AT: Wyden Counterplan

No Solvency — Won't Enact Reform

The counterplan *won't* result in legislative action — empirically proven.

Lupo 14 — Lindsey Lupo, Professor of Political Science at Point Loma Nazarene University, holds a Ph.D. in Political Science from the University of California-Irvine, 2014 ("What Happened to the 9/11 Commission? What a Century of Riot Commissions Teaches us about America's Dependence on Independent Commissions," *Ralph Bunche Journal of Public Affairs*, Volume 3, Issue 1, Available Online at http://digitalscholarship.tsu.edu/cgi/viewcontent.cgi?article=1002&context=rbjpa, Accessed 07-10-2015, p. 22)

But, what is the efficacy of these independent commissions? Herein lies the puzzle - they are at once incredibly ineffective and effective. As problem-solving entities that affect real change in the political system, they are ineffective, as evidenced by the 9/11 Commission's own self-issued failing report card on progress. One woman widowed by the 9/11 attacks expressed her disappointment: "If you were to tell me that two years after the murder of my husband on live television that we wouldn't have one question answered, I wouldn't believe it" (Breitweiser 2003). However, as mechanisms of evasion that allow the government to **delay action** or **elude responsibility altogether**, they are incredibly effective. Both sides of this paradox are **harmful to the basic function of democracy**, a system of government reliant on government responsiveness. Indeed, the U.S. government continues to depend on independent commissions to provide answers and presumably affect change, but **neither is the typical outcome** of these commissions. Even if some clarity does emerge, it is often **ignored**. It has been over two hundred years since Washington's commission on the Whiskey Rebellion and during that time, policy change through independent commissions has been **rare or non-existent**. Why then does the American public continue to be comforted and satiated when the government appoints a commission?

The plan enacts a meaningful reform. The counterplan enacts the *illusion* of reform.

Lupo 14 — Lindsey Lupo, Professor of Political Science at Point Loma Nazarene University, holds a Ph.D. in Political Science from the University of California-Irvine, 2014 ("What Happened to the 9/11 Commission? What a Century of Riot Commissions Teaches us about America's Dependence on Independent Commissions," *Ralph Bunche Journal of Public Affairs*, Volume 3, Issue 1, Available Online at http://digitalscholarship.tsu.edu/cgi/viewcontent.cgi?article=1002&context=rbjpa, Accessed 07-10-2015, p. 22)

This article looks at independent commissions in the United States and the role they play as "flak-catchers" – stopgaps for uncertain or unfavorable judgments cast onto the political system. Because they work as effective mechanisms of **evasion,** giving the appearance of government action while at the same time dodging responsibility, government bodies, particularly executives, have frequently and readily turned to independent commissions. However, independent commissions are typically **riddled with inefficiencies** that **inevitably hinder their work**. This article will look at the obstacles faced by these commissions as they deal with some of the most complex social and political issues of our time. Some of the obstacles are a product of the bureaucratic nature of the commission process, while others are created by the commission itself, in order to **preserve the status quo**. Still others are the creation of the instituting body who finds **little incentive in implementing the recommendations** of a temporary, nonelected body that lacks any real power. Thus, the central issue discussed here is the way in which

independent commissions are utilized as equivocal tools that both ease public anxiety and allow public officials to claim credit for decisive action. Independent commissions are **an easy and effective go-to** for U.S. public officials because they act as **deflectors**, giving **the appearance** of action and serving to satiate the public's demand for explanation and answers, while at the same time evading **actual policy response**. Government officials have therefore developed a dependence on these commissions. This article specifically focuses on the barriers commissions face, comparing the commissions that have often followed U.S. urban race riots to the 9/11 Commission. The riots that have occurred over the last century in America have typically been followed by an investigative, blue-ribbon commission, and therefore provide us with a catalog of comparative cases for the 9/11 Commission.

The counterplan's report will never pass — 9/11 Commission proves.

