# \*\*2AC\*\*

**Bagram Addon: 2AC**

**Detentions at Bagram will prevent post-2014 Afghanistan troop presence**

**Sisk 13** (Richard, 1-4-13, "Afghan Jail a 'Tougher Problem Than Guantanamo'" Military.com) www.military.com/daily-news/2013/01/04/afghan-jail-a-tougher-problem-than-guantanamo.html

**With more than five times the** number of **prisoners than** the detention facility on **Guantanamo** Bay, **the U.S. jail next to Bagram Airfield is** just one of many factors **affecting the degree to which U.S. forces remain in Afghanistan after 2014.** President Obama and Afghan President Hamid Karzai will meet next week in the White House to discuss the fate of the prison, the pace of America’s withdrawal, and the size of the U.S. presence in Afghanistan after 2014. “The first thing is to establish how many will stay in Afghanistan” after 2014, said George Little, the chief Pentagon spokesman. Karzai has warned that he will not approve a troop agreement unless all Afghans in U.S. custody are turned over to his jurisdiction. A complicating factor is the U.S. custody of suspects who allegedly committed insider attacks against allied troops. These attackers, who often posed as Afghan police officers and soldiers, killed U.S. and allied troops at a record rate in 2012. The number of prisoners detained at the high-security, $60 million detention facility is a tightly protected figure. Afghan officials, prison administrators, International Security Assistance Force spokesmen, and senior Pentagon officials all have repeatedly declined comment in recent weeks on how many are held at the facility located next to Bagram Airfield. U.S. Combined Joint Interagency Task Force 435 is the unit assigned to run the detention facility. “As a matter of operational security, we do not discuss numbers of detainees transferred or currently held by CJIATF 435 or U.S. Forces,” said Col. Thomas Collins, an ISAF spokesman in Kabul. However, President Obama discussed the numbers in December. In one of his required periodic reports to Congress under the War Powers Act , Obama wrote on Dec. 14 that “United States Armed Forces are detaining in Afghanistan approximately 946 individuals under the Authorization for the Use of Military Force (Public Law 107-40) as informed by the law of war.” The vast majority of the 946 are detained by CJIATF 435. A small number of recently captured prisoners are kept at local commands until they can be transferred to the detention facility next to Bagram I n the Parawan province. Obama’s report did not state whether the prisoners were captured on the battlefield or were taken into custody for other reasons. “We do not talk about individual detainees and we do not discuss the provenance” of the prisoners’ presence in custody, said Lt. Col. Todd Brasseale, a Pentagon spokesman. Since 2005, Karzai has demanded that prisoners held by the U.S. and the NATO coalition be turned over to Afghan jurisdiction -- with the exception of foreign nationals who were captured in military operations. About one-third of the 946 in Parwan are thought to be foreign nationals, mostly Pakistani but also Yemenis and Saudis, Brasseale said. Karzai has said that he does not want custody of the foreign nationals. In November, Karzai called for "urgent actions” by the U.S. to release the prisoners in Parawan to his control. He said in a statement that the U.S. did not "have the right to run prisons and detain Afghan nationals in Afghanistan." **Karzai threatened to cancel the already difficult negotiations on a post-2014 presence for U.S. forces. A main sticking point to those negotiations involves “status of forces” -- whether U.S. troops in the residual force would be immune from Afghan law.** Iraq’s refusal to provide immunity forced the U.S. to remove military forces from Iraq. Karzai’s spokesman, Aimal Faizi, has said that **more than 70 detainees held by the U.S. under “administrative detention” have already been cleared of wrongdoing by Afghan courts. He said the U.S. had no justification for continuing to hold them since administrative detention was not recognized under Afghan law. "There are some prisoners found innocent by the court who are still in custody,” Faizi said.** “This act is a serious breach of a memorandum of understanding." The U.S. has not faced the same issue at Guantanamo, where the host nation of Cuba has not claimed jurisdiction of the alleged terrorists held on the naval base. Under U.S. court rulings and acts of Congress, many of the 166 prisoners at Naval Station Guantanamo Bay have been cleared to return to their own countries or to a third-party nation willing to take them pending agreements on their continued monitoring and detention. The rest of the prisoners at Gitmo, where the first 20 captives in the war on terror arrived in January 2002, can be tried before a military commission. There is no such prospect for the prisoners next to Bagram. “We have never held a military commission in Afghanistan and we don’t expect there will be one,” Brasseale said. A senior Pentagon official, speaking on background, said “our goal, eventually, is to turn all of the prisoners over” to the Afghans, but the official added that “there is not a mechanism currently in place” for achieving the goal. The Parwan prisoner impasse has left the U.S. in a legal and political bind under international law, the Geneva Conventions and the law of armed conflict, said Gary Solis, a former Marine Corps Judge Advocate General. “We are simply disregarding agreements with the Afghans,” said Solis, an adjunct professor at Georgetown University who also teaches the law of war at West Point. “There is no guidebook for this, no precedent for this situation.” For years, Parwan was a key factor in U.S. worldwide intelligence gathering operations, as interrogators grilled insurgents captured on the battlefield for information on Al Qaeda and the war on terror. In August 2009, Army Gen. Stanley McChrystal, then the coalition commander as head of the International Security Assistance Force, said Parwan was at risk of becoming a “strategic liability” for the U.S. McChrystal said the extrajudicial detentions at Bagram were eroding Afghan support for the allies. Under a Memorandum of Understanding between the U.S. and the Afghan governments reached last March, the U.S. was to have turned over all of the prisoners in September. This led to an awkward change of command ceremony at Parwan on Sept. 9, which Army Lt. Gen. Keith Huber, commander of CJIATF 435, declined to attend. The U.S. transferred about 3,000 prisoners to the Afghans. The U.S. held back more than 50 who were captured before March along with hundreds of others captured by U.S. forces between March and September. The Memorandum of Understanding called for the U.S. to turn over the entire Parwan jail to the Afghans, but the U.S. retained a section closed off to the Afghans. In the dispute over control of the Parwan facility, the U.S. stance has been that the Afghans might not be ready to manage the jail and that the corrupt Afghan justice system might hold trials that would result in the release of dangerous prisoners. In its latest “Report on Progress and Security and Stability in Afghanistan” to Congress last month, the Defense Department said “the Afghan judicial system continues to face numerous challenges.” The system is riddled with “systemic corruption at all levels resulting in a lack of political will to pursue prosecutions against many politically connected individuals,” the Defense Department report said. U.S. and Afghan officials declined comment on whether suspects in insider attacks by Afghan soldiers and police on coalition forces that have killed at least 62 allied troops last year were being held back for fear they would be turned loose. Several field commands said perpetrators in the attacks had been sent to Parwan. One such suspect was a 15-year-old boy allegedly working for the Taliban. A Marine spokesman said the boy had been sent to Parwan after he killed three Marines in southwestern Helmand province in August. According to the Long War Journal, at least 22 suspects in insider attacks have been captured, but U.S. and Afghan officials declined comment on their status. “No one is ever charged with anything so it’s difficult to know what they’re being held for” at Parwan, where prisoners “are not afforded even the minimal protections that the people at Guantanamo have,” said Heather Barr, a researcher in Kabul for Human Rights Watch, an independent advocacy group. Barr said she had attended sessions of the Detention Review Boards set up by the U.S. to determine the status of the prisoners, but the boards have never led to specific charges against prisoners. “We know of only one case that has gone to trial,” Barr said, and that case involved a prisoner, Abdul Sabor, who was captured by the French and handed over to the Afghans. Sabor, who allegedly killed five French troops in an insider attack last January, has been sentenced to death and his case is now under appeals in the Afghan courts, Barr said. Barr said the U.S. was “trying to bully the Afghans into setting up an administrative detention system” for high value prisoners that would allow them to be held indefinitely without the risk of a trial that might set them free. “The Afghan government has said it’s not going to do administrative detention, it’s unconstitutional under Afghan law,” Barr said. British officials have argued against transferring prisoners to the Afghans. In a November letter to Parliament, British Defense Secretary Phillip Hammond wrote that he was canceling future transfer of insurgents captured by British forces to the Afghans on grounds that they might be tortured. “There are currently reasonable grounds for believing that UK-captured detainees who are transferred to Lashkar Gah would be at real risk of serious mistreatment," Hammond said in a reference to the Afghan-run jail in the southwestern Helmand province capital of Lashkar Gah. U.S. Congressional leaders have expressed concerns that Afghan prisoners who still pose a threat might be released. In an August statement, Rep. Howard McKeon (R-Calif.), chairman of the House Armed Services Committee, cited the release of a “high-value terrorist” by Iraq over U.S. objections. “We call upon the President and Secretary of Defense (Leon) Panetta to extend all efforts to ensure that this tragic mistake is not repeated with terrorists currently in U.S. custody in Afghanistan,” McKeon said. **The central question on the Afghan prisoner issue was whether “the U.S. courts are going to take notice of what’s going on in Afghanistan” as they did in setting minimal habeas corpus rights on the charges against prisoners in Guantanamo, said** Donald **Huber**, a former Navy judge advocate general and now dean of the South Texas College of Law.

