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### Contention 1- Legitimacy

#### Guantanamo closure is inevitable- detainees will get transferred to the US

Herb 14 (Jeremy- Defense reporter for The Hill, citing Clifford Sloan the State Depart. Envoy for closing gitmo, 1/3, “Envoy confident Gitmo will be closed”, http://thehill.com/blogs/defcon-hill/policy-strategy/194361-gitmo-envoy-confident-prison-will-be-closed)

The man in charge of closing the U.S. detention center in Guantánamo Bay, Cuba, says he has no doubt it will be shuttered.¶ Clifford Sloan, the State Department’s envoy in charge of closing Guantánamo Bay, said in an interview on PBS “Newshour” Thursday evening that he believed the obstacles to closing the prison — including moving detainees to the U.S. for trial — could be overcome.¶ “I am absolutely convinced that we are going to close the Guantánamo facility,” Sloan said.¶ “We are going to close the Guantánamo detention facility. I have no doubt about that. And President Obama is very strongly committed to that,” he said.¶ The Obama administration has picked up the pace of transferring detainees from Guantánamo in recent months, with nine detainees transferred in December.¶ Those transfers included the final three ethnic Chinese Uyghurs at Guantánamo, who were sent to Slovakia earlier this week.¶ Sloan said that the pace of transfers could pick up in 2014 as well, as the newly signed National Defense Authorization Act (NDAA) loosened the restrictions on sending detainees to foreign countries.¶ Of the 155 remaining detainees at Guantánamo, 76 have been cleared for release.¶ “The law will be different in 2014 — I think that is going to help us very much in moving forward with the transfers,” Sloan said. “We feel very strongly there is a new air of possibility on moving forward on closing the Guantánamo detention facility. That is what we are focused on.”¶ Sloan, along with his Pentagon counterpart Paul Lewis, were appointed by Obama this year to jumpstart the administration’s efforts to close Guantánamo.¶ Obama renewed his pledge — one of this first he made when he took office — during a national security speech in May, and the transfers resumed later in the year to end a two-year gap between transfers.¶ There are still significant obstacles to closing Guantánamo, most notably the restriction on moving detainees to U.S. soil. In the compromise NDAA bill that Obama signed last month, the U.S. restrictions remained in place. ¶ The administration backed away from efforts to try alleged 9/11 mastermind Khalid Sheikh Mohammed in federal court during Obama’s first term, and a military tribunal for Mohammed and four others is in the pretrial phase at Guantánamo.¶ Sloan said he thought the ban on U.S. transfers could be lifted so Guantánamo detainees could be tried in the federal court system.¶ “I think you are seeing a new recognition across the spectrum that it's time to move on; it is time to put this problem before us,” he said.

#### Unfortunately- failure to apply the conventions erodes our court’s credibility

Gruber, 11 (Aya- Professor of Law, University of Colorado Law School, 1/1, “An Unintended Casualty of the War on Terror”, http://scholarworks.gsu.edu/gsulr/vol27/iss2/12/)

As the dust of the Bush administration's war on terror settles, casualties are starting to appear on the legal battlefield. The United States' human rights reputation and the Supreme Court's international influence lay wounded in the wake of U.S. policies that flouted international law by advocating torture, suborning indefinite detention, and erecting irregular tribunals. Through declining citation, the courts of the world are telling the Supreme Court that if it does not respect international and foreign law, international and foreign courts will not respect it. Some might object that the Supreme Court should not be lumped with the Bush administration because in fact it handed down several opinions setting limitations on the administration's treatment of terror detainees. While these cases, notably Hamdan v. Rumsfeld, set forth domestic law limitations, their conspicuous effort to avoid giving the Geneva Conventions the force of law served to confirm world opinion that the Supreme Court is "out of step." This Essay demonstrates how the Court's avoidance of the treaty status issue in Hamdan not only contributed to the perception of American legal exceptionalism but also paved the way for the single most anti- international opinion in Supreme Court history, Medellin v. Texas. In Medellin, the Supreme Court adopted a legal stance that creates near impassable barriers to the domestic enforcement of treaties. Nonetheless, as President Obama ruminates on maintaining military tribunals and courts brace for another round of terrorism cases, the Supreme Court may yet have a chance to narrow the reach of Medellin, confirm the enforceability of the Geneva Conventions, and restore its international influence. The United States' war on terror has produced a lesser-discussed but very important casualty: the international reputation of the Supreme Court. Today, many scholars both within and outside the United States note the dwindling influence of the U.S. Supreme Court, as evidenced by declining worldwide citation. On September 17, 2008, the front page of the New York Times declared, "U.S. Court Is Now Guiding Fewer Nations." n1 The article observes that citations to the Canadian Supreme Court and European Court of Justice are on an upswing, especially in cases involving human rights, while, according to Professor Anne Marie Slaughter, "We are losing one of the greatest bully pulpits we have ever had." n2 The bottom line is that much of today's world views U.S. Supreme Court opinion as antiquated and out-of-step with modern constructions of global rights and obligations. n3 To be sure, several aspects of American legal practice garnered international disfavor even before the September 11 attacks, notably the nation's continued legal support for the death penalty. n4 Subsequently, the war on terror and its concurrent destruction of civil liberties, embrace of torture and indefinite detention, and contempt for international humanitarian law cemented the widespread view of America as the prototypical abuser of human rights rather than guarantor. n5 In short, the courts of the world are [\*301] saying that if the U.S. does not respect international and foreign law, international and foreign courts will not respect the U.S. n6 As President Obama recedes from his initial stance against ad hoc military justice n7 and federal courts prepare for another round of military tribunal challenges, n8 we should remain poignantly focused on the reputational damage caused by the Bush administration's "cowboy adventure into totalitarianism," n9 which was permitted to push forward even by "liberal" "obstructionist" Supreme Court decisions. n10 As we move into a new era of international relations and (hopefully) respect for human rights, the time is ripe to learn some lessons about what was and what was not decided in the Supreme Court terrorism cases. This Essay highlights how an unfortunate misstep in the seemingly internationalist Hamdan v. Rumsfeld n11 decision paved the way for a jurisprudence of hostility toward international law. In this way, progressive Justices actually became complicit in the legal isolationist ideology so prevalent during the Bush era, which led the courts of the world to abandon the Supreme Court. [\*302] I. A Globalist Court in an Age of Nationalism There can be little dispute that during the Bush administration years, especially those immediately following September 11, internationalism fell out of popular and political favor. Guantanamo, renditions, torture, and the unilateral invasion of Iraq served as stark examples of the United States' go-it-alone mentality regarding human rights and humanitarian law. This attitude was arguably a continuation of the administration's pre-September 11 "exceptionalist" n12 approach to human rights. n13 Foreign jurists and human rights supporters had already been shocked at President Bush's "unsigning" of the Rome Statute, thereby withdrawing support for the International Criminal Court, n14 and the United States' refusal to participate in international environmental regulation. n15 Of course, after September 11, as isolationist sentiment rose, America's acceptance of international law further decreased. Indeed, many Americans, including important legal actors, openly express contempt for international law and legal institutions. n16 In this view, international human rights law is a dirty phrase synonymous with loss of American sovereignty and radical liberal ideology. n17 Following September 11, isolationist sentiment intensified as society became increasingly averse to international law, foreign values, and [\*303] even foreigners. n18 Today, conservatives warn against the corrupting influence of foreign practices and characterize international law as a product of "elite" law professors who are not representative of the nation's views. n19 The body of international scholars has been described by even prominent law professors as either "feather boa-wearing" n20 liberal snobs intent on imposing patrician continental norms on ordinary American folk, n21 or worse, terrorism sympathizers. n22 One professor characterized the Supreme Court's citation of foreign and international sources as a product of "aristocratic" global "bonding" sessions at "Lake Como or the South of France." n23 However, if the executive's actions and public opinion confirmed to the world that the United States disdains international law, what about actions of the Supreme Court itself? In the early part of the decade it appeared that an emerging globalist Supreme Court attitude could provide a much-needed foil to the existence and perception of American legal exceptionalism. n24 Justices Breyer, Ginsburg, and former Justice O'Connor vocally extolled the importance of [\*304] international and comparative law in domestic constitutional jurisprudence. n25 In the 2003 decision Lawrence v. Texas, the Court cited international norms as part of its analysis striking down anti-sodomy laws. n26 In 2005, the Court took up the hotly-contested issue of the juvenile death penalty in Roper v. Simmons. n27 In a move that many conservatives saw, and continue to see, as an all-out assault on American values and sovereignty, the Court cited international sentiment as "confirmation" of its formal conclusion that putting juveniles to death is cruel and unusual. n28 Many, like Justice Ginsburg, believed that the Court's "'island' or 'lone ranger' mentality [was] beginning to change." n29 The Supreme Court was in the midst of a modest revolution, inching towards globalization despite great internal conflict n30 and external controversy. n31 At the same time, the Court was asked to [\*305] assess the parameters of the Bush administration's war on terror. Here, political sides had been quickly drawn regarding constitutional restraints on executive war- making power, n32 with conservatives generally arguing for unfettered or near limitless executive authority and liberals favoring significant congressional and judicial oversight. n33 Lurking in the substrata of the various civil liberties-versus-national security debates was a bubbling political polarization over the enforceability of international law. The Geneva Conventions n34 were arguably the greatest threat to the Bush administration's ability to wage the war on terror in any manner it saw fit, even greater than the Constitution. There is very little language in the Constitution regarding presidential war power, and the principle that during war the President can bypass other constitutional provisions is largely a creature of expert commentary and sparse case law. n35 Because the "law of war" is therefore extra-constitutional, it provided the Supreme Court a virtual tabula rasa [\*306] legal regime on which to scrawl its limitations (or non-limitations). n36 Thus, the Bush administration could reasonably hope to exploit the atmosphere of fear and hysteria surrounding September 11 in favor of an expansive judicial reading of constitutional war power. n37 By contrast, the Geneva Conventions lay out with clarity and great specificity how governments must treat prisoners of war, civilians, and others during times of armed conflict. n38 The treaty accordingly represented a significant potential restraint on how the Bush administration could treat detained Afghan and al Qaeda fighters. From the beginning, the Bush administration pursued a policy of "lawyering" the Conventions n39 and setting forth numerous textual arguments, from specious to plausible, as to why they do not apply to the Guantanamo detainees. n40 It was obviously important for public relations reasons that the administration find a way to convince the [\*307] public that it was in compliance with the Conventions, n41 but in the legal arena the administration advanced an argument for the wholesale jettisoning of the Geneva Conventions in domestic courts: "Non-self-execution." The administration claimed simply that as non-self-executing treaties, the Geneva Conventions could not be enforced by individuals in U.S. courts. n42 In turn, the formerly legalistic question of treaty execution became as highly politicized as the civil liberties-versus-national security debate. Of course, the question of treaty execution long predated the war on terror. The status of treaties is mentioned in the very text of the Constitution, in the Supremacy Clause, which declares that "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." n43 During the early years of our republic, the fact of treaty supremacy was relatively apolitical and apparently accepted. n44 The period immediately following World War II saw a flurry of international legal activity and thrust the question of treaty supremacy into the foreground. n45 Since that time, there has been steadily growing hostility in certain legal, academic, and political circles to the concept that treaties created in part or whole by "foreign entities" are binding [\*308] domestic law. n46 Although a topic of moderate activity in lower courts, until the last few years the Supreme Court had said very little on the issue and had not adopted the position that treaties are generally non-self- executing. n47 It was upon this historical, political, and legal background that the Supreme Court rendered its 2006 decision in Hamdan v. Rumsfeld, invalidating Bush's military tribunals because they violated the Uniform Code of Military Justice (UCMJ). n48 The decision caused a feeling that can be fairly characterized as jubilation among progressives and internationalists. n49 Yale Law School dean and international lawyer Harold Koh declared that the Hamdan case "finally beg[a]n the much-needed process of turning the legal world right-side up again." n50 International law scholar George Fletcher dubbed Hamdan a new beginning for international law in the United States. n51 Perhaps, however, internationalists were advancing a premature "mission accomplished" declaration. Upon further examination, the Hamdan majority opinion is remarkable in its [\*309] judicial restraint. Although it invalidated Bush's tribunals, it did so on the narrow ground that they violate the UCMJ, a domestic statute that was about to be superseded by the Military Commissions Act (MCA). n52 Hamdan did not pronounce any significant constitutional limitations on presidential war power, n53 nor did it reach the overriding foreign relations question of treaty execution. n54 Hamdan indeed would have been one of the greatest internationalist victories had the Supreme Court been willing, after nearly fifty years of silence, to recognize the force of international law in the face of decades of growing post-World War II isolationism that pinnacled after September 11. Unfortunately, the Court appeared to fear weighing in on the issue and went to great lengths to stay mute on whether the Geneva Conventions constitute valid domestic law. The Hamdan majority's refusal to comment on the status of the Conventions left open a dangerous door for a divided Court, now politically polarized over the treaty execution issue, to finally adopt an isolationist stance toward treaty execution. This is the precise door the Court walked through with its March 25, 2008 decision, Medellin v. Texas. n55 What started out as fear of international human rights law in Hamdan went to loathing in Medellin, as the Court for the first time formally sanctioned the United States' ability to double deal in international relations. n56 But before discussing Medellin, two [\*310] preliminary questions call for examination. First, what is the status of treaties in U.S. domestic law? Second, why was Hamdan's approach to the Geneva Conventions harmful to the Supreme Court's international reputation?

#### The impact is sustainable rule of law promotion- only maintaining court credibility solves

Scharf 9 (Michael P. Scharf et al., Counsel of Record, Brief of the Public International Law & Policy Group as Amicus Curiae in Support of the Petitioners, Jamal Kiyemba, et. Al., v. Barack H. Obama, et al., SCOTUS, No. 08-1234, 12—09, p. 3-8.)

The precedent of this Court has a significant impact on rule of law in foreign states. Foreign governments, in particular foreign judiciaries, notice and follow the example set by the U.S. in upholding the rule of law. As foreign governments and judiciaries grapple with new and challenging issues associated with upholding the rule of law during times of conflict, U.S. leadership on the primacy of law during the war on terror is particularly important. Recent decisions of this Court have reaffirmed the primacy of rule of law in the U.S. during the war on terror. As relates to the present case, a number of this Court’s decisions, most notably Boumediene v. Bush, 128 S.Ct. 2229 (2008), have established clear precedent that Guantanamo detainees have a right to petition for habeas corpus relief. Despite a clear holding from this Court in Boumediene, the Court of Appeals sought in Kiyemba v. Obama to narrow Boumediene to such a degree as to render this Court’s ruling hollow. 555 F.3d 1022 (D.C. Cir. 2009). The present case is thus a test of both the substance of the right granted in Boumediene and the role of this Court in ensuring faithful implementation of its prior decisions. Although this Court’s rulings only have the force of law in the U.S., foreign governments will take note of the decision in the present case and use the precedent set by this Court to guide their actions in times of conflict. PILPG has advised over two dozen foreign states on peace negotiations and post-conflict constitution drafting, as well as all of the international war crimes tribunals. Through providing pro bono legal assistance to foreign governments and judiciaries, PILPG has observed the important role this Court and U.S. precedent serve in promoting rule of law in foreign states. In Uganda, for example, the precedent established by this Court in Hamdan v. Rumsfeld, 548 U.S. 557 (2006), and Boumediene, influenced judges and legislators to incorporate the principles of judicial review and enforceability in their domestic war crimes bill. In Nepal, this Court has served as a model for the nascent judiciary. In Somaliland, the government relied heavily on U.S. terrorism legislation when drafting terrorism legislation for the region. And in the South Sudan peace process, the Sudan People’s Liberation Movement/Army (SPLM/A), the leading political party in the Government of Southern Sudan, relied on U.S. precedent to argue for the primacy of law and the importance of enforceability of previous adjudicative decisions in the Abyei Arbitration, one of the most important and contentious issues in the ongoing implementation of the peace agreement. Foreign judges also follow the work of this Court closely. In a number of the judicial training programs PILPG has conducted, foreign judges have asked PILPG detailed questions about the role of this Court in upholding rule of law during the war on terror. A review of foreign precedent confirms how closely foreign judges follow this Court. In numerous foreign states, and in the international war crimes tribunals, judges regularly cite the precedent of this Court to establish their own legitimacy, to shore up judicial authority against overreaching by powerful executives, and to develop a strong rule of law within their own legal systems. Given the significant influence of this Court on foreign governments and judiciaries, a decision in Kiyemba implementing Boumediene will reaffirm this Court’s leadership in upholding the rule of law and promote respect for rule of law in foreign states during times of conflict. ARGUMENT I. KIYEMBA v. OBAMA IS A TEST OF SUPREME COURT LEADERSHIP IN UPHOLDING RULE OF LAW IN TIMES OF CONFLICT The precedent set by the Supreme Court in the present case will have a significant impact on the development of rule of law in foreign states. Foreign judicial, executive, and parliamentary bodies closely follow the work of this Court, and this Court’s previous decisions related to the war on terror have shaped how foreign states uphold the rule of law in times of conflict. Foreign governments and judiciaries will review this Court’s decision in the present case in light of those previous decisions. A decision in the present case implementing previous decisions of this Court granting habeas rights to Guantanamo detainees is an opportunity for this Court to reaffirm to foreign governments that the U.S. is a leader and role model in upholding the rule of law during times of conflict. Recent Supreme Court precedent established a clear role for the primacy of law in the U.S. war on terror. In particular, this Court’s landmark decision in Boumediene highlighted the critical role of the judiciary in a system dedicated to the rule of law, as well as the “indispensable” role of habeas corpus as a “time tested” safeguard of liberty. Boumediene v. Bush, 128 S.Ct. 2229, 2247, 2259 (2008). Around the globe, courts and governments took note of this Court’s stirring words: “Security subsists, too, in fidelity to freedom’s first principles. Chief among these are freedom from arbitrary and unlawful restraint and the personal liberty that is secured by adherence to the separation of powers. It is from these principles that the judicial authority to consider petitions for habeas corpus relief derives.” Id. at 2277. In contrast to the maxim silent enim leges inter arma (in times of conflict the law must be silent), this Court affirmed in Boumediene that “[t]he laws and Constitution are designed to survive, and remain in force, in extraordinary times. Liberty and security can be reconciled, and in our system they are reconciled within the framework of the law.” Id. Boumediene held that the detainees in the military prison at Guantanamo Bay are “entitled to the privilege of habeas corpus to challenge the legality of their detentions.” Id. at 2262. Inherent in that privilege is the right to a remedy if the detention is found to be unlawful. In the present case, the Petitioners, who had been found not to be enemy combatants, sought to exercise their privilege of habeas corpus. The Executive Branch conceded that there was no legal basis to continue to detain the Petitioners, that years of diligent effort to resettle them elsewhere had failed, and that there was no foreseeable path of release. The District Court implemented Boumediene, ordering that the Petitioners be brought to the courtroom to impose conditions of release. In re Guantanamo Bay Detainee Litigation, 581 F. Supp. 2d 33, 42-43 (D.C. Cir. 2008). The Court of Appeals reversed, with the majority concluding that the judiciary had no “power to require anything more” than the Executive’s representations that it was continuing efforts to find a foreign country willing to admit Petitioners. Kiyemba v. Obama, 555 F.3d 1022, 1029 (D.C. Cir. 2009). The Court of Appeals’ decision effectively narrowed Boumediene to such a degree that it rendered the ruling hollow. Circuit Judge Rogers recognized this in her dissent, opining that the majority’s analysis “was not faithful to Boumediene.” Id. at 1032 (Roberts, J., dissenting). Given the Court of Appeals’ attempt to narrow Boumediene, Kiyemba v. Obama is a test of this Court’s role in upholding the primacy of law in times of conflict. A decision in favor of the Petitioners in Kiyemba will reaffirm this Court’s leadership in upholding the rule of law and promote respect for rule of law in foreign states during times of conflict.