Lupo 14 — Lindsey Lupo, Professor of Political Science at Point Loma Nazarene University, holds a Ph.D. in Political Science from the University of California-Irvine, 2014 ("What Happened to the 9/11 Commission? What a Century of Riot Commissions Teaches us about America's Dependence on Independent Commissions," *Ralph Bunche Journal of Public Affairs*, Volume 3, Issue 1, Available Online at http://digitalscholarship.tsu.edu/cgi/viewcontent.cgi?article=1002&context=rbjpa, Accessed 07-10-2015, p. 22)

The 9/11 Commission

The 9/11 Commission (formally, the National Commission on Terrorist Attacks upon the United States) was born out of the intense and unrelenting lobbying of the families of the 9/11 victims. Its mandate—"to investigate the facts and circumstances relating to the terrorist attacks of September 11, 2001" (9/11 Commission Report 2004, xv)—was sweeping. According to Chairman Kean and Vice Chairman Hamilton, the mandate was perhaps too broad, asking them to investigate the entire U.S. government in an effort to understand an unprecedented event (Kean and Hamilton 2006, 14). The wide-ranging nature of the Commission was likely a result of the hesitance of both the White House and Congress to institute the Commission at all.i The Bush administration made clear from the beginning that the Commission not be a "runaway commission" used as an institutionalized stage for public Bush-bashing. In those same early meetings in which top White House officials expressed runaway commission concerns, they also emphasized the limitations of time and money awarded to the Commission – and warned not to ask for more of either. It is therefore not surprising that two years after the 9/11 Commission report was released, Kean and Hamilton declared: "We were set up to fail" (Kean and Hamilton 2006, 14).

The chief obstacle to the formation of the 9/11 Commission was the most likely target of such an investigation—the White House. House Republicans were almost as wary of the Commission and according to Kean and Hamilton, "not inclined to help the Commission succeed [and] holding the budget at $3 million was one way to ensure that [it] did not" (Kean and Hamilton 2006, 43). The Commission was indeed given just $3 million to work with, far below what is normal for an independent commission, particularly one with such an expansive mandate. In comparison, the commission set up twenty years earlier to investigate the Challenger space shuttle disaster was given a budget of $40 million. Even early estimates of the 9/11 Commission projected it would run out of money a full year before its scheduled reporting date. In early 2003, the Commission pushed both Congress and the White House for more

money but faced resistance from both. The White House initially denied requests while House Republicans continued to stonewall. In the end, both branches provided enough money to comfortably sustain the Commission for its duration. [end page 29] Thus, despite dire concerns at the outset, funding would prove to be the least of the problems for the 9/11 Commission. Even more troublesome issues would arise to hinder the Commission from the beginning: lack of infrastructure, timing, and subpoena power. Each is discussed below.

From the beginning, the Commission lacked the infrastructure required to run a proper investigation of such a huge crisis. Two months after its inception, the commissioners still had no office, no schedule for work, no security clearance, and only one employee. Staff interviews took place in executive director Philip Zelikow's hotel room in Washington, DC. Lacking a commission telephone, the cell phone of Zelikow's assistant became the main commission telephone number. Four months into the commission process, the commissioners finally held their first public hearing, but found themselves with no gavel.

As with the riot commissions above, timing for the 9/11 Commission was also an obstacle. It was given just a year and a half to conduct research, hold hearings, and write the final report. Again, such timing restrictions illustrate that appointing bodies often do not want commissions to delve too deeply into the issues, preferring that they instead engage in a surface-level investigation. Ultimately, the 9/11 Commission asked for only a two month extension, pushing its report release from May 2004 to July 2004. This did not please anyone, as it meant that the report would be released at the height of the presidential election cycle and amidst the Republican and Democratic National Conventions. With the help of Senators McCain and Lieberman, the extension was granted by Congress but not without a fight from politicians from both parties.

