# 1AC

### 1AC – Terror

**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**

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

#### Extinction – 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

####  Failure to judicially enforce treaties has undermined US human rights credibility – detention is a key test case for US compliance with treaty law

Gruber 7 (Law Prof-Florida International, The Intersection of United States Constitutional Law with International and Foreign Law: Sending the Self-Execution Doctrine to the Executioner, 3 FIU L. Rev. 57, Fall, Lexis)

Consequently, it is fairly evident that the new anti-international self-execution rules were nearly exclusively a creation of lower courts. In the last several years, the topic of hostility to treaty law has filtered out of the courts and become more than merely a topic for academic rumination. As soon as the Guantanamo detentions came to light, the Geneva Conventions became the topic of popular discussion. n185 President Bush quickly set forth the conclusory legal claim that the Geneva Conventions are non-self-executing, n186 andin the world opinion, the UnitedStatesbecame synonymous with disrespect for treaty law. n187 Eventually, two terrorism cases made their way through the lower courts challenging President Bush's program of military detention and trial for terrorism suspects. In Hamdi, an American citizen designated as an enemy combatant challenged his classification and continued military detention as, among other things, in violation of the Geneva Conventions. n188 In Hamdan, a foreign national and Guantanamo detainee sought to have the Supreme Court declare President's Bush's military tribunals illegal, asserting they violated domestic law and the Geneva Conventions. n189 The federal courts of appeals' analyses of the detainees' Geneva Convention claims reflect unequivocally a fervent embrace of the modern anti-internationalist approach to treaty self-execution. In Hamdi, the Fourth Circuit summarily dismissed Hamdi's Geneva claims on the ground that the Conventions neither contain an explicit private right of action, nor otherwise evidence intent to provide one. n190 Yet Hamdi had asserted the federal habeas corpus statute, which allows a litigant to challenge custody in violation of the laws and treaties of the United States, provided him a legal mechanism for suit. n191 To this, the Fourth Circuit responded categorically that the treaty could not be enforced through any domestic legal mechanism because it was intended to be vindicated only through international pro [\*88] cedures. n192 Here, the court assumed, without explanation, that the existence of some international procedure provisions within the Conventions necessarily precluded domestic enforcement. n193 In the end, the court's main legal stance was to mistake the question of self-execution with the question of justiciability, n194 and find the Geneva Conventions unenforceable merely for lack of an internal private right of action. The D.C. Circuit in Hamdan did much better on this issue, recognizing, "The availability of habeas may obviate a petitioner's need to rely on a private right of action." n195 In other respects, however, the decision of the D.C. Circuit in Hamdan elevates treaty law antipathy to new heights. The D.C. Circuit openly reversed the presumption that treaties are the supreme law of the land, through a patent misapplication, bordering on bad faith, of the holding in the Head Money Cases. n196 The court of appeals quoted Head Money for the proposition that "as a general matter, a 'treaty is primarily a compact between independent nations,' and 'depends for the enforcement of its provisions on the interest and honor of the governments which are parties to it.'" n197 Yet conspicuously absent from the D.C. Circuit's holding is the portion of Head Money that states that a treaty may "prescribe a rule by which the rights of the private citizen or subject may be determined," and a "court resorts to the treaty for a rule of decision for the case before it as it would to a statute." n198 The selective quotation of Head Money to create a presumption that treaties can only be enforced through international procedures is plainly unjustified. Relying on its created presumption that treaties do not affect individuals, the court of appeals did not bother to discuss the fact that the Geneva Conventions clearly obligate signatories to treat individual captures in a specific manner. n199 Rather, the Court [\*89] dismissed any domestic enforceability argument on the inapposite ground that Geneva contains provisions setting forth international procedures to resolve claims by signatories against fellow signatories. n200 However, this is clearly neither the principle set forth in Head Money, nor one from any other Supreme Court case. Head Money makes clear that so long as the Geneva Conventions create rights "of a nature to be enforced in a court of justice," they are so enforceable. n201 The existence of international procedures does not control the question. Lurking within the courts of appeals' analyses is the modern intent thesis. The courts interpret the existence of international procedures as an indication that treaty makers intended for the Geneva Conventions to be non-self-executing. The D.C Circuit in Hamdan asserts that it is constrained to this analysis by a footnote in the Supreme Court decision in the World War II case Johnson v. Eisentrager, which states, "It is . . . the obvious scheme of the [Geneva Conventions] that responsibility for observance and enforcement of these rights is upon political and military authorities." n202 The Eisentrager opinion, however, substantively resolved the treaty claims at issue, and the dicta on which the D.C. Circuit relies is unexplained and troubling. n203 The provisions for international procedures in the Geneva Conventions regard disputes between nations over treaty interpretation and inter-sovereign allegations of violations. n204 The Conventions simply do not say one way or another how individual claims should be processed. There is plainly no language in the treaty indicating that the rights set forth are not domestically enforceable. n205 Moreover, there is a good explanation for why the Conventions would remain silent about domestic enforcement mechanisms - the signatories had differing legal systems and varied approaches to domestic treaty enforcement. n206 This does not mean, however, that the Convention negotiators intended to preclude domestic enforcement in every signatory country. n207 Consequently, the existence of international [\*90] procedures does not demonstrate, as a matter of plain language or drafter intent, that domestic enforceability is precluded. Moreover, such a conclusion appears unequivocally at odds with the Supreme Court's holding in Cook. n208 In Hamdi and Hamdan, the Supreme Court had the opportunity to reaffirm the supreme status of treaty law, clarify the distinction between self-execution and justiciability, and send a message to the world that the United States does take international law seriously. n209 Unfortunately, the Court took pains to avoid these issues, finding by hook or crook, only domestic remedies for the detainees. International law played a small but interesting role in Hamdi. Writing for the plurality, Justice O'Connor held that President Bush's military detention of alleged enemy combatants, including citizens, had been authorized by Congress' Joint Resolution Authorizing the Use of Military Force (AUMF), which simply provides that "the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001." n210 Although the AUMF says absolutely nothing about military detention of citizens, the Court concluded that such action was part of using "necessary and appropriate" military force. n211 As support, the Court looked to law of war treatises, previous cases, and international instruments, including the Geneva Conventions. n212 Thus, the Geneva Conventions were used, not to limit the President's use of war power, but to help justify it. n213 Hamdi only limits Presidential discretion by requiring [\*91] that the procedure used to classify citizens as enemy combatants complies with constitutional due process. n214 The Court determined the process due to Hamdi by applying the test from Matthews v. Eldridge, a case involving social security benefits. n215 Having laid out the process due to Hamdi under the Matthews test, the Court summarily declared that it need not determine "whether any treaty guarantees him similar access to a tribunal for a determination of his status." n216 The Court, however, never entertained the notion that the Conventions might provide procedures different from those laid out by the Court. n217 In addition, conspicuously absent is any mention of the Geneva Conventions' prescribed conditions of detention, other than access to a tribunal. n218 It is quite clear that the President's treatment of Hamdi did not comply with the prisoner of war conditions required by the Geneva Conventions. n219 Because Hamdi had challenged the legality of his detention, the Court had an obligation to resolve whether or not the Geneva Conventions applied to him and rendered his detention illegal. n220 Moreover, the Court ignored the probability that the "law of nations," on which it relied in interpreting the AUMF, does not consider detention in violation of Geneva's dictates to be "necessary and appropriate." The Court likely ignored this point because it might have led to a finding that Congress had not authorized Hamdi's detention. n221 O'Connor's conclusion that Congress had authorized the President's detention program was what allowed her to steer clear of the thorny issue of executive unilateralism. Consequently, the Court managed to avoid the self-execution issue, and all substantive interna [\*92] tional law claims, even though a discussion of the Geneva Conventions' status and provisions was clearly warranted. By contrast, in Hamdan, the Supreme Court did undertake an extensive discussion of the Geneva Conventions, finding the military trial procedures unlawful as violative of Geneva Common Article 3, which requires military tribunals to be "regularly constituted courts, affording all the judicial guarantees which are recognized as indispensable by civilized peoples." n222 In doing so, the Court adopted an internationalist interpretation of Common Article 3, contrary to the one proffered by the President. n223 Amazingly, the Court was able to reach the conclusion that Common Article 3 rendered the tribunals unlawful without touching the issue of Geneva self-execution. In order to do so, the Court had to engage in an exercise of incredibly bold legislative interpretation, reading the Geneva Conventions into the Uniform Code of Military Justice (UCMJ). n224 The Court's basic argument was that the UCMJ requires the procedures used to try detainees like Hamdan to comply with the "law of war," including the Geneva Conventions, and the President's procedures did not so comply because of their failure to comport with Common Article 3. n225 The Court held that Article 21 of the UCMJ acted as implicit congressional authorization, with limitations, of the President's power to establish and employ military commissions to try enemy combatants. n226 Article 21 reads: The provisions of this chapter conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute [\*93] or by the law of war may be tried by military commissions, provost courts, or other military tribunals. n227 The Court interprets this sentence as an authorization of the President to use military commissions with the qualification that such commissions comport with "the law of war." n228 This interpretation of Article 21 is quite problematic, and to be sure, it incurred the wrath of conservative members of the Court. n229 Experts are in fair agreement that Article 21 was not meant to authorize or limit the President's common law authority to establish military commissions during wartime. n230 Rather, Article 21 represents Congress' desire that the UCMJ's establishment of court martial procedures leave unchanged whatever common law power the President already had to try enemies for statutory violations or war crimes. n231 There are additional problems with the Court's interpretation of Article 21. Even if Article 21 does operate to limit the President's military commission authority, a plain reading reveals that it only limits the kind of offenses that may be tried -statutory or law of war offenses - not the procedures that may be used. n232 As much was recognized by the Court in the World War II case In re Yamashita, when it stated that Article 21 "left the control over the procedure . . . where it previously had been, with the military command." n233 Finally, the assumption that the UCMJ meant to incorporate Geneva procedural rights seems unsupported by the history of the Code. n234 Consequently, by bringing Geneva into the Hamdan case solely through the domestic UCMJ, the Court was able to scrupulously avoid [\*94] the self-execution issue. The questionable nature of the Court's legislative interpretation shows the length to which the Court was willing to go to avoid the self-execution question. Perhaps, the Court's methodology can be understood as mere judicial restraint. However, the Court clearly believed the Bush administration was violating international law. n235 Placing the fate of the Geneva Conventions in Congress's hands, especially when the Military Commissions Act (MCA), which approves the President's (illegal) interpretation of Geneva, n236 was about to be enacted, cannot be rationalized as mere judicial moderation. Jordan J. Paust criticizes the Court's approach: This roundabout use of the laws of war may seem appropriate in terms of normal judicial caution, but when a judge realizes that every violation of the laws of war is a war crime and war crime activity by the Executive against a habeas petitioner who is before the Court is apparent, such caution in the face of international crime is less than satisfying. The Court should have mandated that the Executive comply with particular laws of war when it was apparent that they were being violated. n237 Moreover, declaring the Conventions self-executing would have bolstered theUnited States'credibility as a defender of human rights. n238 Thus, the Supreme Court's avoidance of self-execution cannot be understood as mere accident or cautious temperance. The Court's jurisprudential choices reveal that it had internalized the view, created by isolationist lower court activism, that treaty self-execution is illegitimate. The Court's avoidance evidences that it believed declaring a humanitarian treaty like the Geneva Conventions self-executing would have been too ambitious, liberal, or difficult. CONCLUSION This Essay has sought to demonstrate that the development of a new isolationist approach to self-execution is a barrier to true internationalism [\*95] in American law. Over the past few decades, lower courts have actively expanded the self-execution barrier to treaty law, thereby rendering ineffective older treaties and providing the U.S. government a mechanism to avoid human rights and humanitarian obligations in new treaties. Meanwhile, the Court has largely sat by passively, allowing lower courts to chip away systematically at the letter and spirit of the Supremacy Clause. Today, however, the Court's avoidance and passivity on the self-execution issues is more than just grounds for academic dissatisfaction. In the midst of the "war on terror," the status of human rights and humanitarian treaties is of dire import**.** The United States has become synonymous with international law violations, and President Bush continues to flout the letter and spirit of the Geneva Conventions by his treatment of the Guantanamo detainees. Yet all is not lost. As the Guantanamo detainees' cases make their way up through the lower courts, now challenging detention under the newly-passed Military Commissions Act, the Supreme Court may yet have another chance to declare the Geneva Conventions self-executing and **affirm that treaties are the supreme law of the land.**

#### Detention credibility spills over to affect other areas of human rights

Culpepper 10 (Brenton, J.D. Candidate 2010, Vanderbilt University Law School + NDT Copeland winner @ UGA, "Missed Opportunity: Congress's Attempted Response to the World's Demand for the Violence Against Women Act," 43 Vand. J. Transnat'l L. 733, lexis)

Congressional activism on gender policy provides an avenue for shifting the image of the U.S. from one of military hard power to a moral and diplomatic leader. n113 This shift increases U.S. diplomatic capital, which can - in much the same way a President spends political capital to achieve policy objectives on Capitol Hill - translate into success for U.S. foreign policy goals. n114 Credibility in one human [\*749] rights arena (e.g. gender equality) often serves to enhance credibility in an unrelated human rights arena (e.g. child labor). n115 Professor Joseph Nye describes the above phenomenon as "soft power": "Soft power is the ability to get what you want through attraction rather than coercion or payments." n116 Nye argues that "when American policies lose their legitimacy and credibility in the eyes of others, attitudes of distrust tend to fester and further reduce our leverage." n117 "Problems arise for our soft power when we do not live up to our own standards," including international standards to which the United States committed. n118 Areas of legal and moral contradiction, such as those present in gender policy, create the loss of the legitimacy and credibility necessary to build soft power. n119