**A strong judiciary is key**

**Kalb 13** [Summer, 2013; Johanna Kalb is an Associate Professor of Law, Loyola University New Orleans College of Law, “The Judicial Role in New Democracies: A Strategic Account of Comparative Citation”, 38 Yale J. Int'l L. 423]

The role of the judiciary in transitional regimes has received increasing attention in the last few decades based largely on two historical developments. First, constitutionalism and judicial review have become increasingly pervasive attributes of late twentieth-century political transitions, which has increased the predominance of the judicial role in most new democratic regimes. Second, a growing number of countries that once held democratic elections **have regressed into authoritarian or semi-authoritarian rule** n38 or have simply failed to move beyond the thin electoral definition of democracy. n39 In this historical context, scholars have turned their focus to the role that courts can play in helping to consolidate or solidify the post-election transition to a democratic order. A. Diagonal Accountability According to Juan J. Linz and Alfred Stepan, democratic consolidation is complete when a government comes to power that is the direct result of a free and popular vote, when this government de facto has the authority to generate new policies, and [\*431] when the executive, legislative, and judicial power generated by the new democracy does not have to share power with other bodies de jure. n40 As is now widely acknowledged, the project of democratic consolidation is inhibited by accountability failures in political institutions. In other words, democracy stalls n41 or collapses because institutional weaknesses undermine the processes by which governmental actors are held responsible for performing their appropriate functions. Courts can aid in democratic consolidation by **reinforcing constitutional structures of accountability** across a number of different planes. First, a credible and autonomous judiciary may serve as an important mechanism of horizontal accountability. "In institutionalized democracies, accountability runs ... horizontally across a network of relatively autonomous powers (i.e. other institutions) that can call into question, and eventually punish, improper ways of discharging the responsibility of a given official." n42 Given the primacy of judicial review in most new regimes, **courts are well positioned to ensure that other governmental actors are subject to the constraints of the law**. An effective judiciary may thus be **a key institutional actor in preventing the reconsolidation of power** in the executive that has characterized so many nations in transition. n43 Courts also play a role in vertical accountability, which can be understood to characterize the relationship between the citizenry and the national government. In introducing this concept, Guillermo O'Donnell focuses on the methods by which nonstate actors in media and civil society can continue to hold state actors to account through regular election, social mobilization, and media oversight. n44 An effective judiciary **can protect and enable these processes of vertical accountability** by ensuring governmental respect for the individual rights that underlie them - for example, by ensuring access to the voting booth and protecting freedom of speech and association. [\*432] While O'Donnell's vertical axis ended with the national government, in the democracies of the last fifty years, the notion of vertical accountability arguably extends further to characterize the relationship between the domestic population, the national government, and the international community, which includes international courts, the governments of other nations, and international NGOs. Most recent democratic transitions were in fact driven by pressures from both internal and external constituencies, sometimes in concert. n45 For example, "few would question the central role played by occupation forces in fostering democratic government in Germany and Japan after World War II," while "the American security umbrella played a similar facilitating function for democracy in South Korea, and Taiwan." n46 In recent decades, international sanctions have helped to force internal political change (perhaps most notably in South Africa), while "the export of election monitoring technologies such as parallel vote tabulation and exit polls played a crucial role in bringing down Augusto Pinochet in Chile in 1988, unseating Slobodan Milo<hac s>evic in Serbia in 2000, and sparking the Orange Revolution in 2004." n47 In each of these cases, donor funding has helped to generate and preserve a global web of civil society groups, which has helped to inspire and operationalize the indispensable efforts of domestic advocates during transitions. n48 Moreover, even long after the formal democratic transition has occurred, new governments, particularly in the economically underdeveloped countries of the Global South, continue to confront pressures from the international community to maintain systems of democratic governance, to protect and promote human rights, and to facilitate economic integration. Thus, governmental actions during the transitional period and beyond are under increased levels of scrutiny from both vertical and horizontal audiences, which can mobilize each other in support of accountability at the national level. The judiciary can also play a role in mediating these relationships by **protecting the domestic rights that enable these transnational connections** - by protecting access to the Internet and to international travel, for example. The ongoing activity along both of the axes creates the opportunity for the judiciary to engage in what we may describe as "diagonal accountability." n49 In modern [\*433] regimes in transition, the judiciary must be responsive to activities on both the vertical and horizontal axes. The challenge is in satisfying these different audiences that are sometimes in harmony and sometimes in conflict. The courts, given their responsibility for preserving the possible channels of horizontal and vertical accountability, **are uniquely positioned to manage this overlap** and can mobilize one axis "diagonally" in support of promoting accountability along the other. Courts may draw on international support "vertically" to protect against encroachment from the other branches "horizontally" - for example, by reaching out to influential international institutions to put pressure on the president to comply with judicial orders limiting executive authority. Alternatively, courts may be well positioned to safeguard the authority of other domestic institutions along the horizontal axis by acting as a site of resistance against coercive international pressures - for example, by striking down as unconstitutional domestically unpopular legislation forced on the elected branches by international actors.

#### Credible rule of law promotion prevents conflict escalation

Kersch 6 [2006, Ken I. Kersch, Assistant Professor of Politics, Princeton University. B.A., Williams; J.D., Northwestern; Ph.D., Cornell. Thanks to the Social Philosophy and Policy Center at Bowling Green State University, where I was a visiting research scholar in the fall of 2005, and to the organizers of, and my fellow participants in, the Albany Law School Symposium, Albany Law School, “The Supreme Court and international relations theory.”, http://www.thefreelibrary.com/The+Supreme+Court+and+international+relations+theory.-a0151714294]

Liberal theories of international relations hold that international peace and prosperity are advanced to the degree that the world’s sovereign states converge on the model of government anchored in the twin commitment to democracy and the rule of law.52 Liberal “democratic peace” theorists hold that liberal democratic states anchored in rule of law commitments are less aggressive and more transparent than other types of states.53 When compared with non-liberal states, they are thus much better at cooperating with one another in the international arena.54 Because they share a market-oriented economic model, moreover, international relations liberals believe that liberal states hewing to the rule of law will become increasingly interdependent economically.55 As they do so, they will come to share a common set of interests and ideas, which also enhances the likelihood of cooperation.56 Many foreign policy liberals—sometimes referred to as “liberal internationalists”—emphasize the role that effective multilateral institutions, designed by a club or community of liberal-democratic states, play in facilitating that cooperation and in anchoring a peaceful and prosperous liberal world order.57 The liberal foreign policy outlook is moralized, evolutionary, and progressive. Unlike realists, who make no real distinctions between democratic and non-democratic states in their analysis of international affairs, liberals take a clear normative position in favor of democracy and the rule of law.58 Liberals envisage the spread of liberal democracy around the world, and they seek to advance the world down that path.59 Part of advancing the cause of liberal peace and prosperity involves encouraging the spread of liberal democratic institutions within nations where they are currently absent or weak.60 Furthermore, although not all liberals are institutionalists, most liberals believe that effective multilateral institutions play an important role in encouraging those developments.61 To be sure, problems of inequities in power between stronger and weaker states will exist, inevitably, within a liberal framework.62 “But international institutions can nonetheless help coordinate outcomes that are in the long-term mutual interest of both the hegemon and the weaker states.”63 Many foreign policy liberals have emphasized the importance of the judiciary in helping to bring about an increasingly liberal world order. To be sure, the importance of an independent judiciary to the establishment of the rule of law within sovereign states has long been at the core of liberal theory.64 Foreign policy liberalism, however, commonly emphasizes the role that judicial globalization can play in promoting democratic rule of law values throughout the world.65 Post-communist and post-colonial developing states commonly have weak commitments to and little experience with liberal democracy, and with living according to the rule of law, as enforced by a (relatively) apolitical, independent judiciary.66 In these emerging liberal democracies, judges are often subjected to intense political pressures.67 International and transnational support can be a life-line for these judges. It can encourage their professionalization, enhance their prestige and reputations, and draw unfavorable attention to efforts to challenge their independence.68 In some cases, support from foreign and international sources may represent the most important hope that these judges can maintain any sort of institutional power—a power essential to the establishment within the developing sovereign state of a liberal democratic regime, the establishment of which liberal theorists assume to be in the best interests of both that state and the wider world community.69 Looked at from this liberal international relations perspective, judicial globalization seems an unalloyed good. To many, it will appear to be an imperative.70 When judges from well-established, advanced western democracies enter into conversations with their counterparts in emerging liberal democracies, they help enhance the status and prestige of judges from these countries. This is not, from the perspective of either side, an affront to the sovereignty of the developing nation, or to the independence of its judiciary. It is a win-win situation which actually strengthens the authority of the judiciary in the developing state.71 In doing so, it works to strengthen the authority of the liberal constitutional state itself. Viewed in this way, judicial globalization is a way of strengthening national sovereignty, not limiting it: it is part of a state-building initiative in a broader, liberal international order.72 A liberal foreign policy outlook will look favorably on travel by domestic judges to conferences abroad (and here in the United States) where judges from around the world can meet and talk.73 It will not view these conferences as “junkets” or pointless “hobnobbing.” These meetings may very well encourage judges from around the world to increasingly cite foreign precedent in arriving at their decisions. Judges in emerging democracies will use these foreign precedents to help shore up their domestic status and independence. They will also avail themselves of these precedents to lend authority to basic, liberal rule-of-law values for which, given their relative youth, there is little useful history to appeal to within their domestic constitutional systems. Judges in established democracies, on the other hand, can do their part to enhance the status and authority of independent judiciaries in these emerging liberal democratic states by showing, in their own rulings, that they read and respect the rulings of these fledgling foreign judges and their courts (even if they do not follow those rulings as binding precedent).74 They can do so by according these judges and courts some form of co-equal status in transnational “court to court” conversations.75 It is worth noting that mainstream liberal international relations scholars are increasingly referring to the liberal democratic international order (both as it is moving today, and indeed, as read backward to the post-War order embodied in the international institutions and arrangements of NATO, Bretton Woods, the International Monetary Fund, the World Bank, and others) as a “constitutional order,” and, in some cases, as a “world constitution.”76 No less a figure than Justice Breyer—in a classic articulation of a liberal foreign policy vision—has suggested that one of the primary questions for American judges in the future will involve precisely the question of how to integrate the domestic constitutional order with the emerging international one.77 If they look at judicial globalization from within a liberal foreign policy framework (whether or not they have read any actual academic articles on liberal theories of foreign policy), criticisms of “foreign influences” on these judges, and of their “globe-trotting” will fall on deaf ears. They will be heard as empty ranting by those who don’t really understand the role of the judge in the post-1989 world. These judges will not understand themselves to be undermining American sovereignty domestically by alluding to foreign practices and precedents. And they will not understand themselves as (in other than a relatively small-time and benign way) as undermining the sovereignty of other nations. They will see the pay-off-to-benefit ratio of simply talking to other judges across borders, and to citing and alluding to foreign preferences (when appropriate, and in non-binding ways) as high. They will, moreover, see themselves as making a small and modest contribution to progress around the world, with progress defined in a way that is thoroughly consistent with the core commitments of American values and American constitutionalism. And they will be spurred on by a sense that the progress they are witnessing (and, they hope, participating in) will prove of epochal historical significance. Even if they are criticized for it in the short-term, these liberal internationalist judges will have a vision of the future which suggests that, ultimately, their actions will be vindicated by history. The liberal foreign policy outlook will thus fortify them against contemporary criticism.

**Empirical analysis proves democratic governance prevents conflicts**

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Drawing from the **empirical literature**, this paper identifies two **underlying pathways** through which state governance systems help to build peace. These are: State capacity. If states lack the ability to execute their policy goals or to maintain security and public order in the face of potentially violent groups, **armed conflict is more likely**. State capacity refers to two significant aspects: security capacity and social capacity. Security capacity includes the ability to control territory and resist armed incursion from other states and nonstate actors. Social capacity includes the ability to provide social services and public goods. Institutional qxuality. Research suggests that not all governance systems are equally effective or capable of supporting peace. Governance systems are seen as **more credible** and **legitimate**, and are better at **supporting peace**, when they are characterized by inclusiveness, representativeness, transparency, and accountability. In particular, systems allowing citizens to voice concerns, participate politically, and hold elected leaders accountable are more stable and better able to avoid armed conflict. Both dimensions—state capacity and quality—are **crucial** to the **prevention of armed conflict** and are the focus of part one of this paper. Part two of the paper focuses on democracy as the most common way of structuring state government to allow for inclusive systems while maintaining state capacity. The two parts summarize **important research findings** on the features of governance that are most **strongly associated** with prospects for peace. Our analysis, based on an **extensive review of empirical literature**, seeks to identify the specific dimensions of governance that are most strongly associated with peace. We show evidence of a **direct link** between peace and a state’s capacity to both exert control over its territory and provide a full range of social services through effective governance institutions. We apply a governance framework to examine three major factors associated with the outbreak of war—border disputes, ethnic conflict, and dependence on commodity exports—and emphasize the importance of inclusive and representative governance structures for the prevention of armed conflict.

#### Autocratic regimes are gaining momentum now, restraints on the executive are key to prevent democratic backsliding

Larry Diamond 9, Professor of Political Science and Sociology @ Stanford, “The Impact of the Global Financial Crisis on Democracy”, Presented to the SAIS-CGD Conference on New Ideas in Development after the Financial Crisis, Conference Paper that can be found on his Vita

Concern about the future of democracy is further warranted by the gathering signs of a democratic recession, even before the onset of the global economic recession. During the past decade, the global expansion of democracy has essentially leveled off and hit an equilibrium While freedom (political rights and civil liberties) continued to expand throughout the post-Cold War era, that progress also halted in 2006, and 2007 and 2008 were the worst consecutive years for freedom since the end of the Cold War, with the number of countries declining in freedom greatly outstripping the number that improved. Two-thirds of all the breakdowns of democracy since the third wave began in 1974 have occurred in the last nine years, and in a number of strategically important states like Russia, Nigeria, Venezuela, Pakistan and Thailand. Many of these countries have not really returned to democracy. And a number of countries linger in a twilight zone between democracy and authoritarianism. While normative support for democracy has grown around the world, it remains in many countries, tentative and uneven, or is even eroding under the weight of growing public cynicism about corruption and the self-interested behavior of parties and politicians. Only about half of the public, on average, in Africa and Asia meets a rigorous, multidimensional test of support for democracy. Levels of distrust for political institutions—particularly political parties and legislatures, and politicians in general—are very high in Eastern Europe and Latin America, and in parts of Asia. In many countries, 30-50 percent of the public or more is willing to consider some authoritarian alternative to democracy, such as military or one-man rule. And where governance is bad or elections are rigged and the public cannot rotate leaders out of power, skepticism and defection from democracy grow. Of the roughly 80 new democracies that have emerged during the third wave and are still standing, probably close to three-quarters are insecure and could run some risk of reversal during adverse global and domestic circumstances. Less at risk—and probably mostly consolidated—are the more established developing country democracies (India, Costa Rica, Botswana, Mauritius), and the more liberal democracies of this group: the ten postcommunist states that have been admitted to the EU; Korea and Taiwan; Chile, Uruguay, Panama, Brazil, probably Argentina; a number of liberal island states in the Caribbean and Pacific. This leaves about 50 democracies and near democracies—including such big and strategically important states as Turkey, Ukraine, Indonesia, the Philippines, South Africa, certainly Pakistan and Bangladesh, and possibly even Mexico—where the survival of constitutional rule cannot be taken for granted. In some of these countries, like South Africa, the demise of democracy would probably come, if it happened, not as a result of a blatant overthrow of the current system, but rather via a gradual executive strangling of political pluralism and freedom, or a steady decline in state capacity and political order due to rising criminal and ethnic violence. Such circumstances would also swallow whatever hopes exist for the emergence of genuine democracy in countries like Iraq and Afghanistan and for the effective restoration of democracy in countries like Thailand and Nepal.