Finally, the issue of subpoena power was a contentious one from the beginning, both within the Commission and for the 9/11 families. The Commission was granted the power when it was created, but it required the vote of 6 out of 10 commissioners to issue a subpoena. Partisanship crept in, with Democratic commissioners generally favoring the wide use of subpoenas and Republican commissioners favoring a more limited, if any, use of subpoena power. Vice Chairman Hamilton broke from his Democratic colleagues on this issue and sided with Kean, thus ending debate on the possibility of the aggressive use of the subpoena. Those who favored reserving the subpoenas for non-compliance felt that blanket subpoenas would be unnecessarily antagonistic toward the White House; something they feared would backfire and cause more non-compliance. The argument was that the Commission should make the administration see the Commission as on its side, as part of the same team looking for answers. In the end, the subpoenas were used infrequently and only against non-compliant agencies like the FAA and the Pentagon. Two things seemed to work more effectively in gaining compliance: threat of subpoena and public shaming. The latter was achieved through such mechanisms as interim reports that mentioned "slow starts" and "delays" and through media interviews that hinted at some executive branch recalcitrance. All of the tactics worked to some extent, with the Commission eventually gaining access to the coveted Presidential Daily Briefings (PDBs), but the 9/11 Commission process can generally be categorized as involving high levels of non-cooperation from government agencies. It is the nature of the independent commission – the appointing body has little incentive to cooperate beyond the creation of the Commission, which lacks any true authority in holding the appointing body accountable.

Thus, these issues of funding, infrastructure, timing, and subpoena power were overshadowed by the biggest obstacle of all—**government resistance** in cooperating with the Commission. Many government

officials showed disdain for the Commission from the beginning, which seemed to only foreshadow the eventual dismissal of the final [end page 30] Commission report. Thus, while the commissioners publicly stated that they eventually got what they needed from government officials, their frustration with regard to lack of government compliance during the process was widely recognized as media outlets continued to report on the stonewalling of many government agencies and branches. The result was what many, particularly the 9/11 families, viewed as a **watered-down final report** with **weak recommendations** that would likely **never be enacted**.

No Solvency — Won't Provide Oversight

The counterplan won't create effective oversight.

Setty 15 — Sudha Setty, Professor of Law and Associate Dean for Faculty Development and Intellectual Life at Western New England University School of Law, holds a J.D. from Columbia Law School, 2015 ("Surveillance, Secrecy, and the Search for Meaningful Accountability," *Stanford Journal of International Law* (51 Stan. J Int'l L. 69), Winter, Available Online to Subscribing Institutions via Lexis-Nexis)

Although Congress **could** launch a large-scale investigation into the programs Snowden disclosed, like the Church Committee in its time, n176 its ability to serve effectively as an ongoing accountability mechanism over intelligence gathering in the manner of a parliament seems **unlikely**. For the **political and structural reasons** discussed above, the apparatus of national security policy-making is somewhat intentionally insulated from Congress. On the one hand, the benefit of this structural arrangement is that it may facilitate expertise and efficient decision-making, but a key effect is also that this apparatus is **not really accessible** to the other branches of government or the public. n177 This consolidation of decision-making authority in the executive branch, plus the difference between congressional and parliamentary access to executive branch information, accounts for a different potential for legislative oversight in the United States as compared to the United Kingdom and India. Further, the lack of widespread and sustained public pressure [*100] on Congress n178 toward reform suggests that a **meaningful** increase in legislative oversight of the intelligence community will **not** occur in the near future.

Double-bind: *either* existing committees solve.

Sledge 14 — Matt Sledge, Reporter for *The Huffington Post*, 2014 ("John McCain Wants A Special NSA Committee, And Dianne Feinstein Isn't Too Happy About That," *The Huffington Post*, February 5th, Available Online at http://www.huffingtonpost.com/2014/02/05/john-mccain-nsa-committee_n_4732759.html, Accessed 07-08-2015)

Sen. Dianne Feinstein (D-Calif.), who chairs the Intelligence Committee, threw cold water on McCain's idea.

"There is no need for a select committee to review the Snowden leaks or NSA collection," Feinstein told HuffPost in a statement Wednesday. "The Senate Intelligence Committee has conducted and continues to conduct thorough oversight of all intelligence collection activities by the National Security Agency and other intelligence agencies."

OR — if existing committees fail, *so will* the counterplan.

Sledge 13 — Matt Sledge, Reporter for *The Huffington Post*, 2013 ("NSA Spying Sparks Calls For New Senate Church Committee," *The Huffington Post*, November 7th, Available Online at http://www.huffingtonpost.com/2013/11/06/nsa-senate-church-committee_n_4228614.html, Accessed 07-08-2015)

Another Church Committee member -- former Sen. Gary Hart (D-Colo.) -- told HuffPost he did not think much of McCain's call for a new select committee.