#### Applying the ICCPR to military activities like detention reestablishes US human rights leadership AND ensures effective warfighting by addressing the root causes of global conflict

Walsh 9 (Patrick, Deputy Staff Judge Advocate, Nevada Army National Guard. L.L.M., 2009, The Judge Advocate General's School, United States Army, Charlottesville, Virginia, "Fighting For Human Rights: The Application of Human Rights Treaties to United States' Military Operations," 28 Penn St. Int'l L. Rev. 45, lexis)

The benefits of joining a growing emerging view on the application of human rights treaties outweigh the potential impacts on U.S. military operations. Adopting the emerging view will create a common body of international law to apply with coalition partners. It will also treat U.S. persons the same as foreign citizens in U.S. Courts. But the strongest argument in favor of the emerging view comes from the U.S. military's revised doctrine. Applying international human rights treaties can help win wars, particularly those against insurgents, can help stabilize governments, and can help develop the rule of law in foreign nations.¶ VII. Conclusion¶ The United States must adopt the emerging view and agree that the ICCPR can apply to its actions outside the United States and even during armed conflicts. Doing so will reestablish the United States as a leader in the promotion of human rights around the world. After World War II, the United States was a driving force in the development and passing of the Universal Declaration of Human Rights ("UDHR"). The UDHR led [\*81] to the creation and enactment of the ICCPR, a comprehensive human rights treaty. The UDHR and ICCPR created a foundation for the development of a broad and comprehensive body of law to protect human rights around the world.¶ While the United States began to limit its view on when human rights treaties apply, the international community began to build on the foundation of human rights principles set forth in the UDHR and the ICCPR. The U.N., through the UNGA, UNSC, and the UNHRC, has expanded human rights protections to apply during armed conflicts and around the world. Regional human rights organizations have followed suit. Courts have also agreed; both the ICJ and the British House of Lords have applied human rights treaties beyond a state's territory and to armed conflicts. Individual nations that endorse this view include many of the United States' traditional coalition partners, including Great Britain.¶ Contrary to its stated policy, the United States already incorporates international human rights treaties in its military operations. In multilateral military operations, it considers human rights treaties because they bind U.S. coalition partners fighting alongside the United States. Even in unilateral U.S. military action, the United States has begun to consider human rights law during military operations. The U.S. military has emphasized that protecting human rights is an important goal in its efforts to stabilize governments, to establish the rule of law war-torn states, and to defeat insurgents.¶ Despite the change in the international community, the change in the views of coalition partners and the recent change in U.S. policy, the official U.S. position remains that human rights treaties, like the ICCPR, do not apply to military operations abroad. The U.S. military is stuck in the middle, and must adopt a "do as we do, not as we say" attitude towards the U.S. position. The United States' view on the application of the ICCPR must change.¶ The United States must adopt the emerging view. Doing so will force the international community to stop criticizing U.S. policy and start looking at U.S. actions, which incorporate human rights protections in military operations. The United States can reassert its preeminence in human rights enforcement and assure the world that it will protect human rights around the world just as carefully as it protects them within the United States. By fighting for, and with, human rights, the United States can do what Secretary of State Rice promised; lay the foundation for lasting peace.

#### That prevents global WMD conflict

**Burke-White 4** (William W., Lecturer in Public and International Affairs and Senior Special Assistant to the Dean at the Woodrow Wilson School of Public and International Affairs, Princeton University and Ph.D. at Cambridge, “Human Rights and National Security: The Strategic Correlation”, The Harvard Human Rights Journal, Spring, 17 Harv. Hum. Rts. J. 249, Lexis)

This Article presents a strategic--as opposed to ideological or normative--argument that the promotion of human rights should be given a more prominent place in U.S. foreign policy. It does so by suggesting a correlation between the domestic human rights practices of states and their propensity to engage in aggressive international conduct. Among the chief threats to U.S. national security are acts of aggression by other states. Aggressive acts of war may directly endanger the United States, as did the Japanese bombing of Pearl Harbor in 1941, or they may require U.S. military action overseas, as in Kuwait fifty years later. Evidence from the post-Cold War period  [\*250]  indicates that states that systematically abuse their own citizens' human rights are also those most likely to engage in aggression. To the degree that improvements in various states' human rights records decrease the likelihood of aggressive war, a foreign policy informed by human rights can significantly enhance U.S. and **global security**. Since 1990, a state's domestic human rights policy appears to be a telling indicator of that state's propensity to engage in international aggression. A central element of U.S. foreign policy has long been the preservation of peace and the prevention of such acts of aggression. [2](http://www.lexis.com/research/retrieve?_m=62d5bddd50e555db7dfb40b14668cef6&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAW&_md5=a81b07a0a90d95be59f9b7bb9d939181#n2) If the correlation discussed herein is accurate, it provides U.S. policymakers with a powerful new tool to enhance national security through the promotion of human rights. A strategic linkage between national security and human rights would result in a number of important policy modifications. First, it changes the prioritization of those countries U.S. policymakers have identified as presenting the greatest concern. Second, it alters some of the policy prescriptions for such states. Third, it offers states a means of signaling benign international intent through the improvement of their domestic human rights records. Fourth, it provides a way for a current government to prevent future governments from aggressive international behavior through the institutionalization of human rights protections. Fifth, it addresses the particular threat of human rights abusing states obtaining weapons of mass destruction (WMD). Finally, it offers a mechanism for U.S.-U.N. cooperation on human rights issues.

### Plan

#### The United States Federal Judiciary should rule that the International Covenant on Civil and Political Rights contains a domestically enforceable restriction on presidential war powers authority to indefinitely detain.

### 1AC

#### Detention now misreads the ICCPR – makes treaties ineffective.

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.

#### Enforcement of the ICCPR crucial to marshal support for recognition and enforcement of a rights-based approach to water issues

Varma, 13

(Director of Robert F. Kennedy Center for Justice and Human Rights, 9/9, “Wòch nan soley: The denial of the right to water in Haiti,” http://www.hhrjournal.org/2013/09/09/woch-nan-soley-the-denial-of-the-right-to-water-in-haiti/)

In addition to protections in domestic law, **the right to water is** also **recognized in international** **law**. International and regional human rights bodies and national and international courts have interpreted the right to water as being an implicit part of other human rights, such as the right to life, the right to health, the right to an adequate standard of living, the right to food, the right to housing, and the right to education.117 These rights have **been enshrined in** both UN and regional **human rights instruments**, several of which have been **ratified by** Haiti and the United States. Both Haiti and the United States have ratified the International Covenant on Civil and Political Rights (ICCPR), which protects, inter alia, the right to life. Both have signed the International Covenant on Economic, Social and Cultural Rights (ICESCR), which includes, inter alia, the right to housing, food, health, and an adequate standard of living.118 The right to water is also protected under other international instruments. These instruments are useful indicators of norms accepted by the international community and reflect evidence of political will to make access to water a priority. The provisions in some international instruments have obtained the status of customary international law and thus create legal obligations for states. Customary international law is derived from a clear consensus among states as to a legal rule, which is evidenced by widespread conduct by states accompanied by a sense of legal obligation to adhere to such rule, known as opinio juris.119 The UN Committee on Economic, Social and Cultural Rights (ESCR Committee) has found that the minimum core of the main economic, social, and cultural rights has become customary international law and is thus binding on all states, regardless of whether they have signed or ratified treaties protecting those rights. Many scholars support this position.120 The right to life is further protected by customary international law, and as a necessary component of the right to life, the right to water is thus implicitly protected by customary international law.121 International instruments that may reflect customary international law and that protect the right to water, either explicitly or implicitly, include the Universal Declaration of Human Rights, the Declaration on the Right to Development, and the Millennium Development Goals.122 States’ treaty-based obligations to secure Haitians’ right to water As the situation in Haiti makes clear, **legal rights provide no real protection for individuals without corresponding responsibilities, and the responsibility for fulfilling rights is an integral part of all legal rights**. Generally, the government of each state bears the primary responsibility to ensure the protection and achievement of human rights for those on its territory or otherwise under its jurisdiction. A state’s human rights obligations also apply when it acts as part of a multilateral or international organization, such as the UN or the World Bank.123 Thus, members of the international community bear a measure of legal responsibility. The case of water in Haiti is **directly relevant to the issue of international human rights law as codified in treaties** and under customary international law. When a state signs a treaty, the state is required to refrain from any action that would contradict the object and purpose of the treaty, and when a state ratifies a treaty, the state thereby accepts the duties contained within the treaty and is required to immediately take positive steps to realize the rights contained in the treaty.124 Even if a state has neither signed nor ratified a human rights treaty, it has certain obligations under customary international law, which protects fundamental human rights and in general applies to all states. Types of duties Human rights treaties generally specify three different kinds of duties relating to the rights set out in the treaty. The first is the obligation to respect, meaning that governments must refrain from interfering directly or indirectly with an individual’s enjoyment of rights. The second is the obligation to protect, meaning that governments must prevent the violation of human rights by other actors. States’ actions to protect include actions that prevent individuals, companies, or other entities from violating individuals’ human rights, and also actions to investigate and punish such violations if they occur. And the third duty is the obligation to fulfill, meaning that governments must adopt whatever measures are necessary to achieve the full realization of human rights for all. Thus, governments are required to provide subsidies, services, or other direct assistance to the most vulnerable and needy members of a society when they cannot otherwise access their rights. Obligations of the government of Haiti In accordance with these treaty-based obligations and customary international law, the Haitian government is responsible for guaranteeing and fulfilling the human rights of everyone in Haiti.125 Haiti is a party to the ICCPR, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child, the Organization of American States (OAS) Charter, and the American Convention on Human Rights; it is thus responsible for all the obligations found within each of these treaties. The Haitian government has signed, but not yet ratified, the ICESCR and the Protocol of San Salvador, both of which enumerate many of the rights at issue in this article; thus, these treaties do not strictly bind the government of Haiti. However, as a signatory, Haiti has an obligation to refrain from actions that will frustrate the object and purpose of these treaties.126 Furthermore, given that the Haitian Constitution protects the rights to health and food, the Haitian government has an obligation to ensure the satisfaction of — at the very least — minimum essential levels of each of these rights, of which access to water is an integral component. All Haitians, as rights-holders, have a particular set of entitlements, and the Haitian state, as the primary duty-bearer, has a particular set of obligations. Haitians who cannot access even the most basic forms of these entitlements are being deprived of their constitutional economic and social rights and their rights under treaties guaranteeing basic civil and political rights, such as the right to life, personal liberty, and security.127 The Haitian Constitution requires the Haitian government to recognize and protect Haitians’ rights to health, decent housing, education, and food.128 Because the right to water is an important component of these rights, the Haitian government has a responsibility to ensure the full realization of the right to water through national legislation and policies. A national water strategy should elaborate how the right to water is to be realized and should include concrete goals, policies, and a time frame for implementation.129 Obligations of the international community While the government of Haiti is the primary guarantor of Haitians’ rights, the international community also has obligations.130 Human rights treaty obligations apply not only within the territory of the ratifying state, but also apply to states’ behavior outside of their borders, through the concept of jurisdiction, and to states’ actions as members of the international community.131 This means that states must protect the human rights of all individuals within their territory or under their jurisdiction and **ensure that their actions at the international level are in compliance with their human rights obligations**.132 With respect to the right to water, this means that states must “refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries.”133 The following brief summary of international obligations relevant to Haiti illustrates the importance of this factor in discussing Haitians’ right to water. Two types of state action are most pertinent to the denial of the right to water in Haiti: 1) when states act individually on the international level, and 2) when they act as members of international organizations, particularly international financial institutions (IFIs). The Maastricht Guidelines, developed to clarify which state actions constitute violations of economic, social, and cultural rights, assert that states’ duties to protect human rights extend to their “participation in international organizations, where they act collectively.”134 When authorized by member states, IFIs can take actions that may help fulfill human rights, such as financing the construction of the infrastructure needed to deliver and treat water. Alternatively, actions by IFIs may hinder the enjoyment of human rights, through, for example, requiring governments to minimize social programs or privatize core services as a precondition to receipt of grants or loans. IFI actions in such cases may interfere with the target state’s ability to fulfill human rights obligations.135 To effectively ensure the realization of the right to water, member states must be held accountable for the actions that they take, through IFIs, that have a direct impact on the human rights of individuals located outside their territory.136 At a minimum, member states must abide by their duty to respect human rights in their actions as members of IFIs.137 The ESCR Committee — responsible for interpreting and monitoring compliance with the ICESCR — has determined that states are bound by human rights obligations when acting as members of IFIs.138 With regard to the right to water, the Committee notes that “States parties that are members of international financial institutions, notably the International Monetary Fund (IMF), the World Bank, and regional development banks, should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures.”139 This statement further stipulates that “water should never be used as an instrument of political and economic pressure.”140 The majority of members of the World Bank Group and IMF (including the United States) are party to the ICCPR, which can be **seen as providing protections of the right to water as an element of the right to life, a right central to the ICCPR**.141 Also, since the ICESCR has been ratified by the majority of major IFI state members and all European Union countries, these states are obligated to comply with its provisions. The United States has not ratified the ICESCR, but it has signed the treaty, and thus must refrain from acting in a manner that would frustrate the object and purpose of the treaty.142 Many IDB member states are also members of the OAS, through which states may ratify regional treaties, including the American Convention and the Protocol of San Salvador, that protect economic and social rights. Moreover, the minimum core content of the key economic and social rights is regarded as customary international law, binding even non-ratifying states such as the United States. Thus, the action taken by the United States in blocking IDB development loans earmarked for water projects in Haiti is a **direct violation of** the **U**nited **S**tates’ **human rights obligations**.143 In this case, the United States actively impeded the Haitian state’s ability to fulfill Haitians’ human right to water through its actions, breaching its duty to respect. Such blatant frustration of the object and purpose of the human rights treaties to which the United States is a signatory or a state party is a clear violation of international law. Recommendation: Adopt a rights-based approach This article has documented the disastrous consequences of the IDB’s extended failure to disburse loans earmarked for water projects in Haiti. It has demonstrated how these actions directly impeded the Haitian government’s ability to respect, protect, and fulfill its citizens’ right to water. While the government of Haiti is primarily responsible for ensuring this right, other key actors, such as IFIs, foreign states, nongovernmental organizations, and private companies also have a role in solving Haiti’s water crisis. To ensure a sustainable solution, we recommend that all of these actors, in addition to the Haitian government, adopt a rights-based approach to the development and implementation of water projects. Such an approach would enhance the Haitian government’s ability to deliver these services and the Haitian population’s right to access safe and sufficient water. This section provides a brief explanation of a rights-based approach to development and its implications for water security in Haiti. A rights-based approach A rights-based approach to development is a conceptual framework that is based on international human rights law and methodology.144 It integrates the norms, standards, and principles of international human rights law into the plans, policies, and processes of development. A rights-based approach to development is based on five principles. First, a human rights-based approach shifts the language of development from charity to empowerment, viewing the beneficiary of development assistance as the owner of a right. The duty-bearer has a responsibility to develop access to the relevant rights to the rights-holder. Second, a rights-based approach considers the indivisibility and interdependence of interrelated rights (civil, cultural, economic, political, and social), recognizing that a policy affecting one right will necessarily have an impact on the others.145 Third, a rights-based approach requires non-discrimination and attention to vulnerable groups; that is, groups historically excluded from the political process and prohibited access to basic services must receive particular attention. Fourth, a rights-based approach to development ceases to be about charity and instead is about duty-bearers’ accountability to human rights obligations. In this case, accountability falls primarily on the government of Haiti, but also on the actions of donor states and private actors (for example, those providing public services) as they have obligations in particular situations. Transparency is crucial to increasing accountability.146 Finally, a rights-based approach requires duty-bearers to ensure a high degree of participation from communities, civil society, minorities, indigenous peoples, women, and other marginalized groups. Such participation must be active, free, and meaningful and must occur at each level of the development process.147 Measures to address and reduce structural participation inequalities or disadvantages may require appropriate preferential treatment to vulnerable and disadvantaged groups. Transparency is, again, essential. A rights-based approach to water projects in Haiti A rights-based approach to developing the water sector in Haiti requires all actors to incorporate each of these principles into their work. For example, effective participation requires that community members be involved in all efforts to improve the water situation. They should be consulted during the development of water projects, especially on issues such as water source, availability, sanitation precautions, time frames for implementation, water cost, and water quality. There must be regular consultations with the community during project development. Community members must have easy access to ongoing project information during implementation — for example, via posters, meetings, and radio programs. Such participation would help to ensure that water projects are empowering the Haitian people as rights-holders and that the projects are adequately and accurately meeting their needs. A rights-based approach also requires transparency of all efforts and actors involved in developing and implementing water projects in Haiti. There are several means to achieving this transparency. For example, since the government does not yet have the capacity to effectively regulate the private sector, groups responsible for water distribution or sale should also be responsible for regularly checking the safety of sources used for drinking water and publicizing test results. In addition, all water providers should report regularly on the status of projects, providing, at a minimum, information about available project funds, monies spent, specific timelines for implementation and completion, and any changes to original implementation plans. International entities might include mechanisms for transparency in their work in Haiti by providing readily-available public documentation of project status, including expenditures. Finally, a rights-based approach requires that each implementing entity has a clear and accessible accountability mechanism (or mechanisms) through which communities can report project problems. In Haiti’s case, this should include mechanisms for redress from all actors, including international organizations, states, IFIs, NGOs, and private entities. These mechanisms need to be locally focused and easily accessible, and they should have built-in transparency so that community members can follow the status of grievances or complaints and keep the public aware of their outcomes. Accountability also lies with the government, which should build internal accountability mechanisms into its national water strategy, with identifying benchmarks to measure the extent to which the right to water is being realized. The right to water has been compromised in Haiti for too long. **A rights-based approach is an essential strategy in the successful implementation and monitoring of** sustainable development projects, including **water projects**. While the government of Haiti is obligated to implement a rights-based approach, all entities involved in the development and implementation of water projects can contribute to fulfilling Haitians’ human rights by adopting this framework.