#### Democratic backsliding causes great power war

Gat 11 (Azar- the Ezer Weizman Professor of National Security at Tel Aviv University, 2011, “The Changing Character of War,” in The Changing Character of War, ed. Hew Strachan and Sibylle Scheipers, p. 30-32)

Since 1945, the decline of major great power war has deepened further. Nuclear weapons have concentrated the minds of all concerned wonderfully, but no less important have been the institutionalization of free trade and the closely related process of rapid and sustained economic growth throughout the capitalist world. The communist bloc did not participate in the system of free trade, but at least initially it too experienced substantial growth, and, unlike Germany and Japan, it was always sufﬁciently large and rich in natural resources to maintain an autarky of sorts. With the Soviet collapse and with the integration of the former communist powers into the global capitalist economy, the prospect of a major war within the developed world seems to have become very remote indeed. This is one of the main sources for the feeling that war has been transformed: its geopolitical centre of gravity has shifted radically. The modernized, economically developed parts of the world constitute a ‘zone of peace’. War now seems to be conﬁned to the less-developed parts of the globe, the world’s ‘zone of war’, where countries that have so far failed to embrace modernization and its pacifying spin-off effects continue to be engaged in wars among themselves, as well as with developed countries.¶ While the trend is very real, one wonders if the near disappearance of armed conﬂict within the developed world is likely to remain as stark as it has been since the collapse of communism. The post-Cold War moment may turn out to be a ﬂeeting one. The probability of major wars within the developed world remains low—because of the factors already mentioned: increasing wealth, economic openness and interdependence, and nuclear deterrence. But the deep sense of change prevailing since 1989 has been based on the far more radical notion that the triumph of capitalism also spelled the irresistible ultimate victory of democracy; and that in an afﬂuent and democratic world, major conﬂict no longer needs to be feared or seriously prepared for. This notion, however, is fast eroding with the return of capitalist non-democratic great powers that have been absent from the international system since 1945. Above all, there is the formerly communist and fast industrializing authoritarian-capitalist China, whose massive growth represents the greatest change in the global balance of power. Russia, too, is retreating from its postcommunist liberalism and assuming an increasingly authoritarian character.¶ Authoritarian capitalism may be more viable than people tend to assume. 8 The communist great powers failed even though they were potentially larger than the democracies, because their economic systems failed them. By contrast, the capitalist authoritarian/totalitarian powers during the ﬁrst half of the twentieth century, Germany and Japan, particularly the former, were as efﬁcient economically as, and if anything more successful militarily than, their democratic counterparts. They were defeated in war mainly because they were too small and ultimately succumbed to the exceptional continental size of the United States (in alliance with the communist Soviet Union during the Second World War). However, the new non-democratic powers are both large and capitalist. China in particular is the largest player in the international system in terms of population and is showing spectacular economic growth that within a generation or two is likely to make it a true non-democratic superpower.¶ Although the return of capitalist non-democratic great powers does not necessarily imply open conﬂict or war, it might indicate that the democratic hegemony since the Soviet Union’s collapse could be short-lived and that a universal ‘democratic peace’ may still be far off. The new capitalist authoritarian powers are deeply integrated into the world economy. They partake of the development-open-trade-capitalist cause of peace, but not of the liberal democratic cause. Thus, it is crucially important that any protectionist turn in the system is avoided so as to prevent a grab for markets and raw materials such as that which followed the disastrous slide into imperial protectionism and conﬂict during the ﬁrst part of the twentieth century. Of course, the openness of the world economy does not depend exclusively on the democracies. In time, China itself might become more protectionist, as it grows wealthier, its labour costs rise, and its current competitive edge diminishes.¶ With the possible exception of the sore Taiwan problem, China is likely to be less restless and revisionist than the territorially conﬁned Germany and Japan were. Russia, which is still reeling from having lost an empire, may be more problematic. However, as China grows in power, it is likely to become more assertive, ﬂex its muscles, and behave like a superpower, even if it does not become particularly aggressive. The democratic and non-democratic powers may coexist more or less peacefully, albeit warily, side by side, armed because of mutual fear and suspicion, as a result of the so-called ‘security dilemma’, and against worst-case scenarios. But there is also the prospect of more antagonistic relations, accentuated ideological rivalry, potential and actual conﬂict, intensiﬁed arms races, and even new cold wars, with spheres of inﬂuence and opposing coalitions. Although great power relations will probably vary from those that prevailed during any of the great twentieth-century conﬂicts, as conditions are never quite the same, they may vary less than seemed likely only a short while ago.

### Contention 2- Geneva

#### The courts failure to apply Geneva to detention policy has eviscerated the conventions credibility

Gruber 11 (Aya- Professor of Law, University of Colorado Law School, 1/1, “An Unintended Casualty of the War on Terror”, http://scholarworks.gsu.edu/gsulr/vol27/iss2/12/)

As President Obama inches ever closer to embracing the “twilight zone” model of terrorism law, it would be wise to keep in mind the reputational harm the Bush administration’s war on terror caused the United States. One human rights advocate warned the Obama administration, “The results of the cases [tried in military commissions] will be suspect around the world. It is a tragic mistake to continue them.”200 More than just a source of embarrassment, there are real consequences to America’s sullied international reputation. Our experiments with “alternative” military justice not only affect our high court’s world influence, they operatively prevent the United States from assuming a leadership role in defining and defending international human rights. For example, in 2007, the Chinese government responded to the U.S. State Department’s annual human rights report by stating that America had no standing to comment on others’ human rights violations given its conduct of the war on terror. Specifically, the Chinese characterized the United States as “pointing the finger” at other nations while ignoring its “flagrant record of violating the Geneva Convention.”201 Supreme Court validation of treaty law would no doubt help repair the international reputation of the United States.202 The lesson here is about fear and missed opportunity. Guantánamo stands as a stark reminder of the great importance of international humanitarian law during times of crisis. The Geneva Conventions were the very barrier between terrorism detainees and a government regime singularly committed to national security through any means possible. Unfortunately, when international law mattered most, even the liberal Supreme Court justices avoided cementing its legal status. By contrast, Medellín, a convicted murderer, was apparently afforded the full panoply of constitutional protections, and in all likelihood, his inability to confer with consular officials did not prejudice his case. Much less was at stake, and those on the Supreme Court critical of humanitarian law impediments to waging the war on terror could fashion anti-internationalist rules with little public fanfare or liberal resistance. Consequently, although Hamdan will likely go down in history as evidence of the Court’s willingness to protect individual rights in the face of massive public fear and executive pressure, it also represents a failure to truly support the comprehensive international regime governing war-time detention, a regime in which the United States long ago vowed to participate. But all may not be lost. The Supreme Court might have another chance to rule on the status of the Geneva Conventions, and Medellín leaves some wiggle room on self-execution. If the Supreme Court is once again to be a beacon of judicial light, it must move beyond the xenophobic exceptionalism of the Bricker past and embrace the straightforward and fair principle that signed and ratified treaties are the law of the land.

#### Credible US lead of Geneva key to prevent hotspot escalation

Koh 4, dean of Yale Law School and professor of international agreement, 9/20/2004

(Harold, “On America's Double Standard,” http://prospect.org/article/americas-double-standard)

When the United States holds Taliban detainees at Guantanamo Bay, Cuba, without Geneva Convention hearings, then decries the failure of others to accord Geneva Convention protections to their American prisoners, it supports a double standard. When George W. Bush tries to “unsign” the International Criminal Court (ICC) treaty that Bill Clinton signed in 2000, yet expects other nations to honor signed treaties, he does the same. When U.S. courts ignore an International Court of Justice decision enjoining American execution of foreign nationals, even as we demand that other countries obey international adjudications that favor American interests, the United States is using its vast power and wealth to promote a double standard. In these and other instances, the United States proposes that a different rule should apply to itself than to the rest of the world. U.S. officials say that they must act to protect our security and to avoid unacceptable constraints on national prerogative. But to win the illusion of unfettered sovereignty, they are actually undermining America's capacity to participate in international affairs. Over the past two centuries, the United States has become party not just to a few treaties but to a global network of closely interconnected treaties enmeshed in multiple frameworks of international institutions. Unilateral administration decisions to bend or break one treaty commitment thus rarely end the matter; rather, they usually trigger vicious cycles of treaty violation. Repeated insistence on a double standard creates the damaging impression of a United States contemptuous of both its treaty obligations and its treaty partners, even as America tries to mobilize those same partners to help it solve problems it simply cannot solve alone -- most obviously, the war against global terrorism, but also the postwar construction of Iraq, the Middle East crisis, and the renewed nuclear militarization of North Korea. \* \* \* Historically, American administrations have tended to distance and distinguish themselves from the rest of the international community; human-rights advocates have often condemned this “American exceptionalism.” But while the promotion of double standards is indeed corrosive, not all forms of exceptional American behavior are equally harmful. America's distinctive rights culture, for example, sometimes sets it apart. Due to our particular history, some human rights, such as the norm of nondiscrimination based on race or First Amendment protections for speech and religion, have received far greater emphasis and judicial protection in the United States than in Europe. But our distinctive rights culture is not fundamentally inconsistent with universal human-rights values. Nor is America genuinely exceptional because it sometimes uses different labels to describe synonymous concepts. When I appeared before the UN Committee Against Torture in Geneva, Switzerland, to defend the first U.S. report on U.S. compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, I was asked the reasonable question of why the United States does not “maintain a single, comprehensive collation of statistics regarding incidents of torture and cruel, inhuman or degrading treatment or punishment,” a universally understood concept. My answer, in effect, was that we applied different labels, not different standards. The myriad bureaucracies of the federal government, the 50 states, and the territories did gather statistics regarding torture and cruel, inhuman, or degrading treatment, but we called that practice different things, including “cruel and unusual punishment,” “police brutality,” “section 1983 actions,” applications of the exclusionary rule, violations of civil rights under color of state law, and the like. Refusing to accept the internationally accepted term reflected national quirkiness, somewhat akin to our continuing use of feet and inches rather than the metric system. A third form of American exceptionalism, our penchant for non-ratification (or ratification with reservations) of international treaties, is more problematic -- but for the United States, not for the world. For example, it is a huge embarrassment that only two nations in the world -- the United States and Somalia, which until recently did not have an organized government -- have not ratified the international Convention on the Rights of the Child. But this is largely our loss. In no small part because of its promiscuous failure to ratify a convention with which it actually complies in most respects, the United States rarely gets enough credit for the large-scale moral and financial support that it actually gives to children's rights around the world. In my view, by far the most dangerous and destructive form of American exceptionalism is the assertion of double standards. For by embracing double standards, the United States invariably ends up not on the higher rung but on the lower rung with horrid bedfellows -- for example, such countries as Iran, Nigeria, and Saudi Arabia, the only other nations that have not in practice either abolished or declared a moratorium on the imposition of the death penalty on juvenile offenders. This appearance of hypocrisy sharply weakens America's claim to lead globally through moral authority. More important, by opposing global rules in order to loosen them for our purposes, the United States can end up -- as it has done with the Geneva Conventions -- undermining the legitimacy of the rules themselves, just when we need them most.

#### These scenarios outweigh- escalation is guaranteed

Ratner, 8 (Law Prof-Michigan, “Think Again: Geneva Conventions,” 2/19, http://www.foreignpolicy.com/articles/2008/02/19/think\_again\_geneva\_conventions?page=0,6)

“No Nation Flouts the Geneva Conventions More than the United States” That’s absurd. When bullets start flying, rules get broken. The degree to which any army adheres to the Geneva Conventions is typically a product of its professionalism, training, and sense of ethics. On this score, U.S. compliance with the conventions has been admirable, far surpassing many countries and guerrilla armies that routinely ignore even the most basic provisions. The U.S. military takes great pride in teaching its soldiers civilized rules of war: to preserve military honor and discipline, lessen tensions with civilians, and strive to make a final peace more durable. Contrast that training with Eritrea or Ethiopia, states whose ill-trained forces committed numerous war crimes during their recent border war, or Guatemala, whose army and paramilitaries made a policy of killing civilians on an enormous scale during its long civil conflict. More importantly, the U.S. military cares passionately that other states and nonstate actors follow the same rules to which it adheres, because U.S. forces, who are deployed abroad in far greater numbers than troops from any other nation, are most likely to be harmed if the conventions are discarded. Career U.S. military commanders and lawyers have consistently opposed the various reinterpretations of the conventions by politically appointed lawyers in the Bush White House and Justice Department for precisely this reason. It is enormously important that the United States reaffirms its commitment to the conventions, for the sake of the country’s reputation and that of the conventions. Those who rely on the flawed logic that because al Qaeda does not treat the conventions seriously, neither should the United States fail to see not only the chaos the world will suffer in exchange for these rules; they also miss the fact that the United States will have traded basic rights and protections harshly learned through thousands of years of war for the nitpicking decisions of a small group of partisan lawyers huddled in secret. Rather than advancing U.S. interests by following an established standard of behavior in this new type of war, the United States—and any country that chooses to abandon these hard-won rules—risks basing its policies on narrow legalisms. In losing sight of the crucial protections of the conventions, the United States invites a world of wars in which laws disappear. And the horrors of such wars would far surpass anything the war on terror could ever deliver.

#### Credibility on detention solves terror and the environment

Wexler 8 (Lesley, Assistant Professor, Florida State University College of Law, “HUMAN RIGHTS IMPACT STATEMENTS: AN IMMIGRATION CASE STUDY,” 22 Geo. Immigr. L.J. 285, Lexis)

Enhancing our reputation for human rights compliance is especially important given current political realities. Many countries hold a declining opinion of the United States.53 The international community would welcome America’s affirmation of the continuing importance of human rights in the wake of many post-September 11th actions such as torture, extraordinary rendition, increased domestic surveillance, and harsher and more frequent detention of immigrants. Moreover, the international community would benefit from the assurance that the concept of “human rights” means more than a justification for regime change.54 American exceptionalism to human rights law angers our allies and complicates efforts to secure their cooperation.55 Not surprisingly, many countries view the United States’ silence about its own human rights failings as hypocritical.56 In particular, the international community strongly criticizes the State Department’s annual human rights reports for omitting an assessment of domestic performance as well as omitting “actions by governments taken at the request of the United States or with the expressed support of the United States . . . .”57 Human rights advocates suggest that U.S. leadership on human rights faces a severe credibility gap - for instance, other countries perceive the United States as a laggard on human rights treaty compliance in regards to migrants58 - but that repudiation of past abuses and momentum for policy changes could restore its leadership.59¶ As many have suggested, good international relations are vital to winning the War on Terror.60 Moreover, international cooperation is essential to address immigration related issues such as human trafficking. A visible commitment to migrants’ human rights might bolster the United States’ credibility when it seeks better treatment for the approximately 2 million American émigrés.61 Other international problems, such as climate change and related environmental issues, also require cooperation and leadership. An increased willingness to participate in global human rights discourse and demonstrate adherence to human rights treaties might enhance our ability to lead and participate in other arenas.

#### Terrorism leads to extinction

Hellman, 08 [Martin E. Hellman, emeritus prof of engineering @ Stanford, “Risk Analysis of Nuclear Deterrence” SPRING 2008 THE BENT OF TAU BETA PI, http://www.nuclearrisk.org/paper.pdf]

The threat of nuclear terrorism looms much larger in the public’s mind than the threat of a full-scale nuclear war, yet this article focuses primarily on the latter. An explanation is therefore in order before proceeding. A terrorist attack involving a nuclear weapon would be a catastrophe of immense proportions: “A 10-kiloton bomb detonated at Grand Central Station on a typical work day would likely kill some half a million people, and inflict over a trillion dollars in direct economic damage. America and its way of life would be changed forever.” [Bunn 2003, pages viii-ix]. The likelihood of such an attack is also significant. Former Secretary of Defense William Perry has estimated the chance of a nuclear terrorist incident within the next decade to be roughly 50 percent [Bunn 2007, page 15]. David Albright, a former weapons inspector in Iraq, estimates those odds at less than one percent, but notes, “We would never accept a situation where the chance of a major nuclear accident like Chernobyl would be anywhere near 1% .... A nuclear terrorism attack is a low-probability event, but we can’t live in a world where it’s anything but extremely low-probability.” [Hegland 2005]. In a survey of 85 national security experts, Senator Richard Lugar found a median estimate of 20 percent for the “probability of an attack involving a nuclear explosion occurring somewhere in the world in the next 10 years,” with 79 percent of the respondents believing “it more likely to be carried out by terrorists” than by a government [Lugar 2005, pp. 14-15]. I support increased efforts to reduce the threat of nuclear terrorism, but that is not inconsistent with the approach of this article. Because terrorism is one of the potential trigger mechanisms for a full-scale nuclear war, the risk analyses proposed herein will include estimating the risk of nuclear terrorism as one component of the overall risk. If that risk, the overall risk, or both are found to be unacceptable, then the proposed remedies would be directed to reduce which- ever risk(s) warrant attention. Similar remarks apply to a number of other threats (e.g., nuclear war between the U.S. and China over Taiwan). his article would be incomplete if it only dealt with the threat of nuclear terrorism and neglected the threat of full- scale nuclear war. If both risks are unacceptable, an effort to reduce only the terrorist component would leave humanity in great peril. In fact, society’s almost total neglect of the threat of full-scale nuclear war makes studying that risk all the more important. The cosT of World War iii The danger associated with nuclear deterrence depends on both the cost of a failure and the failure rate.3 This section explores the cost of a failure of nuclear deterrence, and the next section is concerned with the failure rate. While other definitions are possible, this article defines a failure of deterrence to mean a full-scale exchange of all nuclear weapons available to the U.S. and Russia, an event that will be termed World War III. Approximately 20 million people died as a result of the first World War. World War II’s fatalities were double or triple that number—chaos prevented a more precise deter- mination. In both cases humanity recovered, and the world today bears few scars that attest to the horror of those two wars. Many people therefore implicitly believe that a third World War would be horrible but survivable, an extrapola- tion of the effects of the first two global wars. In that view, World War III, while horrible, is something that humanity may just have to face and from which it will then have to recover. In contrast, some of those most qualified to assess the situation hold a very different view. In a 1961 speech to a joint session of the Philippine Con- gress, General Douglas MacArthur, stated, “Global war has become a Frankenstein to destroy both sides. … If you lose, you are annihilated. If you win, you stand only to lose. No longer does it possess even the chance of the winner of a duel. It contains now only the germs of double suicide.” Former Secretary of Defense Robert McNamara ex- pressed a similar view: “If deterrence fails and conflict develops, the present U.S. and NATO strategy carries with it a high risk that Western civilization will be destroyed” [McNamara 1986, page 6]. More recently, George Shultz, William Perry, Henry Kissinger, and Sam Nunn4 echoed those concerns when they quoted President Reagan’s belief that nuclear weapons were “totally irrational, totally inhu- mane, good for nothing but killing, possibly destructive of life on earth and civilization.” [Shultz 2007] Official studies, while couched in less emotional terms, still convey the horrendous toll that World War III would exact: “The resulting deaths would be far beyond any precedent. Executive branch calculations show a range of U.S. deaths from 35 to 77 percent (i.e., 79-160 million dead) … a change in targeting could kill somewhere between 20 million and 30 million additional people on each side .... These calculations reflect only deaths during the first 30 days. Additional millions would be injured, and many would eventually die from lack of adequate medical care … millions of people might starve or freeze during the follow- ing winter, but it is not possible to estimate how many. … further millions … might eventually die of latent radiation effects.” [OTA 1979, page 8] This OTA report also noted the possibility of serious ecological damage [OTA 1979, page 9], a concern that as- sumed a new potentiality when the TTAPS report [TTAPS 1983] proposed that the ash and dust from so many nearly simultaneous nuclear explosions and their resultant fire- storms could usher in a nuclear winter that might erase homo sapiens from the face of the earth, much as many scientists now believe the K-T Extinction that wiped out the dinosaurs resulted from an impact winter caused by ash and dust from a large asteroid or comet striking Earth. The TTAPS report produced a heated debate, and there is still no scientific consensus on whether a nuclear winter would follow a full-scale nuclear war. Recent work [Robock 2007, Toon 2007] suggests that even a limited nuclear exchange or one between newer nuclear-weapon states, such as India and Pakistan, could have devastating long-lasting climatic consequences due to the large volumes of smoke that would be generated by fires in modern megacities. While it is uncertain how destructive World War III would be, prudence dictates that we apply the same engi- neering conservatism that saved the Golden Gate Bridge from collapsing on its 50th anniversary and assume that preventing World War III is a necessity—not an option.

