# 1NC

## Off

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#### War powers authority is derived from congressional statute - restrictions are increased via statutory or judicial prohibitions on the source

**Bradley, 10** - \* Richard A. Horvitz Professor of Law and Professor of Public Policy Studies, Duke Law School (Curtis, “CLEAR STATEMENT RULES AND EXECUTIVE WAR POWERS” <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2730&context=faculty_scholarship>)

The scope of the President’s independent war powers is notoriously unclear, and courts are understandably reluctant to issue constitutional rulings that might deprive the federal government as a whole of the flexibility needed to respond to crises. As a result, courts often look for signs that Congress has either supported or opposed the President’s actions and rest their decisions on statutory grounds. This is essentially the approach outlined by Justice Jackson in his concurrence in Youngstown.1

For the most part, the Supreme Court has also followed this approach in deciding executive power issues relating to the war on terror. In Hamdi v. Rumsfeld, for example, Justice O’Connor based her plurality decision, which allowed for military detention of a U.S. citizen captured in Afghanistan, on Congress’s September 18, 2001, Authorization for Use of Military Force (AUMF).2 Similarly, in Hamdan v. Rumsfeld, the Court grounded its disallowance of the Bush Administration’s military commission system on what it found to be congressionally imposed restrictions.3

The Court’s decision in Boumediene v. Bush4 might seem an aberration in this regard, but it is not. Although the Court in Boumediene did rely on the Constitution in holding that the detainees at Guantanamo have a right to seek habeas corpus re‐ view in U.S. courts, it did not impose any specific restrictions on the executive’s detention, treatment, or trial of the detainees.5 In other words, Boumediene was more about preserving a role for the courts than about prohibiting the executive from exercising statutorily conferred authority.

#### Vote neg---

#### Limits---allowing restrictions on potential authorities blows the lid off the topic---makes adequate preparation and clash impossible --- also kills precision

#### They’re massively extra topical – Articles 1 through 27 aren’t self executing

International justice project no date

http://www.internationaljusticeproject.org/juvICCPR.cfm

Declarations: "(1) That the United States declares that the provisions of articles 1 through 27 of the Covenant are not self-executing. "(2) That it is the view of the United States that States Party to the Covenant should wherever possible refrain from imposing any restrictions or limitations on the exercise of the rights recognized and protected by the Covenant, even when such restrictions and limitations are permissible under the terms of the Covenant. For the United States, article 5, paragraph 2, which provides that that fundamental human rights existing in any State Party may not be diminished on the pretext that the Covenant recognizes them to a lesser extent, has particular relevance to article 19, paragraph 3 which would permit certain restrictions on the freedom of expression. The United States declares that it will continue to adhere to the requirements and constraints of its Constitution in respect to all such restrictions and limitations.

#### Here are some of the things they allow

#### Death penalty

#### International Covenant on Civil and Political Rights 1978

Article 6 Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. 2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

#### Immigration

#### ICCPR 1978

http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

Article 13 An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

#### Gay marriage

#### ICCPR 1978

http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

Article 23 1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. 2. The right of men and women of marriageable age to marry and to found a family shall be recognized. 3. No marriage shall be entered into without the free and full consent of the intending spouses.

#### Extratopicality is a voting issue, makes the aff entirely unpredictable.

### 1NC

#### There will be a narrow ruling on Bond now but conservative advocates are pushing.

Donnelly 11-5-13

Tom, Constitutional Accountability Center’s Message Director and Counsel and former Climenko Fellow and Lecturer on Law at Harvard Law School, Constitutional law as soap opera: Bond v. United States http://blog.constitutioncenter.org/2013/11/constitutional-law-as-soap-opera-bond-v-united-states/

Colorful facts aside, in the conservatives’ rendering of Bond, the very fabric of the Republic is at stake. George Will has called it the Term’s “most momentous case,” arguing that the Roberts Court must step in to check a “government run amok.” The Heritage Foundation warns that the case challenges a key lesson that “Americans are taught from a young age” – that “our government is a government of limited powers.” And Ted Cruz frames the legal issue as follows: whether the “Treaty Clause is a trump card that defeats all of the remaining structural limitations on the federal government.” A scary proposition, indeed . . . But will the Court even get this far? Ms. Bond’s primary argument is that the chemical weapons treaty and its implementing statute should be read to exclude her conduct – a question of statutory interpretation and hardly the stuff of Tenthers’ dreams. If the Court decides the case on those grounds, Ms. Bond could very well prevail, while the ruling itself could be rather minor. The main reason that this case may prove “momentous” is that leading conservative academics, advocates, and legal groups are pushing the Roberts Court to turn this case from an interesting-but-far-from-historic statutory case into a monumental constitutional one. While the Court denied a request from Professor Nicholas Rosenkranz and the Cato Institute – the main proponents of the treaty-power-as-dangerous-trump-card theory – for time to press their argument during tomorrow’s hearing, the Court generally rejects such requests from amicus curiae, so we can’t read too much into that. And, following other recent cases addressing the scope of federal power – including, most prominently, the Affordable Care Act case – there is every reason to believe that the Court may wade into the important constitutional issues lurking just beneath the surface in Bond. The primary constitutional issue in the case involves the scope of the federal government’s treaty power – a power that was of central interest to George Washington and his Founding-era colleagues – and, in turn, Congress’s power under the Necessary and Proper Clause to pass laws to implement validly enacted treaties. However, in Bond, conservative legal groups have proceeded to turn the Constitution’s text and history on their head, arguing that the Constitution itself requires a ruling that sharply limits federal power and overturns nearly a century’s worth of precedent – dating back to a 1920 ruling by Justice Oliver Wendell Holmes. Indeed, Bond is just one of several cases this Term featuring an aggressive call by conservatives to overturn well-established precedent. Furthermore, a broad ruling by the Court’s conservatives could significantly limit Congress’s power to enact laws under the Necessary and Proper Clause, generally, opening up new challenges to various government programs and regulations. In the past, the right’s constitutional arguments may have gone unanswered. However, increasingly, leading progressive academics and practitioners have begun to stake their own claim to the Constitution’s text and history – the tired battle between the progressive community’s “living Constitution” and Justice Scalia’s “dead Constitution” replaced by new battles between the left and the right over the Constitution’s meaning. Bond is a clear example of this new dynamic. Rather than ceding the Constitution’s text and history to conservative legal groups, progressives have fought back in Bond with originalist arguments of their own in briefs authored by some of the progressive community’s leading lights, including Walter Dellinger, Marty Lederman, and Oona Hathaway. These briefs – as well as one filed by my organization, Constitutional Accountability Center – remind the Court that, in ditching the dysfunctional Articles of Confederation, the Founders sought to create a strong national government with the power to negotiate treaties with foreign nations, pass laws to fulfill those treaty obligations, and, in turn, enhance the young nation’s international reputation. With progressives fully engaged in the battle over the Constitution’s meaning, the question facing the Court in important constitutional cases is now less about whether the Constitution’s text and history should prevail and more about which side’s version rings truer.

#### Aff is a massive change – kills court capital and will be ignored by the President.

Devins 2010

Neal, Professor of Law at William and Mary, Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants, http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1024&context=facpubs

Without question, there are very real differences between the factual contexts of Kiyemba and Bush-era cases. These differences, however, do not account for the striking gap between accounts of Kiyemba as likely inconsequential and Bush-era cases as "the most important decisions" on presidential power "ever., 20 In the pages that follow, I will argue that Kiyemba is cut from the same cloth as Bush-era enemy combatant decision making. Just as Kiyemba will be of limited reach (at most signaling the Court's willingness to impose further limits on the government without forcing the government to meaningfully adjust its policymaking), Bush-era enemy combatant cases were modest incremental rulings. Notwithstanding claims by academics, opinion leaders, and the media, Supreme Court enemy combatant decision making did not impose significant rule of law limits on the President and Congress. Bush-era cases were certainly consequential, but they never occupied the blockbuster status that so many (on both the left and the right) attributed to them. Throughout the course of the enemy combatant dispute, the Court has never risked its institutional capital either by issuing a decision that the political branches would ignore, or by compelling the executive branch to pursue policies that created meaningful risks to national security. The Court, instead, took limited risks to protect its turf and assert its power to "say what the law is." That was the Court's practice during the Bush years, and it is the Court's practice today.

#### Upholding Missouri v Holland is key to treaties but capital is key.

Spiro 2008

Peter J., Professor of Law, Temple University, Resurrecting Missouri v. Holland, Missouri Law Review http://law.missouri.edu/lawreview/files/2012/11/Spiro.pdf

Even with respect to the Children’s Rights Convention, the balance may change. At both levels, the game is dynamic. On the international plane, as more attention is focused on human rights regimes, the costs of nonparticipation rise. Other countries and other international actors (human rights NGOs, for example) will train a more focused spotlight on U.S. nonparticipation.28 From a human rights perspective, it’s low-hanging fruit; the mere fact that the United States finds itself alone with Somalia outside the regime suffices to demonstrate the error of the American stance as a leading example of deplored American exceptionalism. For progressive advocacy groups focusing on children’s rights, the Convention is emerging as an agenda item.29 More powerful actors, including states and such major human rights groups as Amnesty International and Human Rights Watch, may be unlikely to put significant political resources into the effort, but there is the prospect of a drumbeat effect and accompanying stress to U.S. decisionmakers. 30 In the wake of international opprobrium associated with post-9/11 antiterror strategies, U.S. conformity with human rights has come under intensive international scrutiny. That scrutiny is spilling over into other human rights-related issues; there will be no more free passes for the United States when it comes to rights.31 Human rights may present the most obvious flash point along the Holland front, but it will not be the only one. As Antonia Chayes notes, “resentment runs deep” against U.S. treaty behavior.32 International pressure on the United States to fully participate in widely-subscribed international treaty regimes, some of which could constitutionally ride on the Treaty Power alone, will grow more intense. At the same time that the international price of non-participation rises, a subtle socialization may be working to lower the domestic cost of exercising Holland-like powers. Globalization is massaging international law into the sinews of American political culture. The United States may not have ratified the Convention on the Rights of the Child, for example, but it has acceded to Hague Conventions on abduction33 and adoption,34 as well as optional protocols to the Children’s Rights Convention itself,35 and has enthusiastically pursued an agreement on the transboundary recovery of child support.36 As international law becomes familiar as a tool of family law, the Children’s Convention will inevitably look less threatening even against America’s robust sentiments regarding federalism. Regimes in other areas should be to similar effect and will span the political divide. It is highly significant, for instance, that conservative Americans have become vocal advocates of international regimes against religious persecution, a key factor in the aggressive U.S. stance on Darfur.37 To the extent that conservatives see utility in one regime they will lose traction with respect to principled category arguments against others. Which is not at all to say that Holland will be activated with consensus support. A clear assertion of the Treaty Power against state prerogatives would surely provoke stiff opposition in the Senate and among anti-internationalist conservatives, setting the scene for a constitutional showdown.38 The adoption of a treaty regime invading protected state powers would require the expenditure of substantial political capital. Any president taking the Treaty Power plunge would be well advised to choose a battle to minimize policy controversy on top of the constitutional one. A substantively controversial regime depending on Holland’s authority (say, relating to the death penalty) would increase the risk of senatorial rebuke. Perhaps the best strategy would be to plant the seeds of constitutional precedent in the context of substantively obscure treaties, ones unlikely to attract sovereigntist flak. If a higher profile treaty implicating Holland were then put on the table, earlier deployments would undermine opposition framed in constitutional terms. Such was the case with the innovation of congressional-executive agreements, which, before their use in adopting major institutional regimes in the wake of World War II, had been used with respect to minor agreements in the interwar years.39 In contrast to the story of congressional-executive agreements, advocates of an expansive Treaty Power will have the advantage of Holland itself, that is, a Supreme Court decision on point and not superseded by a subsequent ruling. That would lend constitutional credibility to the proposed adoption of any agreement requiring the Treaty Power by way of constitutional support. But it wouldn’t settle the question in the face of the consistent practice described above. Holland is an old, orphaned decision, creating ample space for contemporary rejection. An anti-Holland posture, the decision’s status as good law notwithstanding, would also be bolstered by the highly credentialed revisionist critique.40 That of course begs the question of what the Supreme Court would do with the question were it presented. The Court could reaffirm Holland, in which case its resurrection would be official and the constitutional question settled, this time (one suspects) for good. That result would comfortably fit within the tradition of the foreign affairs differential (in which Holland itself is featured).41 One can imagine the riffs on Holmes, playing heavily to the imperatives of foreign relations and the increasing need to manage global challenges effectively. The opinion might not write itself, but it would require minimal creativity. Recent decisions, Garamendi notably among them,42 would supply an updated doctrinal pedigree. And since the question would come to the Court only after a treaty had garnered the requisite two-thirds’ support in the Senate, the decision would not likely require much in the way of political fortitude on the Court’s part. It would also likely draw favorable international attention, reaffirming the justices’ membership in the global community of courts.43 IV. CONCLUSION:CONSTITUTIONAL LIFE WITHOUT MISSOURI V. HOLLAND Holland’s judicial validation would hardly be a foregone conclusion. The Supreme Court has grown bolder in the realm of foreign relations. Much of this boldness has been applied to advance the application of international norms to U.S. lawmaking, the post-9/11 terror cases most notably among them.44 The VCCR decisions, on the other hand, have demonstrated the Court’s continued resistance to the application of treaty obligations on the states. In Medellín, where the Court found the President powerless to enforce the ICJ’s Avena decision on state courts, that resistance exhibited itself over executive branch objections. The Court rebuffed the President with the result of retarding the imposition of international law on the states and at the risk of offending powerful international actors.

#### Treaties are key to cooperation on every issue – solve extinction

Koh and Smith 2003

Harold Hongju Koh, Professor of International Law, and Bernice Latrobe Smith, Yale Law School; Assistant Secretary of State for Democracy, Human Rights and Labor, “FOREWORD: On American Exceptionalism,” May 2003, 55 Stan. L. Rev. 1479

Similarly, the oxymoronic concept of "imposed democracy" authorizes top-down regime change in the name of democracy. Yet the United States has always argued that genuine democracy must flow from the will of the people, not from military occupation. 67 Finally, a policy of strategic unilateralism seems unsustainable in an interdependent world. For over the past two centuries, the United States has become party not just to a few treaties, but to a global network of closely interconnected treaties enmeshed in multiple frameworks of international institutions. Unilateral administration decisions to break or bend one treaty commitment thus rarely end the matter, but more usually trigger vicious cycles of treaty violation. In an interdependent world, [\*1501] the United States simply cannot afford to ignore its treaty obligations while at the same time expecting its treaty partners to help it solve the myriad global problems that extend far beyond any one nation's control: the global AIDS and SARS crises, climate change, international debt, drug smuggling, trade imbalances, currency coordination, and trafficking in human beings, to name just a few. Repeated incidents of American treaty-breaking create the damaging impression of a United States contemptuous of both its treaty obligations and treaty partners. That impression undermines American soft power at the exact moment that the United States is trying to use that soft power to mobilize those same partners to help it solve problems it simply cannot solve alone: most obviously, the war against global terrorism, but also the postwar construction of Iraq, the Middle East crisis, or the renewed nuclear militarization of North Korea.

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#### Text: Congress should pass legislation implementing US obligations under the ICCPR.

#### Solves and avoids deference problems.

Hathaway et al 2012 Oona, Professor of International Law, Yale Law School, International Law at Home: Enforcing Treaties in U.S. Courts, THE YALE JOURNAL OF INTERNATIONAL LAW http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4845&context=fss\_papers&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fas\_ylo%3D2009%26q%3Dself%2Bexecuting%2Btreaty%2Bcongress%2Bcourts%26hl%3Den%26as\_sdt%3D0%2C18#search=%22self%20executing%20treaty%20congress%20courts%22

Congress has the authority to implement treaties through legislation.158 In so doing, it may also choose to create private rights of action that allow individual plaintiffs to sue to enforce international legal obligations. Indeed, the Supreme Court has asserted that “a decision to create a private right of action is one better left to legislative judgment in the great majority of cases.”159 Several treaties are currently enforced through implementing legislation that includes private rights of action. Consider, for example, the U.N. Convention Against Torture,160 which is enforced in part through the Torture Victim Protection Act’s establishment of civil liability for individuals who commit torture;161 the Hague Convention on International Child Abduction,162 which was implemented through the International Child Abduction Remedies Act providing for a cause of action for individuals seeking to assert their parental rights in court;163 and the Chemical Weapons Convention Implementation Act of 1998,164 which, as its title makes clear, implements the U.S. obligations under the Chemical Weapons Convention. These are only a few examples of the many treaties that are enforced in U.S. courts pursuant to implementing legislation passed for this express purpose.