#### Legal recognition of the right to water key to solve water shortages and de-escalate conflicts

Gleick, 7

(President- Pacific Institute for Studies in Development, Environment, and Security, “The Human Right to Water,” May, http://www.pacinst.org/reports/human\_right\_may\_07.pdf)

What is the point or advantage of explicitly acknowledging such a right? Even if the human right to water is formally accepted, what is the advantage of such an acknowledgment? After all, despite the declaration of a formal right to food, nearly a billion people remain undernourished. Let me offer five reasons for acknowledging a human right to water: 1. Acknowledging a right to water would **encourage the international community and individual governments to renew their efforts to meet basic water needs of their populations**. 2. By acknowledging a right to water, pressures to **translate that right into specific national and international legal obligations** and responsibilities are much more likely to occur. As Richard Jolly of the United Nations Development Programme noted: To emphasize the human right of access to drinking water does more than emphasize its importance. It grounds the priority on the bedrock of social and economic rights, it emphasizes the obligations of states parties to ensure access, and it identifies the obligations of states parties to provide support internationally as well as nationally. 3. Acknowledging a right to water maintains a spotlight of attention on the deplorable state of water management in many parts of the world. 4. Acknowledging a right to water helps **focus attention on the need to more widely address international watershed disputes and to resolve conflicts over the use of shared water** by identifying minimum water requirements and allocations for all basin parties. 5. Explicitly acknowledging a human right to water can help set specific priorities for water policy. In particular, meeting a basic water requirement for all humans to satisfy this right should take precedence over other water management and investment decisions. What are the implications of a human right to water? A right to water cannot imply a right to an unlimited amount of water, nor does it require that water be provided for free. Water availability is limited by resource constraints, the need to maintain natural ecosystems, and economic and political factors. Given such constraints on water availability, how much water is necessary to satisfy this right? Enough solely to sustain a life? Enough to grow all food sufficient to sustain a life? Enough to maintain a certain economic standard of living? Answers to these questions come from international discussions over development, analysis of the human rights literature, and an understanding of human needs and uses of water. These lead to the conclusion that a human right to water most logically applies only to basic needs for drinking, cooking, and fundamental domestic uses. Both the 1977 Mar del Plata statement and the 1986 UN Right to Development set a goal of meeting basic needs. The concept of meeting basic water needs was strongly reaffirmed during the 1992 Earth Summit in Rio de Janeiro. In developing and using water resources, priority has to be given to the satisfaction of basic needs … The Comprehensive Assessment of the Freshwater Resources of the World prepared for the Commission on Sustainable Development of the UN stated: All people require access to adequate amounts of clean water, for such basic needs as drinking, sanitation and hygiene. The UN Convention on the Law of the Non-Navigational Uses of International Watercourses, approved by the General Assembly on May 21, 1997, also explicitly addresses this question of water for basic human needs. Article 10 states that in the event of a conflict between uses of water in an international watercourse, special regard shall be given “to the requirements of vital human needs.” The states negotiating the Convention included in the Statement of Understanding accompanying it an explicit definition that: In determining ‘vital human needs’, special attention is to be paid to providing sufficient water to sustain human life… At what cost should this water be provided? Free? Full economic cost? Here the human rights literature is of little help, but the international water community is increasingly clear about the economics of water. I believe that water should be paid for, even basic water requirements, but that when a basic water requirement cannot be paid for by individuals – for reasons of poverty, emergency, or circumstance – it is still the responsibility of local communities, local governments, or national governments to provide that basic water requirement though subsidies or outright entitlement. Conclusion The failure to meet the most basic water requirements of billions of people has resulted in enormous human suffering and tragedy. It may be remembered as the 20th Century’s greatest failure. Reviewing evidence of international law, declarations of governments and international organizations, and state practices, **access to a basic water requirement must be considered a fundamental human right**. Let me offer a possible formulation appropriate to the existing human rights declarations: All human beings have an inherent right to have access to water in quantities and of a quality necessary to meet their basic needs. This right shall be protected by law. Will the recognition of the human right to water actually improve conditions worldwide? Perhaps not. The challenge of meeting human rights obligations in all areas is a difficult one that has been inadequately and incompletely addressed. But the imperatives to meet basic human water needs are more than just moral, they are rooted in justice and law and the responsibilities of individuals and governments. A first step toward meeting a human right to water would be for governments, water agencies, and international and local organizations to guarantee all humans the most fundamental of basic water needs and to work out the necessary institutional, economic, and management strategies necessary for meeting those basic needs, quickly and completely.

#### Water scarcity coming now - it's a threat multiplier that enflames hotspots globally. Specifically, Egypt and Central Asia - their defense isn't predictive

Dinar et al 10/18/12

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In short, predictions of a Water World War are overwrought. However, tensions over water usage can still exacerbate other existing regional conflicts. Climate change is expected to intensify droughts, floods, and other extreme weather conditions that jeopardize freshwater quantity and quality and therefore act as a threat-multiplier, making shaky regions shakier. So what river basins constitute the biggest risks today? In a World Bank report we published in 2010 (as well as a subsequent article in a special issue of the Journal of Peace Research) we analyzed the physical effects of climate change on international rivers. We modeled the variability in river annual runoff in the past and for future climate scenarios. We also considered the existence and nature of the institutional capacity around river basins, in the form of international water treaties, to potentially deal with the effects of climate change. According to our research, 24 of the world's 276 international river basins are already experiencing increased water variability. These 24 basins, which collectively serve about 332 million people, are at high risk of water related political tensions. The majority of the basins are located in northern and sub-Saharan Africa. A few others are located in the Middle East, south-central Asia, and South America. They include the Tafna (Algeria and Morocco), the Dasht (Iran and Pakistan), the Congo (Central Africa), Lake Chad (Central Africa), the Niger (Western Africa), the Nile (Northeastern Africa), and the Chira (Ecuador and Peru). There are no strong treaties governing the use of these water reserves in tense territories. Should conflicts break out, there are no good mechanisms in place for dealing with them. By 2050, an additional 37 river basins, serving 83 million people, will be at high risk for feeding into political tensions. As is the case currently, a large portion of these are in Africa. But, unlike today, river basins within Central Asia, Eastern Europe, Central Europe, and Central America will also be at high risk within 40 years. Some of these include the Kura-Araks (Iran, Turkey, and the Caucasus), the Neman (Eastern Europe) Asi-Orontes (Lebanon, Syria, Turkey), and the Catatumbo Basins (Colombia and Venezuela). CROSSING THE NILE Among the larger African basins, the Nile has the greatest implications for regional and global security. Tensions over access to the river already pit Ethiopia and Egypt, two important Western allies, against one another. Egypt has been a major player in the Middle East Peace Process and Ethiopia is an important regional force in the Horn of Africa, currently aiding other African forces to battle Al-Shabbab in Somalia. Over the years, a number of international water treaties have made rules for the basin, but they are largely limited to small stretches of it. In particular, only Egypt and Sudan are party to the 1959 Nile River Agreement, the principal treaty regarding the river. Egypt, which is the furthest downstream yet is one of the most powerful countries in the region, has been able to heavily influence the water-sharing regime. Upstream countries, such as Ethiopia and Burundi, have been left out, hard-pressed to harness the Nile for their own needs. In 1999, with increasingly vitriolic rhetoric between Egypt and Ethiopia sidetracking regional development, the World Bank stepped up its involvement in the basin. It helped create a network of professional water managers as well as a set of investments in a number of sub-basins. Still, the drafting of a new agreement stalled: upstream countries would not compromise on their right to develop water infrastructure while downstream countries would not compromise on protecting their shares. In 2010, Ethiopia signed an agreement with a number of the other upstream countries hoping to balance against Egypt and Sudan. More recently, the country has also announced plans to construct a number of large upstream dams, which could affect the stability of the region. By 2050, the environmental state of the Nile Basin will be even worse. That is why it is important to create a robust and equitable water treaty now. Such a treaty would focus on ways to harness the river's hydropower potential to satiate the energy needs of all the riparian states while maintaining ecosystem health. The construction of dams and reservoirs further upstream could likewise help even out water flows and facilitate agricultural growth. Projects such as these, mitigating damage to ecosystem health and local populations, would benefit all parties concerned and thus facilitate further basin-wide cooperation. UP IN THE ARAL Another water basin of concern is the Aral Sea, which is shared by Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan. The basin consists of two major rivers, the Syr Darya and Amu Darya. During the Soviet era, these two rivers were managed relatively effectively. The break-up of the Soviet Union, however, ended that. The major dispute now is between upstream Kyrgyzstan and downstream Uzbekistan over the Syr Darya. During the winter, Kyrgyzstan needs flowing water to produce hydroelectricity whereas Uzbekistan needs to store water to later irrigate cotton fields. The countries have made several attempts to resolve the dispute. In particular, downstream Uzbekistan, which is rich in fuel and gas, has provided energy to Kyrgyzstan to compensate for keeping water in its large reservoirs until the cotton-growing season. Such barter agreements, however, have had limited success because they are easily manipulated. Downstream states might deliver less fuel during a rainy year, claiming they need less water from upstream reservoirs, and upstream states might deliver less water in retaliation. Kyrgyzstan, frustrated and desperate for energy in winter months, plans to build mega hydro-electric plants in its territory. And another upstream state, Tajikistan, is likewise considering hydro-electricity to satiate its own energy needs. Meanwhile, Uzbekistan is building large reservoirs. Although these plans might make sense in the very near term, they are inefficient in the medium and long term because they don't solve the real needs of downstream states for large storage capacity to protect against water variability across time. In fact, both Kyrgyzstan and Uzbekistan, along with Kazakhstan, will see substantial increases in water variability between now and 2050. And so, the need to share the benefits of existing large-capacity upstream reservoirs and coordinate water uses through strong and more efficient inter-state agreements is unavoidable. A stabilized Aral Sea basin would also benefit the United States. With its withdrawal from Afghanistan, Washington has been courting Uzbekistan as a potential alternative ally and provider of stability in the region. The Uzbek government seems willing to host U.S. military bases and work as a counter-weight to Russia. Kyrgyzstan is also an important regional player. The Manas Air Base, the U.S. military installation near Bishkek, is an important transit point. The country is also working with the United States to battle drug trafficking and infiltration of criminal and insurgent groups. Regional instability could disrupt any of these strategic relationships. If the past is any indication, the world probably does not need to worry about impending water wars. But they must recognize how tensions over water can easily fuel larger conflicts and distract states from other important geopolitical and domestic priorities. Since formal inter-state institutions are key to alleviating tensions over shared resources, it would be wise, then, for the involved governments as well as the international community to negotiate sufficiently robust agreements to deal with impending environmental change. Otherwise, freshwater will only further frustrate stability efforts in the world's volatile regions.