#### Risk of theft is high, and attack escalate quickly

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

#### Environmental degradation risks extinction

Coyne 7 (Jerry and Hopi Hoekstra , \*professor in the Department of Ecology and Evolution at the University of Chicago AND Associate Professor in the Department of Organismic and Evolutionary Biology at Harvard University, New Republic, “The Greatest Dying,” 9/24, http://www.truthout.org/article/jerry-coyne-and-hopi-e-hoekstra-the-greatest-dying)

But it isn't just the destruction of the rainforests that should trouble us. Healthy ecosystems the world over provide hidden services like waste disposal, nutrient cycling, soil formation, water purification, and oxygen production. Such services are best rendered by ecosystems that are diverse. Yet, through both intention and accident, humans have introduced exotic species that turn biodiversity into monoculture. Fast-growing zebra mussels, for example, have outcompeted more than 15 species of native mussels in North America's Great Lakes and have damaged harbors and water-treatment plants. Native prairies are becoming dominated by single species (often genetically homogenous) of corn or wheat. Thanks to these developments, soils will erode and become unproductive - which, along with temperature change, will diminish agricultural yields. Meanwhile, with increased pollution and runoff, as well as reduced forest cover, ecosystems will no longer be able to purify water; and a shortage of clean water spells disaster. In many ways, oceans are the most vulnerable areas of all. As overfishing eliminates major predators, while polluted and warming waters kill off phytoplankton, the intricate aquatic food web could collapse from both sides. Fish, on which so many humans depend, will be a fond memory. As phytoplankton vanish, so does the ability of the oceans to absorb carbon dioxide and produce oxygen. (Half of the oxygen we breathe is made by phytoplankton, with the rest coming from land plants.) Species extinction is also imperiling coral reefs - a major problem since these reefs have far more than recreational value: They provide tremendous amounts of food for human populations and buffer coastlines against erosion. In fact, the global value of "hidden" services provided by ecosystems - those services, like waste disposal, that aren't bought and sold in the marketplace - has been estimated to be as much as $50 trillion per year, roughly equal to the gross domestic product of all countries combined. And that doesn't include tangible goods like fish and timber. Life as we know it would be impossible if ecosystems collapsed. Yet that is where we're heading if species extinction continues at its current pace. Extinction also has a huge impact on medicine. Who really cares if, say, a worm in the remote swamps of French Guiana goes extinct? Well, those who suffer from cardiovascular disease. The recent discovery of a rare South American leech has led to the isolation of a powerful enzyme that, unlike other anticoagulants, not only prevents blood from clotting but also dissolves existing clots. And it's not just this one species of worm: Its wriggly relatives have evolved other biomedically valuable proteins, including antistatin (a potential anticancer agent), decorsin and ornatin (platelet aggregation inhibitors), and hirudin (another anticoagulant). Plants, too, are pharmaceutical gold mines. The bark of trees, for example, has given us quinine (the first cure for malaria), taxol (a drug highly effective against ovarian and breast cancer), and aspirin. More than a quarter of the medicines on our pharmacy shelves were originally derived from plants. The sap of the Madagascar periwinkle contains more than 70 useful alkaloids, including vincristine, a powerful anticancer drug that saved the life of one of our friends. Of the roughly 250,000 plant species on Earth, fewer than 5 percent have been screened for pharmaceutical properties. Who knows what life-saving drugs remain to be discovered? Given current extinction rates, it's estimated that we're losing one valuable drug every two years. Our arguments so far have tacitly assumed that species are worth saving only in proportion to their economic value and their effects on our quality of life, an attitude that is strongly ingrained, especially in Americans. That is why conservationists always base their case on an economic calculus. But we biologists know in our hearts that there are deeper and equally compelling reasons to worry about the loss of biodiversity: namely, simple morality and intellectual values that transcend pecuniary interests. What, for example, gives us the right to destroy other creatures? And what could be more thrilling than looking around us, seeing that we are surrounded by our evolutionary cousins, and realizing that we all got here by the same simple process of natural selection? To biologists, and potentially everyone else, apprehending the genetic kinship and common origin of all species is a spiritual experience - not necessarily religious, but spiritual nonetheless, for it stirs the soul. But, whether or not one is moved by such concerns, it is certain that our future is bleak if we do nothing to stem this sixth extinction. We are creating a world in which exotic diseases flourish but natural medicinal cures are lost; a world in which carbon waste accumulates while food sources dwindle; a world of sweltering heat, failing crops, and impure water. In the end, we must accept the possibility that we ourselves are not immune to extinction. Or, if we survive, perhaps only a few of us will remain, scratching out a grubby existence on a devastated planet. Global warming will seem like a secondary problem when humanity finally faces the consequences of what we have done to nature: not just another Great Dying, but perhaps the greatest dying of them all.

### Plan

#### Plan: The United States federal judiciary should restrict the authority of the President of the United States to indefinitely detain by ruling that Third Geneva Convention Article Five rights are self-executing for those combatants found in adherence to the Third Geneva Convention.

### Contention 3- Solvency

#### A selective interpretation is key- expansive interpretations anger our allies, and erode the credibility of the treaty

CSP 2 (Center for Security Policy, Excerpts from articles written by History Profs at Oxford & Sarah Lawrence and WSJ Editorial, Worried About Civilian Casualties in the War on Terror? Don’t Allow Terrorists to Masquerade as Non-Combattants, 2/13, http://www.centerforsecuritypolicy.org/2002/02/13/worried-about-civilian-casualties-in-the-war-on-terror-dont-allow-terrorists-to-masquerade-as-non-combattants-2/)

Fortunately, in recent days, two published items have helpfully clarified the compelling reasons for the U.Sgovernment to continue rejecting appeals to call the detainees POWsThe first is an excellent White Paper by the Foundation for Defense of Democracies co-authored by Andrew Apostolou, an historian at Oxford University, and Fredric Smoler, a professor of history at Sarah Lawrence CollegeThe second appeared as an editorial in the Wall Street Journal on 11 FebruaryBoth should be required reading for everyone participating in the debate over those incarcerated at GitmoExcerpts from The Geneva Convention Is Not a Suicide Pact by Andrew Apostolou and Fredric Smoler, Foundation for the Defense of Democracy Maintaining a strict distinction between lawful combatants (conscripts, professionals, militiamen and resistance fighters) and unlawful combatants (such as bandits and terrorists) not only protects the dignity of real soldiers, it safeguards civiliansBy defining who can be subject to violence and capture, the horror of war is, hopefully, focused away from civilians and limited to those willing put themselves in the line of fire, and seek no cover other than that acquired by military skill If we want soldiers to respect the lives of civilians and POWs, soldiers must be confident that civilians and prisoners will not attempt to kill them Civilians who abuse their non-combatant status are a threat not only to soldiers who abide by the rules, they endanger innocents everywhere by drastically eroding the legal and customary restraints on killing civiliansRestricting the use of arms to lawful combatants has been a way of limiting war’s savagery since at least the Middle AgesIn addition to the legal and military practicalities, there is an obvious moral danger in setting the precedent that captured terrorists are soldiers Not only does that elevate Mohammad Atta from a calculating murderer into a combatant, it puts the IRA, ETA and the Red Brigades on a par with the Marine Corps and the French ResistanceThe U.Sis trying hard to find the most humane way to wage, and win, this warThere is no precedent for this challenge and no perfect legal model that can be taken off the shelfYet it is precisely because the U.Stakes the Geneva Convention seriously, with both its protections for combatants and the line it draws between combatants and civilians, that the U.Sis being so careful in the use of the POW labelSome of the detainees may yet be termed POWs, but restricting the Geneva Convention’s protections to those who obey its rules is the only mechanism that can make the Geneva Convention enforceable Supreme Court Justice Robert Jackson once said that the U.S Constitution is not a suicide pact Neither is the Geneva Convention If well-meaning but misguided human rights activists turn the Geneva Convention into a terrorist’s charter and a civilian’s death warrant, the result will be that it will be universally ignored, with all that implies for the future of the international rule of law Geneva Conviction Review & Outlook The Wall Street Journal, 11 February 2002 If international human rights groups had the courage of their convictions, they’d applaud President Bush’s decision last week that the Geneva Convention applies to Taliban, but not al Qaeda, fighters captured by the U.SIn doing so, he is showing more respect for the Convention than his critics The core purpose of the Geneva Convention is to encourage the conduct of war in a way that minimizes violence to civiliansAnother aim is to encourage respect for basic human dignities — toward civilians, combatants and captivesYet another goal is to encourage warring powers to set up chains of command to ensure that combatants are held responsible for their actionsOne of the most important ways the Convention accomplishes these goals is to require that warring parties make a distinction between combatants and civiliansSoldiers are supposed to be subject to a chain of command, wear insignia and carry their arms openly; they are required to abide by the laws of war, which forbid attacks on civiliansIf they don’t, then they’re not soldiers; they are illegal combatants, not entitled to the protections of the Convention Breaking down this distinction — as the human rights groups wish to do — would have the effect of legitimatizing terrorists and giving them more incentives to hide among civilians and go after civilian targets.

#### Application of the conventions solves credibility, roadblocks and circumvention

Feldman 13 (Noah, professor of Constitutional and International Law at Harvard, “Obama Can Close Guantanamo: Here’s How,” Bloomberg, May 7, 2013, http://www.bloomberg.com/news/2013-05-07/obama-has-leverage-to-get-his-way-on-guantanamo.html)

To deepen the argument beyond executive power, the president is also in charge of foreign affairs. Keeping the detainees at Guantanamo is very costly to international relations, since most nations see the prison there as a reminder of the era of waterboarding and abuses at the Abu Ghraib prison in Iraq. Surely the president should be able to salvage the U.S.’s reputation without being held hostage by Congress?¶ The answer from Congress would have several elements. First, Congress has the power to enact a law defining who can come into the U.S., and the American public doesn’t want the detainees in the country either for trial or in a new Supermax facility. Second, Congress has the power to declare war and could conceivably assert that this should include the right to tell the president how to treat prisoners. Then there’s the power of the purse: Congress could make things difficult by declining to authorize funds for a sui table new stateside detention facility.¶ Faced with a standoff between two branches, the system allows an orderly answer: turning to the third branch, the courts, to resolve the conflict. Since 2003, the Supreme Court has taken an interest in Guantanamo, deciding on the statutory and constitutional rights extended there, and vetting procedures for detainee hearings and trials. Along the way, it has shown an equal-opportunity willingness to second-guess the executive -- as when President George W. Bush denied hearings to detainees -- and Congress, which passed a law denying habeas corpus to the prisoners.¶ How could the court get involved? The first step would be for the Obama administration to show some of the legal self-confidence it did in justifying drone strikes against U.S. citizens or in ignoring the War Powers Resolution in the Libya military intervention. Likewise, it could assert a right of control over where the detainees should be held. And if the president’s lawyers are worried about Bush-style assertions of plenary executive power (which, for the record, didn’t concern them when it came to drones or Libya), there is a path they could follow that would hew closer to their favored constitutional style.¶ Geneva Conventions¶ The reasoning could look like this: The president’s war power must be exercised pursuant to the laws of war embodied in the Geneva Conventions. And though Guantanamo once conformed to those laws -- as the administration asserted in 2009 -- it no longer does. The conditions are too makeshift to manage the continuing prisoner resistance, and indefinite detention in an indefinite war with no enemy capable of surrendering is pressing on the bounds of lawful POW detention.¶ Congress doesn’t have the authority to force the president to violate the laws of war. Yet by blocking Obama from closing Guantanamo, that is just what Congress is doing. What’s more, he has the inherent authority to ensure that we are complying with our treaty obligations.

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

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

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

#### No disads- Congress removed transfer restrictions for detainees- Obama signing it proves he won’t circumvent

ACLU 12/20 (Senate Eases Transfer Restrictions for Guantánamo Detainees <https://www.aclu.org/national-security/senate-eases-transfer-restrictions-guantanamo-detainees>)

WASHINGTON – The Senate late last night passed the National Defense Authorization Act for fiscal year 2014, which will ease transfer restrictions for detainees currently held at the military detention camp at Guantánamo Bay, Cuba, most of whom have been held without charge or trial for over a decade. The bill, which passed the House of Representatives last week, cleared the Senate by a vote of 84-15. The improved transfer provisions were sponsored by Senate Armed Services Committee Chairman Carl Levin and were strongly supported by the White House and the Defense Department. "This is a big step forward for meeting the goal of closing Guantánamo and ending indefinite detention. For the first time ever, Congress is making it easier, rather than harder, for the Defense Department to close Guantánamo – and this win only happened because the White House and Defense Secretary worked hand in hand with the leadership of the congressional committees," said Christopher Anders, senior legislative counsel at the ACLU’s Washington Legislative Office. "After years of a blame-game between Congress and the White House, both worked together to clear away obstacles to transferring out of Guantánamo the vast majority of detainees who have never been charged with a crime." The current population at Guantánamo stands at 158 detainees, approximately half of whom were cleared for transfer to their home or third-party countries by U.S. national security officials four years ago. Also, periodic review boards have recently started reviews of detainees who have not been charged with a crime and had not been cleared in the earlier reviews. While the legislation eases the transfer restrictions for sending detainees to countries abroad, it continues to prohibit the transfer of detainees to the United States for any reason, including for trial or medical emergencies. "There has been a sea change on the Guantánamo issue, both in Congress and at the White House. With the president’s renewed commitment to closing it, and the support of Congress, there now is reason to hope that the job of closing Guantánamo and ending indefinite detention can get done before the president leaves office," said Anders. "As big as this win is, there is more work left to be done. The Defense Department has to use the new transfer provisions to step up transfers out of Guantánamo, and Congress needs to remove the remaining ban on using federal criminal courts to try detainees."

# 2AC

## Solvency

### Yes Impact NW

#### Yes impact- longevity of study, specificity of details, and superior models

UCAR 3/4 (The University Corporation for Atmospheric Research is a consortium of more than 100 member colleges and universities focused on research and training in the atmospheric and related Earth system sciences. Our members set d irections and priorities for the National Center for Atmospheric Research, which UCAR manages with sponsorship by the National Science Foundation, 2014, “Regional Nuclear War Would Have Global Reach”, http://www2.ucar.edu/atmosnews/research/11155/regional-nuclear-war-would-have-global-reach)

Scientists for several decades. have studied the potential environmental impacts of a nuclear conflict—either an all-out conflagration between superpowers or a more limited regional war Now a research team led by NCAR has produced an unusually detailed picture of the aftermath of a hypothetical regional nuclear war by using a modeling approach that includes simulations of atmospheric chemistry, the oceans, land surface, and sea ice.¶ The study, published this month in the American Geophysical Union journal Earth’s Future, finds that an exchange of 100 nuclear weapons between two regional adversaries would have more severe global implications for society and the environment than previously thought.¶ The research team’s model simulations show that global temperatures would drop initially by 1.5 degrees Celsius (about 2.7 degrees Fahrenheit) to their lowest levels in more than 1,000 years. The cooling would be caused by firestorms in major cities lofting ash and other particles high into the atmosphere, where they would block incoming solar heat. The colder temperatures would reduce precipitation, likely leading to widespread fires in regions such as the Amazon and pumping still more smoke into the atmosphere.¶ Whereas previous studies had projected that global temperatures would recover after about a decade, the new work indicates that cooling would persist at least 26 years, which is as far into the future as the simulations went. Two major factors would cause this prolonged cooling: an expansion of sea ice that would reflect more solar heat into space, and a significant cooling in the upper 100 meters (about 330 feet) of the oceans, which would warm only gradually.¶ The new study also tracked the influence of the urban firestorms on stratospheric chemistry. Approximately five teragrams of black carbon would be lofted up to the stratosphere, where it would spread globally. The smoke would absorb sunlight and heat the stratosphere, accelerating chemical reactions that destroy ozone. The resulting damage to the ozone layer would allow much greater amounts of ultraviolet radiation to reach Earth’s surface. The midlatitudes would experience a summertime UV increase of 30-80 percent.¶ The colder temperatures and higher UV levels could have widespread and potentially devastating impacts on society, the authors found. In addition to the destruction caused directly by the nuclear bombs, the colder temperatures worldwide would lead to killing frosts that would reduce growing seasons by 10-40 days per year for several years. The higher levels of UV would pose a threat to human health, agriculture, and terrestrial and aquatic ecosystems.¶ The research team used an NCAR-based computer model: the Community Earth System Model, which simulates interactive responses in atmosphere, ocean, land, and sea ice components of the Earth's climate system. For the atmospheric component, the team turned to the Whole Atmosphere Community Climate Model, which extends from the Earth's surface to the edge of space, and includes interactive calculations of stratospheric ozone chemistry and atmospheric dynamics.¶ The scientists ran a total of seven simulations, comparing a hypothetical war between two nations that have developed nuclear arms relatively recently (India and Pakistan) with control simulations in which there was no nuclear war.¶ “It’s such a complex process that you need sophisticated climate models to understand it,” said NCAR scientist Michael Mills, the lead author. “As we get a more detailed picture, we find that the atmospheric effects for a given amount of weapons deployed are even more severe than we previously thought.”¶ He added that the 100 relatively small nuclear bombs in the study represent just a small fraction of the world’s approximately 17,000 nuclear weapons.