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#### Technical solutions to war powers are a shell game which locks in exceptionalism their reaction is shrouded in a mythos of insecurity that hyper inflates threats to justify itself even though the US is in no danger. The violence they recreate is a blind spot in the western mind which is exactly why we must ask prior to debate about the plan what our national security interests are who is served by those goals

Williams 7 (Daniel, associate professor of law at Northeastern University School of Law. He received a J.D. from Harvard, NORTHEASTERN UNIVERSITY SCHOOL OF LAW. “After the Gold Rush-Part I: Hamdi, 9/11, and the Dark Side of the Enlightenment,” NORTHEASTERN PUBLIC LAW AND THEORY FACULTY WORKING PAPERS SERIES NO. 16-2007. http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=970279)

This fearsome sort of legality is largely shielded from our view (that is, from the view of Americans---the ones wielding this legality) with the veil of democracy, knitted together with the thread of process jurisprudence. Within process jurisprudence, there is no inquiry into the fundamental question: allocation of power between the branches to accomplish . . . what? It is very easy to skip that question, and thus easy to slide into or accept circular argumentation.31 With the focus on the distribution of power, arguments about what to do in this so-called war on terror start off with assumptions about the nature of the problem (crudely expressed as violent Jihadists who hate our freedoms) and then appeal to those assumptions to justify certain actions that have come to constitute this “war.” The grip of this circularity, ironically enough, gains its strength from the ideology of legality, the very thing that the Court seeks to protect in this narrative drama, because that ideology fences out considerations of history, sociology, politics, and much else that makes up the human experience. What Judith Shklar observed over forty years ago captures the point here: the “legalism” mindset--which thoroughly infuses the process jurisprudence that characterizes the Hamdi analysis--produces the “urge to draw a clear line between law and nonlaw” which, in turn, leads to “the construction of ever more refined and rigid systems of formal definitions” and thus “serve[s] to isolate law completely from the social context within which it exists.” 32 The pretense behind the process jurisprudence--and here pretense is purpose--is the resilient belief that law can be, and ought to be, impervious to ideological considerations. And so, the avoidance of the “accomplish . . . what?” question is far from accidental; it is the quintessential act of legality itself.33 More than that, this “deliberate isolation of the legal system . . . is itself a refined political ideology, the expression of a preference” that masquerades as a form of judicial neutrality we find suitable in a democracy.34 If the Executive’s asserted prerogative to prosecute a war in a way that will assure victory is confronted with the prior question about what exactly we want to accomplish in that war--if, that is, we confront the question posed by Slavoj Zizek, noted at the outset of this article—then the idea of national security trumping “law” takes on an entirely different analytical hue. Professor Owen Fiss is probably right when he says that the Justices in Hamdi “searched for ways to honor the Constitution without compromising national interests.”35 But that is a distinctly unsatisfying observation if what we are concerned about is the identification of what exactly those “national interests” are.36 We may not feel unsatisfied because, in the context of Hamdi, it undoubtedly seems pointless to ask what we are trying to accomplish, since the answer strikes us as obvious. We are in a deadly struggle to stamp out the terrorist threat posed by Al Qaeda, and more generally, terrorism arising from a certain violent and nihilistic strain of Islamic fundamentalism. Our foreign policy is expressly fueled by the outlook that preemptive attacks is not merely an option, but is the option to be used. In the words of the Bush Administration’s 2002 National Security Strategy document, “In the world we have entered, the only path to safety is the path of action. And this nation will act.”37 O’Connor and the rest of the Court members implicitly understand our foreign policy and the goal to be pursued in these terms, which explains why the Hamdi opinion nowhere raises a question about what it is the so-called “war on terror” seeks to accomplish. After all, the stories we want to tell dictate the stories that we do tell. We want to tell ourselves stories about our own essential goodness and benevolence, our own fidelity to the rule of law; and that desire dictates the juridical story that ultimately gets told. Once one posits that our foreign policy is purely and always defensive, as well as benevolent in motivation,38 then whatever the juridical story—even one where the nation’s highest Court announces that the Executive has no blank check to prosecute a war on terror—the underlying reality inscribed upon the world’s inhabitants, the consequences real people must absorb somehow, is one where “the United States has established that its only limit on the world stage will be its military power.”39 As O’Connor sees it, the real problem here is that, given that the allocation-of-power issue is tied to the goal of eliminating the terrorist threat, we have to reckon with the probability that this allocation is not just an emergency provision, but one that will be cemented into our society, since the current emergency is likely to be, in all practicality, a permanent emergency. But to say we are in a struggle to stamp out a terrorist threat posed by Islamic fundamentalism, and to say that “the only path to safety is the path of action,” conceals--renders invisible, a postmodernist would likely put it--an even more fundamental, and more radical, question: the allocation of power that the Court is called upon to establish is in the service of eliminating a terrorist threat to accomplish . . . what? The standard answer is, our security, which most Americans would take to mean, to avert an attack on our homeland, and thus, as it was with Lincoln, to preserve the Union. And so, we accept as obvious that our dilemma is finding the right security-liberty balance. The problem with that standard answer is two-fold. First, it glosses over the fact that we face no true existential threat, no enemy that genuinely threatens to seize control over our state apparatus and foist upon us a form of government to which we would not consent. That fact alone distinguishes our current war on terrorism from Lincoln’s quest to preserve the Union against secession.40 Second, this we-must-protect-the-Homeland answer is far too convenient as a conversation stopper. When the Bush Administration=’ National Security Strategy document avers that “the only path to safety is the path of action,” we ought to ask what global arrangements are contemplated through that “path of action.” When that document announces that “this nation will act,” it surely cannot suffice to say that the goal is merely eliminating a threat to attain security. All empires and empire-seeking nations engage in aggression under the rubric of self-defense and the deployment of noble-aims rhetoric. These justifications carry no genuine meaning but are devices of the powerful and the privileged, with the acquiescence and often encouragement by a frightened populace, to quell unsettling questions from dissenters within the society.41 Stop and think for a moment, how is it that the nation with the most formidable military might--the beneficiary of the hugest imbalance in military power ever in world history--is also the nation that professes to be the most imperiled by threats throughout the world, often threatened by impoverished peasant societies (Vietnam, Nicaragua, El Salvador, Chile, Granada, etc.)?42 An empire must always cast itself as vulnerable to attack and as constantly being under attack in order to justify its own military aggression. This is most acutely true when the empire is a democracy that must garner the consent of the populace, which explains why so much of governmental rhetoric concerning global affairs is alarmist in tone. The point is that quandaries over constitutional interpretation--ought we be prudential, or are other techniques more closely tied to the text the only legitimate mode of constitutional adjudication--may very well mask what may be the most urgent issue of all, which concerns what exactly this nation’s true identity is at this moment in world history, what it is that we are pursuing. Whereas Sanford Levinson has courageously argued that “too many people >venerate= the Constitution and use it as a kind of moral compass,”43 which leads to a certain blindness, I raise for consideration an idea that Hamdi suppresses, through its narrative techniques, which is that too many people “venerate” this nation without any genuine consideration of the particular way we have, since World War II, manifested ourselves as a nation. I join Levinson’s suspicion that our Constitution is venerated as an idea, as an abstraction, without much thought given to its particulars. It is important to be open to the possibility that the same is true with regard to our nation--the possibility that we venerate the idea of America (undoubtedly worth venerating), but remain (willfully?) ignorant of the particulars of our actual responsibility for the health of the planet and its inhabitants.44 To openly consider such issues is not anti-American--an utterly absurd locution--for to suggest that it is amounts to a denial that U.S. actions (as opposed to rhetoric that leeches off of the promise and ideal of “America”) can be measured by some yardstick of propriety that applies to all nations.45 The very idea of a “yardstick of propriety” requires a prior acceptance of two ideas: one, that we are part of something larger, that we are properly accountable to others and to that larger circumstance; and two, that it is not a betrayal or traitorous for a people within a nation to look within itself.46 Issacharoff and Pildes, the most prominent process theorists, observe that process jurisprudence may be inadequate to address the risk that we “might succumb to wartime hysteria.”47 I would broaden that observation so as to be open to the possibility that the risk goes beyond just wartime hysteria, that our desire for security and military victory, rooted in our repudiation of a genuine universal yardstick of propriety that we willingly apply to ourselves (often called American exceptionalism48)--which means that security and military victory are not ipso facto the same thing--could easily slide us into sanctioning a form of sovereignty that is dangerously outmoded and far out of proportion to what circumstances warrant. Process jurisprudence supposedly has the merit of putting the balance of security and liberty into the hands of the democratic institutions of our government. But what it cannot bring into the field of vision--and what is absolutely banished from view in Hamdi--is the possibility that the democratic institutions themselves, and perhaps even the democratic culture generally, the public sphere of that culture, have been corrupted so severely as to reduce process jurisprudence to a shell game.49 More specifically, the formal processes of governmentality responding to crisis is judicially monitored, but the mythos of our national identity, particularly the idea that every international crisis boils down to the unquestioned fact that the United States at least endeavors to act solely in self defense and to promote some benevolent goal that the entire world ought to stand behind, is manufactured and thus some hegemonic pursuit in this global “war on terror” remains not just juridically ignored, but muted and marginalized in much of our public discussions about it.50 Under process jurisprudence, it is the wording of a piece of legislation, not the decoding of the slogan national security, that ultimately matters. And under process jurisprudence, fundamental decisions have already been made--fundamental decisions concerning the nature of our global ambitions and the way we will pursue them--before the judiciary can confront the so-called security-liberty balance, which means that the analytical deck has been stacked by the time the justiciable question---that is, what we regard as the justiciable question---is posed. Stacking the analytical deck in this way reduces the Court members to the role of technicians in the service of whatever pursuit the sovereign happens to choose.51 This is why it is worth asking what many might regard as a naive, if not tendentious, question: is it true that in the case of Hamdi and other post-9/11 cases, the judiciary’s quandary over allocation of power is actually in the service of genuine security, meaning physical safety of the populace? Does the seemingly obvious answer that we seek only to protect the safety of our communities against naked violence blind us to a deeper ailment within our culture? Is it possible that the allocation of power, at bottom, is rooted in a dark side of our Enlightenment heritage, an impulse within Legality that threatens us in a way similar to the Thanatos drive Freud identified as creating civilization’s discontent?52 Perhaps Hamdi itself, as a cultural document, signals yet another capitulation to the impulse to embrace a form of means-ends rationality that supports the Enlightenment drive to control and subdue.53 Perhaps what Hamdi shows is that 9/11 has not really triggered a need to recalibrate the security-liberty balance, but has actually unleashed that which has already filtered into and corrupted our culture—Enlightenment’s dark side, as the Frankfurt School understood it54’’and is thus one among many cultural documents that ought to tell us we are not averting a new dark age, but are already in it, or at least, to borrow a phrase from Wendell Berry, that we are “leapfrogging into the dark.” 55 It is impossible, without the benefit of historical distance, to answer these questions with what amounts to comforting certitude. But they are worth confronting, since the fate of so many people depends on it, given our unrivaled ability and frightening willingness to use military force. Our culture’s inability to ask such questions in any meaningful way, as opposed to marginalizing those who plead for them to be confronted, is somewhat reminiscent of how early Enlightenment culture treated scientific endeavors. “Science,” during the rise of Enlightenment culture, rebuffed the why question, banished it as a remnant of medieval darkness, because the why-ness of a certain scientific pursuit suggested that certain domains of knowledge were bad, off-limits, taboo. The whole cultural mindset of the Enlightenment was to jettison precisely such a suggestion. That cultural mindset produced a faith all its own, that all scientific pursuits, and by extension all human quests for knowledge, will in the end promote human flourishing. It has taken the devastation of our planet to reveal the folly of that faith, a blind-spot in the Western mind. It may turn out, as a sort of silver lining on a dark cloud, that the terrorism arising from Islamic jihadists may do something similar.

#### Questioning the affirmatives ontology is a prior question to the advantages; the form of social relations their advocacy embodies rests on faulty epistemology and makes extinction inevitable---vote negative as a form of noncooperation with their political economy

Willson 13 (Brain, is a Ph.D New College San Fransisco, Humanities, JD, American University, “Developing Nonviolent Bioregional Revolutionary Strategies,” http://www.brianwillson.com/developing-nonviolent-bioregional-revolutionary-strategies/)

I. Industrial civilization is on a collision course with life itself. Facilitating its collapse is a deserved and welcomed correction, long overdue. Collapse is inevitable whether we seek to facilitate it or not. Nonetheless, whatever we do, industrial civilization, based as it is on mining and burning finite and polluting fossil fuels, cannot last because it is destroying the ecosystem and the basis of local, cooperative life itself. It knows no limits in a physically finite world and thus is unsustainable. And the numbers of our human species on earth, which have proliferated from 1.6 billion in 1900 to 7 billion today, is the consequence of mindlessly eating oil – tractors, fertilizers, pesticides, herbicides – while destroying human culture in the process. Our food system itself is not sustainable. Dramatic die-off is part of the inevitable correction in the very near future, whether we like it or not. Human and political culture has become totally subservient to a near religion of economics and market forces. Technologies are never neutral, with some being seriously detrimental. Technologies come with an intrinsic character representing the purposes and values of the prevailing political economy that births it. The Industrialism process itself is traumatic. It is likely that only when we experience an apprenticeship in nature can we be trusted with machines, especially when they capital intensive & complicated. The nation-state, intertwined more than ever with corporate industrialism, will always come to its aid and rescue. Withdrawal of popular support enables new imagination and energy for re-creating local human food sufficient communities conforming with bioregional limits. II. The United States of America is irredeemable and unreformable, a Pretend Society. The USA as a nation state, as a recent culture, is irredeemable, unreformable, an anti-democratic, vertical, over-sized imperial unmanageable monster, sustained by the obedience and cooperation, even if reluctant, of the vast majority of its non-autonomous population. Virtually all of us are complicit in this imperial plunder even as many of us are increasingly repulsed by it and speak out against it. Lofty rhetoric has conditioned us to believe in our national exceptionalism, despite it being dramatically at odds with the empirically revealed pattern of our plundering cultural behavior totally dependent upon outsourcing the pain and suffering elsewhere. We cling to living a life based on the social myth of US America being committed to justice for all, even as we increasingly know this has always served as a cover for the social secret that the US is committed to prosperity for a minority thru expansion at ANY cost. Our Eurocentric origins have been built on an extraordinary and forceful but rationalized dispossession of hundreds of Indigenous nations (a genocide) assuring acquisition of free land, murdering millions with total impunity. This still unaddressed crime against humanity assured that our eyes themselves are the wool. Our addiction to the comfort and convenience brought to us by centuries of forceful theft of land, labor, and resources is very difficult to break, as with any addiction. However, our survival, and healing, requires a commitment to recovery of our humanity, ceasing our obedience to the national state. This is the (r)evolution begging us. Original wool is in our eyes: Eurocentric values were established with the invasion by Columbus: Cruelty never before seen, nor heard of, nor read of – Bartolome de las Casas describing the behavior of the Spaniards inflicted on the Indigenous of the West Indies in the 1500s. In fact the Indigenous had no vocabulary words to describe the behavior inflicted on them (A Short Account of the Destruction of the Indies, 1552). Eurocentric racism (hatred driven by fear) and arrogant religious ethnocentrism (self-righteous superiority) have never been honestly addressed or overcome. Thus, our foundational values and behaviors, if not radically transformed from arrogance to caring, will prove fatal to our modern species. Wool has remained uncleansed from our eyes: I personally discovered the continued vigorous U.S. application of the “Columbus Enterprise” in Viet Nam, discovering that Viet Nam was no aberration after learning of more than 500 previous US military interventions beginning in the late 1790s. Our business is killing, and business is good was a slogan painted on the front of a 9th Infantry Division helicopter in Viet Nam’s Mekong Delta in 1969. We, not the Indigenous, were and remain the savages. The US has been built on three genocides: violent and arrogant dispossession of hundreds of Indigenous nations in North America (Genocide #1), and in Africa (Genocide #2), stealing land and labor, respectively, with total impunity, murdering and maiming millions, amounting to genocide. It is morally unsustainable, now ecologically, politically, economically, and socially unsustainable as well. Further, in the 20th Century, the Republic of the US intervened several hundred times in well over a hundred nations stealing resources and labor, while imposing US-friendly markets, killing millions, impoverishing perhaps billions (Genocide #3). Since 1798, the US military forces have militarily intervened over 560 times in dozens of nations, nearly 400 of which have occurred since World War II. And since WWII, the US has bombed 28 countries, while covertly intervening thousands of times in the majority of nations on the earth. It is not helpful to continue believing in the social myth that the USA is a society committed to justice for all , in fact a convenient mask (since our origins) of our social secret being a society committed to prosperity for a few through expansion at ANY cost. (See William Appleman Williams). Always possessing oligarchic tendencies, it is now an outright corrupt corporatocracy owned lock stock and barrel by big money made obscenely rich from war making with our consent, even if reluctant. The Cold War and its nuclear and conventional arms race with the exaggerated “red menace”, was an insidious cover for a war preserving the Haves from the Have-Nots, in effect, ironically preserving a western, consumptive way of life that itself is killing us. Pretty amazing! Our way of life has produced so much carbon in the water, soil, and atmosphere, that it may in the end be equivalent to having caused nuclear winter. The war OF wholesale terror on retail terror has replaced the “red menace” as the rhetorical justification for the continued imperial plunder of the earth and the riches it brings to the military-industrial-intelligence-congressional-executive-information complex. Our cooperation with and addiction to the American Way Of Life provides the political energy that guarantees continuation of U.S. polices of imperial plunder. III. The American Way Of Life (AWOL), and the Western Way of Life in general, is the most dangerous force that exists on the earth. Our insatiable consumption patterns on a finite earth, enabled by but a one-century blip in burning energy efficient liquid fossil fuels, have made virtually all of us addicted to our way of life as we have been conditioned to be in denial about the egregious consequences outsourced outside our view or feeling fields. Of course, this trend began 2 centuries earlier with the advent of the industrial revolution. With 4.6% of the world’s population, we consume anywhere from 25% to nearly half the world’s resources. This kind of theft can only occur by force or its threat, justifying it with noble sounding rhetoric, over and over and over. Our insatiable individual and collective human demands for energy inputs originating from outside our bioregions, furnish the political-economic profit motives for the energy extractors, which in turn own the political process obsessed with preserving “national (in)security”, e.g., maintaining a very class-based life of affluence and comfort for a minority of the world’s people. This, in turn, requires a huge military to assure control of resources for our use, protecting corporate plunder, and to eliminate perceived threats from competing political agendas. The U.S. War department’s policy of “full spectrum dominance” is intended to control the world’s seas, airspaces, land bases, outer spaces, our “inner” mental spaces, and cyberspaces. Resources everywhere are constantly needed to supply our delusional modern life demands on a finite planet as the system seeks to dumb us down ever more. Thus, we are terribly complicit in the current severe dilemmas coming to a head due to (1) climate instability largely caused by mindless human activities; (2) from our dependence upon national currencies; and (3) dependence upon rapidly depleting finite resources. We have become addicts in a classical sense. Recovery requires a deep psychological, spiritual, and physical commitment to break our addiction to materialism, as we embark on a radical healing journey, individually and collectively, where less and local becomes a mantra, as does sharing and caring, I call it the Neolithic or Indigenous model. Sharing and caring replace individualism and competition. Therefore, A Radical Prescription Understanding these facts requires a radical paradigmatic shift in our thinking and behavior, equivalent to an evolutionary shift in our epistemology where our knowledge/thinking framework shifts: arrogant separateness from and domination over nature (ending a post-Ice Age 10,000 year cycle of thought structure among moderns) morphs to integration with nature, i.e., an eco-consciousness felt deeply in the viscera, more powerful than a cognitive idea. Thus, we re-discover ancient, archetypal Indigenous thought patterns. It requires creative disobedience to and strategic noncooperation with the prevailing political economy, while re-constructing locally reliant communities patterned on instructive models of historic Indigenous and Neolithic villages.