#### Water wars cause nuclear extinction

NASCA 4 (National Association for Scientific and Cultural Appreciation, “Water Shortages – Only a Matter of Time”, http://www.nasca.org.uk/Strange\_relics\_/water/water.html)

Water is one of the prime essentials for life as we know it. The plain fact is - no water, no life! This becomes all the more worrying when we realise that the worlds supply of drinkable water will soon diminish quite rapidly. In fact a recent report commissioned by the United Nations has emphasised that by the year 2025 at least 66% of the worlds population will be without an adequate water supply. As a disaster in the making water shortage ranks in the top category. Without water we are finished, and it is thus imperative that we protect the mechanism through which we derive our supply of this life giving fluid. Unfortunately the exact opposite is the case. We are doing incalculable damage to the planets capacity to generate water and this will have far ranging consequences for the not too distant future. The United Nations has warned that burning of fossil fuels is the prime cause of water shortage. While there may be other reasons such as increased solar activity it is clear that this is a situation over which we can exert a great deal of control. If not then the future will be very bleak indeed! Already the warning signs are there. The last year has seen devastating heatwaves in many parts of the world including the USA where the state of Texas experienced its worst drought on record. Elsewhere in the United States forest fires raged out of control, while other regions of the globe experienced drought conditions that were even more severe. Parts of Iran, Afgahnistan, China and other neighbouring countries experienced their worst droughts on record. These conditions also extended throughout many parts of Africa and it is clear that if circumstances remain unchanged we are facing a disaster of epic proportions. Moreover it will be one for which there is no easy answer. The spectre of a world water shortage evokes a truly frightening scenario. In fact the United Nations warns that disputes over water will become the prime source of conflict in the not too distant future. Where these shortages become ever more acute it could forseeably lead to the brink of nuclear conflict. On a lesser scale water, and the price of it, will acquire an importance somewhat like the current value placed on oil. The difference of course is that while oil is not vital for life, water most certainly is! It seems clear then that in future years countries rich in water will enjoy an importance that perhaps they do not have today. In these circumstances power shifts are inevitable, and this will undoubtedly create its own strife and tension. In the long term the implications do not look encouraging. It is a two edged sword. First the shortage of water, and then the increased stresses this will impose upon an already stressed world of politics. It means that answers need to be found immediately. Answers that will both ameliorate the damage to the environment, and also find new sources of water for future consumption. If not, and the problem is left unresolved there will eventually come the day when we shall find ourselves with a nightmare situation for which there will be no obvious answer.

#### 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.

### If Time

#### ICCPR critical to recognition and enforcement of a global right to water

Huang, 8

(JD-University of Florida, “Not Just Another Drop in the Human Rights Bucket: The Legal Significance of a Codified Human Right to Water,” 20 Fla. J. Int'l L. 353, December, Lexis)

Currently amidst the United Nations proclaimed Decade of Water for Life, n1 a vast sector of the world's population still lacks daily access to sources of clean water for personal and domestic use. n2 Despite the universal necessity of water for basic survival and minimal living conditions, a codified right to water does not presently exist in the international legal sphere. Although the right may be derived from many human rights treaties or non-binding declarations, States have seldom recognized an explicit right to water. Yet as the dialogue on climate [\*354] change and other meteorological variations has increased, the movement toward codifying a right to water has simultaneously gained momentum. However, the question remains: why is it necessary to codify a human right to water? Left to the accretion of State practice n3 over time, development of customary international law may compensate for the silence on water rights-an unsatisfactory answer for the billions of people who face water deprivation and poverty as dual obstacles. Projected global populations will increasingly strain water resources, potentially leading to greater conflicts over this precious natural resource. Conflicts have already arisen in parts of the Middle East and sub-Saharan Africa and even include conflicts between humans and native fauna. n4 In addition to increased water consumption in the agricultural and industrial sectors, consumption will only rise further with the rapid industrialization of developing countries. n5 Other development issues include mismanagement of water and ecological resources, such as a lack of adequate water institutions, fragmented institutional structures, and short-sighted water policies. n6 The ecological consequences of water mismanagement are equally detrimental. Draining wetlands decreases water retention and recycling capacity; n7 and contaminated runoff and pollution of natural waterbodies foreclose human use. n8 The destruction of ecological habitats contributes [\*355] to the increase of greenhouse gases and further exacerbates projected temperature increases. n9 Projections indicate a disproportionate increase of volatile weather patterns across the globe. n10 Increased severity of floods, such as those in India, will cause greater contamination of water sources and speed the spread of disease, n11 while other areas will experience corresponding drought and desertification. n12 The legal motivations to codify a right to water are equally compelling. State obligations and duties would be clearly identifiable, as would subsequent violations. Under a right to water, a State could not condone policies that discriminate against individuals based on their economic level or housing status. Yet the current failure to recognize a human right to water also does not provide any legal recourse or access for individuals whose rights are being violated. As a codified right, domestic and international legal institutions provide relief for violations by a State. n13 Currently, violations of a right to water are linked to other rights in order to provide a remedy. Codifying a right to water would spare this rhetorical gymnastics and hold states accountable for specific violations. II. Defining a Human Right to Water That water is an undisputed necessity for life attests to the need to protect a right to water for all. However, the importance of water in the current global order extends beyond its biological and ecological importance. Access to safe drinking water has transformed into a political, economic, and social issue at all levels. Underlying many of the political tensions in the Middle East are conflicts over water and water use among neighboring countries, such as Jordan, Israel, Syria, and Lebanon that dispute the use of the Jordon River. n14 The health implications are also significant; investments in water quality and sanitation can yield net [\*356] economic benefits as a result of improved health conditions and reduced health-care costs. n15 Although the primary international human rights texts do not explicitly recognize a human right to water, n16 **this right is clearly implied in and derived from the provisions of the** International Covenant on Civil and Political Rights (**ICCPR)** and the International Covenant of Economic, Social, and Cultural Rights (ICESCR). n17 For example, Articles 6 and 7 of the ICCPR guarantee the "inherent right to life" and freedom from "torture or to cruel, inhuman, or degrading treatment," respectively. n18 Water is essential to the full realization of these Articles, for deprivation of water may amount to deprivation of life or inhumane treatment. Moreover, Articles 21 and 25 of the ICCPR guarantee the right of peaceful assembly and the right to participate in public life, both of which relate to the monitoring, surveillance, and advocacy aspects of water management and a human right to water. n19

# 2AC

## T

### A2: T

#### We meet – the plan bans indefinite detention – that’s not oversight

#### C/I - Judicial restriction means to reduce the scope of

Newman 8 (Pauline, Judge @ UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, 545 F.3d 943; 2008 U.S. App. LEXIS 22479; 88 U.S.P.Q.2D (BNA) 1385; 2008-2 U.S. Tax Cas. (CCH) P50,621, IN RE BERNARD L. BILSKI and RAND A. WARSAW, lexis)

Id. at 315 (quoting U.S. Const., art. I, §8). The Court referred to the use of "any" in Section 101 ("Whoever invents or discovers any new and useful process . . . or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title"), and reiterated that the statutory language shows that Congress "plainly contemplated that the patent laws would be given wide scope." Id. at 308. The Court referred to the legislative intent to include within the scope of Section 101 "anything under the sun that is made by man," id. at 309 (citing S. Rep. 82-1979, at 5; H.R. Rep. 82-1923, at 6 (1952)), and stated that the unforeseeable future should not be inhibited by judicial restriction of the "broad general language" of Section 101: A rule that unanticipated inventions are without protection would conflict with the core concept of the patent law that anticipation undermines patentability. Mr. Justice Douglas reminded that the [\*981] inventions most benefiting mankind are those that push back the frontiers of chemistry, physics, and the like. Congress employed broad general language in [\*\*103] drafting §101 precisely because such inventions are often unforeseeable.

#### We meet – we’re explicitly a restriction on presidential war powers authority to detain – this is not an argument, read the plan

#### No ground loss – just because we could do other ICCPR things doesn’t make that the aff – our advantages are off of ending a detention restriction via i-law

#### Extra T is not a voter – it provides more ground for the negative and is predictable – lit checks

#### Neg overlimits – their interp will turn restrict into a substantially is a percent debate – a 99% restriction will grant them all the same ground but not meet their interpretation

AND

#### Precision and grammar go aff – only our interpretation sets a clear brightline for topicality

AND

#### Competing interpretations is bad – causes a race to the bottom and trades off with substantive debate about the topic – reasonability is best and good is good enough.

AND

#### Gut check – oversight is an easy adjustment even if they had prepped for prohibition – it’s the most predictable mechanism – if we don’t make it impossible to be neg we shouldn’t lose on T

## S

### A2: Circumvention

#### 1 – doesn’t implicate ICCPR or human rights – the internal link is declaring the treaty self executing which circumvention doesn’t complicate – the signal sent by the plan is sufficient to solve

#### 2 – no specific evidence that Obama circumvents the plan’s specific court decision

#### Obama will comply with the i-law ruling - no circumvention

Koh 12 (Harold Hongju, Legal Adviser, U.S. Department of State: Martin R. Flug ’55 Professor of International Law (on leave), Yale Law School, "Twenty-First Century International Lawmaking," http://www.state.gov/s/l/releases/remarks/199319.htm)

I’ve talked about a host of ways to undertake an obligation, but that’s only the beginning. You then face what international relations people call “the compliance question:” if the United States can lawfully enter into an international agreement, how do you ensure that we’ll comply? My office’s lawmaking practice is not limited to joining treaties and other agreements; we spend just as much time ensuring the U.S. is in a position to comply with its international obligations. I sometimes am asked by my European counterparts why the United States seems slow to join international agreements, suggesting that this shows that the United States doesn’t really care about international law. In fact, it reveals the opposite: before we undertake international commitments, we think very carefully about what they entail, precisely because we take so seriously those commitments we do make.¶ In my academic work, I have described a pervasive phenomenon in international affairs that I call “transnational legal process:” that international law is primarily enforced not by coercion, but by a process of internalized compliance. Nations tend to obey international law, because their government bureaucracies adopt standard operating procedures and other internal mechanisms that foster default patterns of habitual compliance with international legal rules. When I became Legal Adviser, I found that this is even truer than I thought. For example, most people are unaware of the so-called “C-175” process, named after a 1955 State Department Circular setting out a standardized procedure for concluding international agreements. The few academics who have ever noticed that process often assume it is nothing more than a rubber stamp. But having now seen it from the inside, I can tell you that the process is exhaustive and designed to ensure that all proposed U.S. international agreements — even if concluded by a different agency — are subject to a rigorous legal and policy review by the State Department before an any agreement is negotiated and concluded. Through this process, the State Department plays the same kind of clearinghouse role with respect to international agreements that OMB plays with regard to federal regulations. The C-175 process ensures not only that we have the legal authority to conclude the agreement in question, but also that every agency’s lawyers fully understand the nature of the domestic and international legal obligations we will undertake, so that we can accurately evaluate whether the United States will be able to comply with its new international legal obligations.