**Withdrawal causes Afghan instability and terror**

**Curtis 13** (Lisa, senior research fellow, 7-10-13, "Afghanistan: Zero Troops Should Not Be an Option" Heritage Foundation) www.heritage.org/research/reports/2013/07/afghanistan-zero-troops-should-not-be-an-option

The Obama Administration is considering **leaving no U.S. troops behind in Afghanistan after it ends its combat mission** there **in 2014**. This **would undermine U.S. security interests**, as it would **pave the way for the Taliban to regain influence in Afghanistan and ~~cripple~~ [badly hurt]** the U.S. ability to conduct **counterterrorism missions** in the region. President **Obama instead should commit the U.S. to maintaining a robust troop presence** (at least 15,000–20,000) in Afghanistan after 2014 in order to train and advise the Afghan troops and conduct counterterrorism missions as necessary. **The U.S. should** also **remain** diplomatically, politically, and financially **engaged** in Afghanistan in order to sustain the gains made over the past decade **and ensure that the country does not again serve as a sanctuary for international terrorists intent on attacking the U.S.** Flaring Tensions Fuel Poor Policy Decisions Tensions between the Obama and Karzai administrations have escalated in recent months. The U.S. Administration blundered in its handling of the opening of a Taliban political office in Doha in mid-June. In sending a U.S. delegation to Doha to meet with the Taliban leadership without the presence of the Afghan government, the Taliban appeared to be achieving its long-sought objective of cutting the Karzai administration out of the talks. The Taliban also scored a public relations coup by raising the flag associated with its five-year oppressive rule in front of the office. The episode angered Afghan President Hamid Karzai to the point that he pulled out of the Bilateral Security Agreement (BSA) talks with the U.S., thus fulfilling another Taliban goal of driving a wedge between the U.S. and Afghan governments. Karzai’s opposition to the U.S. talking unilaterally with the Taliban is understandable, but his decision to pull out of the BSA talks is misguided, since maintaining an international troop presence post-2014 is essential to the stability of the Afghan state and the ability of Afghan forces to protect against the use of its territory for international terrorism. The BSA talks are necessary to forge an agreement on a post-2014 U.S. troop presence. If the White House is publicizing its consideration of the zero-troop option to try to pressure the Karzai administration, it also is misguided in its negotiating tactics. The Afghans already believe the U.S. is likely to cut and run, similar to the way Washington turned its back on the Afghans over two decades ago when the Soviets conceded defeat and pulled out of the country. The Obama Administration’s failure to reach agreement with the Iraqi government on the terms for a residual U.S. force presence there highlights the White House’s poor track record in managing these kinds of negotiations. Taliban Talks a Masquerade The Taliban leadership has shown no sign that it is ready to compromise for peace in Afghanistan. The Taliban has refused to talk directly with the Karzai government, calling it a puppet of the U.S., and has shown little interest in participating in a normal political process. The Taliban appears to believe that it is winning the war in Afghanistan and simply needs to wait out U.S. and NATO forces. The insurgent leaders’ only motivation for engaging with U.S. officials appears to be to obtain prisoner releases and to encourage the U.S. to speed up its troop withdrawals. The Taliban has already scored tactical points through the dialogue process by playing the U.S. and Afghans off one another and establishing international legitimacy with other governments. Moreover, the Taliban has not tamped down violence in order to prepare an environment conducive to talks. In fact, in recent weeks Taliban insurgents have stepped up attacks. In early June, for instance, insurgents conducted a suicide attack near the international airport in Kabul, and two weeks later they attacked the Afghan presidential palace. Perseverance Required to Achieve U.S. Objectives As difficult as the job may be, it is essential that the U.S. remain engaged in Afghanistan. It would be shortsighted to ignore the likely perilous consequences of the U.S. turning its back on this pivotal country from where the 9/11 attacks originated. Moving forward, the U.S. should: Lay its cards down on the number of troops it plans to leave in Afghanistan post-2014. The White House should commit to keeping a fairly robust number of U.S. forces in Afghanistan over the next several years. Former U.S. Central Command chief General James Mattis made clear in recent remarks to Congress that he hoped the U.S. would leave behind around 13,500 troops and that other NATO nations would leave an additional 6,500 troops.[1] This would bring a total of around 20,000 international forces stationed in Afghanistan beyond 2014 to help with training and advising the Afghan forces. Encourage continued strengthening of the democratic process in the country rather than rely on the false hope of political reconciliation with the Taliban. The Taliban believe they will win the war in Afghanistan without compromising politically and through violent intimidation of the Afghan population, especially when U.S. and coalition troops are departing. Taliban leaders appear unmotivated to compromise for peace and indeed are stepping up attacks on the Afghan security forces and civilians. The White House should focus on promoting democratic processes and institutions that will directly counter extremist ideologies and practices. Integral to this strategy is supporting a free and fair electoral process next spring both through technical assistance and regular and consistent messaging on the importance of holding the elections on time. Further condition U.S. military aid to Pakistan on its willingness to crack down on Taliban and Haqqani network sanctuaries on its territory. There continues to be close ties between the Pakistani military and the Taliban leadership and its ally, the Haqqani network, which is responsible for some of the fiercest attacks against coalition and Afghan forces. In early June, the U.S. House of Representatives approved language in the fiscal year 2014 National Defense Authorization Act that conditions reimbursement of Coalition Support Funds (CSF) pending Pakistani actions against the Haqqani network. Hopefully, the language will be retained in the final bill. The U.S. provides CSF funds to reimburse Pakistan for the costs associated with stationing some 100,000 Pakistani troops along the border with Afghanistan. Pakistan has received over $10 billion in CSF funding over the past decade. Avoid Repeating History **The U.S. should not repeat the same mistake it made 20 years ago by disengaging abruptly from Afghanistan, especially when so much blood and treasure has been expended in the country over the past decade. There is a genuine risk of the Taliban reestablishing its power base and facilitating the revival of al-Qaeda in the region if the U.S. gives up the mission in Afghanistan.** While frustration with Karzai is high, U.S. officials should not allow a troop drawdown to turn into **a rush for the exits** that **would lead to greater instability in Afghanistan and** thus **leave the U.S. more vulnerable to the global terrorist threat.**

**Global nuclear war**

**Morgan 07** (Stephen J., Political Writer and Former Member of the British Labour Party Executive Committee, “Better another Taliban Afghanistan, than a Taliban NUCLEAR Pakistan!?”, 9-23, http://www.freearticlesarchive .com/article/\_Better\_another\_Taliban\_Afghanistan\_\_than\_a\_Taliban\_NUCLEAR\_Pakistan\_\_\_/99961/0/)

However events may prove him sorely wrong. Indeed, his policy could completely backfire upon him. **As the war intensifies,** he has no guarantees that **the current autonomy may** yet **burgeon into a separatist movement**. Appetite comes with eating, as they say. Moreover, should the Taliban fail to re-conquer al of Afghanistan, as looks likely, but captures at least half of the country, then **a Taliban Pashtun caliphate** could be established which **would act as a magnet to separatist Pashtuns in Pakistan**. Then, **the** likely **break up of Afghanistan** along ethnic lines, **could**, indeed, **lead** the way **to the break up of Pakistan, as well**. Strong centrifugal forces have always bedevilled the stability and unity of **Pakistan**, and, in the context of the new world situation, the country **could be faced with civil wars and** popular **fundamentalist uprisings**, probably **including a** military-fundamentalist **coup** d’état. Fundamentalism is deeply rooted in Pakistan society. The fact that in the year following 9/11, the most popular name given to male children born that year was “Osama” (not a Pakistani name) is a small indication of the mood. Given the weakening base of the traditional, secular opposition parties, conditions would be ripe for a coup d’état by the fundamentalist wing of the Army and ISI, leaning on the radicalised masses to take power. Some form of radical, military Islamic regime, where legal powers would shift to Islamic courts and forms of shira law would be likely. Although, even then, this might not take place outside of a protracted crisis of upheaval and civil war conditions, mixing fundamentalist movements with nationalist uprisings and sectarian violence between the Sunni and minority Shia populations. The nightmare that is now Iraq would take on gothic proportions across the continent. The prophesy of **an arc of civil war** over Lebanon, Palestine and Iraq **would spread to south Asia, stretching from Pakistan to Palestine, through Afghanistan into Iraq and up to the Mediterranean** coast. **Undoubtedly, this would** also **spill over into India** both with regards to the Muslim community and Kashmir. **Border clashes**, terrorist attacks, sectarian pogroms and insurgency **would break out. A** new war, and possibly **nuclear war**, between Pakistan and India **could no be ruled out**. Atomic Al Qaeda Should Pakistan break down completely, a Taliban-style government with strong Al Qaeda influence is a real possibility. **Such deep chaos would**, of course, **open a “Pandora's box” for** the region and **the world**. With the possibility of unstable clerical and military fundamentalist elements being in control of the Pakistan nuclear arsenal, not only their use against India, but Israel becomes a possibility, as well as the acquisition of nuclear and other deadly weapons secrets by Al Qaeda. Invading Pakistan would not be an option for America. Therefore **a nuclear war** would now again become a real strategic possibility. This would bring a shift in the tectonic plates of global relations. It **could usher in a new Cold War with China and Russia pitted against the US**.

### T-Restrict = Prohibit: 2AC

#### Restriction means a limit and includes conditions on action

CAA 8,COURT OF APPEALS OF ARIZONA, DIVISION ONE, DEPARTMENT A, STATE OF ARIZONA, Appellee, v. JEREMY RAY WAGNER, Appellant., 2008 Ariz. App. Unpub. LEXIS 613

P10 The term "restriction" is not defined by the Legislature for the purposes of the DUI statutes. See generally A.R.S. § 28-1301 (2004) (providing the "[d]efinitions" section of the DUI statutes). In the absence of a statutory definition of a term, we look to ordinary dictionary definitions and do not construe the word as being a term of art. Lee v. State, 215 Ariz. 540, 544, ¶ 15, 161 P.3d 583, 587 (App. 2007) ("When a statutory term is not explicitly defined, we assume, unless otherwise stated, that the Legislature intended to accord the word its natural and obvious meaning, which may be discerned from its dictionary definition.").

P11 The dictionary definition of "restriction" is "[a] limitation or qualification." Black's Law Dictionary 1341 (8th ed. 1999). In fact, "limited" and "restricted" are considered synonyms. See Webster's II New Collegiate Dictionary 946 (2001). Under these commonly accepted definitions, Wagner's driving privileges were "restrict[ed]" when they were "limited" by the ignition interlock requirement. Wagner was not only [\*7] statutorily required to install an ignition interlock device on all of the vehicles he operated, A.R.S. § 28-1461(A)(1)(b), but he was also prohibited from driving any vehicle that was not equipped with such a device, regardless whether he owned the vehicle or was under the influence of intoxicants, A.R.S. § 28-1464(H). These limitations constituted a restriction on Wagner's privilege to drive, for he was unable to drive in circumstances which were otherwise available to the general driving population. Thus, the rules of statutory construction dictate that the term "restriction" includes the ignition interlock device limitation.

