan Rowhani launched his charm offensive.¶ Samore's interview just proves that the international community knows exactly what Iran wants - a nuclear bomb - but how everyone involved (Iran, the international community and even the Obama Administration) are playing for time. According to Samore, it's a 'classic truce' situation, with 'both sides benefiting from this period of diplomacy.' The goal is not to solve the problem, he says, but to postpone it until a later date. Iran and the world powers both pushed the 'Pause' button together. It's convenient for the international community and it's excellent for Iran.¶ At this rate, the Iranians could still reap the fruits - such as discussions with the United States about future cooperation, reviving their economy and a way out of their international isolation - without having to give up even a single centrifuge.¶ What Samore told Goldberg in the interview did not come as news to Israel, but the fact that he said them makes them even more important and even more worrying. The problem is that Samore is no longer on the White House payroll, having moved on to a position at Harvard.¶ And this is exactly the reason why Iran's Supreme Leader, Ayatollah Ali Khamenei, continued, on the eve of the resumption of the talks, to play down their importance and to claim that they would lead nowhere. And it is why Ali Larijani, the chairman of the Iranian parliament, called on the world powers not to make any fresh demands of Iran and not to ask for inspection of its ballistic missile project.¶ Given the predictions of Obama and Samore, I am surprised that bookmakers in London have not yet started offering odds on the nuclear talks' chances of success. Under these circumstances, they might be better off opening a line on the date that the Iranians will carry out their first test of a nuclear bomb."

#### Minimum wage push thumps the DA

Big News Networks 2/19/14 ("Higher wage will remove poverty but also hit jobs, says CBO report," lexis)

WASHINGTON - President Barak Obama's plan to increase the minimum wages to $10.10 per hour would benefit some families but it would come at the cost of some jobs for low wage workers, leading to rise in unemployment, the Congressional Budget Office has projected in a report released Tuesday.¶ "Increasing the minimum wage would have two principal effects on low-wage workers. Most of them would receive higher pay that would increase their family's income, and some of those families would see their income rise above the federal poverty threshold," the report states.¶ It however warns that "some jobs for low-wage workers would probably be eliminated, the income of most workers who became jobless would fall substantially, and the share of low-wage workers who were employed would probably fall slightly. "¶ Reigniting the debate over one of President Obama's top priorities this year, the report states that among those workers who will earn up to $10.10 under current law, mostabout 16.5 million, according to CBO's estimateswould have higher earnings during an average week in the second half of 2016 if the $10.10 option was implemented.¶ Buoyed by polls showing majority of Americans favor a hike in minimum wage, Obama has signed in favour of raising the minimum wage from the current $7.25 to $10.19 in a move to boost the stagnant wages of millions of low-income contract workers.¶ The increased earnings for low-wage workers resulting from the higher minimum wage would total $31 billion, by CBO's estimate.¶ However, those earnings would not go only to low-income families, because many low-wage workers are not members of low-income families. Just 19 percent of the $31 billion would accrue to families with earnings below the poverty threshold, whereas 29 percent would accrue to families earning more than three times the poverty threshold, CBO estimates.¶ Moreover, the increased earnings for some workers would be accompanied by reductions in real (inflation-adjusted) income for the people who became jobless because of the minimum-wage increase, for business owners, and for consumers facing higher prices. CBO examined family income overall and for various income groups, reaching the following conclusions (see the figure below):¶ The Obama administration has challenged the CBO's report countering it with the findings of a large group of private economists who saw little or no negative impact from a minimum wage hike.¶ White House Council of Economic Advisers Chairman Jason Furman said CBO's report failed to take into account that higher wages would incentivize workers to be more productive and reduce workers not turning up for work.¶ However Republicans in Congress and allies in the business community do not buy this argument stating that higher minimum wage would encourage employers to shed workers to help offset higher salaries.¶ The CBO report is another arsenal in their determination to fight the move ahead of the congressional elections in November.¶ They quickly seized on one of the findings in the CBO report: that raising the minimum wage in three annual steps to $10.10 an hour would result in about 500,000 jobs being lost by late 2016.¶ "With unemployment Americans' top concern, our focus should be creating, not destroying, jobs for those who need them most," said Brendan Buck, a spokesman for House of Representatives Speaker John Boehner, a Republican.