#### Observer effect solves circumvention- this card assumes all your empirics and warrants

Deeks 10/21 (Ashley, Ashbley Deeks served as an attorney-adviser in the Office of the Legal Adviser at the U.S. Department of State. She worked on issues related to the law of armed conflict, including detention, the U.S. relationship with the International Committee of the Red Cross, conventional weapons, and the legal framework for the conflict with al-Qaeda. Courts Can Influence National Security Without Doing a Single Thing <http://www.newrepublic.com/article/115270/courts-influence-national-security-merely-watching>)

While courts rarely intervene directly in national security disputes, they nevertheless play a significant role in shaping Executive branch security policies. Let’s call this the “observer effect.” Physics teaches us that observing a particle alters how it behaves. Through psychology, we know that people act differently when they are aware that someone is watching them. In the national security context, the “observer effect” can be thought of as the impact on Executive policy-setting of pending or probable court consideration of a specific national security policy. The Executive’s awareness of likely judicial oversight over particular national security policies—an awareness that ebbs and flows—plays a significant role as a forcing mechanism. It drives the Executive to alter, disclose, and improve those policies before courts actually review them. Take, for example, U.S. detention policy in Afghanistan. After several detainees held by the United States asked U.S courts to review their detention, the Executive changed its policies to give detainees in Afghanistan a greater ability to appeal their detention—a change made in response to the pending litigation and in an effort to avoid an adverse decision by the court. The Government went on to win the litigation. A year later, the detainees re-filed their case, claiming that new facts had come to light. Just before the government’s brief was due in court, the process repeated itself, with the Obama Administration revealing another rule change that favored the petitioners. Exchanges between detainees and their personal representatives would be considered confidential, creating something akin to the attorney-client privilege. Thus we see the Executive shifting its policies in a more rights-protective direction without a court ordering it to do so.

## Human Rights

## ICCPR

### A2: Secessionism Doesn’t Escalate

#### Internal self-determination averts moves to secessionism – avoids global conflict

Kolodner 94 (Eric, currently completing a joint degree at New York University School of Law and Princeton University's Woodrow Wilson School, "THE FUTURE OF THE RIGHT TO SELF-DETERMINATION," 10 Conn. J. Int'l L. 153, lexis)

Promoted within a myriad of international instruments, principles of self-determination have become embedded within international law. Relying upon these principles since the end of World War I, the international community has fostered decolonization, protected human rights worldwide, and helped to promote the idea that all individuals are entitled to participate in the decision-making process that affects the political, economic, social, and cultural conditions under which they live.¶ Recently, however, some commentators have suggested that the international community should begin to resist movements for self-determination. This perspective derives from a misguided conception of self-determination and a short-sighted view on geo-political realities. Contrary to the assumption of these observers, self-determination is not coterminous with secession, and therefore, self-determination movements do not inherently produce international instability. In fact, since efforts to limit the self-determination movements of today often foment the conflict of tomorrow, recognizing legitimate claims for self-determination might ensure world stability.¶ Rather than abandoning this important right, the international community must readjust its conception of self-determination to address the changing needs of the post-Cold War world. It should emphasize the internal aspects of this right, which in many respects comport with principles of democratic governance that have recently assumed a primacy throughout the world. Additionally, by the international community sup- [\*167] porting movements for internal self-determination, it can potentially avoid the disruption that often accompanies movements for external self-determination. Because some peoples still suffer under neo-colonial oppression, however, the international community should not categorically reject movements for external self-determination. Only when principles of internal self-determination cannot satisfy the legitimate needs of an aggrieved people, should the international community support this people's right to external self-determination. It should attach stringent conditions upon the legitimate exercise of this right, however. Only by limiting movements for external self-determination and recognizing legitimate movements for internal self-determination, can the international community simultaneously foster human rights, support democracy, and maintain world peace and stability.

## Terror

### Legitimacy 2AC

#### Past detention rulings cited i-law - thumps the link

Akram 13 (Susan, School of Law clinical professor of law and former executive director of Boston’s Political Asylum/Immigration Representation Project, "Guantanamo: the Legal Mess Behind the Ethical Mess," <http://webcache.googleusercontent.com/search?q=cache:WeP6DEFXl1oJ:www.bu.edu/today/2013/gitmo-the-legal-mess-behind-the-ethical-mess/+&cd=4&hl=en&ct=clnk&gl=us>)

How could the detention center be legal at all if Congress has blocked funding for any trials for those still imprisoned there? There’s no clear answer. The US Supreme Court, in four important decisions, Rasul v. Bush, Boumediene v. Bush, Hamdi v. Rumsfeld, and Hamdan v. Rumsfeld, **held that international law applies to Guantanamo detainees**, that they cannot be held indefinitely without trial, that constitutional habeas corpus protections apply to them, and that the combatant status review tribunals were unconstitutional and violated the Geneva Conventions. Yet Congress and the executive branch have, through policy and legislation, strenuously avoided implementation of these decisions. The United States has also been chastised repeatedly by other states and the United Nations and its human rights organs that its interpretation of the laws of war concerning the detainees is wrong and against international consensus. Since 2002, the Inter-American Commission on Human Rights of the Organization of American States has issued and reextended precautionary measures against the United States (the equivalent of domestic law injunctive orders), requesting that the United States take urgent measures necessary to have the legal status of the detainees determined by a “competent tribunal.” Why are the detainees’ rights so different from those accorded by our constitution and international law? The Bush administration took the position that laws of war and humanitarian law under the four Geneva Conventions of 1949 did not apply to the armed conflict the United States was engaged in with al-Qaeda in the US invasion of Afghanistan. The Bush policy was that the Geneva Conventions did not apply to “unlawful enemy combatants,” such as al-Qaeda and the Taliban. In Hamdan v. Rumsfeld (2006), the US Supreme Court disagreed, finding that Article 3, common to all the Geneva Conventions, did apply to all individuals in the conflict, providing minimum guarantees of fair and humane treatment.The court found that Article 3 requires fair trials for all detainees, prohibits torture and indefinite detention, and binds both the United States and Afghanistan. This is the overwhelming consensus under international law of the applicability of the Geneva Conventions.

#### 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

#### Legitimacy low – DOMA

Sanchez 13

[Elizabeth, Charisma News, Supreme Court Loses Legitimacy, Authority With Gay Rights Ruling, 6/28/13, <http://www.charismanews.com/politics/40067-supreme-court-loses-legitimacy-authority-with-gay-rights-ruling>]

The 5-4 opinion by the Supreme Court on the Federal Defense of Marriage Act (DOMA) raises serious questions about the legitimacy of the Court’s authority. History has proven that the Supreme Court does not always issue legitimate opinions. In Dred Scott v. Sandford, 60 U.S. 393 (1857), Chief Justice Roger Taney wrote for the majority that while some states had granted citizenship to blacks, the U.S. Constitution did not recognize citizenship of blacks. Taney wrote that blacks were “regarded as beings of inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights that the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his own benefit.” Thus, according to the Supreme Court, Scott had no standing to file the suit. As might be expected, this decision created further rift between the North and the South in the days leading up to the Civil War. The Fourteenth Amendment later put the nail in the coffin of the Dred Scott decision. This decision was thus made illegitimate and is repudiated today. In Buck v. Bell, 274 U.S. 200 (1927), Justice Oliver Wendell Holmes, writing for the Court, described Charlottesville, Va., native Carrie Buck, whom he described as an “imbecile,” as the “probable potential parent of socially inadequate offspring, likewise afflicted,” and he went on to say that “her welfare and that of society will be promoted by her sterilization.” His infamous words still cause one to shudder when he wrote, “Three generations of imbeciles are enough.” The Buck v. Bell case approved forced sterilization to prevent “feebleminded and socially inadequate” people from having children. This horrible decision set the stage for more than 60,000 sterilizations in the United States and was cited favorably at the Nuremberg trials in defense of Nazi sterilization experiments. Incredibly, this decision has never been overturned. Even so, this decision was illegitimate and is repudiated today. In Korematsu v. U.S., 324 U.S. 885 (1945), the Supreme Court upheld Executive Order 9066, which ordered Japanese Americans to be herded into internment camps during World War II. Citizenship had no value to the Japanese. All persons of Japanese descent were placed in custody, despite the constitutional guarantee of the Fifth Amendment. This decision, too, is illegitimate. Justice O’Connor, writing in Planned Parenthood of Southeastern Penn. v. Casey, 505 U.S. 833, 864-869 (1992), candidly acknowledged, “As Americans of each succeeding generation are rightly told, the Court cannot buy support for its decisions by spending money and, except to a minor degree, it cannot independently coerce obedience to its decrees. The Court’s power lies, rather, in its legitimacy, a product of substance and perception that shows itself in the people’s acceptance of the Judiciary as fit to determine what the Nation’s law means and to declare what it demands. ... “The Court must take care to speak and act in ways that allow people to accept its decisions on the terms the Court claims for them, as grounded truly in principle, not as compromises with social and political pressures having, as such, no bearing on the principled choices that the Court is obliged to make. Thus, the Court’s legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation.” “The 5-4 decision by the Supreme Court in the Federal Defense of Marriage Act case has caused millions of Americans to lose confidence in the Court,” says Mat Staver, founder and chairman of Liberty Counsel. “The decision is as far removed from the Constitution and the Court’s prior precedent as the east is from the west. Led by Justice Kennedy, the majority of the justices have cut the tether that once connected them to the Constitution. "This decision does not even pretend to be governed by the Constitution or Court precedent. Although the Court used the words 'equal protection,' the Court never engaged in an equal protection analysis. Not once did the Court identify the right sought by the petitioners. "Not once did the Court ask whether the claimed right was protected, either by an enumerated provision of the Constitution or deeply rooted in history and necessary to ordered liberty. Not once did the Court seek to determine the level of judicial scrutiny the case should receive. In short, the opinion represents the personal views of five Justices and it finds no support in the Constitution or reason. As history has shown us, such decisions delegitimize the Court. "On top of this flawed opinion, the majority demeaned the Court and weakened its authority by labeling as hateful those who believe that marriage is the union of one man and one woman. Marriage pre-dates religion and all civil authorities. It is ontologically a union of a man and a woman and is part of the natural created order. Such irresponsible language by the Court undermines its legitimacy in the eyes of the people. The Court does not have unlimited authority. This decision presumed too much of the people’s blind acceptance of its authority. Just like a corporate act cannot be ultra vires (beyond its authority), the people may determine that this decision is beyond the authority of this Court. If that happens, the Court will lose its authority,” concludes Staver.

#### Post-Boumediene uncertainty ensures the continuation of endless litigation that clogs federal court dockets

Geltzer 11 (Joshua, Joshua Alexander Geltzer is a third-year student at Yale Law School, where he is editor-in-chief of the Yale Law Journal. He received his Ph.D. in War Studies from King's College London, "The Courts' Embrace of Complexity in Guantanamo-Related Litigation," 29 Berkeley J. Int'l L. 94, lexis)

Tackling the most complex limiting factor of the war against terrorism, its means, has led the courts into treacherous terrain. The lack of bright lines in judicial decisions has meant that virtually every lower court ruling has been [\*123] appealed, yet every higher court decision has left many questions unanswered - which, when answered by lower courts, have been appealed yet again. It might be said that the trajectories of the cases assume the shape of a double or even triple helix.¶ Various such treks up and down the judicial hierarchy can be tracked. n148 Rasul, for example, began with a district court opinion grappling, in significant part, with whether detentions at Guantanamo fell within the non-justiciable war-making means of the political branches' war against terrorism. n149 Given the complexity of such an evaluation, the district court's opinion in favor of the government was appealed, producing another discursive examination of the subject, this time by the D.C. Circuit. n150 Both lower courts then were reversed by the Supreme Court. n151 This pronouncement by the nation's highest Court hardly resolved the matter: as previously mentioned, on remand to the district court, the government simply renewed its motion to dismiss by asserting executive authority over foreign affairs, n152 thus calling into question whether the Supreme Court's dramatic decision actually had altered anything and poignantly underscoring just how much uncertainty continued to face the lower courts and plague the case law. n153 Indeed, two district court judges, tasked with responding to Rasul, reached diametrically opposite conclusions. n154 One of the judges specifically noted that "the Court would have welcomed a clearer declaration in the Rasul opinion regarding the specific constitutional and other substantive rights of the petitioners." n155 Embracing complexity thus made the application of higher courts' rulings an extremely difficult task n156 and one [\*124] inevitably challenged by further appeals.

¶ A similarly tangled trail from lower to higher courts and back again emerged in the case of the Uighurs. After Hamdan and then Boumediene traveled up and down - and then back up and back down - the judicial hierarchy, it seemed resolved that Guantanamo detainees could file habeas petitions. What relief was available, however, remained unclear. Following the D.C. Circuit's rejection of enemy combatant status in Parhat n157 and its suggestive language regarding a court's authority to order release in response to a habeas petition, n158 the district court responded to precisely such a set of petitions by ordering the Uighurs released into the U.S. n159 The government, however, questioned whether that was really what the Court of Appeals had envisioned in Parhat, and appealed - winning a reversal, as the D.C. Circuit made clear that release on American soil was not, in fact, what Parhat had in mind. n160 As this article goes to press, the uncertainty persists and the judicial journey continues, with the Supreme Court having vacated the D.C. Circuit's decision and remanded the case, n161 only to have the D.C. Circuit reinstate its previous opinion. n162¶ Hence, virtually the entire string of major Guantanamo-related cases has traveled from the D.C. District Court to the D.C. Circuit to the Supreme Court, only to return to the district court with unanswered questions whose resolution by district court judges is inevitably challenged first before the D.C. Circuit and again before the Supreme Court. n163 The narrow rulings and reinterpretable [\*125] opinions produced by the courts' avoidance of time and space as limiting factors constraining the war against terrorism have generated persistent judicial uncertainty, as court after court must assess the complex factor of the war's means. This cost burdens not only the detainees, who must await answers from their cells in Guantanamo, but also the courts themselves, which find their dockets flooded with endless litigation on the subject. In addition, the country as a whole seems to suffer from the unrelenting uncertainty surrounding such a major issue and the political energy and space that it therefore consumes.