#### A restriction on war powers authority limits Presidential discretion

Jules Lobel 8, Professor of Law at the University of Pittsburgh  Law School, President of the Center for Constitutional Rights, represented members of Congress challenging assertions of Executive power to unilaterally initiate warfare, “Conflicts Between the Commander in Chief and Congress: Concurrent Power  over the Conduct of War,” Ohio State Law Journal, Vol 69, p 391, 2008, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf

So too, the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war—“limited in place, in objects, and in time.” 63 When Congress places such restrictions on the President’s authority to wage war, it limits the President’s discretion to conduct battlefield operations. For example, Congress authorized President George H. W. Bush to attack Iraq in response to Iraq’s 1990 invasion of Kuwait, but it confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions directed to force Iraqi troops to leave Kuwait. That restriction would not have permitted the President to march into Baghdad after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64

### Defer Add-On: Chemical Soldiers 2AC

#### Military is developing chemical soldiers

Parasidis 12 (Efthimios, Assistant Professor of Law, Center for Health Law Studies, Saint Louis University School of Law, 2012, "Justice and Beneficence in Military Medicine and Research" Ohio State Law School, Lexis)

The United States military has a long and checkered history of experimental research involving human subjects. It has sponsored clandestine projects that examined if race influences one's susceptibility to mustard gas, n1 the extent to which radiation affects combat effectiveness, n2 and whether psychotropic drugs could be used to facilitate interrogations or develop chemical weapons. n3 In each of these experiments, the government deliberately violated legal requirements and ethical norms that govern human-subjects research and failed to provide adequate follow-up medical care or compensation for those who suffered adverse health effects. In defending its decisions, the government argued that the studies and research methods were necessary to further the strategic advantage of the United States. n4 The military's contemporary research program is motivated by the same rationale. As the U.S. Defense Advanced Research Projects Agency (DARPA) explains, its goal is to "create strategic surprise for U.S. adversaries by maintaining the technological superiority of the U.S. military." n5 Current research sponsored by DARPA and the U.S. Department of Defense (DoD) [\*725] aims to ensure that soldiers have "no physical, physiological, or cognitive limitations." n6 The research includes drugs that keep soldiers awake for seventy-two hours or more, a nutraceutical that fulfills a soldier's dietary needs for up to five days, a vaccine that eliminates intense pain within seconds, and sophisticated brain-to-computer interfaces. n7 The military's emphasis on neuroscience is particularly noteworthy, with recent annual appropriations of over $ 350 million for cognitive science research. n8 Projects include novel methods of scanning a soldier's brain to ascertain physical, intellectual, and emotional states, as well as the creation of electrodes that can be implanted into a soldier's brain for purposes of neuroanalysis and neurostimulation. n9 One of the goals of the research is to create a means by which a soldier's subjective experience can be relayed to a central command center, and, in turn, the command center can respond to the soldier's experience by stimulating brain function for both therapeutic and enhancement purposes. n10 For example, the electrodes can be used to activate brain function that can help heal an injury or keep a soldier alert during difficult moments. n11 Another goal is to create a "connected consciousness" whereby a soldier can interact with machines, access information from the Internet, or communicate with other humans via thought alone. n12

#### Chemical soldiers cause extinction and destroy value to life

Deubel 13 (Paula, Professor Gabriel has held positions at the Brookings Institution, the Army Intelligence School, the Center for the Study of Intelligence at the CIA, and at the Walter Reed Army Institute of Research, Department of Combat Psychiatry, in Washington. 3-25-13, "The Psychopath Wars: Soldiers of the Future?" Suite 101) suite101.com/article/the-psychopath-wars-soldiers-of-the-future-a366977 \*\*evidence is gender modified\*\*

According to Dr. Richard A. Gabriel in his fascinating book, No More Heroes, the sociopathic personality can keep his or her psyche intact even under extremely pathological conditions, while the sane will eventually break down under guilt, fear, or normal human repulsion. Chemical Soldiers Richard A. Gabriel (military historian, retired U.S. army officer and former professor at the U.S. Army War College) describes socio/psychopaths as people without conscience, intellectually aware of what harm they might do to another living being, but unable to experience corresponding emotions. This realization, Gabriel claims, has led the military establishments of the world to discover a drug banishing fear and emotion in the soldier by controlling ~~his~~ [their] brain chemistry. In order for soldiers to ideally function in modern war ~~he~~ [they] should first be reconstructed to become what could be defined as mentally ill. “We may be rushing headlong into a long, dark chemical night from which there will be no return,” warns Gabriel. If these efforts succeed (as it appears they can) a chemically induced zombie would be born, a psychopathic-type being who would function (at least temporarily) without any human compassion and whose moral conscience would not exist to take responsibility for his actions. “Man’s [Humankind’s] nature would be altered forever,” he adds, “and it would cost him his [us our] soul.” As incredible and futuristic as that sounds, the creation of such a drug is apparently already well underway in the world’s military research labs; Gabriel reports such research centers already exist in the United States, Russia, and Israel. Since all emotions are based in anxiety, it appears the eradication of it (perhaps through a variant of the anti-anxiety medication Busbirone) may create soldiers who become more efficient killing machines. Futuristic Warfare Gabriel writes further about the possible nightmarish future of modern warfare: “The standards of normal sane men will be eroded, and soldiers will no longer die for anything understandable or meaningful in human terms. They will simply die, and even their own comrades will be incapable of mourning their deaths […] The battlefields of the future will witness a clash of truly ignorant armies, armies ignorant of their own emotions and even of the reasons for which they fight.” (Operation Enduring Valor, Richard A. Gabriel) This would strip a person of his core identity and all of his humanity. Whether or not the soldier would knowingly take part in this experience is unknown, but during the 1991 Persian Gulf War, one could almost easily imagine that this conscience-killing pill had already been swallowed. Psychopathic Behavior During War During the 1991 Iraq war a pilot interviewed on European television callously remarked ambushing Iraqis was “like waiting for the cockroaches to come out so we could kill them." Other U.S. pilots compared killing human beings to “shooting turkey” or like “attacking a farm after someone had opened a sheep stall.” This same lack of empathy can be seen in Iraq’s Abu Graib prison scandal (2004) where U.S. soldiers were shown seemingly to enjoy torture, as well as more recent photos of military men posing with dead Afghans (first published in Germany's Der Spiegel magazine); more gruesome photos were later published in Rolling Stone before the U.S. Army censored all the remaining damning material from public view. No More Heroes warns that modern warfare will become increasingly difficult for sane men to endure. The combat punch of man’s weapons has increased over 600% since World War II. These weapons are highly technical. High Explosive Plastic Tracers (HEP-T) send fragments of metal through enemy tanks and into humans at speeds faster than the speed of sound. The Starlight Scope is able to differentiate between males and females by computing differences in body heat given off by pelvic areas. The Beehive artillery ammunition (filled with three-inch long nail-like steel needles) is capable of pinning victims to trees. The world has a nightmare arsenal of terrible weapons advanced beyond the evolution of our morality.

**Amend CP: 2AC**

**Perm guarantees stability in the amendment process – crucial to legitimacy**

**Dellinger, ‘83** [Walter, Professor of Law, Duke University, “The Legitimacy of Constitutional Change: Rethinking the Amendment Process”, Harvard Law Review, December, Harv L. Rev. 386, ln]

Judged by such a standard, **our amendment process is seriously flawed**. During the past decade of debate over the equal rights amendment (ERA), we have learned how much we do not know about the process of amending the Constitution. We do not know, for example, the answers to questions as basic as whether Congress, having established a time limit for ratification, can extend that limit, and if so, whether such an extension can be accomplished by the vote of a simple majority. And we have no definitive answer to a question as crucial as whether a state legislature that has voted to ratify can subsequently rescind its action. Under the most widely held view of article V, these and similar questions about the rules governing the amendment process are to be answered by Congress rather than the courts. Congress, in the exercise of its power to "promulgate" an amendment, must determine whether to "accept" any disputed state ratifications. This conception of the amendment process is, in my view, a disastrous rendering of article V. It is an approach centered upon the idea of continuing congressional control of the ratification process -- control that culminates in a largely discretionary and ad hoc determination by the Congress that happens to be sitting when thirty-eight purported ratifications have been received. This approach is without basis in the text or the history of article V and without precedent in the earlier judicial interpretations of that provision, and it undercuts one of the fundamental goals of an amendment process: certainty in the rules for changing the Constitution. Although Coleman v. Miller, the decision that established the principle of congressional promulgation, is a venerable case, and one that was recently cited approvingly by four Justices of the Supreme Court, it is nonetheless profoundly wrong, and it should no longer be followed. The thesis of this Article is that we should reconsider our generally accepted notions both about who should decide disputes over ratification of constitutional amendments and about how those issues should be resolved on the merits. The two questions are interdependent. The present designation of Congress as the principal institution for resolving ratification disputes is linked to the idea that amendment process decisions should advance certain policies immanent in article V -- principally, the policy that ratifications, to be valid, should reflect a "contemporaneous consensus" in favor of adoption. Congress, the thinking goes, is better suited than are the courts to ascertain whether that consensus has been manifested by the process of ratification considered as a whole .I am convinced that both tenets of this present understanding -- that interpretations of article V should advance the goal of consensus and that such interpretations should therefore be made by Congress -- are deeply mistaken. Article V is more properly viewed as a provision establishing a fixed mechanism for recording assent to an amendment than as a directive mandating a quest for elusive policy goals. The uncertainty that currently afflicts the amendment process flows in part from the tendency to replace the formal test specified in article V -- that an amendment is valid when ratified by the legislatures of three-fourths of the states -- with an ill-defined search for contemporaneous consensus. Although the functions of constitutional law are generally not well served by an adherence to formalism, the process by which we amend the fundamental document may well be an exception. My argument that **the judiciary has a proper role to play in reviewing amendment process issues** is critically intertwined with the suggestion that the resolution of **many disputes about the amendment process could be rendered easier** -- more principled, if you will -- **were we to accept the notion that the expressly stated, formal requirements of article V are satisfactory**. I do not mean to imply that judicial review is a panacea that will produce clear rules for the amendment process and remove all doubt about the validity of the adoption of amendments. Rather, I contend that **judicial review is more likely to achieve such results than is a highly politicized, ad hoc judgment by the Congress** sitting at the time that a proposed amendment receives its thirty-eighth state ratification.

#### Judicial review is key to solve

Christopher P. **Manfredi**, Professor of Political Science, McGill University, “Why Do Formal Amendments Fail?: An Institutional Design Analysis” World Politics, v. 50, April 19**98**, p. 377-400.