#### NSA reforms thump – already sparking intra-party and political fights

Sullivan and Peoples 2/19/14 (Eileen and Steve, Associated Press, "NSA program exposes divisions in both parties," lexis)

WASHINGTON (AP) - While some leading Democrats are reluctant to condemn the dragnet surveillance of Americans' phone records, the Republican Party has begun to embrace a libertarian shift opposing the spy agency's broad powers. But the lines are not drawn in the traditional way.¶ The Republican National Committee and civil libertarians like Kentucky Sen. Rand Paul have joined liberals like Massachusetts Sen. Elizabeth Warren on one side of the debate - a striking departure from the aggressive national security policies that have defined the Republican Party for generations.¶ On the other side, defending surveillance programs created under the Bush administration and continued under President Barack Obama, are Florida Republican Sen. Marco Rubio, Democratic former Secretary of State Hillary Rodham Clinton, and the House and Senate leadership of both parties.¶ As a result, the debate about whether to continue the National Security Agency's sweeping surveillance tactics has highlighted intraparty divisions that could transform the politics of national security. The split in each party could have practical and political consequences ahead of the 2014 midterm elections. There are already signs that the debate is seeping into the next presidential contest.¶ Speaking Tuesday to New Hampshire voters, Rep. Darrell Issa, R-Calif., cited the spy agency's surveillance methods as another example of broad overreach in what he called Obama's "imperial presidency." Issa called for reforms that would ensure American people are represented during secret court proceedings that decide the scope of the NSA surveillance. Obama has called for more oversight, too, and Issa stopped short of endorsing the plan to eliminate the bulk collection program.

#### Losers lose is wrong – Syria proves

Sargent 13 (Greg, 9/10/2013, Washington Post.com, “No, a loss on Syria would not destroy the Obama presidency,” Factiva))

Get ready for a lot more of this sort of thing, should Congress vote No on Syria strikes:¶ The fate of President Obama's second term hangs on his Tuesday speech to the nation about Syria.¶ This is a particularly cartoonish version of what much of the punditry will be like if Obama doesn't get his way from Congress, but make no mistake, the roar of such punditry will be deafening. Jonathan Bernstein offers a much needed corrective:¶ There's one permutation that absolutely, no question about it, would destroy the rest of Barack Obama's presidency is: a disastrous war. Ask Lyndon Johnson or George W. Bush. Or Harry Truman. Unending, seemingly pointless wars are the one sure way to ruin a presidency.¶ Now, I'm not saying that's in the cards; in fact, I don't think it is. I'm just saying: that's the kind of thing that really does matter a lot to presidencies. And if you do believe that the administration is going down a path that winds up there, or a path that has a high risk of winding up there, then you should be very worried about the health of this presidency.¶ If not? None of the other permutations here are anywhere close to that kind of threat to the Obama presidency. **Presidents lose key votes which are then mostly forgotten all the time. They pursue policies which poll badly, but are then mostly forgotten, all the time.**¶ Look, there is no question that **if Obama loses Syria vote**, the coverage will be absolutely merciless. But let's bring some perspective. The public will probably be relieved, and **eventually all the "Obama is a loser" talk will sink out of the headlines and be replaced by other big stories** with potentially serious ramifications for the country.¶ It's key to distinguish between two things here. One question is: How would a loss impact the credibility of the President and the United States with regard to upcoming foreign policy crises and confrontations? That's not the same as asking: How would a loss impact Obama's relations with Congress in upcoming domestic battles?¶ And on that latter score, there's a simple way to think about it: Look at what's ahead on the calendar. The two looming items are **the government shutdown and debt ceiling battles, and when it comes down to it, there's no reason to believe a loss on Syria would substantially alter the dynamics on either. Both are ultimately about whether House Republicans can resolve their own internal differences.**¶Will a Syria loss weaken Obama to the point where Republicans would be even more reluctant than they are now to reach a deal to continue funding the government? Maybe, but even if a shutdown did result, would a loss on Syria make it any easier for the GOP to dodge blame for it? It's hard to see how that work in the eyes of the public. Same with the debt limit. **Is the argument really going to be, See, Obama lost on Syria, so we're going to go even further in threatening to unleash economic havoc in order to defund Obamacare and/or force cuts to popular entitlements? There's just no reason why a Congressional vote against Syria strikes would make the "blame game" on these matters any easier for Republicans.**¶ **Is it possible that a loss on Syria will make Congressional Dems less willing to draw a hard line along with the president in these talks, making a cave to the GOP more likely? I doubt it.** It will still be in the interests of Congressional Dems to stand firm, because the bottom line remains the same: House Republicans face potentially unbridgeable differences over how far to push these confrontations, and a united Dem front exploits those divisions. Syria doesn't change any of that. If a short term deal on funding the government is reached, the prospects for a longer term deal to replace the sequester will be bleak, but they've been bleak for a long time. Syria will fade from public memory, leaving us stuck in the same stalemate -- the same war of attrition -- as before.¶ What about immigration? The chances of comprehensive reform passing the House have always been slim. Could a Syria loss make House Republicans even less likely to reach a deal? Maybe, but so what? Does anyone really imagine Latinos would see an Obama loss on Syria as a reason to somehow become less inclined to blame the GOP for killing reform? The House GOP's predicament on immigration will be unchanged.¶ **Whatever happens on Syria, and no matter how much "Obama is weak" punditry that results from it, all of the remaining battles will be just as perilous for the GOP as they appeared before the Syria debate heated up. Folks making the case that a Syria loss throws Obama's second term agenda into serious doubt -- as if Congressional intransigence were not already about as bad as it could possibly get -- need to explain what they really mean when they say that. It's not clear even they know.**