"It seems to me that Senator McCain is in a way scoring political points here," Hart said. "He's poking the Senate Intelligence Committee in the eye.

"If established committees are not doing their job for whatever reason … you don't **layer on top** another committee, that is to **compound the problems of congressional oversight**," Hart said. Instead, he suggested reforms like "reconstituting" the committees with new members and imposing term limits on committee memberships to prevent so-called agency capture.

Links To Politics

The counterplan saps political capital.

Dalal 14 — Anjali S. Dalal, Resident Fellow of the Information Society Project at Yale Law School, holds a J.D. from Yale Law School and a B.A. in Philosophy and B.S. in Economics from the University of Pennsylvania, 2014 ("Shadow Administrative Constitutionalism And The Creation Of Surveillance Culture," *Michigan State Law Review* (2014 Mich. St. L. Rev. 59), Available Online to Subscribing Institutions via Lexis-Nexis)

The solution to a lack of congressional oversight is **conceptually easy** but **practically difficult**. It requires Congress to pass legislation governing the FBI and regularly exercise its statutory oversight authority, both of which require **significant political capital** and effort. However, the Snowden scandal may have created **the momentum necessary** to motivate congressional action in this area. Senator Ron Wyden recently echoed this sentiment while imploring his colleagues to act stating, "'If we do not seize this unique moment in out [sic] constitutional history to reform our surveillance laws and practices we are all going to live to regret it.'" n337

There's minimal political support for the counterplan.

Sledge 13 — Matt Sledge, Reporter for *The Huffington Post*, 2013 ("NSA Spying Sparks Calls For New Senate Church Committee," *The Huffington Post*, November 7th, Available Online at http://www.huffingtonpost.com/2013/11/06/nsa-senate-church-committee_n_4228614.html, Accessed 07-08-2015)

So far, said Trevor Timm of the Electronic Frontier Foundation, there has been **little momentum in Congress** for a new Church Committee.

"Unfortunately, **we haven't seen much legislative movement**," Timm wrote in an email to HuffPost. "Better late than never though, and it seems with each revelation more and more are calling for one."

Creating a new committee causes political backlash — empirically proven.

Politico 11 — Politico, 2011 ("Commissions grow on Obama," Byline MJ Lee, May 9th, Available Online at http://dyn.politico.com/printstory.cfm?uuid=D1EAB8B1-F951-3C6F-6656270CEFFF3919, Accessed 10-13-2011)

When presidential candidate Sen. John McCain (R-Ariz.) proposed a commission to investigate the 2008 financial crisis, then-Sen. Barack Obama disparaged the idea, calling commissions "the oldest Washington stunt in the book."

"Instead of offering up concrete plans to solve these issues ... You pass the buck to a commission to study the problem," Obama said in a speech on the economy in Golden, Colo., on Sept. 16, 2008. "But here's the thing: This isn't 9/11 — we know how we got into this mess."

But after he took office, Obama's distaste for commissions seemed to fade. During his first 2½ years in the White House, the president has issued countless executive orders creating advisory commissions,

working groups, committees, councils and task forces on subjects ranging from the restoration of the Chesapeake Bay to bioethical issues, to fitness, sports and nutrition.

Douglas Holtz-Eakin, economic adviser to McCain's presidential campaign, dismissed Obama's 2008 comments as campaign rhetoric. "He can and has said anything to become president, and he's flip-flopped on every policy position," Holtz-Eakin told POLITICO.

Other **Republicans have criticized the president's use of commissions**. When Obama announced in April that Vice President Joe Biden would lead negotiations with a bipartisan group of lawmakers on a deficit reduction plan, Republicans derided the outcome of Obama's earlier deficit commission.

"The president ... utterly ignored the recommendations of his last deficit commission and submitted a budget that would add $9 trillion to the debt and raise taxes on job creators," said House Speaker John Boehner (R-Ohio).

They Say: "Trust Net-Benefit"

Turn — the counterplan *increases* cynicism in government.