### Yes GPW

#### This argument is patently false—we answer a majority of your warrants

**Snyder 12**—Professor of History at Yale University [January/February, Timothy, “War No More: Why the World Has Become More Peaceful”, *Foreign Affairs*, 91. 1, AL]

In his vivid descriptions of the distant and recent past, Pinker draws from a wide range of fields beyond his own to chart the decline of violence, which he says "may be the most important thing that has ever happened in human history." He argues that prehistory was much more violent than early civilization and that the past few decades have been much less violent than the first half of the twentieth century. He is opposing two common and related presumptions: that the time before civilization was a golden age and that the present moment is one of unique danger. Pinker rejects the idea that violence is "hydraulic," a pressure within individuals and societies that at some point must burst through. He prefers to see violence as "strategic," a choice that makes sense within certain historical circumstances. Thus, he describes two fundamental transitions: from the anarchy of hunting and gathering societies to the controlled violence of early states and then from a "culture of honor" associated with these states to a "culture of dignity" characteristic of the better moments of modernity. In Pinker's view, the state monopolizes violence and creates the possibility of fruitful trade and intellectual exchange, which in turn permit the development of a new, irenic individuality. Pinker's first target is the tendency to romanticize the distant past. Since he believes that people fantasize about a peaceful prehistory, he deliberately over - emphasizes its violence, dwelling at length on the bloodiest passages of the Old Testament. His cheerful admission of this writerly tactic presages not only the friendly tone of the entire book but also one of its shortcomings. Although Pinker writes as a scientist, his approach in this book is discursive rather than deductive, charmingly but not quite persuasively advancing his ex cathedra views about life in general. The research of others, although abundantly and generously cited, too often seems to footnote Pinker's own prior assumptions. He is most likely correct that prehistoric life was more violent than life in agrarian civilizations and modern states, but the way he pitches the evidence raises suspicions **from the very beginning**. He provides horrifying descriptions of premodern killings, but not of their modern counterparts, which generates a certain narrative bias. The evidence of strikingly brutal premodern warfare and sacrifice is less conclusive than he suggests, since archaeologists are more likely to find the remains of people who die in unusual ways, beyond the reach of communal cremation or at the center of a communal ritual. The book features neat charts showing the relative decline of violence over time. But the sources Pinker cites for the numbers of dead are themselves just aggregates of other estimates, the vast majority of which, if one follows the thread of sources to the end, turn out to be more or less informed guesses. Yet even if Pinker is right that the ratio of violent to peaceful deaths has improved over time (and he probably is), his metric of progress deserves a bit more attention than he gives it. His argument about decreasing violence is a relative one: not that more people were killed annually in the past than are killed in a given year of recent history but that more people were killed relative to the size of the overall human population, **which is of course vastly larger** today than in earlier eras. But ask yourself: Is it preferable for ten people in a group of 1,000 to die violent deaths or for ten million in a group of one billion? For Pinker, the two scenarios are exactly the same, since in both, an individual person has a 99 percent chance of dying peacefully. Yet in making a moral estimate about the two outcomes, one might also consider the extinction of more individual lives, one after another, and the grief of more families of mourners, one after another. Today's higher populations also pose a deeper methodological problem. Pinker plays down the technical ability of modern societies to support greater numbers of human lives. If carrying capacity increases faster than mass murder, this looks like moral improvement on the charts, but it might mean only that fertilizers and anti - biotics are outpacing machine guns and machetes-**for now**. There is also a more fundamental way in which the book is unscientific. Pinker presents the entirety of human history in the form of a natural experiment. But he contaminates the experiment by arranging the evidence to fit his personal view about the proper destiny of the invdividual: first, to be tamed by the state, then, to civilize himself in opposition to the state. The state appears in Pinker's history only when it confines itself to the limited role that he believes is proper, and enlightenment figures as the rebellion of intelligent individuals against the state's attempt to exceed its assigned role. SOLID STATE Following a long tradition that he associates with Thomas Hobbes, Pinker emphasizes the durable coercive state as the fount of social order. States are important because they suppress the individual violence that occurs whenever people compete for limited resources. States solve the security dilemma: when one institution monopolizes violence, individuals or tribes do not have to worry incessantly that other individuals or tribes will strike them first and thus need not strike first themselves. So far, so good. But the creation of states necessitates a second level of analysis in the book, one that Pinker does not really sustain. If the subject is violence, and states are in the picture, then the analysis requires a theory of interstate violence-war, in other words-as well as a sociological analysis of the development of pacific individuals within each state. After all, **some of the very traits that maintain social order**, such as the habit of obedience to authority, **also make total wars and policies of mass killing possible**. Instead of facing this problem squarely, Pinker conflates homicide and war. But as Pinker knows, states with low homicide rates have initiated horribly aggressive wars. Pinker's account of the development of the state more or less stops around the French Revolution, in 1789, when his focus shifts to Enlightenment thinkers concerned with human rights and the protection of individuals from state power. The state begins as a solution for barbarians, then becomes a problem for intellectuals. Since Pinker's picture of the state is almost entirely restricted to its capacity to repress violence, it is not surprising that he focuses on the risks posed to a free society by the state's power to coerce. But the state is not just a machine for controlling the violence of individuals, and its institutional development did not end in the eighteenth century. In Pinker's portrait of the modern era, the state is far in the background, even as it becomes far more capable of both good and evil. The main action is the advance of gentle commerce and human rights rhetoric, which Pinker presents as taking place apart from, or even despite, the state. But commerce is only gentle when a state can enforce property rights, overpower local rent seekers, and regulate trade. And human rights are enshrined and protected only through state action. Pinker, in a characteristically lucid formulation, notes that the emergence of the state transformed "warriors into courtiers." But his minimalist conception of the state does not include a crucial component: its ability to transform those courtiers into taxpayers. Elites who pay homage might be pacified on an individual basis, but those who pay taxes contribute to an entire system of pacification. Throughout the book, Pinker pays surprisingly little attention to obviously relevant achievements of the state in the nineteenth and twentieth centuries, such as mass education, pollution control, and public health. He believes that literacy pacifies but does not dwell on how the masses learn to read. He admits toward the end of the book that the prospect of "additional decades of existence" makes people less violent but has little to say about how lives got longer in ways that do not involve the simple reduction of violence. Disease has always taken more lives than killing, so medical care affects life expectancy more than homicide and war. Instead of tracking modern political history, Pinker reduces it to a matter of good faith and good ideas. When people read the right things, he thinks, they have the right ideas, and they are less violent. Pinker argues that reading generates understanding for those different from oneself and thus a capacity for reflective empathy. This is no doubt true, but the empathy is not necessarily universal. It is impossible to imagine the Reformation and the Counter-Reformation-and thus the religious wars of the sixteenth and seventeenth centuries-without the advent of the printing press. Pinker treats that period as one of religious madness, but it is hardly satisfying to read a critique of ideas that does not acknowledge why they had appeal or how they spread, especially when the technique of propagation is supposed to bring peace. Nationalism, which Pinker thinks led to the deaths of "tens of millions" of people, is also inconceivable without books, especially bad history books. For Pinker, religion and nationalism are simply the wrong ideas, and he casts himself as a kind of referee of intellectual history, showing a red card and removing the bad players from the field. THE WORLD WARS A similar intervention Pinker makes in his own experiment is to dismiss the two world wars and the episodes of mass killing that took place in the first half of the twentieth century. Pinker describes these horrors powerfully and eloquently but claims they are irrelevant to his argument. He is right that historians often impose too much coherence on that time period, wanting all the violence to somehow make sense. But Pinker errs toward the other extreme, portraying the two world wars as "horrifically unlucky samples from a statistical distribution," and the major episodes of mass murder as resulting from "a few contingent ideas and events." In other words, it was bad luck to have two big conflicts so close to each other, and more bad luck that they were associated with especially bad ideas. No doubt: but what does the brute fact that the wars happened mean for Pinker's argument, and for the immediate future? The central psychological virtue of modern civilization, Pinker claims, is "selfcontrol." Over the centuries, after people are pacified by the state, they learn to think ahead, to see the perspectives of others, and to pursue their ends without immediate violent action. Violence becomes not only impractical but also taboo. Nazi Germany, as Pinker seems to sense, represents a tremendous problem for this argument. Germany in the 1930s was probably the most functional state of its time, with low homicide rates and a highly literate population. Mastery of self was not the Nazis' problem; self-control was in fact a major element of the ss ethos, as preached by Reinhard Heydrich and Heinrich Himmler. Even Adolf Hitler practiced his emotive speeches. Lack of self-control was also not the problem for Joseph Stalin's executioners, or for Stalin and Stalinists generally. Individual Soviet nkvd men killed hundreds of people, one by one, in a single day; this can hardly be done without self-control of a very high order. To rescue his argument from the problem posed by the mass killings of the mid-twentieth century, Pinker resorts to claiming that a single individual, in the German case Hitler, was "mostly responsible." Here, he misrepresents the historians he cites. It is true that most historians would subscribe to some version of "no Hitler, no Holocaust." But what they mean is that Hitler was a necessary condition for such a calamity, not that he was a sufficient one. There were many other necessary conditions for Nazi racial imperialism. Take, for example, worries about the food supply. In the 1930s, food was highly valued in both Berlin and Moscow. This fact did not dictate which ideologies would define the two states. But in practice, both **Hitler and Stalin were obsessed with mastering and exploiting fertile soil**, the former to transform Germany into a self-sufficient, racially pure empire, the latter to finance the industrialization of the Soviet Union. Without recognizing the importance of scarce resources, it is impossible to understand the very different plans for agrarian colonization that the Nazi and Soviet ideologies sanctioned. But Pinker dismisses any claim that resources (rather than bad ideas) were related to the bloodiest conflicts in modern history as a "nutball conspiracy theory." This is an odd position for him to take, since his own history begins in a premodern world of conflict over resources. By insisting that ideas alone were to blame, he oversimplifies the issue. A more rigorous explanation would explain how political ideas interacted with scarcity, rather than insist that either one or the other must have been the problem. Modern ideologies were not, as in Pinker's metaphors, "toxic" forces that "drove" people to do this or that. They provided narratives to explain why some groups and individuals had better access to resources, and appealing visions of the future after an aggressive reordering. Nazi Germany and the Soviet Union were ideological states, but they cannot be dismissed from history simply because they were organized around the wrong ideas. Each of them had plans for economic development that were meant to privilege one group at the expense of others-plans that were inextricably entangled with justifications for why some people deserved more, others less, and others nothing but death (the extreme and unprecedented case being the Holocaust). These ideologies were effective in part because they motivated, and they motivated in part because they delivered, if not plenty, then at least visions of plenty. We are different from the Nazis and the Soviets not because we have more self-control-we don't. We are different largely because postwar improvements in agricultural technology have provided the West with reliable supplies of food, our massive consumption of which says much about our limited self-control. But what if food were to become scarcer and more expensive, as seems now to be the trend? What if unfavorable climate change were to outrun our technical capacities? Or what if melting glaciers leave societies such as China without fresh water? Pinker claims, unpersuasively, that global warming poses little threat to modern ways of life. But it hardly matters whether he is right: states are already taking action to minimize its consequences. China, for example, is buying up land in Africa and Ukraine in order to compensate for its own shortage of arable soil. The fresh water of Siberia must beckon. If scientists continue to issue credible warnings about the consequences of climate change, it would be surprising if leaders did not conjure up new reasons for preemptive violent action, positioning their states for a new age of want. L'E'TAT, C'EST NOUS Treating Nazi Germany as a historical aberration also allows Pinker to sidestep the question of how Germans and central and western Europeans became such peaceful people after the demise of Nazism. This is a strange oversight, since European pacifism and low European homicide rates are where he begins the book. Today's Europe is Pinker's gold standard, but he does not ask why its levels of violence are the lowest in all of his charts. If, as he contends, the "pleasures of bourgeois life" prevent people from fighting, Pinker should also consider the place where these are most fully developed, and how they became so. Pinker persuasively relates how postwar economic cooperation among European states led to a pacifying interdependence, but he fails to stress that the postwar rebirth of European economies was a state-led enterprise funded by a massive U.S. subsidy known as the Marshall Plan. And he says very little about the concurrent development of redistributive social policy within those states. State power goes missing in the very places where states became preoccupied with welfare rather than warfare. Pinker believes that people are more pacific when they have the time and the occasion to repeat interactions and reconsider their actions. Yet he has trouble acknowledging that, according to his own story, the one and only agent that can create that sort of cushioned society with educated minds and spare time has been the functional welfare state. This refusal seems rooted in Pinker's commitment to free-market libertarianism. His book's vision of a coming age of peace is a good example of how two trends favoring political passivity-the narcissistic discursiveness of the American left and the antistate prejudices of the American right- conspire in the same delusion: that while we talk, talk, talk, markets do the work of history. Unlike the Enlightenment thinkers he lauds, Pinker fails to see that the state is not simply, as he puts it, "an exogenous first domino" that fell long ago, beginning a chain of events but remaining motionless itself. L'état, c'est nous: the state is what we do, how we vote, the military service we do or do not perform, the taxes we do or do not pay, the federal grants that we do or do not apply for. Pinker shows his libertarian hand when he casually claims that "economic illiteracy" causes redistributive policies and thus "class conflict." Many have made this claim, of course, but as he notes without seeming to realize he is disproving his own hypothesis, today's redistributive European welfare states are the most peaceful in world history. Pinker, who exhibits no economic expertise, confuses economic literacy with a blind faith that unconstrained markets are a self-sustaining good. A principle of the scientific method is to arrange experiments so that one's own prior beliefs can be challenged. Pinker's natural experiment with history generates instead a selective rereading, in which his own commitments become the guiding moral light for past and future. But of course libertarianism, like all other ideologies, involves a normative account of resource distribution: those who have should keep. There is nothing scientific about this, although again, like all other ideologies, libertarianism presents itself simply as a matter of natural reason, or, in Pinker's case, "intelligence." Pinker goes so far as to suggest that libertarianism is equivalent to intelligence, since holding libertarian views correlates with high iq scores. Since he believes that the need to regularly adjust iq tests to preserve an average score of 100 means that we are growing more intelligent generation by generation, he deduces that we are becoming more libertarian. Pinker also conflates libertarian ideology with ethics, allowing him to conclude that we are therefore becoming increasingly moral. Each step in this argument is shaky, to say the least. As Pinker might have learned from Kant or Hume or any of the other Enlightenment figures he mentions, one cannot jump from reason to morals in this way. Even if each generation is brighter than the last, as Pinker believes, being smart is not the same thing as being just. To have an account of ethics, one needs to begin from ideas of right and wrong, not simply from mental habits that happen to be widespread in one's own milieu and moment. Pinker is to be praised for asking a crucial question-perhaps the crucial question-of modern history. But as he moves between the premodern world of violence and a postmodern style of discourse, he loses sight of the modern world in which we actually live. What he provides is less an answer to his question than a mode of reasoning that has little to do with the scientific study of the past and much to do with a worldview that happens to be his own.

#### Econ interdependence doesn’t prevent war

**Martin, Mayer and Thoenig, 2008 -** Phillipe, University of Paris 1 Pantheon—Sorbonne, Paris School of Economics, and Centre for Economic Policy Research; Thierry MAYER, University of Paris 1 Pantheon—Sorbonne, Paris School of Economics, CEPII, and Centre for Economic Policy Research, Mathias THOENIG, University of Geneva and Paris School of Economics, (The Review of Economic Studies 75)

Does globalization pacify international relations? The “liberal” view in political science argues that increasing trade flows and the spread of free markets and democracy should limit the incentive to use military force in interstate relations. This vision, which can partly be traced back to Kant’s Essay on Perpetual Peace (1795), has been very influential: The main objective of the European trade integration process was to prevent the killing and destruction of the two World Wars from ever happening again.1 Figure 1 suggests2 however, that during the 1870–2001 period, the correlation between trade openness and military conflicts is not a clear cut one. The first era of globalization, at the end of the 19th century, was a period of rising trade openness and multiple military conflicts, culminating with World War I. Then, the interwar period was characterized by a simultaneous collapse of world trade and conflicts. After World War II, world trade increased rapidly, while the number of conflicts decreased (although the risk of a global conflict was obviously high). There is no clear evidence that the 1990s, during which trade flows increased dramatically, was a period of lower prevalence of military conflicts, even taking into account the increase in the number of sovereign states.

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#### Ruling on I-law is key to solvency- perception matters

Hathaway 7 (Oona Hathaway, Yale Law School, 2007, “Hamdan v. Rumsfeld: Domestic Enforcement of International Law”, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1009621)

International law has long been subjected to the charge that it isn't really law - at least not in the sense that we usually imagine law. There is no international police force standing ready to enforce the laws of the international community against states that violate them. There is no court system that can adjudicate violations and assess penalties. And, with a few exceptions, there is no mechanism for penalizing states found to have fallen short of the law's rules. This has led some to conclude that most of international law is little more than cheap talk - words not backed up deeds and, hence, without any real force. And yet this view of international law misses much of what makes international law relevant and powerful: International law is not only enforced by states against one another, but it is also enforced by states against themselves. That is to say, it is enforced by domestic courts and political institutions that pressure their own government to live up to the promises it has made; it is enforced by individuals and interest groups that pressure the political branches of government to live up to international legal commitments they have made, whether they can be enforced in the courts or not; and it enforced by individuals or groups that use a state's own court system to enforce international law through litigation. It is this missing part of the picture - the enforcement of international law at home - that this essay brings to light. This essay explores these issues through the lens of one of the most important international law cases in the United States in at least the last decade: Hamdan v. Rumsfeld. The case powerfully illustrates both the promise and limits of domestic enforcement of international law. The circumstances that gave rise to it demonstrate the hurdles that domestic enforcement of international law faces in even the most robust democracies. It stands as a stark reminder that the domestic enforcement of international law relies not only on the existence of robust rule of law institutions, but also on the ability of those institutions to reach the cases in which international legal rules are at stake. And yet Hamdan also offers a more hopeful message: Domestic enforcement of international law can succeed even where there is stringent resistance by even the most powerful of political actors. The story of Hamdan is thus the story of both the fragility and the power of domestic enforcement of international law, and in this story lies broader lessons for the promise and limits of international law as a whole.

#### Only leads to enforcement of already ratified treaties

Lobel 11 (Jules Lobel, Bessie McKee Walthour Endowed Chair and Professor of Law, University of Pittsburgh

School of Law. Fundamental Norms, International Law, and the

Extraterritorial Constitution, <http://www.yjil.org/docs/pub/36-2-lobel-fundamental-norms.pdf>)

Nor would the use of international law to inform the reach of constitutional norms to U.S. action against aliens abroad be subject to the same objections that have been raised against the Court’s use of international or foreign law as an aid in determining the content of Americans’ constitutional rights.166 The question this approach raises is not whether “American law should conform to the laws of the rest of the world,” as Justice Scalia has put it,167 or even more modestly—as the Court has, in fact, used foreign and international law168—whether the views of other nations are helpful in interpreting the content of our constitutional principles. Rather, the Court would only be using nonderogable fundamental international norms to help determine which U.S. constitutional principles are so fundamental as never to be impracticable to apply abroad. Under this proposal, the Court would not actually apply international definitions of torture, cruel, inhumane or degrading treatment, genocide, prolonged arbitrary detention, or slavery, but would instead apply constitutional definitions of those terms, to the extent that the constitutional proscription was not broader than that provided by international law. The Senate, Congress, and several lower courts have used a similar technique to narrow the application of the International Covenant on Civil and Political Rights prohibition on cruel, inhumane, and degrading treatment to only prohibit conduct which would violate the U.S. Constitution.