#### Not intrinsic – no reason a logical decision maker couldn’t do both

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## S

### Congress

#### Congress won’t circumvent - proposals always fail

Devins 6 (Neal, Goodrich Professor of Law and Professor of Government @ College of

William and Mary, "Should the Supreme Court Fear Congress?," http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1158&context=facpubs)

Over the past two years, Congress has considered proposals¶ to strip federal courts of jurisdiction over same-sex marriage,¶ 1 the Pledge of Allegiance, 2 judicial invocations of international¶ law,3 the public display of the Ten Commandments, 4 and¶ legal challenges filed by "enemy combatants."5 And while none¶ of these proposals were enacted,6 some of them were approved¶ by the House of Representatives. 7 More striking, Congress expressed¶ its disapproval of state court decision making in the¶ Terri Schiavo case by expanding federal court jurisdiction.8¶ Specifically, rather than accept state court findings that Terri¶ Schiavo, then in a persistent vegetative state,9 would rather die than be kept alive artificially, Congress asked the federal¶ courts to sort out whether the removal of a feeding tube violated¶ Ms. Schiavo's constitutional rights. 10¶ The specter of lawmakers expressing their disapproval of¶ court decision making through retaliatory legislation seems¶ more real today than it has since Congress pursued jurisdiction-¶ stripping measures against the Warren Court in the late¶ 1950s.11 In addition to jurisdiction-altering proposals and legislation,¶ Congress enacted legislation requiring that records be¶ kept of judges who made downward departures of Sentencing¶ Commission guidelines, 12 and debated the creation of an officer¶ of "inspector general" to monitor federal court decision making.¶ 13 Commenting on how this dramatic increase in the criticism¶ of judges has exacerbated "the strained relationship between¶ the Congress and the federal Judiciary," Chief Justice¶ William Rehnquist spoke, in January 2005, of his "hope that¶ the Supreme Court and all of our courts will continue to command¶ sufficient public respect to enable them to survive basic¶ attacks on the[ir] judicial independence." 14 Three months later,¶ Justice Antonin Scalia sounded a more ominous message. Responding¶ to Justice Stephen Breyer's claim that "the treasure"¶ of this country is that people who criticize the Court will still¶ follow its rulings, Scalia suggested that the Supreme Court¶ "has become a very political institution. And when that happens,¶ the people in a democracy will try to seize control of it."15¶ But should the Supreme Court fear Congress? In the pages¶ that follow, I will argue that the Court need not moderate its¶ decision making in anticipation of a political backlash by today's¶ Congress. To make this point, I will highlight differences¶ between today's Congress and the Congress that the Warren¶ Court confronted in the late 1950s and early 1960s. In the late¶ 1950s, Southerners (who opposed school desegregation) and¶ anti-Communist lawmakers formed a coalition in response to¶ Supreme Court rulings. These lawmakers truly wanted to undo¶ what the Court had done, and had very strong feelings about¶ Congress's power to independently interpret the Constitution. 16