Bernstein 11 — Jared Bernstein, Senior Fellow at the Center on Budget and Policy Priorities, former Chief Economist and Economic Adviser to Vice President Joe Biden, executive director of the White House Task Force on the Middle Class, and a member of President Obama's economic team, holds a Ph.D. in Social Welfare from Columbia University, 2011 ("Commission Overload," *On The Economy*—Jared Bernstein's blog, September 28th, Available Online at http://jaredbernsteinblog.com/commission-overload/, Accessed 10-13-2011)

That's one problem. The other is that when you constantly kick tough calls to commissions, you **amplify cynicism about government**. Too often in this town, when you want to show you care about something that you don't really want to do anything about (or, less snarkily, you're not ready to do anything about), you kick it to a commission.

I haven't seen polls on this, but I'll bet most people's reaction to "so, we created a commission to study the issue and make binding recommendations, etc." is "**those guys just can't do their jobs**."

AT: UN UPR CP

2ac – alt causes

Massive alt. causes to human rights compliance – this is the UPR

Just Security 5/20/15 – based at the Center for Human Rights and Global Justice at New York University School of Law (The UN's "Universal Periodic Review" of US Human Rights Practices—National Security Highlights, Just Security, http://justsecurity.org/23115/us-upr-natsec-highlights/)//JJ

Last week, the UN Human Rights Council's Working Group on the **Universal Periodic Review released** a draft of its report on the United States' UPR. The UPR is a process during which each UN member state has the opportunity to explain what measures it has taken to meet international human rights standards and receives feedback and recommendations from other member states in a sort of "peer review" process. While the UPR covers all human rights (including economic and social) and contains information on a **wide range of topics**, a number of recommendations may be of special interest to Just Security readers. We have collected and organized some key recommendations below that relate to national security law and policy. **Lethal Force, Extrajudicial Killings, and Drones** (5.207–13) A number of states submitted recommendations related to lethal force, extrajudicial executions, killings, and drone strikes, largely focused on ending "unlawful" extrajudicial killings, compensating victims, and protecting innocent civilians. The specific recommendations were: "Use armed drones in line with existing international legal regimes and pay compensation to all innocent victims without discrimination" (Pakistan) "Put an end to unlawful practices which violate human rights including extrajudicial executions and arbitrary detention, and close any arbitrary detention centres" (Egypt) "Take legal and administrative measures to address civilian killings by the US military troops during and after its invasion of Afghanistan and Iraq by bringing perpetrators to justice and remedying the victims" (North Korea) "Desist from extrajudicial killings such as drone strikes and ensure accountability for civilian loss of life resulting from extraterritorial counter terrorism operations" (Malaysia) "Stop extrajudicial killings of citizens of the United States of America and foreigners, including those being committed with the use of remotely piloted aircraft" (Russia) "Investigate and prosecute in courts the perpetrators of selective killings through the use of drones, which has costed [sic] the lives of innocent civilians outside the United States" (Ecuador) "Punish those responsible for torture, drone killings, use of lethal force against African Americans and compensate the victims" (Venezuela) **Torture** (5.214–17, 221, 287–91, 293) A handful of countries made recommendations related to torture, ranging from strengthening safeguards against torture to paying compensation and prosecuting CIA officials including for acts committed outside the United States. The specific recommendations were: "Strengthen safeguards against torture in all detention facilities in any territory under its jurisdiction, ensure proper and transparent investigation and prosecution of individuals responsible for all allegations of torture and ill-treatment, including those documented in the unclassified Senate summary on CIA activities published in 2014 and provide redress to victims" (Czech Republic) "Enact comprehensive legislation prohibiting all forms of torture and take measures to prevent all acts of torture in areas outside the national territory under its effective control" (Austria) "Stops acts of torture by US Government officials, not only in its sovereign territory, but also in foreign soil" (Maldives) "Prevent torture and ill-treatment in places of detention" (Azerbaijan) "Respect the absolute prohibition on torture and take measures to guarantee punishment of all perpetrators" (Costa Rica) "Prosecute all CIA operatives that have been held responsible for torture by the US Senate Select Committee on Intelligence" (Pakistan) "Allow an independent body to investigate allegations of torture and to end the impunity of perpetrators" (Switzerland) "Prosecute and punish those responsible for torture" (Cuba) "Investigate the CIA torture crimes, which stirred up indignation and denunciation among people, to disclose all information and to allow investigation by international community in this regard" (North Korea) "Further ensure that all victims of torture and ill-treatment – whether still in US custody or not – obtain redress and have an enforceable right to fair and adequate compensation and as full rehabilitation as possible, including medical and psychological assistance" (Denmark) "Investigate torture allegations, extrajudicial executions and other violations of human rights committed in Guantanamo, Abu Ghraib, Bagram, NAMA and BALAD camps and to subsequently close them" (Iran) Also Lebanon, Switzerland, and Denmark recommended the US ratify the Optional Protocol to the Convention Against Torture (5.43–45) **Guantánamo** (5.244–55) Ten