### 1NC

#### Text: The appropriate number of the fifty states will invoke their power under Article V of the Constitution to call a limited constitutional convention for the purpose of recognizing that the International Covenant on Civil and Political Rights contains a domestically enforceable restriction on presidential war powers authority to indefinitely detain..

#### The Counterplan solves the case and preserves court capital and legitimacy

Vermule 2004(Adrian, Professor of Law at the University of Chicago, September, "Constitutional Amendments and the Constitutional Common Law", http://www.law.uchicago.edu/files/files/73-av-amendments.pdf)

There is another side to the ledger, however. Premise (i) holds that the lower the rate of amendment, the more updating that the Court must supply; and the need to update constitutional law can itself damage the Court’ s public standing in straightforward ways. Overrulings, switches in time, creative and novel interpretation, all the tools that judges use to change the course of constitutional adjudication, them selves may draw down the Court’s political capital by fracturing the legalistic façade of constitutional interpretation. An equally plausible causal hypothesis, then, is that increasing the rate of amendments might increase the Court’s sociological legitimacy by reducing the need f o r judicial self - correction. In particular cases, legitimacy-granting publics might react poorly to judicial flip-flops, while viewing form al amendments that overturn judicial decisions as the proper legal channel for change—the very use of which assumes that the judges have done their job well, not poorly. This is rankly speculative, but the point is that (ii) is rankly speculative as well. It is hard to know about any of this in the abstract; but we cannot simply assume (ii), in the faith that a world without (nonjudicial) amendments is the best of all possible worlds to inhabit.

## On

### Solvency

#### International law rulings don’t set precedent – previous SCOTUS rulings.

Van Alstine 2012

Michael, Professor of Law, University of Maryland School of Law, STARE DECISIS AND FOREIGN AFFAIRS, Duke Law Journal Vol 61 No 5, Feb 2012, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1526&context=dlj

The special challenges courts face when they inquire into foreign affairs already have found expression in Supreme Court opinions. In particular, I demonstrated in Part II.B how concerns about judicial expertise, access to reliable information, and the uncertain implications of judicial precedents have informed analyses of foreign affairs abstention doctrines.262 Ultimately, these considerations reflect ex ante admonitions to the courts about the risks of improvident action based on insufficient or unreliable information. The message, in short, is that the risks of error in first judicial impressions of international law are simply greater than with prosaic domestic law. These combined considerations retain their force even after a court has created a precedent in the field. That is, the insights about the need for ex ante judicial modesty in foreign affairs generally do not lose their relevance simply because a court has taken a stab at resolving a particular legal issue. Thus, a generic notion of stare decisis, for all its important functions in any rule-bound system, runs contrary to the array of prudential cautions against ill-advised judicial leadership in international law—unless one is comfortable with the conceit that judges nearly always get the answer right the first time. There is every reason to believe, however, that judicial misjudgments are more common in the identification of international law.263 This observation is no slight. The unfamiliar and unstable terrain simply makes the judicial task more challenging in this field. In short, an increased likelihood exists that a particular precedent will not be “well reasoned”264 in the first place. This likelihood does not mean that courts should abdicate their duty to resolve disputes properly before them. It is, however, further evidence that rigid stare decisis norms are inappropriate when, in the context of resolving these disputes, courts create precedents in the sensitive realm of international law. C. Separation of Powers, Stare Decisis, and Judicially Enforceable International Law A deeper appreciation of the relationship between precedent and separation of powers also counsels in favor of a reassessment of stare decisis as to questions of international law. In foreign affairs matters, in particular those that touch on international law, the Supreme Court has repeatedly cautioned that the judiciary should be “particularly wary of impinging on the discretion of the Legislative and Executive Branches.”265 To reiterate one of my major themes, this concern—grounded in the separation-of-powers relationships between the judiciary and the political branches—does not dissolve merely because a court has created a precedent.

#### Turn – incorporation to restrict the executive means it will stop pushing for treaties.

Abebe and Posner 2011

Daniel and Eric, Assistant Professor and Kirkland & Ellis Professor, University of Chicago Law School, The Flaws of Foreign Affairs Legalism, VIRGINIA JOURNAL OF INTERNATIONAL LAW Vol. 51 http://www.vjil.org/assets/pdfs/vol51/issue3/51-3-Abebe\_Posner.pdf

The executive has been the leading promoter of international law. It has negotiated and ratified (sometimes with the Senate’s consent, sometimes with Congress’s consent, and sometimes without legislative consent) thousands of treaties over the last sixty years,153 including the fundamental building blocks of the modern international legal system, such as the UN Charter, the GATT/WTO, the International Covenant for Civil and Political Rights, and the Genocide Convention. Through the U.S. State Department, the executive issues annual reports criticizing foreign countries for human rights violations, and the U.S. government has frequently, although not with complete consistency, issued objections when foreign countries violate human rights.154 The executive has also negotiated and signed other important treaties to which the Senate has withheld consent — including the Vienna Convention on the Law of Treaties, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Law of the Sea, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination Against Women, among others.155 The executive has also been instrumental in creating modern international institutions, including the UN Security Council, the GATT/WTO system, the World Bank, and the IMF.156 Much of what we said might seem too obvious to mention. One can hardly imagine the judiciary deciding on its own that the United States must create or join some new treaty regime. But these obvious points have been overlooked in the debate about the role of the judiciary in foreign affairs. Virtually everything the judiciary does in this area depends on prior executive action. Only the constitutional interpretation cases seem truly judge-initiated, for in these cases, the Court sometimes cites treaties that the United States has not ratified and sometimes cites the laws of foreign nations. The claim that the judiciary can, and even does, play a primary role in the adoption of international law is puzzling. In almost all cases, the judiciary must follow the executive’s lead. This also means that if the judiciary interprets treaties and other sources of international law in an aggressive way — in a way that the executive rejects — the executive may respond by being more cautious about negotiating treaties and adopting international law in the first place. This possible backlash effect has not been documented, but is plausible. As we discuss in the next section, fears of judicial enforcement of certain treaty obligations led to an effort by the Senate to ensure that those treaties would not have domestic legal effect.

#### President will ignore – ilaw isn’t a thing.

Hiken and Hiken 2012

Marti Hiken, former Associate Director of the Institute for Public Accuracy and former chair of the National Lawyers Guild Military Law Task Force, is the director of Progressive Avenues. Luke Hiken is an attorney who has engaged in the practice of criminal, military, immigration, and appellate law The Impotence of International Law 7-17-12 http://fpif.org/the\_impotence\_of\_international\_law/

Whenever a lawyer or historian describes how a particular action “violates international law” many people stop listening or reading further. It is a bit alienating to hear the words “this action constitutes a violation of international law” time and time again – and especially at the end of a debate when a speaker has no other arguments available. The statement is inevitably followed by: “…and it is a war crime and it denies people their human rights.” A plethora of international law violations are perpetrated by every major power in the world each day, and thus, the empty invocation of international law does nothing but reinforce our own sense of impotence and helplessness in the face of international lawlessness. The United States, alone, and on a daily basis violates every principle of international law ever envisioned: unprovoked wars of aggression; unmanned drone attacks; tortures and renditions; assassinations of our alleged “enemies”; sales of nuclear weapons; destabilization of unfriendly governments; creating the largest prison population in the world – the list is virtually endless. Obviously one would wish that there existed a body of international law that could put an end to these abuses, but such laws exist in theory, not in practice. Each time a legal scholar points out the particular treaties being ignored by the superpowers (and everyone else) the only appropriate response is “so what!” or “they always say that.” If there is no enforcement mechanism to prevent the violations, and no military force with the power to intervene on behalf of those victimized by the violations, what possible good does it do to invoke principles of “truth and justice” that border on fantasy? The assumption is that by invoking human rights principles, legal scholars hope to reinforce the importance of and need for such a body of law. Yet, in reality, the invocation means nothing at the present time, and goes nowhere. In the real world, it would be nice to focus on suggestions that are enforceable, and have some potential to prevent the atrocities taking place around the globe. Scholars who invoke international law principles would do well to add to their analysis, some form of action or conduct at the present time that might prevent such violations from happening. Alternatively, praying for rain sounds as effective and rational as citing international legal principles to a lawless president, and his ruthless military.

### Terrorism

#### War power rulings devastate court legitimacy

Deeks 10/11/13 (Associate Professor of Law, University of Virginia Law School, “THE OBSERVER EFFECT: NATIONAL SECURITY LITIGATION, EXECUTIVE POLICY CHANGES, AND JUDICIAL DEFERENCE,” http://fordhamlawreview.org/assets/pdfs/Vol\_82/Deeks\_November.pdf)

Another goal in separating powers—and in placing all of the power to execute the laws in a single entity—is to promote the accountability of the decisionmakers to the people they represent.283 Those who favor national security deference emphasize that the president (and Congress, when it chooses to get involved in national security decisions) are far more politically accountable to the people than the courts. The executive in particular is best positioned to make the difficult decisions that protect individuals from or expose individuals to danger during times of crises. At the same time, the public may and will hold the president accountable for those decisions. Courts are less directly accountable to the people, and, according to this argument, should therefore tread carefully when invalidating executive policies established to protect the citizenry. Courts are sensitive to the reputational costs of deciding controversial cases—and cases involving wartime or emergency policies are particularly likely to be controversial. Many scholars have highlighted the institutional costs of deciding such cases.284 Judicial decisions on the merits force courts to bear certain reputational costs. The operation of the observer effect means that courts need to decide fewer such cases (or decide them in a more modest manner) than they may think in order to preserve separation of- powers values. This approach allows courts largely (though not entirely) to avoid making politically controversial decisions that might cast questions on their institutional competence, while allowing the courts on limited occasions to stake out their more popular role as defender of rights.285 At the same time, there are ways in which courts can distance themselves from the policies in question, thus ensuring that political accountability for the policy falls squarely on the executive.

#### Weakening the court prevents sustainable development

**Stein, New South Wales Court of Appeal former judge, 2005**

(Paul Stein, “Why judges are essential to the rule of law and environmental protection”, IUCN Environmental Policy and Law Paper No. 60, online, ldg)

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

#### Extinction

**Barry, Wisconsin land resources PhD, 2013**

(Glen, “ECOLOGY SCIENCE: Terrestrial Ecosystem Loss and Biosphere Collapse”, 2-4, <http://forests.org/blog/2013/02/ecology-science-terrestrial-ec.asp>, ldg)

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

#### No nuclear terrorism-even attempts under optimal conditions have failed.

**Bergen, New York University’s Center on Law and Security fellow, 2010**

(Peter, “Reevaluating Al-Qa`ida’s Weapons of Mass Destruction Capabilities,” CTC Sentinel, September, http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=122242, ldg)