#### Clogged court system jacks public respect for the system and undermines legitimacy

Bassler ’96 (William G, Judge, United States District Court, District of New Jersey, 1991 present; Adjunct Prof of Law @ Seton Hall School of Law; 48 Rutgers L. Rev. 1139 ln)

In addition to the delegation of opinion writing to clerks, the delegation of authority in general n92 is a major cost of the [\*1157] caseload explosion. "The caseload per federal judge has risen to the point where very few judges, however able and dedicated, can keep up with the flow without heavy reliance on law clerks, staff attorneys, and sometimes externs too." n93 This bureaucratization n94 of the federal judiciary can only serve to erode its effectiveness, independence, and public respect, as well as the morale of the federal bench itself. The sheer volume of cases erodes the ability of the judge to give personal and individual attention to each case. n95 In order to stay abreast of his or her docket, a judge may be tempted to resort to forced settlements, excuses to remand to state courts, and aggressive dispositions by summary judgments rather than carefully weigh the arguments of both sides. The ever-increasing criminal docket with its requirements for early disposition of cases under the Speedy Trial Act n96 prevents careful pretrial management of the civil docket by the judge and mandates reliance on the magistrate. The ever-increasing docket will, by necessity, invite more court administrator involvement with the inevitable erosion of the traditional independence of the federal judge. n97 Increased pressure to dispose of ever in- [\*1158] creasing backlogs also invites well-intentioned efforts to find better ways to manage the docket. This in turn requires judges to attend an ever increasing number of committee meetings n98 which naturally takes away from time on the bench. n99 While "the federal courts do not exist for the purpose of clearing their dockets," n100 the current caseload crisis does at least require those advocating the expansion of federal jurisdiction n101 to justify the need for federal action. Considering the [\*1159] public expectations of the federal judiciary, impaired performance and diminished independence are costs the country cannot afford. n102

#### The use of foreign sources depoliticizes the judiciary – turns the DA

Rahdert 7 (Mark, Prof of Law @ Temple, February, 56 Am. U.L. Rev. 553, lexis)

While this political element may never be excised completely from judicial decisions on politically controversial constitutional questions, consideration of foreign precedent may supply a partial antidote to politicization of the American judiciary. Foreign judges naturally function outside U.S. politics. 401 Their decisions may be colored by [\*629] the political issues of the day in their own countries, but they are unlikely to be influenced by the ebb and flow of politics in the United States, and are thus unlikely to be determined by the partisan political effects of a particular result in the United States. As a consequence, foreign decisions may serve as a background check against domestic political pressures

 on the judiciary. American judges can test their reasoning and results against the decisions and rationales of foreign counterparts. Where there is common ground, the American courts can use foreign precedent to buttress their arguments and demonstrate the political impartiality of their decision. Where there are differences, the American judges may consider whether the difference is attributable to political concerns and, if so, whether according weight to such political factors requires correction. They may also be prompted to explain why their decision differs. Over time,this could help American courts to detect and correct for political influences in their thinking**, and thus to preserve a greater measure of independence from partisan politics**. 402

#### Zero risk of public backlash, even if they hate the substance of the decision

Young ’12 (Ernest A., Alston & Bird Professor, Duke Law School, POPULAR CONSTITUTIONALISM AND THE UNDERENFORCEMENT PROBLEM: THE CASE OF THE NATIONAL HEALTHCARE LAW, 75 Law & Contemp. Prob. 157, ln)

There is a second aspect to the story, however. That aspect focuses on public perceptions of the status and role of the courts - particularly the U.S. Supreme Court. Public opinion evolves not only with respect to matters of policy - for example, the appropriate level of government regulation and social provision - but also with respect to the role of judicial review itself. Because doctrinal underenforcement consists in the courts' willingness to defer constitutional judgments to other actors, broad trends in public opinion influence not only the weight that the courts give to other political institutions but also the confidence with which the courts approach their own tasks. Although the Supreme Court started out in a precarious institutional position with uncertain popular legitimacy, over time it has solidified its role and achieved an impressive level of "diffuse support" - that is, support that does not depend on public agreement with the merits of particular decisions. n19 To the extent that judicial review seems accepted, respected, even desired, we can expect the Court to defer less to Congress, the President, or state institutions on particular issues.

**Legitimacy is resilient**

Gibson 6 (James L. Professor of Government & Professor of African, June, 15, “The Legitimacy of the United States Supreme Court in a Polarized Polity,” Pa24, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=909162)

Conventional political science wisdom holds that contemporary American politics is characterized by deep and profound partisan and ideological divisions. Unanswered is the question of whether those divisions have spilled over into threats to the legitimacy of the United States Supreme Court. Since the Court is often intimately involved in making policy in many policy areas that divide Americans, including the contested 2000 presidential election, it is reasonable to hypothesize that loyalty toward the institution depends upon policy and/or ideological agreement and partisanship. Using data stretching from 1987 through 2005, the analysis reveals that Court support has not declined. Nor is it connected to partisan and ideological identifications. Instead, support is embedded within a larger set of relatively stable democratic values. Institutional legitimacy may not be obdurate, but it does not seem to be caught up in the divisiveness that characterizes so much of American politics - at least not at present.

**Legitimacy isn’t tied to individual decisions**

Ura 13 (Joseph Daniel, Ph.D. Political Science, University of North Carolina at Chapel Hill (2006). Assistant Professor Department of Political Science Texas A&M, 6-20-13, "Supreme Court Decisions in Favor of Gay Marriage Would Not Go ‘Too Far, Too Fast’" Pacific Standard) www.psmag.com/politics/supreme-court-tk-60537/

AN ARRAY OF RESEARCH in political science—due substantially to James Gibson of Washington University, Gregory Caldeira of Ohio State University, and their collaborators—shows that the Supreme Court’s legitimacy is not dependent on agreement on individual questions of policy between the Court and the public. Instead, judicial legitimacy rests on the public’s perception that the Court uses fair procedures to make principled decisions—as compared to the strategic behavior of elected legislators. These perceptions are supported by a variety of powerful symbols representing the close association between the Supreme Court and the law and its impartiality, such as black robes, the image of blind justice, and the practice of calling the members “justices.” The public’s response to the Supreme Court’s decision in Bush v. Gore, which resolved the contested presidential election in 2000, is perhaps the classic example of the nature and influence of the Court’s legitimacy. Despite the bitter partisan conflict that precipitated the case, the enormous political implications of the decision, the blatant partisan divisions on the Court, and the harsh tone of the dissenting justices, the best evidence available indicates that the public’s loyalty to the Supreme Court did not diminish as a result of the case.In particular, neither Democrats nor African-Americans significantly turned against the Court after the decision.

#### Non unique and no link- legitimacy low because of political questions in the squo

Rosen 12

[Jeffery, legal affairs editor of The New Republic., The Supreme Court Has a Legitimacy Crisis, But Not For the Reason You Think, 6/11/12, <http://www.newrepublic.com/article/politics/103987/the-supreme-court-has-legitimacy-crisis-not-the-reason-you-think>]

But a new study by Nathaniel Persily of Columbia Law School and Stephen Ansolabehere of Harvard suggests that the relationship between the Court’s declining approval ratings and increased perceptions of the Court’s partisanship may be more complicated than the New York Times and the Chief Justice suggest. According to the study, **Americans already judge the Court according to political criteria**: They generally support the Court when they think they would have ruled the same way as the justices in particular cases, or when they perceive the Court overall to be ruling in ways that correlate with their partisan views. If this finding is correct, the most straightforward way for the Court to maintain its high approval ratings is to hand down decisions that majorities of the public agree with. And, like its predecessors, the Roberts Court has, in fact, managed to mirror the views of national majorities more often than not. In a 2009 survey, Persily and Ansolabehere found that the public strongly supported many of the Supreme Court’s recent high-profile decisions, including conservative rulings recognizing gun rights and upholding bans on partial birth abortions, as well as liberal rulings upholding the regulation of global warming and striking down a Texas law banning sex between gay men. But if the public agrees with most of the Court's decisions, why is it more unpopular than ever? Part of the answer has to do with the fact that there are a handful of high profile decisions on which the Court is out of step with public opinion, including the Kelo decision allowing a local government to seize a house under eminent domain and the Boumediene case extending habeas corpus to accused enemy combatants abroad, and recent First Amendment decisions protecting unpopular speakers, such as funeral protesters, manufacturers of violent video games, and corporations (in the Citizens United case.) All of these decisions were unpopular with strong majorities of the public. But Persily and Ansolabehere also found that even decisions that closely divide the public can lead to a decrease in the Court’s approval rating over time, by increasing the perception among half the public that the Court is out of step with its partisan preferences. Bush v. Gore is perhaps the clearest example. In the short term, the Court’s overall approval ratings didn’t suffer: Republicans liked the decision, while Democrats didn’t, and the two effects canceled each other out. But Persily and his colleagues found that ten years later, Bush v. Gore continues to define the Court for many citizens, destroying confidence in the Court among Democrats while reinvigorating it among Republicans. Since an important component of the Court’s overall approval rating is whether Americans perceive themselves to be in partisan agreement with the Court as an institution, Bush v. Gore has led to a statistically significant decline in approval among Democrats as a whole. At the beginning of his tenure, Chief Justice Roberts said he wanted to avoid 5-4 decisions because if people perceived the Court as a partisan institution, they would lose confidence in the institution more generally. But Persily and Ansolabehere’s study suggests a more complicated reality: Americans support the Court when they perceive themselves to be in partisan agreement with it, and they lose confidence when they perceive the justices to be moving in a different partisan direction than their own. The study found that most Americans either don’t know or guessed wrong about which party’s presidents appointed the majority of justices: only a third knew that a majority of justices were appointed by Republican presidents. And the study also found that Republicans who can correctly identify the fact that Republican presidents appointed a majority of justices tend to support the Court, while Democrats who can correctly identify the fact that Democrats appointed a minority of justices express less support.

### Legitimacy 2AC – Enviro Internals

#### Why would detention policy affect court ability to protect the environment?

#### One detention case won’t spill over to broader destruction of legitimacy – squo proves

#### Environmental protections rulings will outweigh – EPA case is on the docket now

## Off

### 2AC K

#### 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.

### Amendment CP – 2AC

#### Perm --- do both --- solves the link

Denning 2 (Brannon P, Assistant Professor of Law – Southern Illinois University School of Law; John R. Vile, Chair of Political Science – Middle Tennessee State University; November, 77 Tul. L. Rev. 247, Lexis)

The Article V process is, as the Framers intended, rigorous. The supermajority provisions for both proposal and ratification almost always guarantee that additions will not be made to the Constitution without both deep and broad support. Though some have criticized the necessity of such supermajorities, 127 holding additions to the Constitution in abeyance until it is clear that support is broad generally prevents populous regions from dominating less populous ones. This, in turn, allows the amendment to become part of the Constitution with a near-conclusive presumption of legitimacy. This legitimacy, then, helps free the other branches (courts, for example) to enforce it vigorously; indeed, such enforcement would likely be expected after an amendment makes it through Article V's arduous process. And if, after popular expectations were raised through the debates over proposal and ratification, the amendment is not enforced, institutions responsible for the foot-dragging may again face costs for evasion. This legitimization element is so crucial that the examples Strauss cites of amendments that, he argues, did not do anything immediately (the Reconstruction Amendments) or are not likely to have a significant effect despite their eventual ratification (the Twenty-Seventh Amendment), 128 could be cited as proof of what [\*279] happens when attempts are made to short-circuit (or play games with) Article V's procedural requirements. 129

#### Perm --- do the counterplan --- functionally mandates the plan

#### Amendment counterplans are a reason to reject the team –

#### Topic education – forces focus on the process instead of whether or not the plan is a good idea

#### Steals Aff ground by doing all of the plan which makes it difficult to generate offense

#### Multi-actor fiat bad – destroys predictability because you can combine any number of actors

#### Violates the lit base – no one supports multi actor immediate amendment fiat

#### No solvency ---

#### No enforcement on war powers amendments

Griffin 11

[Stephen, Rutledge C. Clement, Jr. Professor in Constitutional Law, Tulane Law School, The National Security Constitution and the Bush Administration, The Yale Law Journal Online March 25, 2011, L/N]

In previous work, I have advanced the concept of the "legalized Constitution," which is essentially identical to Eskridge and Ferejohn's definition of the "Large 'C'" Constitution. n16 In the legalized Constitution, constitutional change occurs through formal amendments and judicial decisions. It is well known, however, that some parts of the Constitution, especially those having to do with foreign affairs and war powers, are enforced either irregularly by the judiciary or not at all. n17 This creates a space for a [\*371] "nonlegalized" but "Large 'C'" Constitution. Although it is not clear, Eskridge and Ferejohn imply that the judiciary enforces (or underenforces) all parts of the Constitution. n18 By contrast, I regard constitutional norms with respect to the initiation of war (the Declare War Clause of Article I, Section 8) as determinate but not enforced by the judiciary. Thus, I am not proceeding under the assumption that clauses with respect to war and foreign affairs are "underenforced." Rather, in crucial respects they are not enforced at all, thus leaving a clear field for de facto constitutional change through executive action. The theoretical task is to describe and explain how this occurs. The parts of the nonlegalized Constitution relevant to presidential power, such as the Commander-in-Chief Clause of Article II, are nonetheless supreme law even if they are not enforced by the judiciary. Presidents can wield, and have wielded, such clauses with enormous impact in contests for power both inside and outside the Executive Branch. The crucial point of distinction between Eskridge and Ferejohn's theory and my own is that these existing nonlegalized "Large 'C'" constitutional powers can and have been used by presidents to leverage significant constitutional change. The distinction between the parts of the "Large 'C'" Constitution that have been legalized by the judiciary and those that have not cuts across the theories offered by Eskridge and Ferejohn and those offered by Ackerman. These theories are similar in that they posit a process, alternative to that specified in Article V, to account for important changes that have kept the constitutional order up to date. But suppose a President uses "Large 'C'" but nonlegalized powers to transform the constitutional order? Eskridge and Ferejohn's model, in which non-Article V, nonjudicial changes are made through statutory and administrative channels, does not appear to allow for this possibility. By contrast, in the postwar era presidential power in foreign affairs expanded primarily through "Large 'C'" constitutional means. President Truman's decision to use his Article II Commander-in-Chief power unilaterally to involve U.S. armed forces in the Korean War is a classic example. n19