countries – including four NATO members (France, Germany, Iceland, and Spain) – recommended the closure of Guantánamo. Two other states put forth recommendations that the US agree to an unrestricted visit to the site by the Special Rapporteur on Torture. The specific recommendations were: "Close, as soon as possible, the detention centre at Guantanamo Bay and put an end to the indefinite detention of persons considered as enemy combatants" (France) "Close the Guantanamo prison and release all detainees still held in Guantanamo, unless they are to be charged and tried without further delay" (Iceland) "Improve living conditions in prisons in particular in Guantanamo" (Sudan) "Work and do all its best in order to close down the Guantanamo facility" (Libya) "Immediately close the prison in Guantanamo and cease the illegal detention of terrorism suspects at its military bases abroad" (Russia) "Immediately close the Guantanamo facility" (Maldives) "Close Guantanamo and secret detention centres" (Venezuela) "Make further progress in fulfilling its commitment to close the Guantanamo detention facility and abide by the ban on torture and inhumane treatment of all individuals in detention" (Malaysia) "Fully disclose the abuse of torture by its Intelligence Agency, ensure the accountability of the persons responsible, and agree to unrestricted visit by the Special Rapporteur on Torture to Guantanamo facilities" (China) "Engage further in the common fight for the prohibition of torture, ensuring accountability and victims' compensation and enable the Special Rapporteur on torture to visit every part of the detention facility at Guantanamo Bay and to conduct unmonitored interviews" (Germany) "Take adequate measures to ensure the definite de-commissioning of the Guantanamo Military Prison" (Spain) "End illegal detentions in Guantanamo Bay or bring the detainees to trial immediately" (Pakistan)

1ar – xt: alt causes

Massive alt cause to HR cred – no ratification

GICJ 5/18/15 – Geneva International Center for Justice (US Human Rights Violations: Geneva Centre for Justice, Global Research, http://www.globalresearch.ca/us-human-rights-violations-geneva-centre-for-justice/5450204)//JJ

The United States' **continued lack of ratification** for **several key international human rights treaties** drew criticism from many states. Most countries including Luxembourg, Lebanon, and Iran called for the ratification of key documents such as: the Convention on the Elimination of All Forms of Discrimination Against Women (**CEDAW**), the Convention on the Rights of the Child (**CRC**), the Convention on the Rights of Persons with Disabilities (**CRPD**) and the Optional Protocol to the Convention Against Torture (**CAT**). Also mentioned by Egypt, India, and Togo was the International Covenant on Economic, Social and Cultural Rights (**ICESCR**) which is still not ratified by the United States since it signed onto the treaty in 1977. The Indian delegation pointed out that the United States considers itself to be a global leader on human rights, but still does not have a guarantee for all the economic, social and cultural rights outlined in the ICESCR. **To truly be a leader on human rights**, India urged the U.S. to ratify the ICESCR. While the United States delegation did not specifically discuss all the outstanding treaties, the delegation did discuss the process of ratification in the United States. Pointing out that the United States' constitution requires the nation's legislative bodies to sign onto ratification of the treaties, the delegation appeared to shift the responsibility for ensuring the United States' engagement with the outstanding treaties. Not mentioned is the **lack of political willingness** from administrations to push treaties such as the ICESCR which has not been ratified in the over 30 years since it was signed.