Bin Ladin’s and al-Zawahiri’s portrayal of al-Qa`ida’s nuclear and chemical weapons capabilities in their post-9/11 statements to Hamid Mir was not based in any reality, and it was instead meant to serve as psychological warfare against the West. There is no evidence that al-Qa`ida’s quest for nuclear weapons ever went beyond the talking stage. Moreover, al-Zawahiri’s comment about “missing” Russian nuclear suitcase bombs floating around for sale on the black market is a Hollywood construct that is greeted with great skepticism by nuclear proliferation experts. This article reviews al-Qa`ida’s WMD efforts, and then explains why it is unlikely the group will ever acquire a nuclear weapon. Al-Qa`ida’s WMD Efforts In 2002, former UN weapons inspector David Albright examined all the available evidence about al-Qa`ida’s nuclear weapons research program and concluded that it was virtually impossible for al-Qa`ida to have acquired any type of nuclear weapon.8 U.S. government analysts reached the same conclusion in 2002.9 There is evidence, however, that al-Qa`ida experimented with crude chemical weapons, explored the use of biological weapons such as botulinum, salmonella and anthrax, and also made multiple attempts to acquire radioactive materials suitable for a dirty bomb.10 After the group moved from Sudan to Afghanistan in 1996, al-Qa`ida members escalated their chemical and biological weapons program, innocuously code-naming it the “Yogurt Project,” but only earmarking a meager $2,000-4,000 for its budget.11 An al-Qa`ida videotape from this period, for example, shows a small white dog tied up inside a glass cage as a milky gas slowly filters in. An Arabic-speaking man with an Egyptian accent says: “Start counting the time.” Nervous, the dog barks and then moans. After struggling and flailing for a few minutes, it succumbs to the poisonous gas and stops moving. This experiment almost certainly occurred at the Darunta training camp near the eastern Afghan city of Jalalabad, conducted by the Egyptian Abu Khabab.12 Not only has al-Qa`ida’s research into WMD been strictly an amateur affair, but plots to use these types of weapons have been ineffective. One example is the 2003 “ricin” case in the United Kingdom. It was widely advertised as a serious WMD plot, yet the subsequent investigation showed otherwise. The case appeared in the months before the U.S.-led invasion of Iraq, when media in the United States and the United Kingdom were awash in stories about a group of men arrested in London who possessed highly toxic ricin to be used in future terrorist attacks. Two years later, however, at the trial of the men accused of the ricin plot, a government scientist testified that the men never had ricin in their possession, a charge that had been first triggered by a false positive on a test. The men were cleared of the poison conspiracy except for an Algerian named Kamal Bourgass, who was convicted of conspiring to commit a public nuisance by using poisons or explosives.13 It is still not clear whether al-Qa`ida had any connection to the plot.14 In fact, the only post-9/11 cases where al-Qa`ida or any of its affiliates actually used a type of WMD was in Iraq, where al-Qa`ida’s Iraqi affiliate, al-Qa`ida in Iraq (AQI), laced more than a dozen of its bombs with the chemical chlorine in 2007. Those attacks sickened hundreds of Iraqis, but the victims who died in these assaults did so largely from the blast of the bombs, not because of inhaling chlorine. AQI stopped using chlorine in its bombs in Iraq in mid-2007, partly because the insurgents never understood how to make the chlorine attacks especially deadly and also because the Central Intelligence Agency and U.S. military hunted down the bomb makers responsible for the campaign, while simultaneously clamping down on the availability of chlorine.15 Indeed, a survey of the 172 individuals indicted or convicted in Islamist terrorism cases in the United States since 9/11 compiled by the Maxwell School at Syracuse University and the New America Foundation found that none of the cases involved the use of WMD of any kind. In the one case where a radiological plot was initially alleged—that of the Hispanic-American al-Qa`ida recruit Jose Padilla—that allegation was dropped when the case went to trial.16 Unlikely Al-Qa`ida Will Acquire a Nuclear Weapon Despite the difficulties associated with terrorist groups acquiring or deploying WMD and al-Qa`ida’s poor record in the matter, there was a great deal of hysterical discussion about this issue after 9/11. Clouding the discussion was the semantic problem of the ominous term “weapons of mass destruction,” which is really a misnomer as it suggests that chemical, biological, and nuclear devices are all equally lethal. In fact, there is only one realistic weapon of mass destruction that can kill tens or hundreds of thousands of people in a single attack: a nuclear bomb.17 The congressionally authorized Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism issued a report in 2008 that typified the muddled thinking about WMD when it concluded: “It is more likely than not that a weapon of mass destruction will be used in a terrorist attack somewhere in the world by the end of 2013.”18 The report’s conclusion that WMD terrorism was likely to happen somewhere in the world in the next five years was simultaneously true but also somewhat trivial because terrorist groups and cults have already engaged in crude chemical and biological weapons attacks.19 Yet **the prospects of** al-Qa`ida or indeed **any** other **group having access to** a true WMD—**a nuclear device**—**is near zero** for the foreseeable future. If any organization should have developed a serious WMD capability it was the bizarre Japanese terrorist cult Aum Shinrikyo, which not only recruited 300 scientists—including chemists and molecular biologists—but also had hundreds of millions of dollars at its disposal.20 Aum embarked on a large-scale WMD research program in the early 1990s because members of the cult believed that Armageddon was fast-approaching and that they would need powerful weapons to survive. Aum acolytes experimented with anthrax and botulinum toxin and even hoped to mine uranium in Australia. Aum researchers also hacked into classified networks to find information about nuclear facilities in Russia, South Korea and Taiwan.21 Sensing an opportunity following the collapse of the Soviet Union, Aum recruited thousands of followers in Russia and sent multiple delegations to meet with leading Russian politicians and scientists in the early 1990s. The cult even tried to recruit staff from inside the Kurchatov Institute, a leading nuclear research center in Moscow. One of Aum’s leaders, Hayakawa Kiyohide, made eight trips to Russia in 1994, and in his diary he made a notation that Aum was willing to pay up to $15 million for a nuclear device.22 Despite its open checkbook, Aum was never able to acquire nuclear material or technology from Russia even in the chaotic circumstances following the implosion of the communist regime.23 In the end, Aum abandoned its investigations of nuclear and biological weapons after finding them too difficult to acquire and settled instead on a chemical weapons operation, which climaxed in the group releasing sarin gas in the Tokyo subway in 1995. It is hard to imagine an environment better suited to killing large numbers of people than the Tokyo subway, yet only a dozen died in the attack.24 Although Aum’s WMD program was much further advanced than anything al-Qa`ida developed, even they could not acquire a true WMD. It is also worth recalling that Iran, which has had an **aggressive and well-funded nuclear program for almost two decades**, is still some way from developing a functioning nuclear bomb. Terrorist groups simply do not have the resources of states. Even with access to nuclear technology, it is next to impossible for terrorist groups to acquire sufficient amounts of highly enriched uranium (HEU) to make a nuclear bomb. The total of all the known thefts of HEU around the world tracked by the International Atomic Energy Agency between 1993 and 2006 was just less than eight kilograms, well short of the 25 kilograms needed for the simplest bomb;25 moreover, none of the HEU thieves during this period were linked to al-Qa`ida. Therefore, even building, let alone detonating, the simple, gun-type nuclear device of the kind that was dropped on Hiroshima during World War II would be extraordinarily difficult for a terrorist group because of the problem of accumulating sufficient quantities of HEU. Building a radiological device, or “dirty bomb,” is far more plausible for a terrorist group because acquiring radioactive materials suitable for such a weapon is not as difficult, while the construction of such a device is orders of magnitude less complex than building a nuclear bomb. Detonating a radiological device, however, would likely result in a relatively small number of casualties and should not be considered a true WMD.

### Human Rights Law

#### Syria, Turkey and Ukraine prove that we can’t prevent human rights abuses in the status quo

#### There’s no modeling of our Courts and if there was it would create instability.

Seitz-Wald 2013 Alex, reporter for the National Journal, The U.S. Needs a New Constitution—Here's How to Write It, November 2 2013 http://www.theatlantic.com/politics/archive/2013/11/the-us-needs-a-new-constitution-heres-how-to-write-it/281090/

Supreme Court Justice Ruth Bader Ginsburg was pilloried when she told Egyptian revolutionaries last year that she "would not look to the U.S. Constitution, if I were drafting a constitution in the year 2012." But her sentiment is taken for granted by anyone who has actually tried to write a constitution since politicians stopped wearing powdered wigs. "Our Constitution really has been a steady force guiding us and has been perhaps the most stable in the world," says Louis Aucoin, who has helped draft constitutions in Cambodia, East Timor, Kosovo, Rwanda, and elsewhere while working with the U.N. and other groups. "But the disadvantage to the stability is that it's old, and there are things that more-modern constitutions address more clearly." Almost nobody uses the U.S. Constitution as a model—not even Americans. When 24 military officers and civilians were given a single week to craft a constitution for occupied Japan in 1946, they turned to England. The Westminster-style parliament they installed in Tokyo, like its British forebear, has two houses. But unlike Congress, one is clearly more powerful than the other and can override the less powerful one during an impasse. The story was largely the same in defeated Nazi Germany, and more recently in Iraq and Afghanistan, which all emerged from American occupation with constitutions that look little like the one Madison and the other framers wrote. They have the same democratic values, sure, but different ways of realizing them. According to researchers who analyzed all 729 constitutions adopted between 1946 and 2006, the U.S. Constitution is rarely used as a model. What's more, "the American example is being rejected to an even greater extent by America's allies than by the global community at large," write David Law of Washington University and Mila Versteeg of the University of Virginia. That's a not a fluke. The American system was designed with plenty of checks and balances, but the Founders assumed the elites elected to Congress would sort things out. They didn't plan for the political parties that emerged almost immediately after ratification, and they certainly didn't plan for Ted Cruz. And factionalism isn't the only problem. Belgium, a country whose ethnic divisions make our partisan sparring look like a thumb war, was unable to form a governing coalition for 589 days in 2010 and 2011. Nevertheless, the government stayed open and fulfilled its duties almost without interruption, thanks to a smarter institutional arrangement. As the famed Spanish political scientist Juan Linz wrote in an influential 1990 essay, dysfunction, trending toward constitutional breakdown, is baked into our DNA. Any system that gives equally strong claims of democratic legitimacy to both the legislature and the president, while also allowing each to be controlled by people with fundamentally different agendas, is doomed to fail. America has muddled through thus far by compromise, but what happens when the sides no longer wish to compromise? "No democratic principle exists to resolve disputes between the executive and the legislature about which of the two actually represents the will of the people," Linz wrote. "There are about 30 countries, mostly in Latin America, that have adopted American-style systems. All of them, without exception, have succumbed to the Linzian nightmare at one time or another, often repeatedly," according to Yale constitutional law professor Bruce Ackerman, who calls for a transition to a parliamentary system. By "Linzian nightmare," Ackerman means constitutional crisis—your full range of political violence, revolution, coup, and worse. But well short of war, you can end up in a state of "crisis governance," he writes. "President and house may merely indulge a taste for endless backbiting, mutual recrimination, and partisan deadlock. Worse yet, the contending powers may use the constitutional tools at their disposal to make life miserable for each other: The house will harass the executive, and the president will engage in unilateral action whenever he can get away with it." He wrote that almost a decade and a half ago, long before anyone had heard of Barack Obama, let alone the Tea Party. You can blame today's actors all you want, but they're just the product of the system, and honestly it's a wonder we've survived this long: The presidential election of 1800, a nasty campaign of smears and hyper-partisan attacks just a decade after ratification, caused a deadlock in the House over whether John Adams or Thomas Jefferson should be president. The impasse grew so tense that state militias opposed to Adams's Federalist Party prepared to march on Washington before lawmakers finally elected Jefferson on the 36th vote in the House. It's a near miracle we haven't seen more partisan violence, but it seems like tempting fate to stick with the status quo for much longer.

#### No incentive to obey and no spillover in credibility.

Hill 2010 Daniel W., PhD Candidate at Florida State University, Estimating the Effects of Human Rights Treaties on State Behavior The Journal of Politics, Vol. 72, No. 4, October 2010 http://myweb.fsu.edu/dwh06c/pages/documents/Hill10\_jop.pdf

Some scholars may not worry that formal enforcement mechanisms within the human rights regime are weak; after all, the majority of the work on state behavior vis-a´ -vis international institutions has focused primarily on how informal enforcement mechanisms can alter the behavior of recalcitrant states. Unfortunately, the usual set of tenable self-enforcement mechanisms are simply not suitable in the context of the human rights regime (See Simmons (2009) for a thorough discussion). The shadow of the future and fear of reciprocal violation cannot induce compliance in the area of human rights, since it is not clear that states have anything to gain by jointly observing human rights or anything to lose should each (or any) party fail to do so. States should hardly be expected to behave strategically in the realm of human rights, which is to say that their human rights behavior is not the result of expectations that other states are, or are not, going to commit human rights violations (Koremenos 2007). Incentives to violate human rights do not arise from the nature of interactions in the international arena but rather from circumstances at the domestic level. Another informal enforcement mechanism thought to operate in international regimes is fear of damage to one’s reputation (Keohane 1984; Lipson 1991; Simmons 2000). In theory, once states have made formal, public commitments to obey the rules of the regime noncompliance may result in a loss of credibility that is costly enough to deter violations. This mechanism is similar to fear of reciprocal violation in that it depends on the violating state expecting to be deprived of something in the future, namely any number of international agreements it could make with other states had it only proven itself to be trustworthy. In practice, however, it is unlikely that states will be shunned by potential partners because of a bad human rights record. Noncompliance in one area of international law does not necessarily signal an inability or unwillingness to comply in other areas, and this may be especially true of noncompliance with human rights regimes (Downes and Jones 2002).

### ICCPR

**Empirically, water doesn’t cause war**

**Lawfield 10** – Thomas Lawfield is an MA candidate at the University for Peace. Water Security: War or Peace? Thomas Lawfield May 03, 2010 http://www.monitor.upeace.org/innerpg.cfm?id\_article=715

In reality, water does not cause war. The arguments presented above, although correct in principle, have little purchase in empirical evidence. Indeed, as one author notes, there is only one case of a war where the formal declaration of war was over water.[20] This was an incident between two Mesopotamian city states, Lagash and Umma, over 2,500 years BC, in modern day southern Iraq. Both the initial premises and arguments of water war theorists have been brought into question. Given this, a number of areas of contestation have emerged: "Questioning both the supply and demand side of the water war argument [...] Questioning assumptions about the costs of water resources [...and] Demonstrating the cooperative potential of the water resource."[21] Why then is water not a cause of war? The answer lies in two factors: first, the capacity for adaptation to water stresses and, second, the political drawbacks to coupling water and conflict. First, there is no water crisis, or more correctly, there are a number of adaptation strategies that reduce stress on water resources and so make conflict less likely. Unlike the water war discourse, which perceives water as finite in the Malthusian sense, the capacity for adaptation to water stress has been greatly underestimated. For instance, I will discuss in particular a trading adaptation known as ‘virtual water’, which refers to the water used to grow imported food. This water can be subtracted from the total projected agricultural water needs of a state, and hence allows water scarce states to operate on a lower in-country water requirement than would otherwise be expected.[22] This means that regions of the world that are particularly rich in water produce water intense agricultural products more easily in the global trade system, while other water scarce areas produce low intensity products.[23] The scale of this water is significant - Allan famously pointed out that more embedded water flows into the Middle East in the form of grain than flows in the Nile.[24] In addition, there are significant problems around the hegemonic doctrine of the water crisis. Many authors point to relatively low water provision per capita by states, and suggest that this will increase the likelihood of a state engaging in war with a neighbouring state, to obtain the water necessary for its population. This is normally a conceptual leap that produces the incorrect corollary of conflict, but is also frequently a problem of data weaknesses around the per capita requirements. For instance, Stucki cites the case of the Palestinians being under the worst water stress, with a per capita provision being in the region of 165m³/year.[25] Unfortunately, such an analysis is based on false actual provision data in this region. Based on the authors work on water provision in Lebanese Palestinian refugee camps, the actual provision is over 90m³/month. Such a figure is highly likely to be representative of other camps in the region.[26] If this example is representative of trends to exaggerate water pressures in the region, then we should be sceptical about claims of increasing water stress. Furthermore, given that many water systems have a pipe leakage rate of fifty per cent, combined with a seventy per cent loss of agricultural water, significant efficiency enhancements could be made to existing infrastructure. Combined with desalination options in many water shortage prone states, there is an overall capacity for technological and market driven solutions to water scarcity.[27]

#### Ethinic conflict threat is exaggerated

**Dunaway, VPI international affairs professor, 2003**

(Wilma, “Ethnic Confl ict in the Modern World- System: The Dialectics of Counter-Hegemonic Resistance in an Age of Transition”, <http://www.jwsr.org/wp-content/uploads/2013/05/jwsr-v9n1-dunaway.pdf>, ldg)

There is a current scholarly preoccupation with describing ethnic and indigenous resistance as new phenomena that have suddenly become more dangerous. Many writers contend that postmodernism (Friedman 1992) or new forms of economic and cultural “globalization” (Smolicz 1998; Shulman 1998) are causing increased ethnic fragmentation all over the world. Th e United Nations (UNHCR 2002) posits “ethnic confl ict” within and between adjacent countries as the predominant form of warfare that will occur in the 21st century. Th e Minorities at Risk Project (2002) provides the following empirical data about world levels of ethnic confl ict.1 1. Between 1955 and 1996, there were 239 wars, regime transitions, and genocides in which inter-ethnic confl icts were the causative factors (Harff and Gurr 1997:5). 2. Between 1980 and 1996, 60 distinct ethnic and religious minorities were victimized in wars and geno/politicides (Harff and Gurr 1997:8–10). 3. At the end of the 1990s, there were 275 groups in 116 countries—representing nearly one-fi fth of world population—at risk of (a) violent repression from their national governments, (b) initiating open rebellion again a national government controlled by representatives of another ethnic group, or (c) engaging in violent collective action against other groups (Gurr 1999:Table 1). 4. At the turn of the 21st century, one-quarter of the population of Latin America and the Caribbean and one-third of the population of Africa and the Middle East are at risk of open ethnic confl ict (Gurr 1999:Table 3). Are we now seeing a dramatic “renaissance of ethnicity” (Friedman 1988: 453) that exceeds what is typical of the world-system? Does this level of confl ict represent an increase over earlier levels of ethnic confl ict in the world-system? Ethnopolitical confl ict nearly tripled between 1945 and 1989 when the United States was at the peak of its hegemony (see Table 1), a trend opposite to that predicted by Friedman (1989: 67).2 Contrary to the widespread scholarly perception, the contemporary period is characterized by a lower incidence of ethnic confl ict than was typical of the world-system during the Cold War. Since the fall of communism, worldwide ethnic confl ict has increased at only about one-third of the level of increase that characterized the 1950s and the 1970s (see Figure 1). In reality, ethnopolitical confl ict increased at about the same pace in the 1990s as it did in the 1980s. In addition, more than half the confl icts reported in the 1990s were continuation of mobilizations begun during previous decades. Moreover, “communal confl icts across fault lines between civilizations and religious traditions are more intense than others but have not increased in relative frequency or severity since the end of the Cold War” (Gurr 1994:352). Employing worldsystems analysis to investigate trends in ethnic confl ict, Olzak and Tsutsui (1998:712) “question the claim that ethnic violence is exploding in the periphery.” Indeed, they contend that “the periphery is no more likely than core countries to experience serious ethnic confrontations.”