#### No uniqueness- ATS cases will be heard now, and they will win

Anderson 9/23 (Kenneth- Professor of Law, Washington College of Law at American University, 2013, “Kiobel v. Royal Dutch Petroleum: The Alien Tort Statute’s Jurisdictional Universalism in Retreat”, pdf- accessed via CATO)

Moreover, it bears observing one last time that both the Breyer and Roberts opinions are firmly rooted in a retreat to traditional crossborder jurisdictional principles in the correct perception that universal jurisdiction for civil liability in national courts is not a workable concept. And that in any case, what American jurisprudence called universal jurisdiction under the ATS was simply extraordinary—to others in the world—extraterritorial reach under a uniquely American statute. The claims to be carrying out the universal claims of international law rang hollow and illegitimate. Either the majority or the minority approach is an improvement over where ATS jurisprudence has gone, given the failure of Sosa to provide a clear rule, and especially since ATS litigation decisively took the “corporate” turn. The questions have not yet been fully answered—starting, peculiarly, with corporate liability and “aiding and abetting” liability, on which the Court might have been expected to pronounce, given that these were the issues originally granted certiorari and given that they were briefed and argued. American corporations have a strong interest in a clear Supreme Court ruling that corporations cannot properly be defendants in ATS cases. At the end of the day, however, we don’t live in a better world; we live in the world of the American tort system. Certainly I do not believe that the Breyer approach offers enough practical protection against gradual expansion of claims and the erosion of levees that Breyer would claim have been sturdily erected. It simply preserves and assigns too much to discretion in the lower courts. The Roberts approach is less intellectually compelling, vastly cruder, sometimes inconsistent—and far more grounded in the reality of bringing to heel a form of law long since gone feral. The Breyer approach is intellectually perfectionist but likely ineffective; the Roberts approach is far from intellectually perfect, but its crude limits are likely to provide more effective signals of lines not to be crossed. ATS litigation is thus transformed by Kiobel, but the ATS is by no means dead. Even if disputes are now framed as arguments over extraterritoriality rather than universal jurisdiction, alternative theories of jurisdiction and liability are already emerging.39 For that matter, state courts and state law have begun to provide an alternative outlet for litigation under the rubric of “transnational torts.”40 Moreover, days after the Court handed down the Kiobel decision, it accepted review in Bauman v. DaimlerChrysler— a 2011 Ninth Circuit case holding that Daimler AG, a German parent company with no operations or employees in the United States, could be sued under the ATS for human rights abuses allegedly committed by an Argentine subsidiary aiding and abetting the Argentine government during its “dirty war” of the 1970s, solely on the theory that the parent company had sufficient contacts with California through its U.S.-distribution subsidiary to support personal jurisdiction.41 It might seem obvious that Kiobel ought to moot that decision, but the questions are not the same as an acknowledged “foreign-cubed” case because at issue is whether and what contacts are sufficient to establish personal jurisdiction. Bauman is really an attempt by the plaintiffs to turn a foreign-cubed case into one by which agency theory provides a path to finding personal jurisdiction—and thus is no longer entirely “foreign” or premised purely on “universal” considerations. In other words, the case is an attempt to sidestep the formal doctrine of legal separation of corporate entities; it asserts a view that multinational corporate enterprises are to be treated as essentially one economic entity. This is, indeed, a plausible view of their globally unitary economic substance, but by arguing for economic substance over legal form, it renders impossible any real legal principle for why any particular national court should or should not hear a case.

**Nanobots are impossible – fat and sticky fingers**

**Smalley, 1**

[Richard, Gene and Norman Hackerman Professor of Chemistry and Physics at Rice University. He received the 1996 Nobel Prize in Chemistry for the discovery of fullerenes, “ Of Chemistry, Love and Nanobots,” Scientific American v285 no3 p76-7 Ag 30 2001]

But how realistic is this notion of a self-replicating nanobot? Let’s think about it. Atoms are tiny and move in a defined and circumscribed way—a chemist would say that they move so as to minimize the free energy of their local surroundings. The electronic “glue” that sticks them to one another is not local to each bond but rather is sensitive to the exact position and identity of all the atoms in the near vicinity. So when the nanomanipulator arm of our nanobot picks up an atom and goes to insert it in the desired place, it has a fundamental problem. It also has to somehow control not only this new atom but all the existing atoms in the region. No problem, you say: our nanobot will have an additional manipulator arm for each one of these atoms. Then it would have complete control of all the goings-on that occur at the reaction site. But remember, this region where the chemistry is to be controlled by the nanobot is very, very small—about one nanometer on a side. That constraint leads to at least two basic difficulties. I call one the fat fingers problem and the other the sticky fingers problem. Because the fingers of a manipulator arm must themselves be made out of atoms, they have a certain irreducible size. There just isn’t enough room in the nanometer-size reaction region to accomodate all the fingers of all the manipulators necessary to have complete control of the chemistry. In a famous 1959 talk that has inspired nanotechnologists everywhere, Nobel physicist Richard Feynman memorably noted, “There’s plenty of room at the bottom.” But there’s not that much room. Manipulator fingers on the hypothetical self-replicating nanobot are not only too fat; they are also too sticky: the atoms of the manipulator hands will adhere to the atom that is being moved. So it will often be impossible to release this minuscule building block in precisely the right spot.

Both these problems are fundamental, and neither can be avoided. Self-replicating, mechanical nanobots are simply not possible in our world. To put every atom in its place—the vision articulated by some nanotechnologists—would require magic fingers. Such a nanobot will never become more than a futurist’s daydream.

**Their ev is science fiction**

Risen, Asst Editor – The New Republic, ‘6

(Clay, [www.tnr.com/docprint.mhtml?i=w060116&s=risen011606](http://www.tnr.com/docprint.mhtml?i=w060116&s=risen011606))

Instead, among many people who have heard of nanotech, the term is still largely the province of science-fiction fantasy. That is due, in part, to a single book, Engines of Creation, published in 1986 by futurist K. Eric Drexler. Engines of Creation was commendable for its foresight but lamentable for the way Drexler overhyped both nanotech's promises and risks. As he later wrote in an essay for the pro-nanotech Foresight Institute, "Its products will cure cancer and replace fossil fuels, yet those advances will, in retrospect, seem a minor part of the whole." Perhaps. But Drexler never explained that, in science, change often comes slowly. Despite the enormous gains made in nanotech research, we are still decades away from the "nano-robots" Drexler predicted would do everything from fight diseases (when ingested) to fight wars. For Drexler, the nanotech era was to be an overnight success.

## Add-on’s

### Morrocco

#### International treaty norm promotion key to prevent autocratic takeover of Morocco- prevents African instability and world war 3

Epstein 9 (Pamela, LLM – Golden Gate University, JD – University of La Verne, “BEHIND CLOSED DOORS: "AUTONOMOUS COLONIZATION" IN POST UNITED NATIONS ERA-THE CASE FOR WESTERN SAHARA” Spring, 2009, 15 Ann. Surv. Int'l & Comp. L. 107)

In dealing with the case of Western Sahara, the U.N. has allowed itself to be a geopolitical pawn in the maneuverings of two minor regional powers: Morocco and Algeria. "Every State has the duty to refrain from organizing, instigating assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territorial directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force." n177 Member states are under a duty to bring about a speedy end to [\*136] colonialism, including due regard for the freely expressed will of the peoples concerned. n178 States' attitudes toward self-determination shift and change depending on the impact it could have on a State's self-interested agenda. Under the U.N.'s Friendly Relations Declaration, "strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security." n179¶ As two of the five permanent members with vetoing power of the U.N. Security Council, France and the U.S. have blocked the Council from enforcing its resolutions in regard to Western Sahara. n180 Both countries have perceived a historical need to strengthen the Moroccan monarchy as a barrier against Communism and radical Arab nationalism during the Cold War. n181 More recently, Morocco has served as an important ally in the battle against Islamic extremism. n182 The U.N. has been an abysmal failure in regard to Western Sahara. The resolution should have been tailor-made for the U.N. - hold a referendum to allow the people of Western Sahara to decide whether to be free or integrate with Morocco. Yet, after the cease-fire, and MINURSO with a staggering operational budget of six hundred million dollars, the referendum has gone nowhere. n183 It is an ironclad stalemate. Moreover, the referendum process as whole has been met with gross irregularities and improprieties. The chief setback relates to the misuse of administrative control, on paper this task is assigned to MINURSO, on the ground a different story emerges, the referendum or lack thereof has been strictly controlled by the Moroccan government. n184¶ The U.S. has not made any attempt to distinguish itself by setting a higher standard. From the beginning U.S. power politics affected its duty under international customary law. U.N. Ambassador Daniel [\*137] Moynihan recounted his job during the Cold War years, as a duty to oppose an independent state for the Saharawi's. n185 "No new Angola on the west coast of Africa n186 was his instruction from then Secretary of State Henry Kissinger. According to declassified White House documents, Kissinger is cited as saying in reference to Morocco's unsanctioned and illegal entry into the Western Sahara during the 1975 "Green March," "if we had prevented it we would have destroyed our relationship with Morocco." n187 The U.S. has proven by its actions, they are not abiding by the principles enumerated within the Friendly Relations Declaration cited above. Despite the termination of the Cold War, the U.S. still refuses to use its favored relationship with Morocco or its position as a vetoing member on the Security Council to ensure Sahrawi people are provided the right of self-determination, one of the most important and basic human rights the U.N. was created to protect. This U.S.'s behavior is in starch contradiction to its origins as a colony breaking away from its colonial master, England, in its inalienable right to freedom through self-determination.¶ As indicated above, both the U.S. and France have attempted to utilize their close relationship with Morocco to exploit Western Sahara for its resources: oil and fish stocks. France, as a vetoing member on the U.N. Security Council, has close political ties to Morocco as its foremost trading partner and provider of developmental aid. France's close relationship to Morocco has led France in successfully preventing condemnation by the Security Council of the human right violations committed by Morocco. n188 Their relationship has additionally prevented the expansion of the MINURSO mandate to include human rights monitoring in the occupied territories, thereby forcing MINURSO to stand idly by as a silent witness to the continuing human rights violations. n189¶ Furthermore, Spain unlike its neighbor Portugal, who played a leadership role in supporting the liberation of East Timor from Indonesian [\*138] occupation as the former colonial power has played no such role and, in fact, has done quite the opposite. Spain has placed a higher value on maintaining good neighborly relations with Morocco. A strong motivator behind the controversial 2006 fishing agreement, previously mentioned, between the European Union and Morocco was the advancement of friendly relations and monetary gain. From these incidents alone it is enough to conclude that the duties and responsibilities of member states of the U.N., the principles and norms of international customary law, and the right to self-determination have taken a back seat to power politics and nation-state self-interest.¶ PART FIVE: MOROCCO'S 2007 PLAN AND FUTURE CONSEQUENCES¶ A.Morocco's 2007 Plan¶ "The Moroccan autonomy plan aims at legitimatizing the occupation..." n190 Falling well below what is required to bring about a peaceful resolution to the conflict is Morocco's 2007 Autonomy Plan supported by the U.S. and France was cited as "serious and credible" and a "constructive contribution to finding a solution to the conflict." n191 Irreparable damage will occur if the proposal is implemented, as it stands the plan wouldcategorically alter the foundationof thepost-World War II international legal system. The autonomy plan, which re-legitimizes colonization through military occupation

, is premised on the notion that Western Sahara is part of Morocco-a view strongly contested by the U.N. Charter, the ICJ, the African Union, and various other international sources. Acceptance of the autonomy plan would be the first time since the founding of the U.N. and the ratification of its Charter more than sixty years ago, the international community would be endorsing the expansion of a country's territory by military force, resulting in a dangerous and destabilizing precedent. n192¶ Further complicating the situation is the lack of an enforcement mechanism provided in the proposal, and Morocco has a history of breaking its promises to the international community in regards to the U.N.-mandated referendum for the Western Sahara. n193 Upon closer [\*139] inspection, the proposal is offering limited autonomy at best, particularly in regards to natural resources and law enforcement beyond local matters. n194 According to Article 19 of Morocco's constitution, the Sultan (King) of Morocco is ultimately vested with absolute authority and, therefore, the autonomy proposal insist Moroccan "keep its powers in the royal domains, especially with respect to defense, external relations and the constitutional and religious prerogatives of His Majesty the King." n195 Unmistakably giving the monarch considerable leeway in interpretation of the plan and control over its autonomous "colony" Western Sahara.¶ B.Consequences of not granting full independence¶ Further aggravation and acceleration of human rights violations, the destabilization of an already unstable region withglobal implications, as well as setting a bad legal precedent as described above is just the tip of the iceberg if self-determination of Western Sahara is not advanced. It is time to heed the lessons from the past which clearly demonstrate that any solution against or ignoring the right of self-determination and reinstitution of colonization is not built for longevity. The tragic and bloodstained universal truth is that notgranting a people's right to self-determination is amajor cause of warsand revolutions. n196 Historically, centralized autocratic governments seldom ever respect the autonomy of regional jurisdictions, which classically lead to violent conflict and genocides. n197 For example, in 1952 the U.N. granted the British protectorate and former Italian colony of Eritrea autonomous status federated with Ethiopia. n198 Ethiopia's emperor in 1961 revoked Eritrea's [\*140] autonomous status, annexing it as his empires new province. n199 The result was a thirty-nine year battle marked by death and violence. n200¶ Western Sahara is a clear cut case of self-determination for a people struggling against foreign military occupation. The Polisario Front has already offered guarantees to protect Moroccan strategic and economic interest if allowed full independence. To insist that the people of Western Sahara give up their moral and legal right to a genuine and free referendum, is not a formula for conflict resolution, but rather a recipe for a far more serious conflict in the future. Now is the "most opportune time to break the cycle of compromise and accommodation, of realpolitik and to adopt a no-nonsense attitude to the issue." n201¶ CONCLUSION: AN ARGUMENT FOR CHAPTER 7 USE OF FORCE¶ The subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security, convinced that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality. n202¶ Any attempt aimed at the partial or total disruption other than national unity and territorial integrity of a State or country or in regard to political independence is incompatible with the purposes and principles of the U.N. Charter. n203 [\*141] ¶ Every state has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes. n204 Every Member State, including Morocco, has a duty to refrain from any forcible action which deprives other peoples' rights of equality and self-determination synonymous with their freedom and independence. n205 Furthermore, as members of the U.N., each state is obligated to promote the realization of self-determination and to respect that right in accordance with the provisions of the U.N. Charter. n206 All obligations that deal with preemptory and customary law, such as the right to self-determination, are applied erga omnes in relation to all-not just between parties. n207 All states must then do what is in their power to make the parties respect their obligations. In light of the articles on state responsibility, individual states have a "duty of non-recognition" of gross violations of international law. The lack of political will and nation-state self-interest has corrupted the foundational Charter of the U.N. and made it possible for Morocco to continue denying the Sahrawi's their right to self-determination.¶ The U.N. Security Council's involvement in using force to implement the referendum and its outcome is restricted to its powers of collective security found in Chapter 7 of the U.N. Charter. n208 In order to call upon this power, the Council must first satisfy Article 39, indentifying either a salient threat to the peace, a breach of the peace or an act of aggression. n209 A mounting salient threat has been established-by occupying Western Sahara and blocking the referendum from allowing any choice of independence, Morocco actions are identical to the role of a colonial power. Morocco has also violated international law by invading Western Sahara by force in the 1975 "Green March." This one action translates to a cognizable breach of international peace and security, violating the U.N. Charter invoking Chapter 7 Security Council powers. n210 To further support the "Green March" as an act of aggressive [\*142] force on the part of Morocco, Special Rapporteur Cristescu states, "The use of force against another State may take various forms: for instance, actions conducted by regular or irregular forces; by forces of volunteers or by armed bands; acts of reprisal; invasion; or pressure or coercion of various kinds." n211¶ In U.N. resolution 1783, n212 which again extended the mandate of MINURSO, the U.N. Secretary General noted there was a conspicuous increase in violence in Western Sahara not seen in years past. n213 The U.N. has been denied access to Morocco's military installations within the occupied territory of Western Sahara. n214 This lack of access traditionally has been associated with rising tensions as a precursor to violence. n215 The Security Council has previously utilized its Chapter 7 powers to terminate conflicts which are not forthcoming and where the situation is classified as threat to international peace and security. n216 For example, the case of Iraqi occupation of Kuwait in 1990 when the Security Council invoked Chapter 7 and went to the military defense of Kuwait. Since 1990, over 1000 resolutions have been adopted by the Security Council in accordance with Chapter 7. However, the Security Council is unwilling to do the same for Western Sahara. Ultimately, unless war breaks out, no international actor in the current situation seems able, or willing to initiate a lasting resolution to the conflict. Another outbreak of war is not implausible. In fact, it is highly probable, carrying with it the ability tofurther destabilize the Northern Africa regionand involves the U.S., France, and other countries providing the potential for a world war scenario**.**

## K

### 2AC Security Perm

#### Perm do the plan and all parts of the alternative that aren’t vote negative – the alternative fails because explanations of security rely on insecurity and termination of all threats is not possible but if it were it would end the state.

**ALVAREZ 6** - studied International Relations at the Universidad Externado in Bogotá. She holds a master's degree in peace studies at the University of Innsbruck and a doctorate in Peace, Conflict and Democracy at the University Jaume I (Spain). Echavarría has as UNDP and World Bank consultant working in the field of development projects and further. As a researcher for the latest security policies and gender issues in the EU Since 2007, she is a faculty member of the OCT in Peace Studies at the University of Innsbruck. Currently, she is a secretary general of the 54th International Congress of Americanists**, (JOSEFINA ECHAVARRÍA ALVAREZ Re-thinking (in)security discourses¶ from a critical perspective 2006 http://echavarria.wissweb.at/fileadmin/echavarria/Rethinking\_insecurity\_Asteriskos\_01.pdf)bs**

And this line of thinking takes us back to the state of nature, because if¶ there are no threats there is no justification for state security, for the sacrifice of individuals in the name of the modern state. Therefore we are¶ faced with a contradiction which Buzan does not address directly but¶ points to timidly: without threats there is no security, insecurity is the¶ condition for the state to be born according to Buzan’s reading of Hobbes¶ and, contrary to the common explanation of security policies, it is insecurity,¶ threats and vulnerabilities which form the constituting element of security¶ itself. Without insecurity, security cannot exist. Security, therefore,¶ has to remain a promise or, in Buzan’s words, “total security is not possible”,¶ but not because threats are endless but, quite on the contrary, because¶ achieving security would imply the termination of the state.