Perhaps because of the rigidity of its amending process**, the U.S. Constitution is** also **characterized by interpretive fluidity. This characteristic stems** not only from the broad, indeterminate language in which most constitutional provisions are written but also **from the willingness of courts to exercise the power of judicial review in order to derive more policy-specific rules from those provisions.** Although the U.S. Supreme Court established the constitutionality of judicial review in 1803, the interpretive fluidity of the U.S. Constitution has been most evident since 1954. Indeed, between 1889 and 1953 the Court overturned on average about one act of Congress and seven state laws every year. By contrast, since 1954 the judicial nullification rate has approximately doubled to almost two acts of Congress and twelve state laws per year. Especially throughout the 1960s, litigants took advantage of judicial openness toward the Constitution's interpretive fluidity to persuade U.S. courts to participate actively in shaping and administering policy in areas such as zoning and land-use planning, housing, social welfare, transportation, education, and the operation of complex institutions like prisons and mental health facilities. While this may make the document's rigid amending process less burdensome on the constitutional order, **the ability and willingness of courts to extend formal rules in unexpected directions heightens redistributive indeterminacy.** Finally, both the rigid amending process and the interpretive fluidity of the U.S. Constitution generate a high degree of institutional inclusiveness. On the one hand, interpretive fluidity provides society-based actors with a wide range of opportunities to institutionalize specific policy preferences by manipulating and transforming formal constitutional rules through litigation. Interpretive fluidity promotes institutional inclusiveness by allowing society-based actors to alter the policy impact of constitutional rules without the constraints imposed by the formal amending process. On the other hand, the requirement that ratification succeed in eighty-seven legislative chambers unconstrained by strict party discipline provides numerous points of influence for social actors wary of the policy consequences of proposed amendments. **The institutional inclusiveness of U.S. constitutional politics** thus **provides** both incentives to oppose constitutional change and**the means of carrying out that opposition successfully.**

**Courts will ignore the amendment**

**Segal & Spaeth ‘02** [The Supreme Court and the Attitudinal Model Revisted, p. 5-6]

If action by the Congress to undo the Court’s interpetation of one of its laws does not subert judicial authority, a fortiori neither does the passage of a constitutional amendment, for example, the Twenty-Sixth Amendment reducing the voting age to eighteen and thereby undoing the decision in Oregon v. Mitchell, which held that Congress could not constitutionally lower the voting age in state elections. Furthermore, not only does a constitutional amendment not subvert judicial authority, courts themselves—ultimately, **the Supreme Court—have the last word when determining the** sanctioning **amendment’s meaning**. Thus, **the Court is free to construe any amendment**—whether or not it overturns one of its decisions—**as it sees fit, even though its construction deviates** appreciably **from the language or purpose of the amendment.** Consider, for example, the fourteenth and Sixteenth Amendments. The former clearly overturned the Court’s decision in Scott v. Sandford and was meant to give blacks legal equality with whites. Scholars disagree about other objectives the amendment may have had, but it does appear that the prohibition of sex discimination was not among them. Nonetheless, in 1871 the Court held that the equal protection clause of the Fourteenth Amendment encompassed women. As for the Sixteenth Amendment, it substantially, but not completely, reversed the Court’s decisions in Pollock v. Farmers’ Loan and Trust Co., which declared unconstitutional the income tax that Congress had enacted in 1894. In 1913, the requisite number of states ratified an amendment that authorized Congress to levy a tax on income “from whatever source derived.” The language is unequivocal. Yet for the next twenty-six years the [6] Supreme Court ruled that this language excluded the salaries of federal judges. Why the exclusion? Because Article III, section I, of the original Constitution orders that judges’ salaries “not be diminished during their continuance in office.” Though it is an elementary legal principle that later language erases incompatible earlier language, the justices ruled that any taxation of their salaries, and those of their lower court colleagues, would obviously diminish them. Finally, in 1939 the justices overruled their predecessors and magnaminously and unselfishly allowed themselves to be taxed.

**They don’t solve – amendments only apply moving forward, don’t solve current cases**

Jill E. **Fisch**, Professor and Director, Center for Corporate, Securities, and Financial Law, Fordham Law School, “The Implications of Transition Theory for Stare Decisis,” JOURNAL OF CONTEMPORARY LEGALISSUES v. 13, 200**3**, p. 97-98.

The second alternative when stare decisis does not permit a court to change the law by overruling is for another lawmaker to effect the change. Congress can enact new legislation to overrule decisions involving statutory interpretation or common law rulemaking. The **Amendment process** provided by Article V **provides a mechanism to overrule constitutional decisions**. Some constitutional decisions can also be effectively overruled by other means; for example, states can overturn the Supreme Court's decision to limit federal constitutional rights by interpreting their own constitutions to provide such rights. **There is an important distinction, however, between overruling and these lawmaking alternatives. When a court overrules a precedent, the new legal rule is applied retroactively to all pending and future cases. Parties that relied upon the old rule are not accorded transition relief. In contrast, statutory changes and constitutional amendments generally apply prospectively.**

### Drone Shift DA: 2AC

**No direct link to detention**

Robert **Chesney 11**, Charles I. Francis Professor in Law at the UT School of Law as well as a non-resident Senior Fellow at Brookings, "Examining the Evidence of a Detention-Drone Strike Tradeoff", October 17, www.lawfareblog.com/2011/10/examining-the-evidence-of-a-detention-drone-strike-tradeoff/

Yesterday Jack linked to this piece by Noah Feldman, which among other things advances the argument that the Obama administration has resorted to drone strikes at least in part in order to avoid having to grapple with the legal and political problems associated with military detention:¶ Guantanamo is still open, in part because Congress put obstacles in the way. Instead of detaining new terror suspects there, however, Obama vastly expanded the tactic of targeting them, with eight times more drone strikes in his first year than in all of Bush’s time in office.¶ Is there truly a detention-drone strike tradeoff, such that the Obama administration favors killing rather than capturing? As an initial matter, the numbers quoted above aren’t correct according to the New America Foundation database of drone strikes in Pakistan, 2008 saw a total of 33 strikes, while in 2009 there were 53 (51 subsequent to President Obama’s inauguration). Of course, you can recapture something close to the same point conveyed in the quote by looking instead to the full number of strikes conducted under Bush and Obama, respectively. There were relatively few drone strikes prior to 2008, after all, while the numbers jump to 118 for 2010 and at least 60 this year (plus an emerging Yemen drone strike campaign). But what does all this really prove?¶ Not much, I think. Most if not all of the difference in drone strike rates can be accounted for by specific policy decisions relating to the quantity of drones available for these missions, the locations in Pakistan where drones have been permitted to operate, and most notably whether drone strikes were conditioned on obtaining Pakistani permission. Here is how I summarize the matter in my forthcoming article on the legal consequences of the convergence of military and intelligence activities:¶ According to an analysis published by the New America Foundation, two more drone strikes in Pakistan’s FATA region followed in 2005, with at least two more in 2006, four more in 2007, and four more in the first half of 2008.[1] The pattern was halting at best. Yet that soon changed. U.S. policy up to that point had been to obtain Pakistan’s consent for strikes,[2] and toward that end to provide the Pakistani government with advance notification of them.[3] But intelligence suggested that on some occasions “the Pakistanis would delay planned strikes in order to warn al Qaeda and the Afghan Taliban, whose fighters would then disperse.”[4] A former official explained that in this environment, it was rare to get permission and not have the target slip away: “If you had to ask for permission, you got one of three answers: either ‘No,’ or ‘We’re thinking about it,’ or ‘Oops, where did the target go?”[5]¶ Declaring that he’d “had enough,” Bush in the summer of 2008 “ordered stepped-up Predator drone strikes on al Qaeda leaders and specific camps,” and specified that Pakistani officials going forward should receive only “‘concurrent notification’…meaning they learned of a strike as it was underway or, just to be sure, a few minutes after.”[6] Pakistani permission no longer was required.[7] ¶ The results were dramatic. The CIA conducted dozens of strikes in Pakistan over the remainder of 2008, vastly exceeding the number of strikes over the prior four years combined.[8] That pace continued in 2009, which eventually saw a total of 53 strikes.[9] And then, in 2010, the rate more than doubled, with 188 attacks (followed by 56 more as of late August 2011).[10] The further acceleration in 2010 appears to stem at least in part from a meeting in October 2009 during which President Obama granted a CIA request both for more drones and for permission to extend drone operations into areas of Pakistan’s FATA that previously had been off limits or at least discouraged.[11] ¶ There is an additional reason to doubt that the number of drone strikes tells us much about a potential detention/targeting tradeoff: most of these strikes involved circumstances in which there was no feasible option for capturing the target. These strikes are concentrated in the FATA region, after all. ¶ Having said all that: it does not follow that there is no detention-targeting tradeoff at work. I’m just saying that drone strikes in the FATA typically should not be understood in that way (though there might be limited exceptions where a capture raid could have been feasible). Where else to look, then, for evidence of a detention/targeting tradeoff?¶ Bear in mind that it is not as if we can simply assume that the same number of targets emerge in the same locations and circumstances each year, enabling an apples-to-apples comparison. But set that aside.¶ First, consider locations that (i) are outside Afghanistan (since we obviously still do conduct detention ops for new captures there) and (ii) entail host-state government control over the relevant territory plus a willingness either to enable us to conduct our own ops on their territory or to simply effectuate captures themselves and then turn the person(s) over to us. This is how most GTMO detainees captured outside Afghanistan ended up at GTMO. Think Bosnia with respect to the Boumediene petitioners, Pakistan’s non-FATA regions, and a variety of African and Asian states where such conditions obtained in years past. In such locations, we seem to be using neither drones nor detention. Rather, we either are relying on host-state intervention or we are limiting ourselves to surveillance. Very hard to know how much of each might be going on, of course. If it is occurring often, moreover, it might reflect a decline in host-state willingness to cooperate with us (in light of increased domestic and diplomatic pressure from being seen to be responsible for funneling someone into our hands, and the backdrop understanding that, in the age of wikileaks, we simply can’t promise credibly that such cooperation will be kept secret). In any event, this tradeoff is not about detention versus targeting, but something much more complex and difficult to measure.

#### International actors care more about detention than drones for legitimacy

John Bellinger 13, partner in the international and national security law practices at Arnold & Porter LLP in DC, Adjunct Senior Fellow in International and National Security Law at the CFR, "Peter Baker on Mounting Criticisms of Obama Administration CT Policies", February 10, www.lawfareblog.com/2013/02/peter-baker-on-mounting-criticisms-of-obama-administration-ct-policies/

One of Baker’s more interesting observations — and one of the first times I have seen this in print, although it is a subject of some discussion among Bush Administration officials — is that civil liberties groups have taken it easy on the Obama Administration:¶ For four years, Mr. Obama has benefited at least in part from the reluctance of Mr. Bush’s most virulent critics to criticize a Democratic president. Some liberals acknowledged in recent days that they were willing to accept policies they once would have deplored as long as they were in Mr. Obama’s hands, not Mr. Bush’s.¶ “We trust the president,” former Gov. Jennifer Granholm of Michigan said on Current TV. “And if this was Bush, I think that we would all be more up in arms because we wouldn’t trust that he would strike in a very targeted way and try to minimize damage rather than contain collateral damage.”¶ Presumably for the same reason, European governments, who were unrelenting in their criticism of Guantanamo and other Bush Administration counterterrorism policies, have simply looked the other way as most of those same policies have continued (or, in the case of drones, dramatically increased). One does wonder whether the Nobel Prize Committee is suffering from at least a modicum of buyer’s remorse.¶ As the Obama Administration begins its second term, the big question now is whether the domestic and international criticism will snowball and, if so, how the Administration will respond.