# 2NC

## Add-On

### 1NC – A/T Iraq JI

#### Multiple alt causes to Iraqi independence they can’t solve –

#### A – judicial intimidation

Pimental and Anderson 13

[June 2013, David Pimentel is Visiting Associate Professor of Law, Ohio Northern University; Brian Anderson is a Reference Librarian and Assistant Professor, also at Ohio Northern University, “Judicial Independence in Post-Conflict Iraq: Establishing the Rule of Law in an Islamic Constitutional Democracy”, http://works.bepress.com/cgi/viewcontent.cgi?article=1013&context=david\_pimentel]

Something worthy of particular attention here is a judge’s personal security, which is specifically mentioned in the UN Basic Principles as an element of judicial independence,139 and which remains a constant challenge in post-conflict Iraq.140 Early on in the occupation of Iraq, judicial security was so weak that the CPA issued an order to provide pensions to the families of judges assassinated after the start of the occupation.141 One report in August 2010 indicated that judicial security improved somewhat due to increased levels of personal security and to equipping judges with weapons and ballistic vests,142 buts judicial intimidation nonetheless remained, and remains, a serious issue.143 As recently as 2011, there were still high numbers of targeted attacks against government officials, with approximately ten per month, two-thirds of which resulted in death.144 In mid-2012, a criminal court judge was gunned down as he was returning home from work.145 As long as a significant risk remains to the health and safety of judges and their families, there is risk they are susceptible to coercion and corruption, threatening the independence of the judiciary. Judicial compensation is one issue that is addressed by the 2005 Federal Supreme Court Law.146 It notes that the members of the Court are awarded the same compensation and benefits as government ministers.147 Additionally, members are entitled to a pension equal to 80% of their monthly salary as long as they are not removed for conviction of a crime involving moral turpitude or resign without permission of the Presidency Council.148 The 2007 Draft Law would have added a detailed pay scale based on rank and providing paid leave by law.149 Term of office and tenure for members of the Federal Supreme Court is an issue that presents a great challenge to the Court’s judicial independence. The 2005 law does not specify a term of years for members of the Court, and indicates that the Court may “continue to exercise their functions without determining a maximum age limit.”150 With respect to tenure, the Constitution again calls for an implementing law, stating that “judges may not be removed except in cases specified by law.”151 The 2005 law—the only one in place—states that members of the Court may be removed, however, based on “disqualification due to conviction for a crime involving moral turpitude or corruption,”152 but it is silent on any procedural provisions for such a removal from office.153 This failure to properly adopt a law that defines the term of office and tenure, and to specify appropriate due process requirements for a judge facing removal,154 could be problematic for judicial independence. Overall, there remains considerable uncertainty about judges’ terms and conditions of service, as the system is still relying on laws that predate the Constitution. Until these conditions are defined and secured by law, and adequate personal security is provided to ensure the safety of judges and their families, judicial independence in Iraq will remain elusive.

#### B – religious and political pressure

Pimental and Anderson 13

[June 2013, David Pimentel is Visiting Associate Professor of Law, Ohio Northern University; Brian Anderson is a Reference Librarian and Assistant Professor, also at Ohio Northern University, “Judicial Independence in Post-Conflict Iraq: Establishing the Rule of Law in an Islamic Constitutional Democracy”, http://works.bepress.com/cgi/viewcontent.cgi?article=1013&context=david\_pimentel]

A concern for Iraq here is that the Constitution accords juridical significance to established provisions of Islam, which opens the door to influence from religious leaders or authorities.119 Depending on how the courts address these issues, and on whom they must rely for determinations on questions of what Islamic principles require, the courts may well be open to outside influences, seriously compromising their independence. For example, if Article 2 is interpreted to require judicial fealty to fatwas,120 then anyone authorized to issue a fatwa would have direct power to dictate outcomes in judicial cases. b. Political influence and interference In addition to this potential for religious influence, there are noted instances of political (executive) influence of the judiciary.'21 One such case that raised much controversy was the case shortly before the 2010 parliamentary elections in Iraq, when the Supreme Commission for Accountability and Justice announced that pursuant to relevant de- Ba'athificalion laws it had disqualified over 500 nominees from participating in the election.122 The Court of Cassation overturned the Commission's ruling, holding that there was not sufficient time prior to the election to complete a proper review of the claims against the nominees, and they should be allowed to participate in the election subject to post-election 123 review. The Court's decision, however, was largely unpopular with the Prime Minister and his political allies.124 Under great pressure, and after meetings with the Prime Minister and other political leaders, the Court reversed the decision

and ultimately allowed only 26 candidates to stand for election.1-5 This reversal was generally perceived among Iraqis as evidence that the judiciary was susceptible to political pressure, and thus lacking independence.126 Another example came in 2011, when the Federal Supreme Court rendered a decision, authored by the Chief Justice, ruling that a series of previously powerful and independent agencies were subject to direct cabinet oversight.1" One commentator referred to this case as the Prime Minister utilizing his "increasingly pliable judiciary" to weaken oversights and empower the executive. 128 Cases like these raise serious doubts about the judiciary's ability to withstand pressure and interference from a very powerful executive. At the very least, the situation seriously undermines public confidence in the judiciary and, more particularly, in its independence.

### 2NC – Solvency

#### Self execution precedent will be undermined by lower courts – means only the cp solves

Gruber 2007

Aya, Associate Professor of Law, Florida International University College of Law, Sending the Self-Execution Doctrine to the Executioner, FIU Law Review,

Claims of the Supreme Court's increasing awareness and integration of international consensus and norms appear vindicated by decisions like Roper v. Simmons,8 which incorporates international opinion into the "evolving standards of decency" analysis of juvenile execution. 9 The argument that the Supreme Court is still not fulfilling its potential as a validator of international law is supported by cases like Sosa v. Alvarez-Machain,' in which the Court interpreted the Alien Torts Claims Act to permit private claims under federal common law for violations of customary international law, but defined customary international law narrowly with reference to the law of nations in 1789 (the year the Act was passed)." In this Essay, I contend the Supreme Court can never truly abandon its "island" mentality until it is willing to reaffirm the status of treaties as supreme federal law in the face of anti-internationalist lower decisions that have created a super-charged self-execution doctrine. The self-execution doctrine is a judicial invention2 holding that a treaty only provides judicially-enforceable rights if it "operates of itself" or if Congress implements it through specific legislation." Over the past forty years, lower courts have substantially narrowed the class of treaties that operate of themselves and created a presumption of domestic unenforceability." Unless the Supreme Court is willing to sound the death knell of the modem self-execution doctrine, it cannot truly embrace the value of international law. Recently, the Court had two very good opportunities to declare the Geneva Conventions5 self-executing in Hamdi v. Rumsfeld," and Hamdan v. Rumsfeld. Unfortunately, the Court went to great lengths to avoid the self-execution issue, even though a resolution of the question of Geneva self-execution was clearly called for.

#### Only the counterplan can solve lower court enforcement.

Gruber 2007

Aya, Associate Professor of Law, Florida International University College of Law, Sending the Self-Execution Doctrine to the Executioner, FIU Law Review,

It is relatively clear that the modern intent doctrine was not a necessary corollary of the principle set forth in Foster. Although some experts have characterized the doctrine as the culmination of years of poor legal analysis,"' I believe that isolationist sentiment was the driv-ing force behind the modem self-execution doctrine. Consider the tangible results of the modern intent doctrine. The first practical effect of the doctrine is to allow the United States to sign and ratify treaties guaranteeing individual rights, typically human rights treaties, while simultaneously declaring that the treaty cannot be enforced by individuals domestically, either by expressly stating so in a non-selfexecution declaration132 or otherwise indicating through more informal statements.", In essence, the United States can ratify treaties, appease international actors, and pretend to be a leader in human rights, while eliminating the only realistic mechanism for accountability."' While one might argue that international institutional mechanisms are sufficient for vindication of individual rights under, for example, the Convention against Torture or the Geneva Conventions, 5 that argument rings hollow in the face of a stream of unmitigated violations of these treaties by the United States since 2001."6 It is quite evident that the best hope of curtailing violations is through individual lawsuits seeking relief.'7 Under the modern self-execution doctrine, such suits have little ability to check government abuse because they will be dismissed whenever a court finds some evidence of treaty maker intent against self-execution or even silence on the issue. 'The second thing the modern intent doctrine accomplishes is the presumptive undermining of treaties signed before the modem doc-trine took hold in American law. Typically, when individuals enter into contracts, such contracts set forth specific terms that become enforceable when the contract is validly executed. It would be unusual for a contract signatory to assume that the contract is unenforceable unless it contains a provision explicitly stating that parties can enforce the contract. Why, then, would treaty makers add a specific provision to assert that the rights set forth in the treaty are domestically enforceable? The only reason they would do so is if they believed doing so was required for treaty enforceability. In the era prior to the advent of the modern self-execution doctrine, in which both the 1929 and 1949 Geneva Conventions ratifications took place, treaty makers would have had no reason to assume that ratified treaty provisions are not presumptive federal law.' As a consequence, looking for an explicit "intentto-self-execute" will prove an impassable barrier for treaties ratified prior to the last fifty years. '

## DA

### 1NC – Chemical Industry Impact

#### Key to the chemical industry – patchwork regulation.

ACC 2013

American Chemistry Council, leading chemical manufacturing industry trade group, BRIEF FOR AMICUS CURIAE THE AMERICAN CHEMISTRY COUNCIL IN SUPPORT OF RESPONDENT http://sblog.s3.amazonaws.com/wp-content/uploads/2013/08/08\_16\_13-American-Chemistry-Council-Amicus-Brief\_115164106\_1.pdf

Like the federal statute considered by this Court in Gonzales v. Raich, 545 U.S. 1 (2005), Section 229 is a component of a “comprehensive framework” for prohibiting the “production, distribution, and possession,” id. at 24, of chemical weapons. That the statute may reach the intrastate production, transfer, possession, or use of such weapons in order to extinguish the interstate market for them is of no constitutional significance. Congress could reasonably have concluded that eradicating the interstate and foreign markets in chemical weapons required prohibiting intrastate activity. As this Court has determined, “[t]he notion that … a discrete activity … [may be] hermetically sealed off from the larger interstate … market is a dubious proposition, and, more importantly, one that Congress could have rationally rejected.” Id. at 30. That is decidedly the case here: Like the possession or consumption of homegrown marijuana, the intrastate manufacture, possession, or use of chemicals for illicit purposes could easily affect interstate or foreign markets. To be sure, many chemicals within the ambit of the CWC and Section 229 are “dual-use”: they have the potential to be used as chemical weapons or as precursors to chemical weapons, but they also have extensive beneficial uses in manufacturing, agriculture, industry, education, and the arts. That fact, however, does nothing to alter that Section 229 is a pillar in a comprehensive scheme to eradicate the national and international market in chemicals for illicit purposes. Under this Court’s Commerce Clause precedents, it does not matter that Congress is attempting to suppress a market for the manufacture, transfer, and possession of certain chemicals only for particular purposes and not commerce in such chemicals altogether. Section 229, moreover, is not merely part of a larger regulatory framework aimed at eradicating a commercial market; it is also squarely aimed at fostering the lawful national and international trade in chemicals for their beneficial uses. Petitioner’s narrow focus on the disarmament objectives of the CWC ignores this vital commerce-enhancing objective. See Wickard v. Filburn, 317 U.S. 111, 128 (1942) (“The stimulation of commerce is a use of the regulatory function quite as definitely as prohibitions or restrictions thereon.”); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 36- 37 (1937). Indeed, the text and history of the CWC and its implementing legislation make clear that one of its principal goals was the promotion of “free trade in chemicals.” Conv. pmbl. ¶¶ 9, 10 (Pet. App. 147). Encouraging that commerce, the signatories (“States Parties”) agreed, required a comprehensive prohibition on the use, production, or acquisition of chemicals for illicit purposes, not only by signatory nations but also by corporations and individuals. Otherwise, the everyday commerce in chemicals would be in constant jeopardy of piecemeal trade-restricting measures aimed at securing what only uniform controls could accomplish. Such was the importance of the prohibition’s scope that “[v]arious chemical industry spokespersons consider[ed] the CWC a trade enabling regime that could counteract trends in the future, in which U.S. chemical trade and investment could be constricted under even tighter export controls.” Convention on Chemical Weapons: Hearing Before the S. Comm. on Foreign Relations, 104th Cong. 25 (1996) (statement of Sen. Lugar) (emphasis added). Petitioner is thus wrong to insist that her conduct is far afield from the goals of the CWC and its implementing legislation. Even one misuse of a toxic chemical for malicious purposes—and certainly such misuses when viewed in the aggregate—could prompt a patchwork of severe domestic or international restrictions on the lawful trade in chemicals. Only by imposing comprehensive criminal controls on the diversion of chemicals into illicit channels and on the subsequent misuse of such chemicals could the CWC fully achieve its objectives. Just as Congress may regulate local wheat production to help stabilize the interstate market in wheat (per Wickard), Congress may regulate local misuses of chemicals that could lead to the impairment of lawful interstate or international trade in chemicals for their beneficial uses

#### The chemical industry solves extinction

Baum 1999 (Rudy, C&EN Washington, MILLENNIUM SPECIAL REPORT, Volume 77, Number 49 CENEAR 77 49 pp.46-47, <http://pubs.acs.org/cen/hotarticles/cenear/991206/7749spintro2.html>)