### 2AC Security- Top Shelf

#### No impact – threat construction isn’t sufficient to cause wars

**Kaufman ‘9** (Prof Poli Sci and IR – U Delaware, ‘9 (Stuart J, “Narratives and Symbols in Violent Mobilization: The Palestinian-Israeli Case,” Security Studies 18:3, 400 – 434)

Even when hostile narratives, group fears, and opportunity are strongly present, war occurs only if these factors are harnessed. Ethnic narratives and fears must combine to create significant ethnic hostility among mass publics. Politicians must also seize the opportunity to manipulate that hostility, evoking hostile narratives and symbols to gain or hold power by riding a wave of chauvinist mobilization. Such mobilization is often spurred by prominent events (for example, episodes of violence) that increase feelings of hostility and make chauvinist appeals seem timely. If the other group also mobilizes and if each side's felt security needs threaten the security of the other side, the result is a security dilemma spiral of rising fear, hostility, and mutual threat that results in violence. A virtue of this symbolist theory is that symbolist logic explains why ethnic peace is more common than ethnonationalist war. Even if hostile narratives, fears, and opportunity exist, severe violence usually can still be avoided if ethnic elites skillfully define group needs in moderate ways and collaborate across group lines to prevent violence: this is consociationalism.17 War is likely only if hostile narratives, fears, and opportunity spur hostile attitudes, chauvinist mobilization, and a security dilemma.

### 2AC Security- AT: Serial Ptx Failure

#### Serial policy failure isn’t a thing, and security can remade through productive state actions

Ian Loader 7, Professor of Criminology and Director of the Centre for Criminology at the University of Oxford and Neil Walker, Professor of European Law in the Department of Law at the EU Institute, Florence, "Civilizing Security", 2007, guessoumiss.files.wordpress.com/2011/08/civilizing-security.pdf

Yet critical work in policing and security studies remains, in our view, skewed in its account of these associationsIt concludes too easily from the above that there can be no progressive democratic politics aimed at civilizing security, that security is so stained by its uncivil association with the (military and police) state and its monolithic affects and effects, that the only radical strategy left open is to deconstruct and move beyond it (e.gDillon 1996: ch1)In so doing, this strand of state scepticism commits two mistakes, both of which flow from its failure to appreciate or at least sufficiently to acknowledge what we tried to demonstrate in an earlier section of the chapter; namely, that state policing, however culpable it might be in exacerbating certain of the tensions involved in applying general order in any particular context, is not the fixed and fundamental source of these tensionsIt forgets, first of all, that while the affective connections between security, state and nation are deeply entrenched, they take no necessary or essential substantive formThey can, in other words, be remade and reimagined in ways that connect policing and security to other more inclusive, cosmopolitan forms of belonging - to political communities that 'do not necessarily equate difference with threat\* (Dalby 1997: 9)It tends, secondly, to forget that the 'pursuit of security' through general order is not only the product of forms of technocratic, authoritarian government that impoverishes our sense of the political (Dillon 1996: 15)Security, in the sense of a broadly responsive and acceptable conception of order, can also be, and indeed - if we examine the political aspirations which preceded and have survived the modern state - must also be, conceived of in a prior and abstract sense as a valuable human good, one that in concrete application is a key ingredient of the good society as well as being axiomatic to the production of other individual goods (most directly, liberty)It is our contention that security can be rethought along these lines, and that the state through its ordering and cultural work continues to possess a central place in the production of security thus conceived; we develop this argument in part IIWe must first, however, consider one further critique of the modern state tradition.

## DA

### 2AC Court Capital

#### U evidence is from last summer- not ev says currently on docket

#### Kennedy won’t uphold Schuette ban – he’ll vote on precedent.

Smith, Law Professor at Suffolk University, 6-24

[Robert, “Supreme Court Decision "Did Nothing to … Clarify Constitutional Issues Surrounding Affirmative Action”’, Suffolk University News, 6-24-13,

<http://www.suffolk.edu/news/17966.php#.UeARsUFvP_m>, RSR]

“If the Supreme Court were to reverse the lower court in Schuette and rule that Michigan can create a constitutional ban on affirmative action, then it could achieve what conservatives might consider a ‘second-best’ option. The four conservative justices were unable in Fisher and earlier Supreme Court decisions to have the Supreme Court create a national ban on affirmative action (as part of U.S. constitutional law). But if the Court upholds the Michigan constitutional amendment, it would allow for state-by-state bans of affirmative action that would not be subject to Supreme Court review. “It is likely, however, that the court will not allow the Michigan amendment to stand. Justice Kennedy is likely to refuse to join the four conservative justices in allowing a total ban on affirmative action, much as he has done in prior affirmative action decisions.”

#### Gay marriage rulings coming- thump the link

USA Today 2/15 (Same Sex Marriage on Winning Streak Towards High Court http://www.usatoday.com/story/news/nation/2014/02/14/supreme-court-gay-lesbian-marriage-virginia/5485119/)

Same-sex marriage is on a roll in the nation's courts, signaling a mad dash back to the Supreme Court just months after its victories there last June. A federal judge's decision late Thursday striking down Virginia's sweeping ban on gay and lesbian unions was but the latest in a string of rulings in some of the nation's most conservative states. The rapid-fire opinions from federal judges in Virginia, Oklahoma and Utah striking down gay marriage bans, and from Kentucky and Ohio on more narrow issues, come on top of state court rulings in New Jersey and New Mexico in recent months, as well as Nevada's decision not to defend its gay marriage ban in court. One after another, judges have used decades of Supreme Court opinions to back up their findings that gay and lesbian couples deserve the same marriage rights as heterosexuals. Judge Arenda Wright Allen even quoted Mildred Loving, whose case in Virginia struck down bans on interracial marriage, at the beginning of her eloquent 41-page decision. But more than anything else, it was last June's ruling in United States v. Edith Windsorthat has sent judges ever since to one side of the argument — just as Justice Antonin Scalia predicted in angry dissent. That 5-4 decision, written by Justice Anthony Kennedy, said the Defense of Marriage Act's ban on federal benefits for legally married same-sex couples was unconstitutional.

#### Daimler AG v. Bauman

Carasik 2/20 (Lauren, Al Jazeera. Supreme Court ruling shields corporations from accountability http://america.aljazeera.com/opinions/2014/2/supreme-court-daimlerbaumanhumanrightsargentina.html)

Less than a year after the United States Supreme Court ruling in [Kiobel v. Royal Dutch Petroleum](http://www.aljazeera.com/indepth/opinion/2013/04/201341103110790388.html)dealt a major blow to corporate accountability for human rights abuses, a second decision issued last month in [Daimler AG v. Bauman](http://www.supremecourt.gov/opinions/13pdf/11-965_1qm2.pdf) further eroded the ability of plaintiffs to sue multinational corporations in U.S. courts for human rights claims. The decision in the Kiobel case made it far more difficult for plaintiffs to file lawsuits under the Alien Tort Statute (ATS), which allows foreigners to sue foreign defendants in U.S. courts for human rights abuses committed abroad. The latest ruling erects yet another structural impediment to holding corporate wrongdoers accountable by limiting the scope of jurisdiction against corporate defendants. Daimler v. Bauman was filed by 22 Argentine plaintiffs against the German corporation DaimlerChrysler (Daimler) in a federal court in California. Plaintiffs allege that Daimler’s subsidiary in Argentina conspired and collaborated with the Argentine military in the arrest, torture and murder of labor union activists working at its Mercedes plant during that country’s “Dirty War.” In order to hear cases, courts must have both personal jurisdiction over the parties and subject matter jurisdiction over the legal issue in dispute. Courts can exercise two kinds of personal jurisdiction: general and specific. General jurisdiction requires a finding that a defendant’s contacts with a given state are so extensive that a plaintiff can sue the defendant in that state for any claim, including activities that occurred elsewhere. Specific jurisdiction is more limited, allowing a plaintiff to sue in a state’s courts only when the claims arise out of the defendant’s conduct within that state. The plaintiffs in Daimler did not claim that the suit arose out of Daimler’s conduct in California, but rather that California could exercise general jurisdiction over Daimler, citing the German automaker’s extensive contacts with the state through its U.S. subsidiary, Mercedes-Benz USA (MBUSA). MBUSA is incorporated in Delaware, with its principal place of business in New Jersey. It distributes Daimler products in all U.S. states, including California, making it amenable to suit in the state. In fact, the U.S. Court of Appeals for the Ninth Circuit in 2011 upheld this general jurisdiction claim, citing MBUSA’s substantial business operations in California.

Many observers expected the Daimler decision to clarify the standard for exercising jurisdiction over corporations through their subsidiaries. Instead, on Jan. 14, the Supreme Court reversed the lower court’s decision. The high court held that general jurisdiction against a foreign corporation in states other than where the company is incorporated or has its principal place of business applies only in very limited circumstances. In analyzing whether the company’s “continuous and systematic” contacts in the state could render it “at home,” the court applied a relative standard for contacts, ignoring the fact that substantial aggregate contacts could render a company at home in other states. A global company such as Daimler, whose subsidiaries operate in 40 countries and all U.S. states, is simply “too big” to be confined to one home state. In a stinging opinion concurring with the court’s decision but objecting to its reasoning, Justice Sonia Sotomayor called the court’s rationale a “deep injustice,” claiming that it in effect held Daimler to be “too big for general jurisdiction.” Sotomayor disparaged the focus of the majority’s opinion on Daimler’s substantial contacts with other states instead of analyzing whether its contacts with California were sufficient to establish general jurisdiction. In evaluating the corporation’s amenability to suit, Sotomayor opined that Daimler’s $4.6 billion annual revenue from California, although it accounted for only 2.4 percent of the company’s global sales, was substantial in real dollars. This revenue, combined with MBUSA’s multiple facilities in California, including its regional headquarters, could make Daimler essentially “at home” in that state. Yet the court ruled that subjecting Daimler to the general jurisdiction of courts in California would violate the “fair play and substantial justice” required by due process, despite the substantial benefits it derives from operating in the state.

#### Capital is bulletproof

Gibson 12 (James L. Gibson, Sidney W. Souers Professor of Government (Department of Political Science), Professor of African and African-American Studies, and Director of the Program on Citizenship and Democratic Values (Weidenbaum Center on the Economy, Government, and Public Policy) at Washington University in St. Louis; and Fellow at the Centre for Comparative and International Politics and Professor Extraordinary in Political Science at Stellenbosch University (South Africa), 7/15/12, “Public Reverence for the United States Supreme Court: Is the Court Invincible?”, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2107587>)

Political scientists and legal scholars continue to be obsessed with the so-called countermajoritarian dilemma created by the United States Supreme Court’s lack of accountability, particularly when coupled with its immense policy-making powers. Especially when the Supreme Court makes decisions that seem to fly in the face of public preferences—as in Kelo v. New London 1 and Citizens United v. Federal Election Commission 2—concerns about the function of the institution within American democracy sharpen. Indeed, some seem to believe that by making policies opposed by the majority of the American people the Court undermines its fundamental legitimacy, its most valuable political capital. The underlying assumption of these worries about the Supreme Court’s legitimacy is that dissatisfaction with the Court’s decisions leads to the withdrawal, or at least diminution, of support for the institution. So when the Court decides a high profile case like Citizens United in a widely unpopular direction, it is logical to assume that the Court’s legitimacy suffers. Again, the assumption is that legitimacy flows from pleasing decisions, but it is undermined by displeasing decisions. At least some empirical evidence directly contradicts this assumption. In what is perhaps the most salient and politically significant decision of the last few decades, the Supreme Court’s decision in Bush v. Gore 3 effectively awarded the presidency to George W. Bush. One might have expected that this decision would undermine the Court’s legitimacy, at least with Democrats and probably with African-Americans as well. Yet several empirical research projects have indicated that, if anything, the Court’s legitimacy was boosted by this decision, even among Democrats and African-Americans. 4 Bush v. Gore had great potential to chip away at the Court’s legitimacy—it was a deeply divided 5-4 decision; divided by the justices’ partisanships as well; it extended the Court’s authority into an area of law in which the Court had generally deferred to the states; the decision was severely criticized by some, with many in the legal academy describing the decision as a “self-inflicted wound”; 5 and, of course, it was a decision of immense political importance. If Bush v. Gore did not subtract from the Court’s institutional legitimacy, it is difficult to imagine less momentous decisions undermining judicial legitimacy. Political scientists have been studying the legitimacy of the Supreme Court for decades now, and several well-established empirical findings have emerged. The findings relevant to the countermajoritarian dilemma can be summarized in a series of nutshells: ● The Supreme Court is the most legitimate political institution within the contemporary United States. Numerous studies have shown that the American mass public extends great legitimacy to the Court; typically, Congress is depicted as being dramatically less legitimate than the Supreme Court. Indeed, some have gone so far as to describe the Supreme Court as “bulletproof,” and therefore able to get away with just about any ruling, no matter how unpopular. And indeed, the United States Supreme Court may be one of the most legitimate high courts in the world.

#### Turn popularity- The public overwhelming supports the aff

Greenwald 9 (Glenn- former Constitutional and civil rights litigator and is the author of three New York Times Bestselling books: two on the Bush administration's executive power and foreign policy abuses, and his latest book, With Liberty and Justice for Some, an indictment of America's two-tiered system of justice. Greenwald was named by The Atlantic as one of the 25 most influential political commentators in the nation. He is the recipient of the first annual I.F. Stone Award for Independent Journalism, and is the winner of the 2010 Online Journalism Association Award for his investigative work on the arrest and oppressive detention of Bradley Manning, citing NYT/CBS Poll, June 18, “Overwhelming majority oppose preventive detention without charges”, http://www.salon.com/2009/06/18/detention/)

A new NYT/CBS News poll just released today asked a question designed to test support for Obama’s proposal to indefinitely detain Guantanamo detainees without charges — and it found overwhelming opposition to that plan (click to enlarge): The view that detainees should be charged with crimes or released is often depicted as the fringe “Far Left” view. Like so many views that are similarly depicted, it is — in reality — the overwhelming consensus view among Americans (68%). As is so often the case, it is the view depicted as the Serious Centrist position — the U.S. should keep people in cages for as long as it wants without charging them with any crime — that is the fringe view held by only a small minority (24%). While some may express surprise at the outcome of this question, it really shouldn’t be surprising: Americans are taught from childhood that one of the primary distinctions between free countries and tyrannies is that, in the former, the state lacks the power to imprison people without charging and convicting them of a crime. Is it really that surprising that an overwhelming majority of Americans see such charge-free imprisonment as wrong even when it comes to Guantanamo detainees, probably the single most dehumanized group on the planet?

#### That’s key to court capital

Hoekstra 3 [Valerie J. Hoekstra, Associate Professor of Political Science at ASU, *Public Reactions to Supreme Court Decisions* Cambridge University Press 2003]

In some respects, comparisons with Congress or the presidency are neither appropriate nor fair. Unlike its democratically selected and accountable counterparts, the Supreme Court appears relatively isolated from and unconstrained by public opinion. Its members do not run for election, and once in office, they essentially serve for life. While this certainly places them in an enviable position, the justices must rely on public support for the implementation of their policies since they possess “neither the purse nor the sword.” The Court’s lack of many enforcement mechanisms makes public support even more essential to the Court than it is to the other institutions. This public support may generate an important source of political capital for the Court (Choper 1980).

#### Ruling on human rights makes the decision popular

Soohoo and Stolz, ’08 [Cynthia Soohoo\* and Suzanne Stolz Director, U.S. Legal Program, Center for Reproductive Rights \*\* Staff Attorney, U.S. Legal Program ‘8, Center for Reproductive Rights 2008 Fordham Law Review Fordham Law Review November, 2008 77 Fordham L. Rev. 45]

A recent poll conducted by The Opportunity Agenda indicates that most Americans identify with human rights as a value and think that human rights violations are occurring in the United States. n1 Eighty-one percent of Americans polled agreed that "we should strive to uphold human rights in the United States because there are people being denied their human rights in our country." n2 And approximately three quarters (seventy-seven percent) of the public expressed that they would like the United States to work on making regular progress to advance and protect human rights. n3 Globalization and recent political events have played an important role in educating the American public about human rights standards and in thinking about the United States as a country in which human rights violations can occur. However, public attitudes about domestic human rights also reflect, and are being promoted by, two shifts in advocacy work. International human rights organizations are increasingly focusing on the United States, and domestic public interest lawyers and activists are integrating human rights strategies into their work. n4

### 2AC Economy Impact

#### No impact to economic decline – prefer new data

Daniel Drezner 14, IR prof at Tufts, The System Worked: Global Economic Governance during the Great Recession, World Politics, Volume 66. Number 1, January 2014, pp. 123-164

The final significant outcome addresses a dog that hasn't barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.42 They voiced genuine concern that the global economic downturn would lead to an increase in conflict—whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fueled impressions of a surge in global public disorder. The aggregate data suggest otherwise, however. The Institute for Economics and Peace has concluded that "the average level of peacefulness in 2012 is approximately the same as it was in 2007."43 Interstate violence in particular has declined since the start of the financial crisis, as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict, as Lotta Themner and Peter Wallensteen conclude: "[T]he pattern is one of relative stability when we consider the trend for the past five years."44 The secular decline in violence that started with the end of the Cold War has not been reversed. Rogers Brubaker observes that "the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected."43

#### Credible rule of law promotion is modelled by Latin America and is key to economic growth and stability

Cooper, 08 (James, Institute Professor of Law and an Assistant Dean at California Western School of Law, "COMPETING LEGAL CULTURES AND LEGAL REFORM: THE BATTLE OF CHILE," 29 Mich. J. Int'l L. 501, lexis)