## DA

### Ideology

#### Capital not key – all ideology

Levinson 10

[Sanford, W. St. John Garwood and W. St. John Garwood Centennial Chair in Law, University of Texas Law School; Professor, Department of Government, University of Texas at Austin; and Visiting Professor, Harvard Law School and Harvard Department of Government, Fall 2009, The Yale Law Journal Online February 7, 2010, Assessing the Supreme Court's Current Caseload: A Question of Law or Politics?, L/N]

Does/should the Court have a self-conscious sense of where it wants to lead the country, and work to achieve that goal? Robert McCloskey suggested as much in his widely used (and still in print, in an updated edition that I am responsible for) 1960 book The American Supreme Court. n7 In my 2005 revision of the book, n8 I suggested that McCloskey, who basically swooned over Marshall's cleverness in Marbury v. Madison n9 in achieving his political agenda -- both establishing judicial review and denouncing Thomas Jefferson -- without provoking an institutional crisis for the Court, would have embarrassing difficulty in not offering similar admiration for the Court's awful decision in Bush v. Gore. n10 There, after all, its five-Justice conservative Republican majority achieved what was surely one of its principal political goals: to place in the White House someone sure to nominate fellow conservatives to the federal bench. The opprobrium engendered among liberal law professors, pundits, and other observers who perhaps warrant Justice Holmes's famously dismissive phrase "puny anonymities" n11 might have been a relatively small price to pay. And, of course, many hard-core political scientists are satisfied to describe judges as nothing more than politicians in robes who [\*103] do nothing more than maximize their policy preferences. n12 From this perspective, there is nothing at all behaviorally anomalous about Bush v. Gore; it was simply a magnificently crude and obvious instance of "attitudinalism" in action (though, as my colleague Scot Powe has noted in conversation, it is hard to "code" the opinions in a politically plausible manner, given that the majority presents itself as vigorous defenders of equal voting rights, while the presumptively more liberal dissenters embrace the values of federalism). Inasmuch as George W. Bush received the imprimatur of the general electorate in 2004, whatever one thinks of the 2000 "election," one might argue that the Court did recognize the zeitgeist and made its own marginal contribution to making sure that the country would go in its preferred direction.

### Arctic

#### Zero chance of Arctic war---experts

Mahony 3/19 Honor, EU Observer, "Fear of Arctic conflict are 'overblown'", 2013, euobserver.com/foreign/119479