#### No solvency for ICCPR – that’s Loan - Court action is key to change current trends in jurisprudence – that’s critical to effective enforcement

#### Court has unique symbolic effect --- key to foreign perception of the plan

Fontana 8 (David, Associate Professor of Law – George Washington University Law School, “The Supreme Court: Missing in Action”, Dissent Magazine, Spring, http://www.dissentmagazine.org/article/?article=1165)

*The Results of Inaction*
What is the problem with this approach? The answer, simply put, is that it legitimates and even catalyzes political activity by Congress and the president, but it does so without including in this political activity the critically influential background voice of the Supreme Court on issues related to individual rights. The Court has two main powers: one has to do with law and compulsion, the other has to do with political debate. The Court can legally compel other branches of government to do something. When it told states and the federal government in Roe v. Wade that they could not criminalize all abortions, for example, the Court’s decision was a binding legal order. But the Supreme Court also plays a role in political debate, even when it does not order anyone to do anything. If the Justices discuss the potential problems for individual rights of a governmental action, even if they don’t contravene the action, their decision still has enormous import. This is because other actors (members of Congress, lawyers, newspaper editorial writers, college teachers, and many others) can now recite the Court’s language in support of their cause. Supreme Court phrases such as “one person, one vote” have enormous symbolic effect and practical influence. If there had been a case about torture, for example, and some of the justices had written in detail about its evils, then Senator Patrick Leahy (senior Democrat on the Judiciary Committee) could have used the Justices’ arguments to criticize attorney general nominee Michael Mukasey during his confirmation hearings. Attorneys for those being detained at Guantánamo could have made appearances on CNN and (even) Fox News reciting the evils of torture as described by the Court. Concerns about rights could have been presented far more effectively than if, as actually happened, the Court refused to speak to these issues. The Supreme Court’s discussion of constitutional questions is particularly important for two reasons. First, the justices view these questions from a distinct standpoint. While members of Congress and the president have to focus more on short-term and tangible goods, members of the Court (regardless of which president appointed them) focus more on the long term and on abstract values. The Court offers a perspective that the other branches simply cannot offer. Second, when the Supreme Court presents this perspective, people listen. It is and has been for some time the most popular branch of American government. Although there is some debate about terminology and measurement, most scholars agree that the Court enjoys “diffuse” rather than “specific” support. Thus, even when Americans don’t like a specific decision, they still support the Court. By contrast, when the president or Congress does something Americans don’t like, their support drops substantially. AMERICANS BECOME more aware of the Court the more it involves itself in controversies. This is because of what political scientists call “positivity bias.” The legitimating symbols of the Court (the robes, the appearance of detachment, the sophisticated legal opinions) help to separate it from other political institutions—and in a good way for the Court. If the Justices had drawn attention to violations of individual rights, most of America would have listened and possibly agreed. As it is, our politics has been devoid of a voice—and an authoritative voice—on individual rights. For most of the time since September 11, few major political figures have been willing to stand up and speak in support of these rights. Recall that the Patriot Act was passed in 2001 by a vote of ninety-eight to one in the Senate, with very little debate. Congress overwhelmingly passed the Detainee Treatment Act (DTA) of 2005, which barred many of those complaining of torture from access to a U.S. court. Congress also overwhelmingly passed the Military Commissions Act (MCA) of 2006, which prevented aliens detained by the government from challenging their detention—and barred them from looking to the Geneva Conventions as a source of a legal claim.

#### No solvency for human rights – that’s Gruber – detention is a key test case for how the judiciary treats treaties – no evidence they solve enforcement

#### Delay – amendments don’t take effect for YEARS

**Joyce 98** (Jay, Prof of Public Administration at George Washington, 98

“The Rescissions Process After the Line Item Veto: Tools for Controlling Spending”

<http://www.rules.house.gov/archives/rules_joyc07.htm>)

In the final analysis, there is no clear fallback position for supporters of the Line Item Veto Act. The Supreme Court, in its majority opinion, stated flatly that a different role for the President in the lawmaking process could only "come through the Article V amendment procedures". Deciding the issue through amending the Constitution**,** however, has two substantial drawbacks. The first is that Constitutional amendments are notoriously difficult to adopt. Even if a Constitutional amendment were adopted, it would likely not take effect for a number of years**.** The second is more substantive. A constitutionally provided line item veto would only allow the President to veto items that were specifically provided for in appropriation bills. Most federal "line items", however, are found not in statute, but in report language accompanying statutes.

#### Judicial re-affirmation of rule of law principles on detention causes Iraqi modelling – that staves off civil war

**Scharf et al 9** (Michael, PILPG Managing Director, John Deaver Drinko — Baker & Hostetler Professor of Law and Director of the Frederick K. Cox International Law Center at the Case Western Reserve University School of Law, “BRIEF OF THE PUBLIC INTERNATIONAL LAW & POLICY GROUP AS AMICUS CURIAE IN SUPPORT OF PETITIONERS”, [www.americanbar.org/content/dam/aba/publishing/preview/publiced\_preview\_briefs\_pdfs\_09\_10\_08\_1234\_PetitionerAmCuPILPG.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_09_10_08_1234_PetitionerAmCuPILPG.authcheckdam.pdf)\)

B. Foreign Judges Follow U.S. and Supreme Court Leadership in Times of Conflict. In addition to its work advising foreign governments, PILPG has been and continues to be involved in a number of judicial training initiatives in foreign states. These initiatives aim to foster independent and fair judicial systems in transitional and post-conflict states throughout Central and Eastern Europe, Africa, and the Middle East. In these trainings, PILPG frequently relies on the work of this Court to illustrate and promote adherence to the rule of law. In 2004, for example, PILPG led a week-long training session for Iraqi judges in Dubai on due process and civil liberties protections to institute in the new post-Saddam legal system. The training was seen as an important step toward the democratization of Iraq, and something that would hasten the ability of the U.S. to withdraw its troops from Iraq. On the second day of the training program, local and international media published the leaked photos of the abuses at Abu Ghraib. The Iraqi judges would not allow the training sessions to continue until PILPG answered to their satisfaction questions about whether the U.S. judicial system could ensure that the perpetrators would be brought to justice, that the victims would be able to bring suit for their injuries, and that the abuses would be halted. When PILPG returned for another training session several months later, the Iraqi judges had mixed reactions to the prosecutions of the Abu Ghraib perpetrators. Some judges perceived the U.S. Prosecutions of the perpetrators as not aggressive enough, which left the Iraqi judges with the impression that the U.S. was not leading by example. Although other Iraqi judges appreciated and sought to follow the U.S. example to try those responsible for abuses before an independent tribunal, it was clear that Abu Ghraib temporarily set back U.S. efforts to establish rule of law in Iraq. A year later, in 2005, PILPG conducted training sessions for the Iraqi high tribunal judges who would be presiding over the trial of Saddam Hussein and other former leaders of the ba’athist regime. Even more than the human rights training of ordinary Iraqi judges discussed above, the successful operation of the Iraqi high tribunal was seen as critical to suppressing the spread of sectarian violence and heading off a full-scale civil war in Iraq. The objectives of the tribunal were twofold. First, the tribunal sought to bring those most responsible for the atrocities committed under the Ba’athist regime before an independent panel of judges to be tried under international standards of justice. Second, the tribunal sought to establish a model for upholding and implementing rule of law in Iraq and to demonstrate that the need for rule of law is greatest in response to the gravest atrocities. During the training sessions, the Iraqi judges requested guidance on controlling disruptive defendants in the courtroom. Specifically, the judges asked whether they could bind and gag the defendants in the courtroom as they understood had been done to the defendants in the 1969 “Chicago Seven” trial in the U.S. PILPG explained that the U.S. Court of Appeals had ultimately overturned the convictions in that case, in part because of the mistreatment of the defendants in the courtroom. United States v. Dellinger, 472 F.2d 340 (7th Cir. 1972). This information persuaded the Iraqi judges to seek less draconian means of control in the trial of Saddam Hussein, which was televised gavel to gavel in Iraq. See generally Michael Newton and Michael Scharf, Enemy of the State: The Trial and Execution of Saddam Hussein (2008). Foreign judicial interest in U.S. respect for rule of law during the war on terror is not limited to Iraqi judges. In 2006, PILPG conducted sessions in a weeklong rule of law training program in Prague for fifty judges from former Soviet Bloc countries in Eastern Europe. At the start of the first session, one of the judges asked “Sobriaetes’ li vi goverit’ o slone v komnate?,” which translates to “Are you going to be addressing the elephant in the room?” Michael P. Scharf, The Elephant in the Room: Torture and the War on Terror, 37 Case W. Res. J. Int’l L. 145, 145 (2006). The question referred to the so-called “White House Torture Memos,” released just before the training session began, which asserted that Common Article 3 of the 1949 Geneva Conventions was not applicable to detainees held at Guantanamo Bay and which provided justification for Military Commissions whose procedures would not meet the Geneva standards. Id. at 145-46. The group of judges asked PILPG to explain “how representatives of the United States could expect to be taken seriously in speaking about the importance of human rights law when the United States itself has recently done so much that is contrary to that body of law in the context of the so-called ‘Global War on Terror.’” Id. at 145. PILPG addressed judges’ concerns by explaining that the President’s decision to establish Military Commissions via Executive Order, and whether those Commissions had to comport with the Geneva Conventions, was currently being reviewed by this Court in Hamdan v. Rumsfeld, 548 U.S. 557 (2006), and that the Executive Branch would be bound to follow the holding of this Court. Scharf, supra, at 148. Foreign judges closely follow the work of this Court and the example set by the U.S. Government in upholding the rule of law during the war on terror. As these examples illustrate, when the U.S. upholds the rule of law, foreign judges are more likely to follow.

#### Impact is global nuclear war

Corsi 7 (Jerome, "War with Iran is imminent," Phd in Poly Sci @ Harvard, author, + staff reporter @ World Net Daily, 1-8, http://www.worldnetdaily.com/news/article.asp?ARTICLE\_ID=53669)

**If a broader war breaks out in Iraq**, Olmert will certainly face pressure to send the Israel military into the Gaza after Hamas and into Lebanon after Hezbollah. If that happens, it will **only be a matter of time** before Israel and the U.S. have no choice but to invade Syria. **The Iraq war could quickly spin into a regional war**, with Israel waiting on the sidelines ready to launch an air and missile strike on Iran that could include tactical nuclear weapons.

With Russia ready to deliver the $1 billion TOR M-1 surface-to-air missile defense system to Iran, military leaders are unwilling to wait too long to attack Iran. Now that Russia and China have invited Iran to join their Shanghai Cooperation Pact, will Russia and China sit by idly should the U.S. look like we are winning a wider regional war in the Middle East? If we get more deeply involved in Iraq, China may have their moment to go after Taiwan once and for all. A broader regional war could easily lead into a third world war, much as World Wars I and II began.

### Congress Inc. CP – 2AC

#### Perm – do both –

#### No solvency – effective congressional incorporation fails and doesn’t restrain the executive

**Brennan 99** (Maureen F. Brennan - Association Henri Capitant Louisiana Chapter award recipient – 99

(Louisiana Law Review, p. Lexis / 59 La. L. Rev. 1195)

Bradley and Goldsmith contend that the consequences of their position have been over-dramatized by the proponents of the "modern" position. They argue that under their view, "the federal political branches, rather than the federal courts, would have the primary role in deciding when and how the United States carried out its international obligations and when and how these norms created enforceable rights in U.S. courts." [156](http://www.lexis.com/research/retrieve?_m=8f975c10ef187f9f2d65be54fa1d2cb6&docnum=6&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAW&_md5=07248d5d4eb3dc4e8772dcfcdf635a13#n156) However, this contention is too simplistic and assumes that Congress will anticipate international problems, will not abdicate its responsibility, and will specifically decide in advance of controversy whether the United States will comply with customary international law. This is impossible and it is unrealistic to expect that Congress will consistently, or even often, act with expediency in the absence of crisis. If Bradley and Goldsmith are correct, until Congress acts, courts would be required to approve a U.S. violation of international law even when Congress would not so intend. What negative consequences would arise from a rule that customary international law should be applied to decide cases in the face of congressional silence? One should remember that customary international law has two components: first, a consistent and widespread practice by states, and second, the acceptance of the custom by the international community as legally binding. [157](http://www.lexis.com/research/retrieve?_m=8f975c10ef187f9f2d65be54fa1d2cb6&docnum=6&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAW&_md5=07248d5d4eb3dc4e8772dcfcdf635a13#n157) In addition to the impracticality of their argument, Bradley and Goldsmith overlook the potential negative consequences to the United States when the United States itself might seek to rely on customary international law in U.S. courts. First of all, it is a fundamental principle of American government and the separation of powers that the judicial branch judges the constitutionality of [\*1219] acts of the other branches of government. [158](http://www.lexis.com/research/retrieve?_m=8f975c10ef187f9f2d65be54fa1d2cb6&docnum=6&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAW&_md5=07248d5d4eb3dc4e8772dcfcdf635a13#n158) Furthermore, because the Constitution grants Congress the power to regulate international commerce, to define and punish offenses against international law, to raise and support the armed forces, to declare war, and to mobilize a militia to repel invasions, it is clear that the President does not have exclusive power in the field of foreign affairs. [159](http://www.lexis.com/research/retrieve?_m=8f975c10ef187f9f2d65be54fa1d2cb6&docnum=6&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAW&_md5=07248d5d4eb3dc4e8772dcfcdf635a13#n159) But if customary international law is not U.S. law, then any time a custom has not been expressly incorporated, the judiciary will be unable to keep the foreign affairs conduct of the executive branch in check.