The legal transplantation process involves, by its very nature, the adoption of, adaptation n57 to, incorporation of, or reference to legal cultures from abroad. n58 Judges, along with other actors in the legal [\*512] sector - including prosecutors, justice ministry officials, judicial councils, supreme courts, law school professors, ombudspeople, and public defenders - often look to rules, institutions, and jurisprudence from other countries, particularly to those from similar legal traditions and Anglo-Saxon or other legal cultures. n59 Professor Alan Watson contends that "legal transplants [are] the moving of a rule or a system of law from one country to another, or from one people or another since the earliest recorded history." n60 For many centuries, the legal codes and legal cultures that were established in Latin America were products of the colonial experience with Spain and Portugal. n61 Prior to independence, laws were merely imposed on the territories of the colonial powers. Spain, through the legal culture it transplanted during colonial times, enjoyed a consistent influence on the New World in the Americas. n62 In the colonies, "the Spanish judiciary was given almost no autonomy and continued to depend on the Crown's scholarly-inspired statutes with limited reflection of the principles, customs and values arising from Spain's diverse regions." n63 After independence in the early part of the nineteenth century, however, legal models from other countries like the United Kingdom and the United States soon found receptive homes in the southern parts of the Western Hemisphere. n64 Statutes, customs, and legal processes were [\*513] transplanted in a wholesale fashion, themselves the product of French influence over the codification process. n65 For much of the twentieth century - at least until the early 1980s - most governments in Latin America pursued policies of economic nationalism, including import substitution and controls on capital flows. Latin American governments closed markets to foreign competition and pursued state intervention. n66 When these policies failed, they resulted in economic stagnation, hyperinflation, and the erosion of living standards. n67 International bond defaults in the early 1980s produced military dictatorships and oppressive regimes simultaneously throughout Latin [\*514] America. The region was ready for a change. n68 In exchange for the adoption of certain rules and regulations concerning the functioning of markets, and some strengthening of democratic institutions, the international financial community lent money to these nascent democracies in an attempt to encourage a set of "neoliberal" policies - the so-called Washington Consensus. n69 Privatization of state assets was a central part of the prescription. n70 Deregulation, the opening of markets to foreign competition, and the lowering of barriers to trade were also recommended policies. n71 These policies - involving the flow of capital, intellectual property, technology, professional services, and ideas - require that disputes be settled fairly and by a set of recognized and enforced laws. n72 The rule of law, after all, provides the infrastructure upon which democracies may thrive, because it functions to enforce property rights and contracts. n73 [\*515] Likewise, the rule of law is the foundation for economic growth and prosperity: n74 Law is a key element of both a true and a stable democracy and of efficient economic interaction and development both domestically and internationally ... . The quality and availability of court services affect private investment decision and economic behavior at large, from domestic partnerships to foreign investment. n75 Foreign businesses that invest or do business abroad want to ensure that their intellectual property, shareholder, capital repatriation, contract, and real property rights will be protected. n76 It is not surprising, then, that in [\*516] the aftermath of the economic reforms, or at times concurrently, there also have been efforts to implement new criminal procedures, protect human and civil rights, and increase access to justice. n77 Economic growth and sustainable development require a functioning, transparent, and efficient judicial sector. n78 "It is not enough to build highways and factories to modernize a State ... a reliable justice system - the very basis of civilization - is needed as well." n79 Without the rule of law, corruption in the tendering regimes was rampant, encouraging the looting of national treasuries, n80 the exploitation of labor, and the polluting of the environment. n81 As Professor Joseph Stiglitz sadly points out, "The market [\*517] system requires clearly established property rights and the courts to enforce them; but often these are absent in developing countries." n82 A healthy and independent judicial power is also one third of a healthy democratic government. n83 Along with the executive and legislative branches, the judicial branch helps form the checks and balances to allow for an effective system of governance. Instead, what has resulted over the last few decades in many Latin American governments is a breakdown in the rule of law: a judiciary unable to change itself, virtual impunity from prosecution, judicial officers gunned down, and the wholesale interference with the independence of the judicial power. The judiciary is not as independent as the other two branches of government. n84 Instead, the judiciary functions as part of the civil service: devoid of law-making abilities, merely a slot machine for justice that applies the various codes. n85

#### Latin American growth key to US growth

Zehnbacht ’12 [November 13, 2012. Gil Zehnbacht is a Search Engine Marketing Expert at ProTradingIndicators. “Will Latin America be the Next Engine for Global Economic Growth?” ProTradingIndicators. <http://www.protradingindicators.com/news-market-analysis/will-latin-america-be-the-next-engine-for-global-economic-growth>]

But Brazil will not be the only Latin American country working to take economic growth higher. Mexico, Peru and Chile are also developing into powers. While Argentina and Venezuela have been set been set back due to its government, it is inevitable that the country will recover as the region is moving forward. Like Brazil, these other Latin American companies have a wide array of powerhouse companies. Ecopetrol (NYSE: ECO) is a Columbian oil and natural gas entity with a market capitalization rate of well over $100 billion. By contrast, Occidental Petroleum (NYSE: OXY), a major oil company based in California, only has a market capitalization of around $60 billion. Banco Santander (NYSE: SAN), a bank in Chile, has a market capitalization of close to $70 billion. The market capitalization for Credit Suisse (NYSE: CS), a major Swiss bank, is under $30 billion. While past performance may not always be an accurate indicator for future actions, over the last decade, Latin America has posted very bullish figures. Since 2003, more than 70 million Latin Americans have risen out of poverty. Incomes have increased by about one-third. Over the next five years, economic growth is projected to rise another one-third. That economic growth will be crucial for both the United States and China. Trade between the United States and Latin America is growing. According to a recent study, air traffic between Latin America and the United States is expected to grow the most in the years ahead. China is Brazil’s largest trading partner. With Latin America so important to be China and the United States, its growth will be crucial for leading economic demand around the world in the years ahead.

#### Latin American instability goes global

Rochin 94 – Professor of Political Science

(James, Professor of Political Science at Okanagan University College, Discovering the Americas: the evolution of Canadian foreign policy towards Latin America, pp. 130-131)

While there were economic motivations for Canadian policy in Central America, security considerations were perhaps more important. Canada possessed an interest in promoting stability in the face of a potential decline of U.S. hegemony in the Americas. Perceptions of declining U.S. influence in the region – which had some credibility in 1979-1984 due to the wildly inequitable divisions of wealth in some U.S. client states in Latin America, in addition to political repression, under-development, mounting external debt, anti-American sentiment produced by decades of subjugation to U.S. strategic and economic interests, and so on – were linked to the prospect of explosive events occurring in the hemisphere. Hence, the Central American imbroglio was viewed as a fuse which could ignite a cataclysmic process throughout the region. Analysts at the time worried that in a worst-case scenario, instability created by a regional war, beginning in Central America and spreading elsewhere in Latin America, might preoccupy Washington to the extent that the United States would be unable to perform adequately its important hegemonic role in the international arena – a concern expressed by the director of research for Canada’s Standing Committee Report on Central America. It was feared that such a predicament could generate increased global instability and perhaps even a hegemonic war. This is one of the motivations which led Canada to become involved in efforts at regional conflict resolution, such as Contadora, as will be discussed in the next chapter.

# 1AR

### Yes Terror

#### Nuclear terrorism likely—they’ll get state sponsor- prefer our evidence, post-dates

Graham Allison, Director, Belfer Center for Science and International Affairs; Douglas Dillon Professor of Government; Faculty Chair, Dubai Initiative, Harvard Kennedy School, 9/7/12, "Living in the Era of Megaterror", belfercenter.ksg.harvard.edu/publication/22302/living\_in\_the\_era\_of\_megaterror.html

Today, how many people can a small group of terrorists kill in a single blow? Had Bruce Ivins, the U.S. government microbiologist responsible for the 2001 anthrax attacks, distributed his deadly agent with sprayers he could have purchased off the shelf, tens of thousands of Americans would have died. Had the 2001 “Dragonfire” report that Al Qaeda had a small nuclear weapon (from the former Soviet arsenal) in New York City proved correct, and not a false alarm, detonation of that bomb in Times Square could have incinerated a half million Americans.¶ In this electoral season, President Obama is claiming credit, rightly, for actions he and U.S. Special Forces took in killing Osama bin Laden. Similarly, at last week’s Republican convention in Tampa, Jeb Bush praised his brother for making the United States safer after 9/11. There can be no doubt that the thousands of actions taken at federal, state and local levels have made people safer from terrorist attacks.¶ Many are therefore attracted to the chorus of officials and experts claiming that the “strategic defeat” of Al Qaeda means the end of this chapter of history. But we should remember a deeper and more profound truth. While applauding actions that have made us safer from future terrorist attacks, we must recognize that they have not reversed an inescapable reality: The relentless advance of science and technology is making it possible for smaller and smaller groups to kill larger and larger numbers of people.¶ If a Qaeda affiliate, or some terrorist group in Pakistan whose name readers have never heard, acquires highly enriched uranium or plutonium made by a state, they can construct an elementary nuclear bomb capable of killing hundreds of thousands of people. At biotech labs across the United States and around the world, research scientists making medicines that advance human well-being are also capable of making pathogens, like anthrax, that can produce massive casualties.¶ What to do? Sherlock Holmes examined crime scenes using a method he called M.M.O.: motive, means and opportunity. In a society where citizens gather in unprotected movie theaters, churches, shopping centers and stadiums, opportunities for attack abound. Free societies are inherently “target rich.”¶ Motive to commit such atrocities poses a more difficult challenge. In all societies, a percentage of the population will be homicidal. No one can examine the mounting number of cases of mass murder in schools, movie theaters and elsewhere without worrying about a society’s mental health. Additionally, actions we take abroad unquestionably impact others’ motivation to attack us.¶ As Faisal Shahzad, the 2010 would-be “Times Square bomber,” testified at his trial: “Until the hour the U.S. ... stops the occupation of Muslim lands, and stops killing the Muslims ... we will be attacking U.S., and I plead guilty to that.”¶ Fortunately, it is more difficult for a terrorist to acquire the “means” to cause mass casualties. Producing highly enriched uranium or plutonium requires expensive industrial-scale investments that only states will make. If all fissile material can be secured to a gold standard beyond the reach of thieves or terrorists, aspirations to become the world’s first nuclear terrorist can be thwarted

### Eco

#### Ecosecurity solves k impacts

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The question of whether it is valid to understand environmental problems as security problems recurs throughout any thoughtful discussion of environmental security. The dilemma should by now be apparent; securitising environmental issues runs the risk that the strategic/realist approach will coopt and colonise the environmental agenda rather than respond positively to environmental problems (as discussed in Chapter 6). For this reason critics of environmental security, such as Deudney (1991) and-Brock (1991), Suggest that it is dangerous to understand environmental problems as security issues: This book's position on the matter has been emerging in previous chapters. It contends that the problem turns not on the presentation of environmental problems as security issues, but on-the meaning and practice of security in present times. Environmental security, wittingly or not, contests the legitimacy of the realist conception of security by pointing to the contradictions of security as the defence of territory and resistance to change. It seeks to work from within the prevailing conception of security, but to be successful it must do so with a strong sense of purpose and a solid theoretical base. Understanding environmental problems as security problems is thus a form of conceptual speculation. It is one manifestation of the pressure the Green movement has exerted on statessince the late 1960s**.** This pressure has pushed state legitimacy nearer to collapse, for if the state cannot control a problem as elemental as environmental degradation, then what is its purpose? This legitimacy problem suggests that environmental degradation cannot further intensify without fundamental change or the collapse of the state. This in turn implies that state-sanctioned environmentally degrading practices such as those undertaken in the name of national security cannot extend their power further if it means further exacerbation of environmental insecurity. While the system may resist environmental security's challenge for change, it must also resist changes for the worse. In terms of the conceptual venture, therefore, appropriation by the security apparatus of the concept of environmental security is unlikely to result in an increase in environmental insecurity (although the concept itself may continue to be corrupted). On the other hand, succeeding in the conceptual venture may mean a positive modification of the theory and practice of national security. It may also mean that national governments will take environmental problems more seriously, reduce defence budgets, and generally implement policies for a more peaceful and environmentally secure world. This dual goal of demilitarisation and upgrading policy may well be a case of wanting to have one's cake and eat it — but either the having or the eating is sufficient justification for the concept **(Brock 1996).** The worst outcome would be if the state ceased to use the concept of environmental security, heraldingthe end of the contest and requiring that the interests of peace and the environment be advocatedthrough alternative discourses**.** This is perhaps the only real failure that is likely to ensue from the project ofenvironmental security

### Democracy

#### Democratic liberalism is the best forum for politics- Political Agonism creates tolerance and acceptance – not backlash and genocide- no risk of their impacts

Gutmann and Thompson 96 (Amy – President of Penn and Former prof @ Princeton, Dennis – Alfred North Whitehead Professor of Political Philosophy at Harvard, *Democracy and Disagreement*, p 1) jl

Of the challenges that American democracy faces today, none is more formidable than the problem of moral disagreement. Neither the theory nor the practice of democratic politics has so far found an adequate way to cope with conflicts about fundamental values. We address the challenge of moral disagreement here by developing a conception of democracy that secures a central place for moral discussion in political life. Along with a growing number of other political theorists, we call this conception deliberative democracy. The core idea is simple: when citizens or their representatives disagree morally, they should continue to reason together to reach mutually acceptable decisions. But the meaning and implications of the idea are complex. Although the idea has a long history, it is still in search of a theory. We do not claim that this book provides a comprehensive theory of deliberative democracy, but we do hope that it contributes toward its future development by showing the kind of deliberation that is possible and desirable in the face of moral disagreement in democracies. Some scholars have criticized liberal political theory for neglecting moral deliberation. Others have analyzed the philosophical foundations of deliberative democracy, and still others have begun to explore institutional reforms that would promote deliberation. Yet nearly all of themstop at the point where deliberation itself begins. None has systematically examined the substance of deliberation-the theoretical principles that should guide moral argument and their implications for actual moral disagreements about public policy. That is our subject, and it takes us into the everyday forums of democratic politics, where moral argument regularly appears but where theoretical analysis too rarely goes. Deliberative democracy involves reasoning about politics, and nothing has been more controversial in political philosophy than the nature of reason in politics. We do not believe that these controversies have to be settled before deliberative principles can guide the practice of democracy. Since on occasion citizens and their representatives already engage in the kind of reasoning that those principles recommend, deliberative democracy simply asks that they do so more consistently and comprehensively. The best way to prove the value of this kind of reasoning is to show its role in arguments about specific principles and policies, and its contribution to actual political debates. That is also ultimately the best justification for our conception of deliberative democracy itself. But to forestall possible misunderstandings of our conception of deliberative democracy, we offer some preliminary remarks about the scope and method of this book. The aim of the moral reasoning that our deliberative democracy prescribes falls between impartiality, which requires something like altruism, and prudence, which demands no more than enlightened self-interest. Its first principle is reciprocity, the subject of Chapter 2, but no less essential are the other principles developed in later chapters. When citizens reason reciprocally, they seek fair terms of social cooperation for their own sake; they try to find mutually acceptable ways of resolving moral disagreements. The precise content of reciprocity is difficult to determine in theory, but its general countenance is familiar enough in practice. It can be seen in the difference between acting in one's self-interest (say, taking advantage of a legal loophole or a lucky break) and acting fairly (following rules in the spirit that one expects others to adopt). In many of the controversies discussed later in the book, the possibility of any morally acceptable resolution depends on citizens' reasoning beyond their narrow self-interest and considering what can be justified to people who reasonably disagree with them. Even though the quality of deliberation and the conditions under which it is conducted are far from ideal in the controversies we consider, the fact that in each case some citizens and some officials make arguments consistent with reciprocity suggests that a deliberative perspective is not utopian. To clarify what reciprocity might demand under non-ideal conditions, we develop a distinction between deliberative and nondeliberative disagreement. Citizens who reason reciprocally can recognize that a position is worthy of moral respect even when they think it morally wrong. They can believe that a moderate pro-life position on abortion, for example, is morally respectable even though they think it morally mistaken. (The abortion example-to which we often return in the book-is meant to be illustrative. For readers who deny that there is any room for deliberative disagreement on abortion, other political controversies can make the same point.) The presence of deliberative disagreement has important implications for how citizens treat one another and for what policies they should adopt. When a disagreement is not deliberative (for example, about apolicy to legalize discrimination against blacks and women), citizens do not have any obligations of mutual respect toward their opponents. In deliberative disagreement (for example, about legalizing abortion), citizens should try to accommodate the moral convictions of their opponents to the greatest extent possible, without compromising their own moral convictions. We call this kind of accommodation an economy of moral disagreement, and believe that, though neglected in theory and practice, it is essential to a morally robust democratic life. Although both of us have devoted some of our professional life to urging these ideas on public officials and our fellow citizens in forums of practical politics, this book is primarily the product of scholarly rather than political deliberation. Insofar as it reaches beyond the academic community, it is addressed to citizens and officials in their more reflective frame of mind. Given its academic origins, some readers may be inclined to complain that only professors could be so unrealistic as to believe that moral reasoning can help solve political problems. But such a complaint would misrepresent our aims. To begin with, we do not think that academic discussion (whether in scholarly journals or college classrooms) is a model for moral deliberation in politics. Academic discussion need not aim at justifying a practical decision, as deliberation must. Partly for this reason, academic discussion is likely to be insensitive to the contexts of ordinary politics: the pressures of power, the problems of inequality, the demands of diversity, the exigencies of persuasion. Some critics of deliberative democracy show a similar insensitivity when they judge actual political deliberations by the standards of ideal philosophical reflection. Actual deliberation is inevitably defective, but so is philosophical reflection practiced in politics. The appropriate comparison is between the ideals of democratic deliberation and philosophical reflection, or between the application of each in the nonideal circumstances of politics. We do not assume that politics should be a realm where the logical syllogism rules. Nor do we expect even the more appropriate standard of mutual respect always to prevail in politics. A deliberative perspective sometimes justifies bargaining, negotiation, force, and even violence. It is partly because moral argument has so much unrealized potential in democratic politics that we believe it deserves more attention. Because its place in politics is so precarious, the need to find it a more secure home and to nourish its development is all the more pressing. Yet because it is also already' pert of our common experience, we have reason to hope that it can survive and even prosper if philosophers along with citizens and public officials better appreciate its value in politics. Some readers may still wonder why deliberation should have such a prominent place in democracy. Surely, they may say, citizens should care more about the justice of public policies than the process by which they are adopted, at least so long as the process is basically fair and at least minimally democratic. One of our main aims in this book is to cast doubt on the dichotomy between policies and process that this concern assumes. Having good reason as individuals to believe that a policy is just does not mean that collectively as citizens we have sufficient justification to legislate on the basis of those reasons. The moral authority of collective judgments about policy depends in part on the moral quality of the process by which citizens collectively reach those judgments. Deliberation is the most appropriate way for citizens collectively to resolve their moral disagreements not only about policies but also about the process by which policies should be adopted. Deliberation is not only a means to an end, but also a means for deciding what means are morally required to pursue our common ends.