#### Non-unique---drone shift now because detention is already too difficult – plan can still solve legitimacy

David Ignatius 10, Washington Post, "Our default is killing terrorists by drone attack. Do you care?", December 2, www.washingtonpost.com/wp-dyn/content/article/2010/12/01/AR2010120104458.html

Every war brings its own deformations, but consider this disturbing fact about America's war against al-Qaeda: It has become easier, politically and legally, for the United States to kill suspected terrorists than to capture and interrogate them.¶ Predator and Reaper drones, armed with Hellfire missiles, have become the weapons of choice against al-Qaeda operatives in the tribal areas of Pakistan. They have also been used in Yemen, and the demand for these efficient tools of war, which target enemies from 10,000 feet, is likely to grow.¶ The pace of drone attacks on the tribal areas has increased sharply during the Obama presidency, with more assaults in September and October of this year than in all of 2008. At the same time, efforts to capture al-Qaeda suspects have virtually stopped. Indeed, if CIA operatives were to snatch a terrorist tomorrow, the agency wouldn't be sure where it could detain him for interrogation.¶ Michael Hayden, a former director of the CIA, frames the puzzle this way: "Have we made detention and interrogation so legally difficult and politically risky that our default option is to kill our adversaries rather than capture and interrogate them?"¶ It's curious why the American public seems so comfortable with a tactic that arguably is a form of long-range assassination, after the furor about the CIA's use of nonlethal methods known as "enhanced interrogation." When Israel adopted an approach of "targeted killing" against Hamas and other terrorist adversaries, it provoked an extensive debate there and abroad.¶ "For reasons that defy logic, people are more comfortable with drone attacks" than with killings at close range, says Robert Grenier, a former top CIA counterterrorism officer who now is a consultant with ERG Partners. "It's something that seems so clean and antiseptic, but the moral issues are the same."

#### End to strikes inevitable—backlash

Benjamin 13 (Medea, Co-Founder, CODEPINK: Women for Peace, 3-25-13, "Finally, the Backlash Against Drones Takes Flight" Huffington Post) www.huffingtonpost.com/medea-benjamin/finally-the-backlash-against-drones\_b\_2950601.html

Rand Paul's marathon 13-hour filibuster was not the end of the conversation on drones. Suddenly, drones are everywhere, and so is the backlash. Efforts to counter drones at home and abroad are growing in the courts, at places of worship, outside air force bases, inside the UN, at state legislatures, inside Congress -- and having an effect on policy. 1. April marks the national month of uprising against drone warfare. Activists in upstate New York are converging on the Hancock Air National Guard Base where Predator drones are operated. In San Diego, they will take on Predator-maker General Atomics at both its headquarters and the home of the CEO. In D.C., a coalition of national and local organizations are coming together to say no to drones at the White House. And all across the nation -- including New York City, New Paltz, Chicago, Tucson and Dayton -- activists are planning picket lines, workshops and sit-ins to protest the covert wars. The word has even spread to Islamabad, Pakistan, where activists are planning a vigil to honor victims. 2. There has been an unprecedented surge of activity in cities, counties and state legislatures across the country aimed at regulating domestic surveillance drones. After a raucous city council hearing in Seattle in February, the mayor agreed to terminate its drones program and return the city's two drones to the manufacturer. Also in February, the city of Charlottesville, Va., passed a two-year moratorium and other restrictions on drone use, and other local bills are pending in cities from Buffalo to Ft. Wayne. Simultaneously, bills have been proliferating on the state level. In Florida, a pending bill will require the police to get a warrant to use drones in an investigation; a Virginia statewide moratorium on drones passed both houses and awaits the governor's signature, and similar legislation in pending in at least 13 other state legislatures. 3. Responding to the international outcry against drone warfare, the United Nations' special rapporteur on counterterrorism and human rights, Ben Emmerson, is conducting an in-depth investigation of 25 drone attacks and will release his report in the spring. Meanwhile, on March 15, having returned from a visit to Pakistan to meet drone victims and government officials, Emmerson condemned the U.S. drone program in Pakistan, as "it involves the use of force on the territory of another State without its consent and is therefore a violation of Pakistan's sovereignty." 4. Leaders in the faith-based community broke their silence and began mobilizing against the nomination of John Brennan, with more than 100 leaders urging the Senate to reject Brennan. And in an astounding development, The National Black Church Initiative (NBCI), a faith-based coalition of 34,000 churches comprised of 15 denominations and 15.7 million African Americans, issued a scathing statement about Obama's drone policy, calling it "evil," "monstrous" and "immoral." The group's president, Rev. Anthony Evans, exhorted other black leaders to speak out, saying, "If the church does not speak against this immoral policy we will lose our moral voice, our soul, and our right to represent and preach the gospel of Jesus Christ." 5. In the past four years the congressional committees that are supposed to exercise oversight over the drones have been mum. Finally, in February and March, the House Judiciary Committee and the Senate Judiciary Committee held their first public hearings, and the Constitution Subcommittee will hold a hearing on April 16 on the "constitutional and statutory authority for targeted killings, the scope of the battlefield and who can be targeted as a combatant." Too little, too late, but at least Congress is feeling some pressure to exercise its authority. 6. The specter of tens of thousands of drones here at home when the FAA opens up U.S. airspace to drones by 2015 has spurred new left/right alliances. Liberal Democratic Senator Ron Wyden joined the tea party's Rand Paul during his filibuster. The first bipartisan national legislation was introduced by Rep. Ted Poe, R-Texas, and Rep. Zoe Lofgren, D-Calif., saying drones used by law enforcement must be focused exclusively on criminal wrongdoing and subject to judicial approval, and prohibiting the arming of drones. Similar left-right coalitions have formed at the local level. And speaking of strange bedfellows, NRA president David Keene joined The Nation's legal affairs correspondent David Cole in an op-ed lambasting the administration for the cloak of secrecy that undermines the system of checks and balances. 7. While trying to get redress in the courts for the killing of American citizens by drones in Yemen, the ACLU has been stymied by the Orwellian U.S. government refusal to even acknowledge that the drone program exists. But on March 15, in an important victory for transparency, the D.C. Court of Appeals rejected the CIA's absurd claims that it "cannot confirm or deny" possessing information about the government's use of drones for targeted killing, and sent the case back to a federal judge. 8. Most Democrats have been all too willing to let President Obama carry on with his lethal drones, but on March 11, Congresswoman Barbara Lee and seven colleagues issued a letter to President Obama calling on him to publicly disclose the legal basis for drone killings, echoing a call that emerged in the Senate during the John Brennan hearing. The letter also requested a report to Congress with details about limiting civilian casualties by signature drone strikes, compensating innocent victims, and restructuring the drone program "within the framework of international law." 9. There have even been signs of discontent within the military. Former Defense Secretary Leon Panetta had approved a ludicrous high-level military medal that honored military personnel far from the battlefield, like drone pilots, due to their "extraordinary direct impacts on combat operations." Moreover, it ranked above the Bronze Star, a medal awarded to troops for heroic acts performed in combat. Following intense backlash from the military and veteran community, as well as a push from a group of bipartisan senators, new Defense Secretary Senator Chuck Hagel decided to review the criteria for this new "Distinguished Warfare" medal. 10. Remote-control warfare is bad enough, but what is being developed is warfare by "killer robots" that don't even have a human in the loop. A campaign against fully autonomous warfare will be launched this April at the UK's House of Commons by human rights organizations, Nobel laureates and academics, many of whom were involved in the successful campaign to ban landmines. The goal of the campaign is to ban killer robots before they are used in battle. Throughout the U.S. -- and the world -- people are beginning to wake up to the danger of spy and killer drones. Their actions are already having an impact in forcing the administration to share memos with Congress, reduce the number of strikes and begin a process of taking drones out of the hands of the CIA.

#### No impact

Rod **Adams 12**, Former submarine Engineer Officer, Founder, Adams Atomic Engines, Inc., “Has Apocalyptic Portrayal of Climate Change Risk Backfired?”, May 2, <http://atomicinsights.com/2012/05/has-apocalyptic-portrayal-of-climate-change-risk-backfired.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+AtomicInsights+%28Atomic+Insights%29>

Not only was the discussion enlightening about the reasons why different people end up with different opinions about climate change responses when presented with essentially the same body of information, but it also got me thinking about a possible way to fight back against the Gundersens, Caldicotts, Riccios, Grossmans and Wassermans of the world. That group of five tend to use apocalyptic rhetoric to describe what will happen to the world if we do not immediately start turning our collective backs on all of the benefits that abundant atomic energy can provide. They spin tall tales of deformed children, massive numbers of cancers as a result of minor radioactive material releases, swaths of land made “uninhabitable” for thousands of years, countries “cut in half”, and clouds of “hot particles” raining death and destruction ten thousand miles from the release point. Every one of those clowns have been repeating similar stories for at least two solid decades, and continue to repeat their stories even after supposedly catastrophic failures at Fukushima have not resulted in a single radiation related injury or death. According to eminent scientists – like Dr. Robert Gale – Fukushima is unlikely to EVER result in any measurable increase in radiation related illness. One important element that we have to consider to assess cancer risks associated with an accident like Fukushima is our baseline risk for developing cancer. All of us, unfortunately, have a substantial risk of developing cancer in our lifetime. For example, a 50-year-old male has a 42% risk of developing cancer during his remaining life; it’s almost the same for a 10-year-old. This risk only decreases when we get much older and only because we are dying of other causes. It’s true that excess radiation exposure can increase our cancer risk above baseline levels; it’s clear from studies of the survivors of the 1945 atomic bombings of Hiroshima and Nagasaki, of people exposed to radiation in medical and occupational settings, and of people exposed to radon decay products in mines and home basements. When it comes to exposures like that of Fukushima, the question is: What is the relative magnitude of the increased risk from Fukushima compared to our baseline cancer risk? Despite our fears, it is quite small. If the nuclear industry – as small and unfocused as it is – really wanted to take action to isolate the apocalyptic antinuclear activists, it could take a page from the effective campaign of the fossil fuel lobby. It could start an integrated campaign to help the rest of us to remember that, despite the dire predictions, the sky never fell, the predicted unnatural deaths never occurred, the deformations were figments of imagination, and the land is not really irreversibly uninhabitable for generations. The industry would effectively share the story of Ukraine’s recent decision to begin repopulating the vast majority of the “dead zone” that was forcibly evacuated after the Chernobyl accident. It would put some context into the discussion about radiation health effects; even if leaders shy away from directly challenging the Linear No Threshold (LNT) dose assumption, they can still show that even that pessimistic model says that a tiny dose leads to a tiny risk. Aside: My personal opinion is that the LNT is scientifically unsupportable and should be replaced with a much better model. We deserve far less onerous regulations; there is evidence that existing regulations actually cause harm. I hear a rumor that there is a group of mostly retired, but solidly credentialed professionals who are organizing a special session at the annual ANS meeting to talk about effective ways to influence policy changes. End Aside. Most of us recognize that there is no such thing as a zero risk; repeated assertions of “there is no safe level” should be addressed by accepting “close enough” to zero so that even the most fearful person can stop worrying. The sky has not fallen, even though we have experienced complete core meltdowns and secondary explosions that did some visible damage. Nuclear plants are not perfect, there will be accidents and there will be radioactive material releases. History is telling me that the risks are acceptable, especially in the context of the real world where there is always some potential for harm. The benefits of accepting a little nuclear risk are immense and must not be marginalized by the people who market fear and trembling.