Here is the fundamental challenge we face: The world's growing and aging population must be fed and clothed and housed and transported in ways that do not perpetuate the environmental devastation wrought by the first waves of industrialization of the 19th and 20th centuries. As we increase our output of goods and services, as we increase our consumption of energy, as we meet the imperative of raising the standard of living for the poorest among us, we must learn to carry out our economic activities sustainably. There are optimists out there, C&EN readers among them, who believe that the history of civilization is a long string of technological triumphs of humans over the limits of nature. In this view, the idea of a "carrying capacity" for Earth—a limit to the number of humans Earth's resources can support—is a fiction because technological advances will continuously obviate previously perceived limits. This view has historical merit. Dire predictions made in the 1960s about the exhaustion of resources ranging from petroleum to chromium to fresh water by the end of the 1980s or 1990s have proven utterly wrong. While I do not count myself as one of the technological pessimists who see technology as a mixed blessing at best and an unmitigated evil at worst, I do not count myself among the technological optimists either. There are environmental challenges of transcendent complexity that I fear may overcome us and our Earth before technological progress can come to our rescue. Global climate change, the accelerating destruction of terrestrial and oceanic habitats, the catastrophic loss of species across the plant and animal kingdoms—these are problems that are not obviously amenable to straightforward technological solutions. But I know this, too: Science and technology have brought us to where we are, and only science and technology, coupled with innovative social and economic thinking, can take us to where we need to be in the coming millennium. Chemists, chemistry, and the chemical industry—what we at C&EN call the chemical enterprise—will play central roles in addressing these challenges. The first section of this Special Report is a series called "Millennial Musings" in which a wide variety of representatives from the chemical enterprise share their thoughts about the future of our science and industry. The five essays that follow explore the contributions the chemical enterprise is making right now to ensure that we will successfully meet the challenges of the 21st century. The essays do not attempt to predict the future. Taken as a whole, they do not pretend to be a comprehensive examination of the efforts of our science and our industry to tackle the challenges I've outlined above. Rather, they paint, in broad brush strokes, a portrait of scientists, engineers, and business managers struggling to make a vital contribution to humanity's future. The first essay, by Senior Editor Marc S. Reisch, is a case study of the chemical industry's ongoing transformation to sustainable production. Although it is not well known to the general public, the chemical industry is at the forefront of corporate efforts to reduce waste from production streams to zero. Industry giants DuPont and Dow Chemical are taking major strides worldwide to manufacture chemicals while minimizing the environmental "footprint" of their facilities. This is an ethic that starts at the top of corporate structure. Indeed, Reisch quotes Dow President and Chief Executive Officer William S. Stavropolous: "We must integrate elements that historically have been seen as at odds with one another: the triple bottom line of sustainability—economic and social and environmental needs." DuPont Chairman and CEO Charles (Chad) O. Holliday envisions a future in which "biological processes use renewable resources as feedstocks, use solar energy to drive growth, absorb carbon dioxide from the atmosphere, use low-temperature and low-pressure processes, and produce waste that is less toxic." But sustainability is more than just a philosophy at these two chemical companies. Reisch describes ongoing Dow and DuPont initiatives that are making sustainability a reality at Dow facilities in Michigan and Germany and at DuPont's massive plant site near Richmond, Va. Another manifestation of the chemical industry's evolution is its embrace of life sciences. Genetic engineering is a revolutionary technology. In the 1970s, research advances fundamentally shifted our perception of DNA. While it had always been clear that deoxyribonucleic acid was a chemical, it was not a chemical that could be manipulated like other chemicals—clipped precisely, altered, stitched back together again into a functioning molecule. Recombinant DNA techniques began the transformation of DNA into just such a chemical, and the reverberations of that change are likely to be felt well into the next century. Genetic engineering has entered the fabric of modern science and technology. It is one of the basic tools chemists and biologists use to understand life at the molecular level. It provides new avenues to pharmaceuticals and new approaches to treat disease. It expands enormously agronomists' ability to introduce traits into crops, a capability seized on by numerous chemical companies. There is no doubt that this powerful new tool will play a major role in feeding the world's population in the coming century, but its adoption has hit some bumps in the road. In the second essay, Editor-at-Large Michael Heylin examines how the promise of agricultural biotechnology has gotten tangled up in real public fear of genetic manipulation and corporate control over food. The third essay, by Senior Editor Mairin B. Brennan, looks at chemists embarking on what is perhaps the greatest intellectual quest in the history of science—humans' attempt to understand the detailed chemistry of the human brain, and with it, human consciousness. While this quest is, at one level, basic research at its most pure, it also has enormous practical significance. Brennan focuses on one such practical aspect: the effort to understand neurodegenerative diseases like Alzheimer's disease and Parkinson's disease that predominantly plague older humans and are likely to become increasingly difficult public health problems among an aging population. Science and technology are always two-edged swords. They bestow the power to create and the power to destroy. In addition to its enormous potential for health and agriculture, genetic engineering conceivably could be used to create horrific biological warfare agents. In the fourth essay of this Millennium Special Report, Senior Correspondent Lois R. Ember examines the challenge of developing methods to counter the threat of such biological weapons. "Science and technology will eventually produce sensors able to detect the presence or release of biological agents, or devices that aid in forecasting, remediating, and ameliorating bioattacks," Ember writes. Finally, Contributing Editor Wil Lepkowski discusses the most mundane, the most marvelous, and the most essential molecule on Earth, H2O. Providing clean water to Earth's population is already difficult—and tragically, not always accomplished. Lepkowski looks in depth at the situation in Bangladesh—where a well-meaning UN program to deliver clean water from wells has poisoned millions with arsenic. Chemists are working to develop better ways to detect arsenic in drinking water at meaningful concentrations and ways to remove it that will work in a poor, developing country. And he explores the evolving water management philosophy, and the science that underpins it, that will be needed to provide adequate water for all its vital uses. In the past two centuries, our science has transformed the world. Chemistry is a wondrous tool that has allowed us to understand the structure of matter and gives us the ability to manipulate that structure to suit our own purposes. It allows us to dissect the molecules of life to see what makes them, and us, tick. It is providing a glimpse into workings of what may be the most complex structure in the universe, the human brain, and with it hints about what constitutes consciousness. In the coming decades, we will use chemistry to delve ever deeper into these mysteries and provide for humanity's basic and not-so-basic needs.

### 2NC – A/T Winners Win

#### Doesn’t matter – the link turn is long term but the link is rapid.

Ura 2013

Joseph Daniel, Assistant Professor, Department of Political Science, Texas A&M University, Backlash and Legitimation: Macro Political Responses to Supreme Court Decisions, American Journal of Political Science July 19 2013

This paper offers a first attempt to develop and assess the competing predictions of the thermostatic model of public opinion and legitimation theory for the likely responses of public mood to Supreme Court decision-making. While thermostatic theory predicts a negative relationship between the ideological direction of Supreme Court decisions and changes in public mood, legitimation theory predicts that changes in public mood should be positively associated with the ideological content of the Court’s actions. To assess these rival expectations, I estimated a model of the dynamic relationship between changes in public mood and Supreme Court decisions controlling for policy choices made by Congress and the president as well as the state of the macro economy. The results show that both thermostatic and legitimizing forces bear on the response of public mood to the Supreme Court. The model predicts that the public’s initial response to changes in aggregate Supreme Court liberalism is negative. When the Supreme Court hands down salient decisions in one ideological direction, public mood shifts in the opposite direction in the short run, which is consistent with thermostatic accounts of public mood. However, the model predicts that this negative response ultimately decays and is replaced by a positive response to Supreme Court decisions. Aggregate Supreme Court liberalism is significantly and positively associated with liberalism in public mood over the long run. Though the model shows mood to be a reasonably slowly adjusting time series, there is significant evidence that public mood shifts towards the ideological position of the Supreme Court.

### 2NC – A/T Ideology

#### Not true for prez powers cases – extremely visible.

Curry 2006

Todd, PoliSci Master’s Thesis, THE ADJUDICATION OF PRESIDENTIAL POWER IN THE U.S. SUPREME COURT: A PREDICTIVE MODEL OF INDIVIDUAL JUSTICE VOTING, University of Central Florida Summer 2006

If the predominant theory of Supreme Court decision-making, the attitudinal model, were applied to this subset of cases, despite the uniqueness of the political ramifications (which amount to direct judicial interaction with the executive branch), the balance of power issues that arise, and the distinct constitutional questions, it may be expected that justices would still simply vote their policy preferences because the attitudinal model assumes that all individual level decision-making by the Supreme Court justices is a function of ideology. This theory is too simplistic to account for the complexities that arise in separation of power cases, in particular in cases that involve presidential power. Therefore, while acknowledging the importance of a justice’s attitude in decision-making, this study postulates that there are multiple attitudinal and extra-attitudinal factors that may influence a justice’s individual level decision-making. Following the research of Yates (2002) and others, this study theorizes that, Supreme Court cases in which the president or presidential power is being adjudicated, the attitudinal model of judicial decision-making may not completely account for the justices’ individual decision-making process because in these highly salient cases, the presence of external and political cues may influence the justices because highly salient cases such as these may call into question the very legitimacy of the Court. Since there are numerous political and external factors that can affect the justices’ decision-making process in cases involving presidential power, there will be numerous hypotheses in order to test this theory.

### 2NC – Capital High Now

#### Court legitimate now – moderation of decisions and avoiding controversy.

Economist 2013

The Supreme Court's term in review: Moderately legitimate, Jun 27th 2013, http://www.economist.com/blogs/democracyinamerica/2013/06/supreme-courts-term-review

THE SUPREME COURT struck down an unusually large number of statutes this term. Just this week, the court nullified Section 3 of the Defense of Marriage Act (DOMA) and Section 4 of the Voting Rights Act (VRA), both federal laws. Last week, it struck down another federal statute requiring organizations fighting AIDS abroad to explicitly denounce prostitution as a condition for federal funding. It also rejected Arizona’s law requiring voters to prove their citizenship as inconsistent with federal law and reinterpreted a federal statute protecting Native American children from estrangement from their tribe. In striking down or altering the meaning of all these legislative provisions, the court acted in line with public opinion at times and counter to it at others. But in a conceptual sense every episode of judicial review is a “counter-majoritarian” act, as Alexander Bickel explained in his 1962 book, The Least Dangerous Branch. The power of judicial review has defined the Supreme Court since Chief Justice John Marshall first asserted it in his brilliant Marbury v. Madison opinion, but its use is never unproblematic. In our day, accusations of judicial activism arise whenever the court overturns the will of elected representatives in Congress or a state legislature. Here is how Bickel put the dilemma: The root difficulty is that judicial review is a countermajoritarian force in our system....[W]hen the Supreme Court declares unconstitutional a legislative act or the act of an elected official it thwarts the will of the actual people of the here and now; it exercises control, not in behalf of the prevailing majority, but against it. That, without mystic overtones, is what actually happens...[I]t is the reason the charge can be made that judicial review is undemocratic. In recent years, the charge of judicial activism has been heard from the left in complaints about the Citizens United decision. It was a trope a year ago from the right when the court upheld the constitutionality of Obamacare on grounds some thought were judicially invented. This season, liberals are unhappy with the court’s decision to ignore the huge margin by which Congress voted to reauthorise the VRA in 2006. Adam B at the Daily Kos writes that the “conservative activist Supreme Court” erred by brushing off the 15,000 pages of evidence establishing discriminatory practices in jurisdictions covered by Section 4. (Matt Berreto shares more evidence of voting discrimination that Chief Justice Roberts willfully ignored.) At the same time, conservatives callthe DOMA ruling a “judicial activist opinion which will create disorder and confusion.” Justice Scalia is being mocked on Comedy Central for overturning a law he doesn’t like (the VRA) and upholding one he does (DOMA). But liberals could just as easily be called to account for their inverted views: had the court issued a more sweeping ruling in Hollingsworth and recognised a fundamental, nationwide right to marriage equality, few on the left would have complained about activist intrusions on the rights of Alabamans to define marriage more traditionally. It would be very hard to find someone who is happy with every decision the court has issued this term. This fact alone lends legitimacy to the Supreme Court as an institution and eases the “counter-majoritarian difficulty” diagnosed by Mr Bickel. Several patterns in the court’s 78 opinions this year give it an air of moderation. First, while there were many 5-4 splits (23% of the total), a surprising proportion of decisions—43 percent—were unanimous. So the Roberts court is often cohesive, but it is not ideologically monolithic the way, say, the Warren court was. While it leans conservative and is undoubtedly pro-business (witness the two cases sharply limiting the rights of employees to sue their employers for sexual harassment or retaliation), the Roberts court splits differences and tends to rule on narrow grounds in hot-button cases. S

econd, this year's court has splintered in unpredictable ways over some sensitive issues: in the Native American adoption case, liberal stalwart Justice Breyer joined the conservatives in the majority and Justice Scalia sided with the liberals in dissent. Justice Scalia is a favorite whipping boy of the left, but he received kudos from the editorial board of the New York Times for opposing Arizona's proof of citizenship law in Arizona v. Inter Tribal Council of Arizona. Approval ratings for the Supreme Court are about five times higher than they are for Congress, and there seems to be good reason for this: both the left and the right have reason to cheer certain rulings and to jeer others. Love them, hate them, or (more likely), love them and hate them, there is little reason to worry that the institution's legitimacy in the eyes of the public is in much trouble as the gavel comes down for the last time this summer.

### 2NC – Median Justice

#### Elite pressure will force median justices to engage in impression management – conservative backlash from the aff will force the court’s hand in Bond.

Baum and Devins 2010

Lawrence and Neal, Law Profs at Ohio St and William & Mary, Why the Supreme Court Cares About Elites, Not the American People http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2149&context=facpubs

As we have suggested already, legal academics may be an especially salient audience within the legal profession. The news media may also be a salient audience, and the impact of these two groups is parallel in some important respects. The potential salience of academics and the news media has three different sources. First, the news media and academia play an important role in deﬁning the Justices’ status and reputation within their own inner circles. Supreme Court Justices read the newspapers, as do their family and friends. Their clerks and the advocates who appear before them typically served as the editors of the nation’s leading law reviews, and many of their clerks will become academics—writing journal articles and books about their handiwork. Supreme Court Justices, moreover, are part of the larger law school culture. They frequently travel to law schools and have strong ties to the elite schools that they and their clerks attended.143 Second, the news media and academia also deﬁne the Justices’ status and reputation to society at large.144 Political elites in general and the news media in particular play a signiﬁcant role in opinion formation among the mass public. Indeed, on issues “that are not ideologized in the mass public,” there is a convergence between elite opinion (typically reinforced by Supreme Court decision making) and public opinion—as “media discussion [of a Court decision] and elite behavior” change public norms in ways that “reduce the differences between the pattern of elite and mass opinion on an issue.”145 Third, whereas the mass public knows very little about the speciﬁc decisions of the Court,146 elites are far more likely to pay attention to reports on Court decision making. In other words, elites are the principal consumers of media reports about the Court, especially in specialized media such as legal newspapers and blogs. The media’s inﬂuence in shaping the Justices’ decision making is something that we will take up in Part III, when we discuss whether there is empirical evidence backing the so-called Greenhouse effect, whereby Justices shift their views to reﬂect the left-leaning values of media and academic elites.147 At this point, two observations are in order: First, there is little question that Justices pay attention to reports about the Court and about themselves personally in the news media. Although the Justices interact with reporters far less than their counterparts in the other branches, such interactions are not rare148 and they are becoming more common. Justices may engage in those interactions for several reasons, but it is likely that an interest in shaping news coverage is one of those reasons.149 Second, there is good reason to think that the Court’s swing Justices are especially sensitive to their reputations

among academic and media elites. Swing Justices typically have comparatively weak legal policy preferences, and as such, are more likely to engage in externally focused impression management.150 In particular, rather than seeking to win the esteem of some ideologie cally identiﬁable group, swing Justices are often drawn to the norm of judicial independence and the idea that a neutral, impartial arbiter would not join one or another faction that regularly favors liberal or conservative outcomes.151 For example, Justice Anthony Kennedy—the super median on today’s Roberts Court—seems particularly concerned with his public persona. According to one of his law clerks, Justice Kennedy “‘would constantly refer to how it’s going to be perceived, how the papers are going to do it, [and] how it’s going to look.’”152 On the very day that the Court reafﬁrmed Roe in Planned Parenthood v. Casey, Justice Kennedy told a reporter that “‘[s]ometimes you don’t know if you’re Caesar about to cross the Rubicon or Captain Queeg cutting your own tow line.’”153 No doubt, Justice Kennedy may be an extreme case. Nevertheless, there is good reason to think that swing Justices are more apt to be externally focused and, as such, more interested in press and academic commentary about the Court. D. SUMMARY Social psychology provides important insights into Supreme Court decision making. Unlike political science models which emphasize the pursuit of legal policy preferences, social psychology highlights how issues of self presentation also contribute to the choices Justices make. In so doing, social psychology takes into account both the legal policy preferences of Justices (by recognizing that a Justice will only back up legal or policy positions that are roughly in sync with their personal preferences) and a Justice’s interest in power and reputation (by recognizing that a Justice’s preferences and votes—consciously or unconsciously—are inﬂuenced by audiences they care about). By highlighting how Justices take audiences into account, this Part has called attention to divergences between the social psychology and political science models. At the same time, it is important to recognize that both models anticipate that Justices will diverge from favored policy positions to pursue other objectives. Political science models that argue that the Court accommodates itself to public opinion, for example, anticipate that Justices will calibrate their decision making to stave off public disapproval. The social psychology model, on the other hand, highlights the pivotal role that personal motivation plays in judicial decision making. There is reason to think that political science models that view public opinion as a signiﬁcant inﬂuence on the Justices anticipate greater divergence by the Justices from positions that reﬂect their policy preferences than does the social psychology model. Social psychology anticipates that the formation of legal policy preferences is driven by both ideological and personal motivations, so there is likely to be considerable agreement between Justices’ preferences and the preferences of the audiences that are most important to them. In contrast, any mechanisms that lead to agreement in preferences between the Justices and the general public are likely to be weaker. Social psychology is important for three other related reasons. First, even though the Supreme Court Justices are members of a single Court, it is wrong to describe the Court as a unitary body. Not only do the Justices have different legal policy preferences, they also place different values on power and reputation—including their willingness to be associated with ideologically identiﬁable groups. Second, in looking at the Supreme Court as a conglomeration of individual preferences, social psychology—consistent with the political science models— calls attention to the often pivotal role that median Justices play in Court decision making.154Unlike the political science models, however, social psychology calls attention to the important role that audiences play in the decision making of median Justices. Third, and ﬁnally, social psychology is instructive in understanding which audiences matter most to Justices. Supreme Court Justices are elites whose reference groups are also elites. And although there are both liberal and conservative elite audiences—so that highly ideological Justices are likely to garner praise from the interest groups they identify with so long as they generally support the positions of those groups—the Court’s swing Justices are especially likely to look to the media, law professors, and lawyers’ groups like the American Bar Association. These are the very audiences that will dissect and write about the Justices’ opinions, both in specialty journals for the legal profession and in books and articles that reach across elite audiences (and ultimately ﬁlter to the mass public).155 As it turns out, these audiences are left-leaning, at least on civil liberties issues, in the current era.156 For that reason, it is to be expected that Supreme Court decision making will sometimes favor these elite preferences over the preferences of the American people.157

### 1NC – International Law

#### Incorporating international law undermines the court’s capital.

Blomquist 2010

Robert F., Professor of Law @ Valparaiso, THE THEORETICAL CONSTITUTIONAL SHAPE (AND SHAPING) OF AMERICAN NATIONAL SECURITY LAW SAINT LOUIS UNIVERSITY PUBLIC LAW REVIEW [Vol. XXX:439] http://slu.edu/Documents/law/PLR/Archives/PLR30-2\_Blomquist\_Article.pdf

A final functional reason for urging Supreme Court Justices to avoid citation of foreign judicial precedents in reviewing American national security presiprudence is for the Court to maintain its political legitimacy. Indeed, political legitimacy for the Court is very fragile and vulnerable in the realm of constitutional review of national security policy. First, Supreme Court decisions depend on the “social acquiescence” of the American people and particular elites within American society.196 The Court has suffered a strong backlash from its Boumediene v. Bush decision from an editorial in a national newspaper 197 to the reaction of a presidential candidate.198 How much stronger would the backlash have been if the Boumediene Court had cited a foreign judicial precedent in support of its holding? Second, “a precedent,” in order to achieve and maintain political legitimacy, “has to receive the genuine, enduring commitment of political institutions” to the principles articulated in the Supreme Court opinion.199 Foreign judicial precedents that are incorporated by reference in Supreme Court national security opinions risk alienating significant numbers of members of Congress, the President, and the American military. Third, the political legitimacy of a Supreme Court opinion also depends on sound persuasion. The Supreme Court opinion needs “to be grounded in sufficiently persuasive reasoning, argumentation, rhetoric, or imagery as to cultivate, maintain, and win the longstanding support of at least the Court and the leadership of other [American] public institutions.”200 Citation of a foreign judicial precedent by a Supreme Court Justice in an American national security presiprudence case is likely to be a “shot from the hip” with little, if any, rhetorical salience to the meaning and protection of American national security.