The Arctic has become a new frontier in international relations, but fear of potential conflict in the resource-rich region is overblown, say experts.¶ For long a mystery because of its general impenetrability, melting ice caps are revealing more and more of the Arctic region to scientists, researchers and industry.¶ Climate change experts can take a more precise look at a what global warming is doing to the planet, shipping trade routes once considered unthinkable are now possible, and governments and businesses are in thrall to the potential exploitation of coal, iron, rare earths and oil.¶ The interest is reflected in the growing list of those wanting to have a foot in the Arctic council, a forum of eight countries with territory in the polar region.¶ While the US, Denmark, Iceland, Finland, Norway, Sweden, Russia and Canada form the council, the EU commission, China, India, South Korea and Japan have all expressed an interest in having a permanent observer status.¶ "The Arctic has become a new meeting place for America, Europe and the Asia Pacific," says Damien Degeorges, founder of the Arctic Policy and Economic Forum.¶ During a recent conference on Arctic shipping routes in the European Parliament, Degeorges noted that "China has been the most active by far in the last years."¶ He points to its red-carpet treatment of politicians from Greenland, a territory that recently got full control over its wealth of natural resources. Bejing also cosied up to Iceland after the island's financial meltdown. The two undertook a joint expedition to the North Pole and the Chinese have the largest foreign embassy in Reykjavik.¶ Meanwhile, South Korea's president visited Greenland last year and shipping hubs like Singapore are holding Arctic conferences.¶ The interest is being spurred by melting icebergs.¶ Last year saw a record low of multi-year ice - permanent ice - in the polar sea. This means greater shipping and mineral exploitation potential. There were 37 transits of the North East Passage (NEP), running from the Atlantic to the Pacific along the top of Russia, in 2011. This rose to 47 in 2012.¶ For a ship travelling from the Netherlands to China, the route around 40 percent shorter than using the traditional Suez Canal. A huge saving for China, where 50 percent of its GDP is connected to shipping. Russia is also keen to exploit the route as the rise in temperatures is melting the permafrost in its northern territory, playing havoc with its roads and railways.¶ According to Jan Fritz Hansen, deputy director of the Danish shipowners’ association, the real breakthrough will come when there is a cross polar route. At the moment there are are two options - the North East Passge for which Russia asks high fees for transiting ships - or the much-less developed North West Passage along Canada.¶ His chief concern is that "trade up there is free. We don't want protectionism. Everyone should be allowed to compete up there."¶ And he believes the biggest story of the Arctic is not how it is traversed but what will be taken out of it. According to the US Geological Survey (2009), the Arctic holds 13 percent of undiscovered oil and 30 percent of undiscovered gas supplies.¶ Greenland is already at the centre of political tussle between the EU and China over future exploitation of its rare earths - used in a range of technologies such as hybrid cars or smart phones.¶ "The biggest adventure will be the Arctic destination. There is a lot of valuable goods that should be taken out of nature up there," he said.¶ This resource potential - although tempered by the fact that much of it is not economically viable to exploit - has led to fears that the Arctic region is ripe for conflict.¶ But this is nonsense, says Nil Wang, a former Danish admiral and Arctic expert.¶ Most resources have an owner¶ "There is a general public perception that the Arctic region holds great potential for conflict because it is an ungoverned region where all these resources are waiting to be picked up by the one who gets there first. That is completely false," he said.¶ He notes that it is an "extremely well-regulated region," with international rules saying that coastal states have territorial jurisdiction up to 12 nautical miles off their coast.¶ On top of that is a further 200 nautical miles of exclusive economic zone "where you own ev

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ery value in the water and under the seabed."¶ "Up to 97 percent of energy resources is actually belonging to someone already," says Wang.¶ He suggest the actors in the region all want to create a business environment, which requires stable politics and security.

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### 1AR Israel Strikes

#### Domestic politics

Zachary Keck, 11/28/2013. Associate editor of [The Diplomat](http://thediplomat.com/). “Five Reasons Israel Won't Attack Iran,” The National Interest, http://server1.nationalinterest.org/commentary/five-reasons-israel-wont-attack-iran-9469?page=2.

4. Israel’s Veto Players

Although Netanyahu may be ready to attack Iran’s nuclear facilities, he operates within a democracy with a strong elite structure, particularly in the field of national security. It seems unlikely that he would have enough elite support for him to seriously consider such a daring and risky operation.

For one thing, Israel has strong institutional checks on using military force. As then vice prime minister and current defense minister Moshe Yaalon[explained last year](http://www.reuters.com/article/2012/02/06/us-israel-iran-decision-idUSTRE8151JU20120206): “In the State of Israel, any process of a military operation, and any military move, undergoes the approval of the security cabinet and in certain cases, the full cabinet… the decision is not made by two people, nor three, nor eight.” It’s far from clear Netanyahu, a fairly divisive figure in Israeli politics, could gain this support. In fact, Menachem Begin struggled to gain sufficient support for the 1981 attack on Iraq even though Baghdad presented a more clear and present danger to Israel than Iran does today.

What is clearer is that Netanyahu lacks the support of much of Israel’s highly respected national security establishment. Many former top intelligence and military officials[have spoken](http://thinkprogress.org/security/2012/05/31/492897/report-majority-of-israeli-defense-chiefs-oppose-attack-on-iran/) out publicly against Netanyahu’s hardline Iran policy, with at least one of them questioning whether Iran is actually seeking a nuclear weapon. Another former chief of staff of the Israeli Defense Forces [told](http://www.independent.co.uk/news/world/middle-east/israels-military-leaders-warn-against-iran-attack-6298102.html) The Independent that, “It is quite clear that much if not all of the IDF [Israeli Defence Forces] leadership do not support military action at this point…. In the past the advice of the head of the IDF and the head of Mossad had led to military action being stopped.”