### Court Politics DA: 2AC

#### Multiple controversies thump—the Court is taking an activist stance

Blum 9-5 (Bill, 9-5-13, "Supreme Court Preview: A Storm Is on the Horizon" Truth Dig) www.truthdig.com/report/page2/supreme\_court\_preview\_a\_storm\_is\_on\_the\_horizon\_20130905/

They’re b-a-c-k! As the war clouds gather over Washington in preparation for airstrikes against Syria, the nine justices who sit on the Supreme Court have returned from summer break and are preparing to kick up a legal storm of their own as they resume their quest to radically transform federal law and the Constitution. To be sure, there are four moderate to liberal voices on the high court, led by the frail but courageous Ruth Bader Ginsburg, who at the tender age of 80 has become the conscience of the tribunal. But with precious few detours, the court has become, in Ginsburg’s words, “one of the most activist courts in history.” So, as the court readies for the commencement of oral arguments next month in a brand new term, what can we expect from the gang of nine? Here are three cases slated for decisions on the merits with the potential to cause lasting social and political harm, and three more with sufficient weight to be added to the docket as the current term unfolds: Affirmative Action (Schuette v. Coalition to Defend Affirmative Action) From the great state of Michigan, set for oral argument on Oct. 15, comes this new challenge to the consideration of race in public higher-education admissions programs. Last term, the court dealt a mild setback to colleges that have chosen to adopt race-conscious programs when it remanded a case involving the University of Texas’ admissions plan back to a federal appellate panel for reconsideration under a more stringent and hard-to-meet constitutional test (Fisher v. Texas). This time, the question before the court is far more extensive: whether a state, by a legislative act or popular initiative, can prohibit affirmative action even if a university system chooses on its own to implement or maintain a race-based program. In 2006, Michigan voters ratified Proposition 2, which outlawed such programs. The U.S. Court of Appeals for the 6th Circuit, however, subsequently declared the proposition unconstitutional. Advertisement Currently, the country is sharply divided on the issue, as California and five other states besides Michigan, accounting for 28 percent of college admissions nationwide, have also outlawed the consideration of race. The 9th Circuit Court of Appeals, unlike the 6th, has upheld California’s ban. The Schuette case will resolve the split. Since liberal Justice Elena Kagan has recused herself from deliberations due to conflicts arising from her tenure as solicitor general, the court’s five conservatives appear to have the perfect vehicle to drive another nail into the heart of race-conscious plans. The conservative majority may not be ready to adopt the ever-vitriolic Justice Clarence Thomas’ characterization of affirmative action as a latter-day form of Jim Crow, but in the end, it is likely to vote alongside Thomas, who in the cruelest of ironies was a beneficiary of affirmative action at Yale Law School. Environmental Protection (Environmental Protection Agency v. EME Homer City Generation) At the request of the Obama administration, the American Lung Association and environmental groups, the court has agreed to take up a federal appellate ruling that had invalidated the Environmental Protection Agency’s Cross-State Air Pollution rule, which sought to enforce the Clean Air Act by setting much-needed limits on nitrogen oxides and sulfur dioxide emissions from coal-fired power plants in 28 eastern states. Although some observers see the court’s decision to hear the EME case as a sign of support for the EPA, the Roberts court has a dismal record on environmental protection, aligning itself time and again on the side of corporate interests and polluters. In 2008, in Exxon v. Baker, the court voted 5-3 to reduce the punitive damages awarded to the victims of the Valdez oil spill from $2.5 billion to $500 million, a mere pittance of the oil giant’s annual profits, leaving more than 30,000 people whose livelihoods and community were destroyed by the disaster with a sum completely inadequate to make up for their losses. Last term, the court continued its beneficence toward big business, ruling unanimously that farmers could not use Monsanto’s patented genetically altered soybeans to create new seeds without paying the company a hefty fee. Expect more of the same going forward, this time on behalf of coal companies. Federal Election Law (McCutcheon v. Federal Election Commission) Dubbed by some commentators as Citizens United 2.0, this mean-spirited piece of litigation was generated by the Republican National Committee and Alabama businessman Scott McCutcheon. Together, they seek to overturn current federal law that limits the aggregate amount of money any single person can contribute directly to candidates for federal office, political parties and political committees to $123,000 in any two-year election cycle. As the New York-based Brennan Center for Justice has argued in an amicus (friend of the court) brief filed in the case, the aggregate contribution limits are designed to inhibit political corruption. But as the Roberts court demonstrated with the original Citizens United ruling in 2010, it views campaign contributions as a form of individual expression protected under the First Amendment. In 2012, the court signaled its intention to elevate this perverse interpretation of the First Amendment to a new level of rigidity as it overturned a 100-year-old Montana law that prohibited corporations from spending funds to influence the outcome of state elections (American Tradition Partnership v. Bullock). In the United States of Corporate America, under the judicial stewardship of Chief Justice John Roberts, money talks, as loudly as possible. Three Cases Vying to Make the A-List Abortion Rights (Cline v. Oklahoma Coalition for Reproductive Justice) In 2011, Oklahoma enacted a law that would impose severe restrictions on the use of RU-486 (also known as mifepristone or Mifeprex) and any other “abortion-inducing drugs” as alternatives to pregnancy-terminating surgery. Although the Roberts court had agreed in June to resolve the law’s validity, it later sent the case back to the Oklahoma Supreme Court to clarify the meaning of the statute. If the clarifications are delivered by January, the Roberts court may schedule the case for oral argument before the current term ends. Although the case lacks the potential to overturn Roe v. Wade, a resolution in favor of Oklahoma could have major implications for the 16 states that have passed similar laws, sending yet another signal that Roe’s days may be numbered. Voting Rights (League of Women Voters of North Carolina et al. v. North Carolina, United States v. Texas) Within days of the court’s decision last term in Shelby County v. Alabama, gutting the historic Voting Rights Act, several states, including Texas and North Carolina, reinstated various voting suppression schemes—including gerrymandered redistricting plans, harsh voter ID requirements and new curbs on same-day voting—that never would have passed muster under the act’s now eviscerated “preclearance” provisions. Those provisions required states and localities with a legacy of electoral discrimination to obtain advance approval from the Justice Department or the courts before implementing new voting laws and procedures. Despite the broad sweep of Shelby’s holding, the Justice Department quickly brought suit to declare the Texas maneuvers unconstitutional while the ACLU initiated an action to block the North Carolina measures. Both suits rely on Section 2 of the Voting Rights Act, which prohibits discrimination generally in elections, as well as the rarely invoked Section 3 of the act, which permits a court to order continuous monitoring of a jurisdiction found to have engaged in intentional discrimination in much the same fashion as the old preclearance procedures. Given the novelty of the Section 3 claims and in view of the Supreme Court’s skepticism about the continued need for federal election oversight and the high political stakes involved in the struggle over voter suppression, one or both cases stand a strong chance of being added to the docket.

#### Campaign finance, affirmative action, treaty powers, and prayer thump

Klukowski 8-22 (Ken, 8-22-13, "SUPREME COURT SCHEDULES BIG CASES FOR FIRST PART OF 2013 TERM" Breitbart) www.breitbart.com/Big-Government/2013/08/22/Supreme-Court-Schedules-Big-Cases-for-First-Part-of-2013-Term

On Thursday, the Supreme Court announced its calendar of cases for the first two months of its annual term, including four major cases that are sure to gather headlines. By federal law, the Supreme Court’s term each year begins on the first Monday in October, and continues until the justices finish their business on the year’s cases, which typically happens in the last week of June of the following calendar year. The Court hears close to 80 cases each year. Earlier this year the justices accepted 45 cases thus far for their upcoming term, which begins Oct. 7. Almost half of the remaining slots will be filled during the pre-term conference on Sept. 30. The final slots are then filled during closed-door weekly conferences on each Friday during the early months of the Court’s Term. Of the 45 cases already granted review, four exceptionally-important ones have now been assigned an argument date. On Oct. 8, the Court will hear arguments in McCutcheon v. FEC, the first major follow-up case to the 2010 landmark decision in Citizens United v. FEC. In McCutcheon, the Court will consider whether the federal law provisions limiting how much money American citizens can donate every two years to national political parties and non-candidate committees violate the First Amendment. Congress began imposing these limits in 1971. The following week, on Oct. 15, the Court will hear a major race-issues case. In Schuette v. Coalition to Defend Affirmative Action, the justices will consider whether the Fourteenth Amendment Equal Protection Clause forbids a state from amending its state constitution to say that government shall not consider a person’s race when making decisions. Otherwise put, the Court will consider whether there is a constitutional right to require states to consider race. On Nov. 5, the justices will hear Bond v. U.S., the second time Carol Anne Bond has been before the Court, represented by Supreme Court superstar Paul Clement. (The previous case, also argued by Clement, dealt solely with a jurisdictional issue.) The question presented this time in Bond II is whether the Treaty Clause of the Constitution expands Congress’ power when it is implementing a treaty to make laws or apply them in a manner that would otherwise be beyond Congress’ authority under Article I of the Constitution. And the following day, Nov. 6, the Supreme Court will hear the biggest religious-liberty case in years. In Town of Greece v. Galloway, the justices will consider the constitutionality of prayers offered at legislative sessions, and specifically whether the Court’s precedent on this issue requires that the prayers not include language specific to one faith. This case is especially important because the Court may revisit a quarter-century of problematic precedent, reconsidering whether the First Amendment's Establishment Clause is violated when government actions give the impression that the government is endorsing religion, and instead is only violated when people are being coerced to support religion or participate in a religious exercise. In September the Court will release additional argument dates for cases.