Alt causes to HR cred – laundry list

Sherrif 5/11/15 – visiting scholar at the Arthur L. Carter Journalism Institute, journalist for NYU, Luce Research Fellow in Religion and Digital Media at NYU's Center for Religion and Media((Natasja, US cited for police violence, racism in scathing UN review on human rights, Aljazeera America, http://america.aljazeera.com/articles/2015/5/11/us-faces-scathing-un-review-on-human-rights-record.html)//JJ

The United States was slammed over its rights record Monday at the United Nations' Human Rights Council, with member nations criticizing the country for **police violence** and **racial discrimination**, the **Guantánamo Bay** Detention Facility and the continued use of the **death penalty**. The issue of racism and police brutality dominated the discussion on Monday during the country's second universal periodic review (UPR). Country after country recommended that the U.S. strengthen legislation and expand training to eliminate racism and excessive use of force by law enforcement. "I'm not surprised that the world's eyes are focused on police issues in the U.S.," said Alba Morales, who investigates the U.S. criminal justice system at Human Rights Watch. "There is an **international spotlight** that's been shone [on the issues], in large part due to the events in Ferguson and the disproportionate police response to even peaceful protesters," she said. Anticipating the comments to come, James Cadogan, a senior counselor to the U.S. assistant attorney general, told delegates gathered in Geneva, "The tragic deaths of Freddie Gray in Baltimore, Michael Brown in Missouri, Eric Garner in New York, Tamir Rice in Ohio and Walter Scott in South Carolina have renewed a long-standing and critical national debate about the even-handed administration of justice. These events challenge us to do better and to work harder for progress — through both dialogue and action." All of the names he mentioned are black men or boys who were killed by police officers or died shortly after being arrested. The events have sparked **widespread anger** and unrest over the past year. Cadogan added that the Department of Justice has opened more than 20 investigations in the last six years — including an investigation into the Baltimore Police Department — as well as the release of a report of the Presidential Task Force on 21st Century Policing in March, which included more than 60 recommendations. But advocates like Morales say **the U.S. could do much more**. Use of excessive force by police was a major part of this year's UPR, and the fact that we still don't have a reliable national figure to know how many people are killed by police or what the racial breakdown is of those people is a travesty," she said. A nation as

advanced as the U.S. should be able to gather that number." The Justice Department did not respond to requests for comment. Although the problems are not new, the death of young men like Gray and Brown and the unrest that followed their killings in U.S. cities over the past year has attracted the attention — and **criticism** — of the international community "Chad considers the United States of America to be a country of freedom, but recent events targeting black sectors of society have **tarnished its image**," said Awada Angui of the U.N. delegation to Chad. The U.S. responded to questions and recommendations from 117 countries during a three-and-a-half-hour session in Geneva on Monday morning, with the high level of participation leaving each country just 65 seconds to speak. Among the various concerns raised by U.N. member states was the failure to close the Guantánamo Bay detention facility, the continued use of the death penalty, the need for adequate protections for migrant workers and protection of the rights of indigenous peoples. Member states also called on the U.S. to end child labor, human trafficking and sexual violence against Native American and Alaska Native women and to lift restrictions on the use of foreign aid to provide safe abortion services for rape victims in conflict areas.

More laundry – hope you brought your OxiClean

Sherrif 5/11/15 – visiting scholar at the Arthur L. Carter Journalism Institute, journalist for NYU, Luce Research Fellow in Religion and Digital Media at NYU's Center for Religion and Media((Natasja, US cited for police violence, racism in scathing UN review on human rights, Aljazeera America, http://america.aljazeera.com/articles/2015/5/11/us-faces-scathing-un-review-on-human-rights-record.html)//JJ

Pakistan, Russia, China and Turkey were among the most vociferous of the member states, with Russia informing the U.S. that "the human rights situation in the country has seriously deteriorated recently" before presenting seven recommendations to the U.S. delegation. Pakistan Ambassador to the U.N. Zamir Akram told the delegation that Pakistan has "serious concerns about the human rights situation in the U.S." Akram's eight recommendations included calls for the U.S. to use **armed drones** in line with international norms and to **compensate innocent victims** of drone strikes with cash. He also said the U.S. should **end police brutality** against African-Americans, **cease illegal detentions at Guantánamo Bay** and **prosecute CIA operatives responsible for torture**. The March findings of the Senate Select Committee on Intelligence on torture were not overlooked by international delegates. Many echoed the concerns of the Danish delegate, Carsten Staur, who recommended that the U.S. "further ensures that all victims of torture and ill treatment, whether still in U.S. custody or not, obtain redress and have an enforceable right to fair and adequate compensation and as full rehabilitation as possible, including medical and psychological assistance."