### 1AR Courts Shield

#### Solves controversy

Litwick and Schragger 10/8/06(Dahlia and Richard, Legal Affairs Correspondent @ Slate Magazine + Prof of Law @ UVA, Wash Post, lexis)

Criticizing the court for overturning the laws passed by Congress -- as Specter did repeatedly during the confirmation hearings for John G. Roberts Jr. and Samuel A. Alito Jr. -- is fair . But crying "judicial activism" at the same time you rely on the courts for political cover when you're too timid to defy the electorate -- or your president -- is hypocritical . Why should the Supreme Court defer to a Congress that adopts laws it suspects are unconstitutional? And what should we think of those elected officials who would take so cavalier an attitude toward their oath to uphold the Constitution? Members of Congress take the same oath as Supreme Court justices do, after all. And Congress regularly asserts its institutional capacity to interpret the Constitution -- to act on an equal footing with the Supreme Court in deciding the constitutionality of a law. Moreover, the justices are supposed to assume that Congress never intentionally adopts an unconstitutional law, and you need attend oral argument for only a few moments to know how seriously they take that charge. So how is it possible that an oath-bound member of Congress can support a law that he or she believes violates the Constitution? Congress gives in to the temptation of passing bills that are of questionable constitutionality because it's easy and convenient . Political expediency seems to trump constitutional principle. The elected branches need never defy the popular will if the courts are available to do so instead. And those members of Congress who insist that the courts should stay out of Congress's business should recognize Congress for the enabler it has become. It's a two-way street: The courts work with what Congress sends them and sometimes Congress purposely sends them unconstitutional legislation, because it is politically expedient to do so. That's why lawmakers who know that legislation to ban flag burning violates the First Amendment regularly trot it out anyway. It is an easy way to mollify voters, while letting some other branch grapple with what the Constitution requires. As a bonus , lawmakers then can blame the courts for usurping the will of the electorate, turning an ordinary political pander into an Olympic-worthy double-pander. So instead of pointing fingers at the court, let's call the whole relationship what it is: dysfunctional . For all its railing against the court, Congress sometimes relies on it to achieve substantive aims. The court, sheltered from political fallout, can sometimes afford to be brave when Congress cannot . But this suggests that cries of "judicial activism" from the Congress should be suspect. As is the case in any dysfunctional relationship, Congress has a vested interest in being upheld when it wants to be, and struck down when it needs to be bailed out.

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#### Fight is over - the sanction bill is dead

Rosenberg 2/14/14 (MJ, Political Analyst @ Washington Spectator, "AIPAC: Stuck With the GOP," http://www.huffingtonpost.com/mj-rosenberg/aipac-iran-sanctions-bill\_b\_4789209.html)

Suddenly AIPAC is a lobby without a cause.¶ In three weeks thousands of delegates from all over the country will descend on the Washington, D.C. convention center to get their marching orders but, as of today, AIPAC hasn't even drafted them.¶ That is because the centerpiece of the conference was to be dispatching its people to Capitol Hill to lobby for the Menendez-Kirk Iran sanctions bill. The lobby had anticipated that its bill would still be very much alive in March. In fact, it would be at that sweet spot, with hundreds of co-sponsors but not quite enough to pass over President Obama's veto. That would allow the lobby's conference program to write itself. It would be Iran hysteria followed by visits to every single Member of Congress to warn that stopping Iran was a matter of life and death for Israel and that a legislators failure to support the sanctions bill might well be a matter of political life and death for them.¶ The "life and death" theme would, of course, be brought to a crescendo by the appearance, in person, of Prime Minister Binyamin Netanyahu who would offer an encore to his popular "this is 1942 and Iran is Nazi Germany" mantra which has brought AIPAC audiences to their feet for a decade.¶ However, due to the combined efforts of President Obama and Senate Majority Leader Harry Reid, the AIPAC bill is dead. Once the president made clear in his State Of The Union that AIPAC's efforts were not in "our national interests," the bill lost its Democratic supporters by the drove, leaving AIPAC alone out there with just right-wing Republicans and some powerless House Democrats.