#### Empirics prove the Court doesn’t consider capital

Schauer 04 [Frederick, Law prof at Hravard, “Judicial Supremacy and the Modest Constitution”, California Law Review, July, 92 Cal. L. Rev. 1045, ln //uwyo-kn]

Examples of the effects of judicial supremacy hardly occupy the entirety of constitutional law. As the proponents of popular constitutionalism properly claim, it is simply not plausible to argue that all of the Supreme Court's decisions are counter-majoritarian, nor that the Court is unaware of the potential repercussions if a high percentage of its decisions diverges too dramatically from the popular or legislative will. Nevertheless, there is no indication that the Court uses its vast repository of political capital only to accumulate more political capital, and in many areas judicial supremacy has made not just a short-term difference, but a long-term difference as well. Perhaps most obvious is school prayer. For over forty years the Court has persisted in its view that organized prayer in public schools is impermissible under the Establishment Clause 59 despite the fact that public opinion is little more receptive to that view now than it was in 1962. 60 So too with flag burning, where the Court's decisions from the late 1960s 61 to the present have remained dramatically divergent from public and legislative opinion. 62 Or consider child pornography, where the Court's decision in Ashcroft v. Free Speech Coalition 63 flew in the face of an overwhelming congressional majority approving the extension of existing child pornography laws to virtual child pornography. Similarly, in the regulation of "indecency," the Court has spent well over a decade repeatedly striking down acts of Congress that enjoyed overwhelming public and [\*1059] congressional support. 64 Most dramatic of all, however, is criminal procedure, where the Supreme Court's decision in Dickerson v. United States, 65 invalidating a congressional attempt to overrule Miranda v. Arizona, 66 underscores the persistent gap in concern for defendants' rights between Congress and the public, on the one hand, and the Supreme Court, on the other.

#### Winners win

Law 09 (David, Professor of Law and Professor of Political Science, Washington University in St. Louis, Georgetown Law Journal, March 2009, 97 Geo. L.J. 723; “A Theory of Judicial Power and Judicial Review,” Lexis, rwg)

Part IV of this Article discusses a counterintuitive implication of a coordination-based account of judicial power. Conventional wisdom suggests that courts secure compliance with their decisions by drawing upon their store of legitimacy, which is undermined by decisions that are unpopular, controversial, or lack intellectual integrity. n25 Part IV argues that precisely the opposite is true: an unpopular or unpersuasive decision can, in fact, enhance a court's power in future cases, as long as it is obeyed. Widespread compliance with a decision that is controversial, unpopular, or unpersuasive serves only to strengthen the widely held expectation that others comply with judicial decisions. This expectation, in turn, is self-fulfilling: those who expect others to comply with a court's decisions will find it strategically prudent to comply themselves, and the aggregate result will, in fact, be widespread compliance. Part IV illustrates these strategic insights--and the Supreme Court's apparent grasp of them--by contrasting [\*734] Bush v. Gore n26 with Brown v. Board of Education n27 and Cooper v. Aaron. n28

#### Issues are compartmentalized

Redish and Cisar 91 prof law @ Northwestern and Law clerk to US Court of Appeals, 1991

(MARTIN H. REDISH, prof law and public policy @ Northwestern; ELIZABETH J. CISAR, Law Clerk to Chief Judge William Bauer, United States Court of Appeals, Seventh Circuit, Dec 1991, “CONSTITUTIONAL PERSPECTIVES: ARTICLE: "IF ANGELS WERE TO GOVERN" \*: THE NEED FOR PRAGMATIC FORMALISM IN SEPARATION OF POWERS THEORY.”41 Duke L.J. 449)

Choper's assumption that the judiciary's institutional capital is transferable from structural cases to individual rights cases is no more credible. Common sense should tell us that the public's reaction to con- troversial individual rights cases-for example, cases concerning abor- tion,240 school prayer,241 busing,242 or criminal defendants' rights243- will be based largely, if not exclusively, on the basis of its feelings con- cerning those particular issues. It is unreasonable to assume that the public's acceptance or rejection of these individual rights rulings would somehow be affected by anything the Court says about wholly unrelated structural issues.

#### Decision is announced in May, after the DA

SCOTUS 12 (Supreme Court of the United States, 7/25/2012 “The Court and Its Procedures,”

http://www.supremecourt.gov/about/procedures.aspx, Accessed 7/25/2012, rwg)

The Court maintains this schedule each Term until all cases ready for submission have been heard and decided. In May and June the Court sits only to announce orders and opinions. The Court recesses at the end of June, but the work of the Justices is unceasing. During the summer they continue to analyze new petitions for review, consider motions and applications, and must make preparations for cases scheduled for fall argument.

#### Public supports the plan

Reuters 13 (Quoting John McCain, Republican Senator, 6-9-13, "Support growing to close Guantanamo prison: senator" Reuters) www.reuters.com/article/2013/06/09/us-usa-obama-guantanamo-idUSBRE9580BL20130609

Republican Senator John McCain said on Sunday there is increasing public support for closing the military prison at Guantanamo Bay, Cuba, and moving detainees to a facility on the U.S. mainland. "There's renewed impetus. And I think that most Americans are more ready," McCain, who went to Guantanamo last week with White House chief of staff Denis McDonough and California Democratic Senator Dianne Feinstein, told CNN's "State of the Union" program. McCain, a senior member of the Senate Armed Services Committee, said he and fellow Republican Senator Lindsey Graham, of South Carolina, are working with the Obama administration on plans that could relocate detainees to a maximum-security prison in Illinois. "We're going to have to look at the whole issue, including giving them more periodic review of their cases," McCain, of Arizona, said. President Barack Obama has pushed to close Guantanamo, saying in a speech in May it "has become a symbol around the world for an America that flouts the rule of law."

#### decline Doesn’t cause war

**Miller 2k** – Professor of Management, Ottawa (Morris, Poverty As A Cause Of Wars?, http://www.pugwash.org/reports/pac/pac256/WG4draft1.htm, AG)

Thus, these armed conflicts can hardly be said to be caused by poverty as a principal factor when the greed and envy of leaders and their hegemonic ambitions provide sufficient cause. The poor would appear to be more the victims than the perpetrators of armed conflict. It might be alleged that some dramatic event or rapid sequence of those types of events that lead to the exacerbation of poverty might be the catalyst for a violent reaction on the part of the people or on the part of the political leadership who might be tempted to seek a diversion by finding/fabricating an enemy and going to war. According to a study undertaken by Minxin Pei and Ariel Adesnik of the Carnegie Endowment for International Peace, there would not appear to be any merit in this hypothesis. After studying 93 episodes of economic crisis in 22 countries in Latin America and Asia in the years since World War II they concluded that Much of the conventional wisdom about the political impact of economic crises may be wrong... The severity of economic crisis - as measured in terms of inflation and negative growth - bore no relationship to the collapse of regimes. A more direct role was played by political variables such as ideological polarization, labor radicalism, guerilla insurgencies and an anti-Communist military... (In democratic states) such changes seldom lead to an outbreak of violence (while) in the cases of dictatorships and semi-democracies, the ruling elites responded to crises by increasing repression (thereby using one form of violence to abort another.

**Prez Flex DA: 2AC**

#### Flexibility is irrelevant in the hegemonic era—rule-breaking is a greater risk

Knowles 09 (Robert, Assistant Professor, New York University School of Law, Spring 2009, "American Hegemony and the Foreign Affairs Constitution" Arizona State Law Journal, Lexis)

The hegemonic model also reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability. n422 G. John Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors: "The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability." n423 Stable interpretation of the law bolsters the stability of the system because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states." n424 The Bush Administration's detainee policy, for all of its virtues and faults, was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch. n425 Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law. n426 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions. n427 It declared all detainees at Guantanamo to be "enemy combatants" without establishing a regularized process for making an individual determination for each detainee. n428 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections. n429 In an anarchic world characterized by great power conflict, one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law. Indeed, the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s - a period when the international system was radically unstable, and the United States was one of several great powers vying for advantage. n430 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from [\*156] powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. Instead, the danger is that American rule-breaking will set a pattern of rule-breaking for the world, leading to instability. n431 America's military predominance enables it to set the rules of the game. When the U.S. breaks its own rules, it loses legitimacy.

#### Executive flexibility is bad—leads to arbitrary decisions and mismanagement

Pearlstein 09 (Deborah, Visiting Scholar and Lecturer in Public and International Affairs, Woodrow Wilson School of Public & International Affairs, Princeton University, "Form and Function in the National Security Constitution" Connecticut Law Review) uconn.lawreviewnetwork.com/files/archive/v41n5/formandfunction.pdf