#### Doesn’t solve case

#### A – Precedent – future jurisprudence is key – that’s Loan – and congress can’t change existing precedent against incorporation

Kundmueller 2 (Michelle, Journal of Legislation, p. lexis)

This section of this Note, on the legal authority of customary international law vis-a-vis federal legislation, has not been included with the purpose of discovering which position is correct. Rather, the overview of this debate holds a central place in this Note because it demonstrates some of the issues at stake as U.S. courts begin to integrate customary international law into what were previously thought of as purely or primarily domestic issues. Admittedly, the number of cases using customary international law in this manner is still few and primarily based on some enabling federal statute. Nonetheless, these decisions take on a greater importance in light of the debate discussed above. Should theorists such as Paust and Lillich prevail, these early cases, taking the first modern steps in the process of identifying and applying customary international law would become crucial precedent in a law-making process that Congress would be powerless to overturn. On the other hand, the case law about to be analyzed will lie at the mercy of the will of the people and their Congress, should the theories of Kelley and Garland prove prophetic. It is still too early to know which faction will dominate, but this analysis of their theories does survey the potential spectrum of outcomes and the legal and political issues yet to be determined.

#### Turn – congressional incorporation tanks cred and undermines CIL

Brennan 99 (Maureen, JD Candidate @ LSU, + Recipient of the Association Henri Capitant, Louisiana Chapter award for the best paper on a civil or comparative law topic, Summer, 59 La. L. Rev. 1195)

By far the most serious implications of the Bradley-Goldsmith argument are those repercussions that could befall the United States in the international arena. First, if the Bradley-Goldsmith argument were adopted, U.S. courts would be required not to enforce our international obligations. This would demonstrate that the United States**, through its** judiciary, **is not committed to enforcing its international obligations** sufficiently to apply international law in its courts. This position would undermine our credibility, encourage other nations where U.S. citizens reside or where U.S. corporations do business to follow suit, and decline to apply customary international law as domestic law to the United States' detriment. It would also erode the customary international law itself. Similarly, if a foreign nation imprisoned U.S. nationals or permanent residents based on an invalid claim of self- defense or another reason inconsistent with international law, the United States government would have no workable basis to protest or to protect the U.S. national. Thus, a charge of "blasphemy" or membership in an "outlawed" group, or even simply one's American citizenship, could lead to arrest and detention. The United States government would be without legal  [\*1221]  argument to challenge the conduct or even to protest in that nation's courts. An invalid claim of self-defense would be unassailable. The State Department is obliged to protect U.S. citizens abroad, but in such a situation it would be unable to do so if it could not rely on customary international law.

#### 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

#### NSA reform riders will be attached to the CP

Hattem 14 (Julian, The Hill, "NSA reform stalls in committee," 2/16, http://thehill.com/blogs/hillicon-valley/technology/198501-nsa-reforms-stalls-in-committee)

Lawmakers could also try to attach surveillance reform riders to other bills. Last year, Rep. Justin Amash (R-Mich.) nearly succeeded in placing an amendment to defund the NSA’s phone records program on the 2014 defense spending bill. The effort was defeated by just 12 votes on the House floor.¶ An Amash spokesman did not rule out trying to attach a similar amendment to the National Defense Authorization Act, upcoming appropriations bills or other “must-pass” pieces of legislation.¶ “That's one vehicle through which to move surveillance reform,” Will Adams told The Hill in an email. “Of course, we prefer that the House move comprehensive legislation such as the USA Freedom Act before then.”¶ Richardson, from the ACLU, said that looming threat ought to prompt congressional leadership to allow some legislation to pass sooner rather than later.¶ “If they don’t pass something, there are members in the House and Senate who will file NSA-related amendments to every intel or defense bill or judiciary bill till the end of time, like the authorization bills and things like that,” she said.¶ “The issue is not going to go away… The advocates for change are only going to wait so long before they go this other route.”

#### That cripples US intelligence capabilities

Bolton 13 (John, senior fellow at the American Enterprise Institute and former US ambassador to the United Nations, 9/26, "3 views on NSA reform after Snowden leaks," http://www.csmonitor.com/Commentary/One-Minute-Debate-3-Views/2013/0926/3-views-on-NSA-reform-after-Snowden-leaks/Don-t-overreact-Anger-over-abuses-must-not-harm-NSA-capabilities-secrecy)

For years, America's enemies have yearned to cripple its foreign electronic intelligence-gathering capabilities. Now, the ongoing furor over the National Security Agency (NSA) gives them the chance. Outright falsehoods, distortions, and hysteria have unfortunately been fueled by actual abuses and mistakes.¶ We face a general debate about whether vital electronic-surveillance programs should be substantially curtailed. We must prevent hype and anger over specific abuses from harming the NSA's actual capabilities and the secrecy needed to protect them.¶ Intelligence exists not for its own sake but to support executive decisionmaking. Accordingly, President Obama is principally responsible for explaining and advocating clandestine activities. This, he appallingly failed to do. Mr. Obama must act like a president, leading the defense of our embattled capabilities.¶ The inevitable congressional proceedings must not repeat the irreparable damage that the 1970s-era congressional investigative committees caused the CIA. Deficiencies there were, but our enemies were the principal beneficiaries of the committees' destructive investigations.¶ Most important, whatever fixes are made today must not deny America the tools to protect itself from terrorists, their state sponsors, and foreign adversaries, many of which are developing massive cyberwarfare programs. Moreover, the largely preventable or imaginary invasions of privacy pale before security breakdowns that have allowed serious intelligence leaks.¶ The NSA's opponents should be put on notice: If you materially restrict surveillance capabilities, you risk having American blood on your hands.

#### Impact is global wars and WMD use

Tenet 97 (George, former CIA director, DCI Remarks: Does America Need the CIA? Nov 19, <https://www.cia.gov/news-information/speeches-testimony/1997/dci_speech_111997.html>)

You will doubtless hear many views on the CIA during this conference. In stating mine, let me break the suspense and say that my answer to your question -- does America still need the CIA -- is an unambiguous **"yes"**. I imagine that is what you would expect to hear from me. But let me be equally clear about why I say it. In a nutshell, it flows from my conviction that the compelling factors behind the creation of the CIA are still present in the world that America must live in today.¶ The CIA was created by President Truman as an insurance policy against the kind of surprise that caught America off guard in World War II. He was also annoyed by the confused and conflicting nature of the reports landing on his desk from various departments. He wanted someone to make sense of them -- someone who had no policy axe to grind and someone whose exclusive mission was to work for him, and to ensure that he was not taken off guard by dangerous developments overseas.¶ As I look at the world today, it is clear to me that the potential for dangerous surprise is as great as ever.¶ That is true whether I look at terrorist groups whose sole purpose is to harm American interests, the biological weapons that Saddam Hussein is still trying to build and to hide in Iraq, or the programs Iran has for building intermediate range missiles and nuclear weapons.¶ It is true when I look at the ethnic tensions that make life dangerous for US forces in Bosnia, the build up of North Korean forces near the DMZ, or the vast and unfinished transformations underway in countries with large nuclear arsenals, such as Russia and China.¶ Against that backdrop, we can debate whether or not CIA should exist, but I must tell you that I have no doubt about what the American people expect of us as long as we do. They want us to:¶ Protect the lives of Americans everywhere;¶ Protect our men and women in uniform and ensure that **they dominate the battlefield** whenever they are called and wherever they are deployed.¶ They want us to protect Americans from threats posed by terrorists, drug traffickers or weapons of mass destruction.¶ They want intelligence to arm our diplomats with critical insights and foreknowledge that can help them advance American interests and avert conflicts.¶ They want us to focus not just on threats but also on opportunities -- opportunities to act before danger becomes disaster and opportunities to create circumstances favorable to America's interests.¶ They want us to track and give advance warning about major geopolitical transformations in the world.¶ And, they want our reporting and analysis to add real value to what they already know about the toughest problems facing the United States.¶ To live up to these expectations, we need to do four things very well. ¶ We need to produce outstanding all-source analysis that is timely, prescient, and persuasive. ¶ We need to mount imaginative and sophisticated clandestine human and technical operations in order to get vital information our nation cannot get in any other way.¶ We need to be vigilant on the counterintelligence front.¶ And, we need to sharpen CIA's capacity to effectively employ covert action on those occasions when our nation's leaders conclude that an important aim can be achieved through no other means.¶ These are essentially the 4 core mission areas of our business that I do not believe can be replicated anyplace else in our government.

#### 7. Agent CPs are a voter

#### A) Topic education – shifts the focus of the debate from whether the plan should be done to who should do it – causes stale debates about process

#### B) Fairness- steals the entirety off the aff and makes it impossible to generate offense

#### 8. No neg fiat –

#### unpredictable - the resolution doesn’t say should not AND

#### kills fairness and education because the neg burden is to refute the plan

### Bond 2AC Treaties

#### We solve the treaties impact – that’s the entire 1AC

#### 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

#### No reason kennedy vote switches – if he’s down for the environment he’ll stay that way

#### SOP decisions increase court legitimacy and augment institutional capital

 Little 2K (Laura, Professor of Law, Temple University, Beasley School of Law, November, 52 Hastings L.J. 47, lexis)

Other scholars bolster Redish's position by pointing out that judicial review of both federalism and separation of powers questions presents something of a self-fulfilling prophesy. Through review of these sensitive issues of power, the judiciary bolsters its own position or amasses "political capital" and, thereby, legitimates its own power to engage in such review . 237 The judiciary has therefore established [\*98] itself as an effective watchdog to ensure that governmental structures are functioning appropriately. n237. Perry, supra note 11, at 57 (Supreme Court has "amassed a great deal of the political capital it now enjoys ... precisely by resolving problems arising under the doctrines of federalism and of the separation-of-powers "); see also Archibald Cox, The Role of the Supreme Court in American Government 30 (1972) (explaining that "history legitimated the power [of judicial review], and then habit took over to guide men's actions so long as the system worked well enough").

#### Winners win - controversial rulings beget more controversial rulings

Paulsen 2 (Michael, Prof of Law @ Minnesota, Spring, 19 Const. Commentary 215, lexis)

Judicial triumphs **tend to beget more judicial triumph**s - and sometimes judicial triumphalism and hubris. It is probably only a slight exaggeration to say thatif there had been no Youngstown there would have been no Brown v. Board of Education, 10 no Cooper v. Aaron, 11 no Warren Court criminal procedure and civil rights revolution, no United States v. Nixon, 12 no Roe v. Wade 13 and Planned Parenthood v. Casey. 14 Still more, had Youngstown played out differently in the end - had Truman resisted or evaded the Court's judgment against his seizure of the steel industry - the aftermath of the Nixon Tapes case might have played out differently, too. Had Truman successfully held on to the steel mills in the face of an adverse decision, Nixon probably would have held on to the tapes, too, no matter what the Court said. And perhaps the Court would not even have tried to order Nixon to produce the tapes in the first place. Finally, if Youngstown had been decided the other way, The Pentagon Papers Case 15 probably would have played out differently, too. The federal government probably would have won in court the power to enjoin a newspaper's publication of materials the government deems detrimental to national security (or affirmance of an executive order banning such publication). 16 Or, had Youngstown been decided as it was but Truman successfully defied the judgment, Nixon might have seized the printing  [\*220]  presses of The New York Times and The Washington Post and ignored any judicial decrees to the contrary. 17

#### 3. Not intrninsic – the supreme court can rule for the plan and \_\_\_ - key to effective decisionmaking

#### 4. Capital not key – 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.

#### 5. No spillover --- there’s no reason \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ would be picked for make-up. The Court would choose another case that requires capital. Even a 50% chance massively reduces the DA.

# 1AR

### Chem

#### Chemical industry inevitable—nanotech boom and other countries fill in

Harper 7 (Tim, 4/30, Nanotech And The Chemical Industry, http://www.mabico.com/en/news/20070430/foreign\_exchange/article74463/)

In 2006, the global chemical industry spent some $2.9 billion dollars on nanotech-related research and development (R&D); that??™s almost three times what the US government spent on nanotech. And while government funding will remain fairly flat--how many national nanotech centers of excellence do you actually need--we see chemical industry growth continuing at some 25 to 30 percent a year until 2012. Globally, the market for nanomaterials is some $80 billion already, although the vast majority of this is business-to-business trade--supplies of bulk chemicals, particles, polymers adhesives, catalysts, etc.--will never end up in the hands of consumers. The industry also has more than 35,000 people worldwide directly engaged in nano-related research, the highest of any industrial sector outside the semiconductor industry (most of whose products are nanoscale already).

### Court Politics – 1AR – Ideology O/W

#### 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.