### 2NC – Ilaw Link T/ Case

#### Backlash means there’s a chilling effect.

Parrish 2007

Austen, STORM IN A TEACUP: THE U.S. SUPREME COURT’S USE OF FOREIGN LAW Associate Professor of Law, Southwestern Law School. J.D. 1997, Columbia University; UNIVERSITY OF ILLINOIS LAW REVIEW http://illinoislawreview.org/wp-content/ilr-content/articles/2007/2/Parrish.pdf

Yet it is consistent. Stripped of its rhetoric, the hostility towards citing foreign decisions in any context seems misplaced. Those who oppose the use of foreign law confuse the question of validity with the question of what weight to afford that law. The critics also ignore a history of practice in which foreign legal materials have been used in constitutional analysis.17 Indeed, the practice is one our state courts have long embraced when interpreting their own, unique state constitutions, a point that until now has been downplayed. Lurking under the surface of arguments made by those who oppose the use of foreign sources appears to be the hubris of American exceptionalism. More fundamentally, the arguments often reflect particular modes of constitutional interpretation— textualism and originalism—that, despite recent attempts to resuscitate, the legal mainstream long ago rejected or discounted, at least in their extreme forms.18 A need therefore remains to explain not only why the use of foreign law is not offensive, but why its use is consistent with American constitutionalism and the proper role of the judiciary. This article attempts to do exactly that. This is not an academic exercise: explaining why the U.S. Supreme Court’s use of foreign law is legitimate, while debunking arguments that categorically reject its use, is important. The spirited backlash against the judiciary for citing to foreign materials as persuasive authority threatens to have a chilling effect.19 [FOOTNOTE BEGINS] The last time Justice Scalia vigorously attacked a citation practice—the use of legislative history in statutory interpretation—he had a significant impact in reducing the practice. See Michael H. Koby, The Supreme Court’s Declining Reliance on Legislative History: The Impact of Justice Scalia’s Critique, 36 HARV. J. ON LEGIS. 369 (1999) (concluding that Justice Scalia’s acerbic criticism of the reliance on legislative history led to an overall decline in the use of that interpretive tool). For an explanation of why the Court might start using foreign materials silently, even when the use is legitimate, see Deborah Hellman, The Importance of Appearing Principled, 37 ARIZ. L. REV. 1107, 1125–27 (1995) (arguing that an “appearance factor” influences decision making). [FOOTNOTE ENDS] Instead of exploring how to utilize foreign materials in a refined way, the debate has been debased to an all-or-nothing proposition, with extreme and fringe positions obtaining a degree of superficial credibility. The result is problematic, and its impact real. Lessons that could be learned from other countries are missed. Moreover, the Court’s failure to engage more meaningfully with foreign law divorces the Court from an ongoing transnational dialogue that is developing and shaping international norms—norms that, one day, may exert some control domestically. This article proceeds in three parts. Part I describes the current debate and how it has unfolded in the last few years. Part II explores the validity of arguments championed by those who oppose citation to foreign law sources and explains why those arguments are misplaced. Contrary to the positions staked in the flood of critical articles published in 2005, the use of foreign law is hardly an offensive practice. Part III explains why citation to foreign law is consistent with American constitutionalism and explores some pragmatic reasons for why the U.S. Supreme Court’s use of foreign law is sensible. The article concludes by suggesting that the U.S. Supreme Court should continue cautiously to use foreign law as persuasive authority. Engaging in transnational constitutional dialogue is a commendable goal, not an illegitimate one.

# 1NR

## Legitimacy

### No Extinction

#### Prefer it – no aff evidence has a warrant for extinction – it won’t cause it

**Nyquist**, 5/20/**1999** (J.R. – contributing editor and author of Origins of the Fourth World War, Is Nuclear War Survivable, p. http://www.antipas.org/news/world/nuclear\_war.html)

The truth is, many prominent physicists have condemned the nuclear winter hypothesis. Nobel laureate Freeman Dyson once said of nuclear winter research, “It’s an absolutely atrocious piece of science, but I quite despair of setting the public record straight.” Professor Michael McElroy, a Harvard physics professor, also criticized the nuclear winter hypothesis. McElroy said that nuclear winter researchers “stacked the deck” in their study, which was titled “Nuclear Winter: Global Consequences of Multiple Nuclear Explosions” (Science, December 1983). Nuclear winter is the theory that the mass use of nuclear weapons would create enough smoke and dust to blot out the sun, causing a catastrophic drop in global temperatures. According to Carl Sagan, in this situation the earth would freeze. No crops could be grown. Humanity would die of cold and starvation. In truth, natural disasters have frequently produced smoke and dust far greater than those expected from a nuclear war. In 1883 Krakatoa exploded with a blast equivalent to 10,000 one-megaton bombs, a detonation greater than the combined nuclear arsenals of planet earth. The Krakatoa explosion had negligible weather effects. Even more disastrous, going back many thousands of years, a meteor struck Quebec with the force of 17.5 million one-megaton bombs, creating a crater 63 kilometers in diameter. But the world did not freeze. Life on earth was not extinguished. Consider the views of Professor George Rathjens of MIT, a known antinuclear activist, who said, “Nuclear winter is the worst example of misrepresentation of science to the public in my memory.” Also consider Professor Russell Seitz, at Harvard University’s Center for International Affairs, who says that the nuclear winter hypothesis has been discredited. Two researchers, Starley Thompson and Stephen Schneider, debunked the nuclear winter hypothesis in the summer 1986 issue of Foreign Affairs. Thompson and Schneider stated: “the global apocalyptic conclusions of the initial nuclear winter hypothesis can now be relegated to a vanishingly low level of probability.” OK, so nuclear winter isn’t going to happen. What about nuclear fallout? Wouldn’t the radiation from a nuclear war contaminate the whole earth, killing everyone? The short answer is: absolutely not. Nuclear fallout is a problem, but we should not exaggerate its effects. As it happens, there are two types of fallout produced by nuclear detonations. These are: 1) delayed fallout; and 2) short-term fallout. According to researcher Peter V. Pry, “Delayed fallout will not, contrary to popular belief, gradually kill billions of people everywhere in the world.” Of course, delayed fallout would increase the number of people dying of lymphatic cancer, leukemia, and cancer of the thyroid. “However,” says Pry, “these deaths would probably be far fewer than deaths now resulting from ... smoking, or from automobile accidents.” The real hazard in a nuclear war is the short-term fallout. This is a type of fallout created when a nuclear weapon is detonated at ground level. This type of fallout could kill millions of people, depending on the targeting strategy of the attacking country. But short-term fallout rapidly subsides to safe levels in 13 to 18 days. It is not permanent. People who live outside of the affected areas will be fine. Those in affected areas can survive if they have access to underground shelters. In some areas, staying indoors may even suffice. Contrary to popular misconception, there were no documented deaths from short-term or delayed fallout at either Hiroshima or Nagasaki. These blasts were low airbursts, which produced minimal fallout effects. Today’s thermonuclear weapons are even “cleaner.” If used in airburst mode, these weapons would produce few (if any) fallout casualties.

### Legit Turns Case

Losing legitimacy collapses the effectiveness of Judicial Review

Jackson 11 (Lester, state Senator from Chatham County,“The Threat Of Liberal Judicial Activism Reaches New Heights,” http://www.americanthinker.com/2011/08/the\_threat\_of\_liberal\_judicial\_activism\_reaches\_new\_heights.html)

From time to time, there are calls for making Supreme Court nominations a major issue in presidential elections. These calls have never been really met. This time, the presidential candidates should wake up. They should be talking seriously and often about justices who have contempt for the law, so that the American people will also wake up to the danger. If they don't wake up in 2012, they surely will wake up in 2013 to a Supreme Court that a majority of Americans do not respect because the majority of the Court lacks respect for them. In turn, that will call into question the very legitimacy of judicial review for which Chief Justice Marshall so eloquently laid the groundwork.

### Warming Turns Case

#### Terrorism

CNN 2008

Citing/quoting Thomas Fingar – Chairman of the National Intelligence Council, Global warming could increase terrorism, official says http://articles.cnn.com/2008-06-25/politics/climate.change.security\_1\_climate-change-global-warming-international-migration?\_s=PM:POLITICS

Global warming could destabilize "struggling and poor" countries around the world, prompting mass migrations and creating breeding grounds for terrorists, the chairman of the National Intelligence Council told Congress on Wednesday. Climate change "will aggravate existing problems such as poverty, social tensions, environmental degradation, ineffectual leadership and weak political institutions," Thomas Fingar said. "All of this threatens the domestic stability of a number of African, Asian, Central American and Central Asian countries." People are likely to flee destabilized countries, and some may turn to terrorism, he said. "The conditions exacerbated by the effects of climate change could increase the pool of potential recruits into terrorist activity," he said. "Economic refugees will perceive additional reasons to flee their homes because of harsher climates," Fingar predicted. That will put pressure on countries receiving refugees, many of which "will have neither the resources nor interest to host these climate migrants," he said in testimony to the House Select Committee on Energy Independence and Global Warming. Reactions to the report broke down along partisan lines, with Democrats generally praising it and Republicans expressing doubts. Committee members had concerns about the report's secrecy, reliability and use of intelligence resources. Global warming may have a slight positive effect on the United States, since it is likely to produce larger farming yields, Fingar said But it is also likely to result in storm surges that could affect nuclear facilities and oil refineries near coasts, water shortages in the Southwest and longer summers with more wildfires, the study found. International migration may also help spread disease, Fingar added, and climate change could put stress on international trade in essential commodities. "The United States depends on a smooth-functioning international system ensuring the flow of trade and market access to critical raw materials, such as oil and gas, and security for its allies and partners. Climate change and climate change policies could affect all of these," he warned, "with significant geopolitical consequences."

#### Decks leadership – means we lose the moral highground to pressure other countries

Jake Schmidt, is the international climate policy director at Natural Resources Defense Council (NRDC)., September 26th 2011, “US to attend India meeting to try to stop global warming action on aviation… will these countries now lead on efforts for global solution?

The Indian Government has asked a handful of governments to come to New Delhi on Sept. 29-30th for a meeting to discuss the EU’s effort to control carbon pollution from aviation. After 15 years of waiting for global action the EU took the reasonable step of moving forward at home. Now it looks like the US, India, and other major polluters are going to plot on how to undermine this effort. Instead of trying to stop the EU’s effort, will these countries actually agree to lead on efforts to immediately achieve a global solution to aviation’s pollution? If they don’t it is a failure of leadership and a sign that they aren’t serious about addressing aviation’s global warming pollution. Will the “Delhi Declaration” to stop EU climate action strongly urge all countries, including the ones at the meeting, to immediately develop an enforceable global solution to aviation’s carbon pollution? Press reports indicate that countries attending the Delhi meeting are developing a “declaration” and various versions of this declaration are already being circulated to invited countries. The Obama Administration claims that it wants a global solution to aviation’s pollution (or so they’ve told us). Assuming it moves forward, the “Delhi Declaration to stop the EU” should agree on a strong commitment to develop a global solution immediately or it is a failure of US leadership. It isn’t leadership to attempt to stop another country’s action on global warming and then not push for a change in position from the countries that have historically blocked a global solution. After all, President Obama has promised that: “My presidency will mark a new chapter in America's leadership on climate change…”

### Uniqueness

#### Previous decisions did not invalidate policies-just the institutional arrangement-the plan changes this

**Scheppele, Princeton public affairs professor, 2012**

(Kim Lane, “The New Judicail Deference”, Boston University Law Review, January, lexis, ldg)

In this Article, I will show that American courts have often approached the extreme policies of the anti-terrorism campaign by splitting the difference between the two sides—the government and suspected terrorists. One side typically got the ringing rhetoric (the suspected terrorists), and the other side got the facts on the ground (the government). In major decisions both designed to attract public attention and filled with inspiring language about the reach of the Constitution even in times of peril, the Supreme Court, along with some lower courts, has stood up to the government and laid down limits on anti-terror policy in a sequence of decisions about the detention and trial of suspected terrorists. But, at the same time, these decisions have provided few immediate remedies for those who have sought the courts' protection. As a result, suspected terrorists have repeatedly prevailed in their legal arguments, and yet even with these court victories, little changed in the situation that they went to court to challenge. The government continued to treat suspected terrorists almost as badly as it did before the suspected terrorists "won" their cases. And any change in terrorism suspects' conditions that did result from these victorious decisions was slow and often not directly attributable to the judicial victories they won. Does this gap between suspected terrorists' legal gains and their unchanged fates exist because administration officials were flouting the decisions of the courts? The Bush Administration often responded with sound and fury and attempted to override the Supreme Court's decisions or to comply minimally with them when they had to. n6 But, as this Article will show, these decisions did not actually require the government to change its practices very quickly. The decisions usually required the government to change only its general practices in the medium term. Judges had a different framework for analyzing the petitioners' situation than the petitioners themselves did; judges generally couched their decisions in favor of the suspected terrorists as critiques of systems instead of as solutions for individuals. In doing so, however, courts allowed a disjuncture between rights and remedies for those who stood before them seeking a vindication of their claims. Suspected terrorists may have won [\*92] in these cases—and they prevailed overwhelmingly in their claims, especially at the Supreme Court—but courts looked metaphorically over the suspects' heads to address the policies that got these suspects into the situation where the Court found them. Whether those who brought the cases actually got to benefit from the judgments, either immediately or eventually, was another question. Bad though the legal plight of suspected terrorists has been, one might well have expected it to be worse. Before 9/11, the dominant response of courts around the world during wars and other public emergencies was to engage in judicial deference. n7 Deference counseled courts to stay out of matters when governments argued that national security concerns were central. As a result, judges would generally indicate that they had no role to play once the bullets started flying or an emergency was declared. If individuals became collateral damage in wartime, there was generally no judicial recourse to address their harms while the war was going on. As the saying goes, inter arma silent leges: in war, the law is mute. After 9/11, however, and while the conflict occasioned by those attacks was still "hot," courts jumped right in, dealing governments one loss after another. n8 After 9/11, it appears that deference is dead. [\*93] But, I will argue, deference is still alive and well. We are simply seeing a new sort of deference born out of the ashes of the familiar variety. While governments used to win national security cases by convincing the courts to decline any serious review of official conduct in wartime, now governments win first by losing these cases on principle and then by getting implicit permission to carry on the losing policy in concrete cases for a while longer, giving governments a victory in practice. n9 Suspected terrorists have received [\*94] from courts a vindication of the abstract principle that they have rights without also getting an order that the abusive practices that have directly affected them must be stopped immediately. Instead, governments are given time to change their policies while still holding suspected terrorists in legal limbo. As a result, despite winning their legal arguments, suspected terrorists lose the practical battle to change their daily lives. Courts may appear to be bold in these cases because they tell governments to craft new policies to deal with terrorism. But because the new policies then have to be tested to see whether they meet the new criteria courts have laid down, the final approval may take years, during which time suspected terrorists may still be generally subjected to the treatment that courts have said was impermissible. Because judicial review of anti-terrorism policies itself drags out the time during which suspected terrorists may be detained, suspected terrorists win legal victories that take a very long time to result in change that they can discern. As a result, governments win the policy on the ground until court challenges have run their course and the courts make decisions that contribute to the time that the litigation takes. This is the new face of judicial deference. This Article will explore why and how American courts have produced so many decisions in which suspected terrorists appear to win victories in national security cases. As we will see, many judges have handled the challenges that terrorism poses for law after 9/11 by giving firm support, at least in theory, to both separation of powers and constitutional rights. Judges have been very active in limiting what the government can do, requiring substantial adjustments of anti-terrorism policy and vindicating the claims of those who have been the targets. But the solutions that judges have crafted—often bold, ambitious, and brave solutions—nonetheless fail to address the plights of the specific individuals who brought the cases. This new form of judicial deference has created a slow-motion brake on the race into a constitutional abyss. But these decisions give the government leeway to tackle urgent threats without having to change course right away with respect to the treatment of particular individuals. New deference, then, is a mixed bag. It creates the appearance of doing something—an appearance not entirely false in the long run—while doing far less in the present to bring counter-terrorism policy back under the constraint of constitutionalism.