The new functionalists’ instinctive attraction to flexibility in decisionmaking rules or structures—and its corresponding possibilities of secrecy and dispatch—is not without foundation in organization theory.183 Flexibility ideally can make it possible for organizations to adapt and respond quickly in circumstances of substantial strain or uncertainty, as conditions change or knowledge improves, and to respond to events that cannot be predicted in advance.184 In a crisis or emergency setting in particular, one can of course imagine circumstances in which taking the time to follow a series of structurally required decision-making steps would vitiate the need for action altogether.185 What the new functionalists fail to engage, however, are flexibility’s substantial costs, especially in grappling with an emergency. For example, organizations that depend on decentralized decision-making but leave subordinates too much flexibility can face substantial principal-agent problems, resulting in effectively arbitrary decisions. The problem of differences in motivation or understanding between organizational leaders and frontline agents is a familiar one, a disjunction that can leave agents poorly equipped to translate organizational priorities into priority consistent operational goals. As Sagan found in the context of U.S. nuclear weapons safety, whatever level of importance organizational leadership placed on safety, leaders and operatives would invariably have conflicting priorities, making it likely that leaders would pay “only arbitrary attention to the critical details of deciding among trade-offs” faced by operatives in real time.186 One way of describing this phenomenon is as “goal displacement”—a narrow interpretation of operational goals by agents that obscures focus on overarching priorities.187 In the military context, units in the field may have different interests than commanders in secure headquarters;188 prison guards have different interests from prison administrators.189 Emergencies exacerbate the risk of such effectively arbitrary decisions. Critical information may be unavailable or inaccessible.190 Short-term interests may seek to exploit opportunities that run counter to desired long-term (or even near-term) outcomes. 191 The distance between what a leader wants and what an agent knows and does is thus likely even greater. The Cuban Missile Crisis affords striking examples of such a problem. When informed by the Joint Chiefs of Staff of the growing tensions with the Soviet Union in late October 1962, NATO’s Supreme Allied Commander in Europe, American General Lauris Norstad, ordered subordinate commanders in Europe not to take any actions that the Soviets might consider provocative.192 Putting forces on heightened alert status was just the kind of potentially provocative move Norstad sought to forestall. Indeed, when the Joint Chiefs of Staff ordered U.S. forces globally to increase alert status in a directive leaving room for Norstad to exercise his discretion in complying with the order, Norstad initially decided not to put European-stationed forces on alert.193 Yet despite Norstad’s no-provocation instruction, his subordinate General Truman Landon, then Commander of U.S. Air Forces in Europe, increased the alert level of nuclear-armed NATO aircraft in the region.194 In Sagan’s account, General Landon’s first organizational priority—to maximize combat potential—led him to undermine higher priority political interests in avoiding potential provocations of the Soviets.195 It is in part for such reasons that studies of organizational performance in crisis management have regularly found that “planning and effective response are causally connected.”196 Clear, well-understood rules, formalized training and planning can function to match cultural and individual instincts that emerge in a crisis with commitments that flow from standard operating procedures and professional norms.197 Indeed, “the less an organization has to change its pre-disaster functions and roles to perform in a disaster, the more effective is its disastetr [sic] response.”198 In this sense, a decisionmaker with absolute flexibility in an emergency— unconstrained by protocols or plans—may be systematically more prone to error than a decision-maker who is in some way compelled to follow procedures and guidelines, which have incorporated professional expertise, and which are set as effective constraints in advance. Examples of excessive flexibility producing adverse consequences are ample. Following Hurricane Katrina, one of the most important lessons independent analysis drew from the government response was the extent to which the disaster was made worse as a result of the lack of experience and knowledge of crisis procedures among key officials, the absence of expert advisors available to key officials (including the President), and the failure to follow existing response plans or to draw from lessons learned from simulations conducted before the fact. 199 Among the many consequences, basic items like food, water, and medicines were in such short supply that local law enforcement (instead of focusing on security issues) were occupied, in part, with breaking into businesses and taking what residents needed.200 Or consider the widespread abuse of prisoners at U.S. detention facilities such as Abu Ghraib. Whatever the theoretical merits of applying coercive interrogation in a carefully selected way against key intelligence targets,201 the systemic torture and abuse of scores of detainees was an outcome no one purported to seek. There is substantial agreement among security analysts of both parties that the prisoner abuse scandals have produced predominantly negative consequences for U.S. national security.202 While there remain important questions about the extent to which some of the abuses at Abu Ghraib were the result of civilian or senior military command actions or omissions, one of the too often overlooked findings of the government investigations of the incidents is the unanimous agreement that the abuse was (at least in part) the result of structural organization failures 203—failures that one might expect to produce errors either to the benefit or detriment of security. In particular, military investigators looking at the causes of Abu Ghraib cited vague guidance, as well as inadequate training and planning for detention and interrogation operations, as key factors leading to the abuse. Remarkably, “pre-war planning [did] not include[] planning for detainee operations” in Iraq.204 Moreover, investigators cited failures at the policy level—decisions to lift existing detention and interrogation strictures without replacing those rules with more than the most general guidance about custodial intelligence collection.205 As one Army General later investigating the abuses noted: “By October 2003, interrogation policy in Iraq had changed three times in less than thirty days and it became very confusing as to what techniques could be employed and at what level non-doctrinal approaches had to be approved.”206 It was thus unsurprising that detention and interrogation operations were assigned to troops with grossly inadequate training in any rules that were still recognized.207 The uncertain effect of broad, general guidance, coupled with the competing imperatives of guidelines that differed among theaters of operation, agencies, and military units, caused serious confusion among troops and led to decisionmaking that it is overly kind to call arbitrary.208 Would the new functionalists disagree with the importance of government planning for detention operations in an emergency surrounding a terrorist nuclear attack? Not necessarily. Can an organization anticipate and plan for everything? Certainly not. But such findings should at least call into question the inclination to simply maximize flexibility and discretion in an emergency, without, for example, structural incentives that might ensure the engagement of professional expertise.209 Particularly if one embraces the view that the most potentially damaging terrorist threats are nuclear and biological terrorism, involving highly technical information about weapons acquisition and deployment, a security policy structure based on nothing more than general popular mandate and political instincts is unlikely to suffice; a structure that systematically excludes knowledge of and training in emergency response will almost certainly result in mismanagement.210 In this light, a general take on role effectiveness might suggest favoring a structure in which the engagement of relevant expertise in crisis management is required, leaders have incentives to anticipate and plan in advance for trade-offs, and organizations are able to train subordinates to ensure that plans are adhered to in emergencies. Such structural constraints could help increase the likelihood that something more than arbitrary attention has been paid before transcendent priorities are overridden.

**Iraq disproves the link**

National Institute of Military Justice, Amicus Brief, Rasul v. Bush, 2003 U.S. Briefs 334, January 14, 2004, p. 12-13.

The experience of United States armed forces in combat belies the Government's expressed concern that judicial review of the claims of combatants "would interfere with the President's authority as Commander in Chief." (Opp. at 11) Courts-martial, prisoner status determinations, and other legal processes have been a regular adjunct of American wartime operations throughout § Marked 11:44 § the period since Eisentrager. During the Vietnam era, the United States Army held approximately 25,000 courts-martial in the war theater. In 1969 alone, 7691 of these were special and general courts-martial, which are trials presided over by a military judge in which the defendant is entitled to a panel equivalent to a jury as provided in the UCMJ. Frederic L. Borch, Judge Advocates In Combat: Army Lawyers in Military Operations from Vietnam to Haiti 29 (2001). Another 1146 special and general courts-martial were held in Vietnam by the Marine Corps in 1969. In addition, still only in 1969, the Army held 66,702 less formal disciplinary proceedings under Article 15 of the UCMJ, 10 U.S.C. § 815. Id. . The United States Military Assistance Command in Vietnam enforced strict requirements for the classification of captured personnel, including providing impartial tribunals to determine eligibility for prisoner of war status. Military Assistance Command Vietnam, Directive No. 381-46, Annex A (Dec. 27, 1967) and Directive No. 20-5 (Sept. 21, 1966 as amended Mar. 15, 1968.) . During the 1991 Persian Gulf War, the status of approximately 1200 detainees was determined by "competent tribunals" established for that purpose. Dep't of Defense, Final Report to Congress: Conduct of the Persian Gulf War 578 (1992); Army Judge Advocate General's School, Operational Law Handbook 22 (O'Brien ed. 2003). . At this very time, United States forces in Iraq, a theater of actual combat, are providing impartial tribunals compliant with Article 5 of the GPW to adjudicate the status of captured belligerents. Although details are difficult to come by, American commanders of forces in Iraq acknowledge that as many as 100 prisoners there have had their status adjudicated by impartial tribunals under Article 5 of the GPW.

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### Thumpers

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**Ideology**

#### Kennedy makes decisions based on ideology

Benac 06 [Associated press, “Justice Kennedy takes ‘center’ stage on court”, October 22, http://www.washtimes.com/national/20061022-124644-5427r.htm //uwyo-kn]

Justice Kennedy rejects the notion that his judicial approach is subject to change and finds the label of "swing justice" to be "a most unfortunate phrase." "Justice O'Connor didn't like it, either," he said in an interview with the Associated Press last week. "It indicates some sort of a vacillation, but in my own view, my jurisprudence is quite consistent. It just happens that the cases happen to swing from one side to the other of what I think is a well-grounded philosophy."

#### Ideology predicts the vast majority of decisions

Friedman 05 [Barry, Prof. of Law at NYU, “The Politics of Judicial Review, Texas Law Review, December, 84 Texas Law Rev. 257, ln //uwyo-kn]

The central tenet of the attitudinal model is that the primary determinant of much judicial decisionmaking is the judge's own values. Judges come onto the bench with a set of ideological dispositions and apply them in resolving cases. As the most notable proponents of the attitudinal model, Jeffrey Segal and Harold Spaeth, explain: "Simply put, Rehnquist votes the way he does because he is extremely conservative; Marshall voted the way he did because he is extremely liberal." Although methodologies vary, attitudinalists typically use a measure of judicial ideology and then rely on it to predict judicial votes. Often, they also try to control for other factors that might influence the vote: everything from personal characteristics of the judge (such as race, gender, and prior occupation) to law itself. Attitudinalists claim an enormous degree of success in their predictive endeavor, especially with regard to the Supreme Court. "There is now surpassing empirical evidence in support of [the attitudinal model] of judicial decisionmaking." Segal and Spaeth are able to predict over 70% of Supreme Court Justices' votes based on ideology, and sometimes they do quite a bit better. "For Rehnquist, Blackmun, Brennan and Marshall, simply knowing that a case involves search and seizure would lead to correct predictions of votes between 78% and 90% of the time." Even in the lower courts, ideology turns out to be a significant determinant of judicial behavior.

#### Life tenure of Court justices makes political pressures irrelevant

Yates 02 [Jeff, political science @ Georgia, “Popular Justice” p. 9 //uwyo-kn]

Under this theory, external pressures from the public or other political actors do not sway justices’ voting behavior; once on the Court they vote their sincere policy preferences. Thus, the judicial replacement theory is logically aligned with the attitudinal model of judicial behavior. Attitudinal theorists discount the possibility of external influences of justices’ behavior. They note that while state judicial officers are elected in some states and thus may be susceptible to external pressures (e.g. Brace and Hall 1990). United States Supreme Court Justices are life tenured and typically seek no higher political office and therefore have no reason to be influenced by external factors (Norpoth and Segal 1994).

### No Spillover

#### Zero spillover between issues

Gibson 03

[James L., Washington University in St. Louis, ‘Measuring Attitudes Toward the United States Supreme Court”, American Journal of Poltiical Science V. 47 I. 2 //uwyo-kn]

Perhaps more important is the rather limited relationship between performance evaluations and loyalty to the Supreme Court. These two types of attitudes are of course not entirely unrelated, but commitments to the Supreme Court are not largely a function of whether one is pleased with how it is doing its job. Even less influential are perceptions of decisions in individual cases. When people have developed a “running tally” about an institution—a sort of historical summary of the good and bad things an institution has done—it is difficult for any given decision to have much incremental influence on that tally. Institutional loyalty is valuable to the Court precisely because it is so weakly related to actions the Court takes at the moment.