### AT: Clog

#### New system implemented now – solves backlog

Shackleford 13 (Lynne P., Staff Writer for local news at GoUpstate, “Judicial circuits looking at a way to alleviate a backlog of cases”, http://www.goupstate.com/article/20130713/ARTICLES/130719839?p=3&tc=pg)

Judicial circuits statewide may soon implement a system that puts judges in control of court dockets similar to the one that has been highly successful in Spartanburg County. The criminal case backlog continues to grow in most circuits across the state, but the Judge Run Docket implemented in October 2008 has reduced the county's pending criminal cases from about 10,200 to 7,190 at the end of May 2013. Of those pending cases in the Seventh Judicial Circuit, which includes Spartanburg and Cherokee counties, 75 percent are one-year-old or less. The state benchmark is for all circuits to have at least 80 percent of cases resolved in a year. S.C. Supreme Chief Justice Jean Toal is working with lawmakers on a new system for handling criminal cases to reduce case backlogs. Circuit Court Judge Mark Hayes, the chief judge for administrative purposes for General Sessions Court, said once a defendant is charged with a crime, he has a first appearance hearing in front of a judge to determine whether there are special needs, such as for a translator or accommodations for disabilities. Then at second appearance within 120 days of the arrest, a defendant, usually through his attorney, will tell the judge whether the case is set for trial or a guilty plea and the cases are set on appropriate dockets for pleas or trials. The administrative judge then oversees Roll Call on Mondays to determine the final status of cases set for that week's docket. Every case is different, and some have issues such as State Law Enforcement Division testing, which can take months or defendants who may not be competent to stand trial, Hayes said. "Spartanburg is in a good position in that we have several judges and multiple courtrooms so we can move cases more quickly than other counties that might not have those resources," Hayes said. "This system works well for efficiency." Hayes said although no system is perfect, he credited those involved with case disposition with working together to move cases. "It places some burdens on everyone and there's some measure of accountability," Hayes said. Solicitor Barry Barnette said the program's success is a result of cooperation between prosecutors, defense attorneys, judges and clerks of court. "

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What we have now is a system of checks and balances," Barnette said. "All pieces work together. The defense bar, although we don't always agree, are on board with us to make sure that we administer justice in a fair and timely fashion." The judges — Derham Cole, Roger Couch and Mark Hayes — are all invested in the system and committed to its success, so much so that they are willing to take extra time to taking pleas, hearing motions or presiding over trials, Barnette said. Barnette also credited the clerk of court's office with coordinating the trial and plea dockets. Before October 2008, the solicitor's office was responsible for calling cases, but then-Solicitor Trey Gowdy, who was previously a federal prosecutor, said putting judges in the driver's seat made sense. "Spartanburg is fortunate in that we have three judges — four now with Keith Kelly," Gowdy said. "They were working until 8, 9, sometimes 10 o'clock at night, but we still had tons and tons of cases, so if hard work and willingness were the only variables, we would've licked this problem years ago." In the federal system, judges are in control of which and when cases are called and when judges ask prosecutors or defense attorneys a question, such as what the particular challenges of a specific case are and a timetable for resolution, they are more willing to respond, Gowdy said. Gowdy said although he implemented the system, Barnette has been able to improve the system and now, the numbers show the system is working. "I can't say enough about how fortunate Spartanburg is to have Barry Barnette," Gowdy said. "He knows the ins and outs of the criminal justice system and he is committed 100 percent to taking on the tough cases and a fair outcome." Circuit Public Defender Clay Allen agrees the system is working in Spartanburg. Cherokee County has implemented parts of the docket system, but an additional clerk-of-court is needed to have it fully implemented. Allen said attorneys now are aware farther in advance of when a case will be called and the system now appears fairer since judges hold defense attorneys and prosecutors accountable.

#### If you’re right, then Court clog turns detainee’s rights-takes out any perception of legitimacy

**Guiora, Utah law professor, 2009**

(Amons, “Creating a Domestic Terror Court”, 4-14, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1401982>, ldg)

This was abundantly clear to me when I testified before the Senate Judiciary Committee,'12 where the proponents of Article III courts repeatedly emphasized how well the process had worked in one particular case. My response was: We are talking about thousands of trials, not one. Jury trials and traditional processes are not going to provide defendants with speedy trials, but in fact, quite the opposite. Bench trials- with judges trained in understanding and analyzing intelligence information- will much more effectively guarantee terrorism suspects their rights. That is, the traditional Article III courts will be less effective in preserving the rights and protections of thousands of detainees than the proposed DTC. I predicate this assumption on a "numbers analysis": not establishing an alternative judicial paradigm will all but ensure the continued denial of the right to trial to thousands of detainees. A recent report published by Human Rights First defends traditional Article III courts' abilities to try individuals suspected of terrorism. 13 The authors demonstrate confidence in the courts' abilities to maintain a balance between upholding defendants' rights while simultaneously keeping confidential information secure.'4 Nevertheless, the report recognizes the limitations inherent in trying terrorist suspects in traditional courts as illustrated by the discussion concerning Zacarias Moussaoui's trial. 15

### Link

#### President will circumvent which wrecks legitimacy

**Pushaw, Pepperdine law professor, 2004**

(Robert, Defending Deference: A Response to Professors Epstein and Wells,” Missouri Law Review, lexis, ldg)

Civil libertarians have urged the Court to exercise the same sort of judicial review over war powers as it does in purely domestic cases—i.e., independently interpreting and applying the law of the Constitution, despite the contrary view of the political branches and regardless of the political repercussions.54 This proposed solution ignores the institutional differences, embedded in the Constitution, that have always led federal judges to review warmaking under special standards. Most obviously, the President can act with a speed, decisiveness, and access to information (often highly confidential) that cannot be matched by Congress, which must garner a majority of hundreds of legislators representing multiple interests.55 Moreover, the judiciary by design acts far more slowly than either political branch. A court must wait for parties to initiate a suit, oversee the litigation process, and render a deliberative judgment that applies the law to the pertinent facts.56 Hence, by the time federal judges (particularly those on the Supreme Court) decide a case, the action taken by the executive is several years old. Sometimes, this delay is long enough that the crisis has passed and the Court’s detached perspective has been restored.57 At other times, however, the war rages, the President’s action is set in stone, and he will ignore any judicial orders that he conform his conduct to constitutional norms.58 In such critical situations, issuing a judgment simply weakens the Court as an institution, as Chief Justice Taney learned the hard way.59 Professor Wells understands the foregoing institutional differences and thus does not naively demand that the Court exercise regular judicial review to safeguard individual constitutional rights, come hell or high water. Nonetheless, she remains troubled by cases in which the Court’s examination of executive action is so cursory as to amount to an abdication of its responsibilities—and a stamp of constitutional approval for the President’s actions.60 Therefore, she proposes a compromise: requiring the President to establish a reasonable basis for the measures he has taken in response to a genuine risk to national security.61 In this way, federal judges would ensure accountability not by substituting their judgments for those of executive officials (as hap-pens with normal judicial review), but rather by forcing them to adequately justify their decisions.62 This proposal intelligently blends a concern for individual rights with pragmatism. Civil libertarians often overlook the basic point that constitutional rights are not absolute, but rather may be infringed if the government has a compelling reason for doing so and employs the least restrictive means to achieve that interest.63 Obviously, national security is a compelling governmental interest.64 Professor Wells’s crucial insight is that courts should not allow the President simply to assert that “national security” necessitated his actions; rather, he must concretely demonstrate that his policies were a reasonable and narrowly tailored response to a particular risk that had been assessed accurately.65 Although this approach is plausible in theory, I am not sure it would work well in practice. Presumably, the President almost always will be able to set forth plausible justifications for his actions, often based on a wide array of factors—including highly sensitive intelligence that he does not wish to dis-close.66 Moreover, if the President’s response seems unduly harsh, he will likely cite the wisdom of erring on the side of caution. If the Court disagrees, it will have to find that those proffered reasons are pretextual and that the President overreacted emotionally instead of rationally evaluating and responding to the true risks involved. But are judges competent to make such determinations? And even if they are, would they be willing to impugn the President’s integrity and judgment? If so, what effect might such a judicial decision have on America’s foreign relations? These questions are worth pondering before concluding that “hard look” review would be an improvement over the Court’s established approach. Moreover, such searching scrutiny will be useless in situations where the President has made a wartime decision that he will not change, even if judicially ordered to do so. For instance, assume that the Court in Korematsu had applied “hard look” review and found that President Roosevelt had wildly exaggerated the sabotage and espionage risks posed by Japanese-Americans and had imprisoned them based on unfounded fears and prejudice (as appears to have been the case). If the Court accordingly had struck down FDR’s order to relocate them, he would likely have disobeyed it. Professor Wells could reply that this result would have been better than what happened, which was that the Court engaged in “pretend” review and stained its reputation by upholding the constitutionality of the President’s odious and unwarranted racial discrimination. I would agree. But I submit that the solution in such unique situations (i.e., where a politically strong President has made a final decision and will defy any contrary court judgment) is not judicial review in any form—ordinary, deferential, or hard look. Rather, the Court should simply declare the matter to be a political question and dismiss the case. Although such Bickelian manipulation of the political question doctrine might be legally unprincipled and morally craven, 67 at least it would avoid giving the President political cover by blessing his unconstitutional conduct and instead would force him to shoulder full responsibility. Pg. 968-970

## Case

### ICCPR

#### Obama recognizes the right to internal self-defense now – no impact

Coltert 10 (Robert T, “THE LAW OF SELF-DETERMINATION AND THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES”, http://www.indianlaw.org/sites/default/files/UCLA%20Self-Det.pdf)

The right of self-determination for indigenous peoples within states is perhaps the most important right included in the Declaration on the Rights of Indigenous Peoples adopted by the United Nations in 2007. President Obama announced the support of the United States for the Declaration on December 16, 2010.2 The recognition of the right of self-determination in the Declaration is a breakthrough of great importance in the law of self-determination, probably the most important development of the right since the era of decolonization. It does not, of course, include a right of secession. The Declaration not only reaffirms for indigenous peoples the right of self-determination contained in common Article 1 of the Covenant on Civil and Political Rights and the Covenant on Economic, Social, and Cultural Rights, but it also for the first time recognizes a new and more extensive right of self-determination for indigenous peoples located within states. The Declaration also includes provisions on land rights, treaty rights, environmental rights, rights to be free from discrimination and genocide, and many other specific rights. The purpose of this article is to summarize the international law concerning the right of self-determination at the time the Declaration was adopted and to discuss the meaning and content of that right in the Declaration.

#### Can’t solve – the US will still violate other human rights treaties which prevents norm development

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)

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.

#### **Can’t solve ethnic conflict – the ICESCR is key**

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

### Human Rights Law

#### There’s no modeling of our Courts and if there was it would create instability.

Seitz-Wald 2013 Alex, reporter for the National Journal, The U.S. Needs a New Constitution—Here's How to Write It, November 2 2013 http://www.theatlantic.com/politics/archive/2013/11/the-us-needs-a-new-constitution-heres-how-to-write-it/281090/

Supreme Court Justice Ruth Bader Ginsburg was pilloried when she told Egyptian revolutionaries last year that she "would not look to the U.S. Constitution, if I were drafting a constitution in the year 2012." But her sentiment is taken for granted by anyone who has actually tried to write a constitution since politicians stopped wearing powdered wigs. "Our Constitution really has been a steady force guiding us and has been perhaps the most stable in the world," says Louis Aucoin, who has helped draft constitutions in Cambodia, East Timor, Kosovo, Rwanda, and elsewhere while working with the U.N. and other groups. "But the disadvantage to the stability is that it's old, and there are things that more-modern constitutions address more clearly." Almost nobody uses the U.S. Constitution as a model—not even Americans. When 24 military officers and civilians were given a single week to craft a constitution for occupied Japan in 1946, they turned to England. The Westminster-style parliament they installed in Tokyo, like its British forebear, has two houses. But unlike Congress, one is clearly more powerful than the other and can override the less powerful one during an impasse. The story was largely the same in defeated Nazi Germany, and more recently in Iraq and Afghanistan, which all emerged from American occupation with constitutions that look little like the one Madison and the other framers wrote. They have the same democratic values, sure, but different ways of realizing them. According to researchers who analyzed all 729 constitutions adopted between 1946 and 2006, the U.S. Constitution is rarely used as a model. What's more, "the American example is being rejected to an even greater extent by America's allies than by the global community at large," write David Law of Washington University and Mila Versteeg of the University of Virginia. That's a not a fluke. The American system was designed with plenty of checks and balances, but the Founders assumed the elites elected to Congress would sort things out. They didn't plan for the political parties that emerged almost immediately after ratification, and they certainly didn't plan for Ted Cruz. And factionalism isn't the only problem. Belgium, a country whose ethnic divisions make our partisan sparring look like a thumb war, was unable to form a governing coalition for 589 days in 2010 and 2011. Nevertheless, the government stayed open and fulfilled its duties almost without interruption, thanks to a smarter institutional arrangement. As the famed Spanish political scientist Juan Linz wrote in an influential 1990 essay, dysfunction, trending toward constitutional breakdown, is baked into our DNA. Any system that gives equally strong claims of democratic legitimacy to both the legislature and the president, while also allowing each to be controlled by people with fundamentally different agendas, is doomed to fail. America has muddled through thus far by compromise, but what happens when the sides no longer wish to compromise? "No democratic principle exists to resolve disputes between the executive and the legislature about which of the two actually represents the will of the people," Linz wrote. "There are about 30 countries, mostly in Latin America, that have adopted American-style systems. All of them, without exception, have succumbed to the Linzian nightmare at one time or another, often repeatedly," according to Yale constitutional law professor Bruce Ackerman, who calls for a transition to a parliamentary system. By "Linzian nightmare," Ackerman means constitutional crisis—your full range of political violence, revolution, coup, and worse. But well short of war, you can end up in a state of "crisis governance," he writes. "President and house may merely indulge a taste for endless backbiting, mutual recrimination, and partisan deadlock. Worse yet, the contending powers may use the constitutional tools at their disposal to make life miserable for each other: The house will harass the executive, and the president will engage in unilateral action whenever he can get away with it." He wrote that almost a decade and a half ago, long before anyone had heard of Barack Obama, let alone the Tea Party. You can blame today's actors all you want, but they're just the product of the system, and honestly it's a wonder we've survived this long: The presidential election of 1800, a nasty campaign of smears and hyper-partisan attacks just a decade after ratification, caused a deadlock in the House over whether John Adams or Thomas Jefferson should be president. The impasse grew so tense that state militias opposed to Adams's Federalist Party prepared to march on Washington before lawmakers finally elected Jefferson on the 36th vote in the House. It's a near miracle we haven't seen more partisan violence, but it seems like tempting fate to stick with the status quo for much longer.