2ac – 4 years

UPR reviews happen in cycles – most recent U.S. review was two months ago – computation means the counterplan process happens in 4 years
OHCHR 15 – Office of the High Commissioner for Human Rights (Basic facts about the UPR, United Nations Human Rights, 2015,
http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx)//JJ

***all of the neg ev talks about how the most recent UPR was in May 2015

When will States have their human rights records reviewed by the UPR? During the first cycle, all UN Member States have been reviewed, – with 48 States reviewed each year. The second cycle, which officially started in **May 2012** with the 13th session of the UPR Working Group, will see **42 States** reviewed each year. The reviews take place during the sessions of the UPR Working Group (see below) which meets **three times a year**. The **order of review remains the same** as in the first cycle and the number of States reviewed at each session is now 14 instead of 16.

2ac – wont implement

U.S. won't implement – empirics

HRW 5/7/15 – Human Rights Watch, citing Antonio Ginatta, U.S. Advocacy Director at HRW (US: UN Rights Review to Expose Failings, HRW, https://www.hrw.org/news/2015/05/07/us-un-rights-review-expose-failings)//JJ

The United States should make concrete commitments to address serious human rights problems during a United Nations review of its human rights record, Human Rights Watch said today. On May 11, 2015, the US is scheduled to undergo its second Universal Periodic Review (UPR) before the UN Human Rights Council in Geneva, in which UN member countries will raise past US human rights pledges and new concerns. The UN Human Rights Council periodically reviews the human rights progress of each member every four-and-a-half years during this process. The first review of the US was in 2010. "At the UN rights review, the US has been strong on process and short on substance," said Antonio Ginatta, US advocacy director at Human Rights Watch. "The US has little progress to show for the many commitments it made during its first Universal Periodic Review." During the current UN review, Human Rights Watch has flagged concerns over the newly revealed mass surveillance programs, longstanding concerns over indefinite detention without trial at Guantanamo Bay, and the lack of accountability for torture under the previous administration. The UN established the UPR process in 2006. Countries under review submit written reports on their human rights situation and respond to the questions and recommendations put forward by UN member countries at the Human Rights Council. All 193 UN member countries undergo these reviews. The United States engaged in extensive consultation with nongovernmental organizations in the lead-up to its UPR. In its first review in 2010, the US accepted 171 recommendations out of 240 from other member countries. However, the US has **largely failed to follow through** on these recommendations. For example, the US agreed to: Take measures to "improve living conditions through its prison system," "increase its efforts to eliminate alleged brutality and use of excessive force by law enforcement officials" against Latinos, African Americans, and undocumented migrants, and study racial disparities in the application of the death penalty. Five years later, the **US has done little** on these recommendations; "[I]nvestigate carefully each case" involving the detention of migrants and ensure immigration detention conditions meet international standards. While UN bodies oppose all detention of immigrant children, the US has in the past year **embraced the detention** of immigrant children and their mothers; and Seek the ratification of core international human rights treaties, including the Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child. The Obama administration submitted **only** the Disability Rights Convention to the Senate for its consent, and was **unable to muster** the two-thirds majority necessary for ratification. UN member countries should hold the US to its past human rights commitments by making sure that new recommendations are concrete, specific, and measurable, Human Rights Watch said. "Governments at the Human Rights Council should press the US on mass surveillance, police violence, and detention of migrant families," Ginatta said. "The US should take the opportunity to make a serious commitment to roll back these abusive practices."

2ac – U.S. lies

U.S. will lie about the plan – durable fiat doesn't answer this

Norrel 5/12/15 – staff reporter at numerous American Indian newspapers and a stringer for AP and USA Today (Brenda, US lies to UN Human Rights Council about spying, torture, imprisonment of migrant children, The Narcosphere, http://narcosphere.narconews.com/notebook/brenda-norrell/2015/05/us-lies-un-human-rights-council-about-spying-torture-imprisonment-mi)//JJ

The United States **lied** about **spying**, **torture** and the **imprisonment of migrant children**, before the UN Human Rights Council during a review of the US human rights record on Monday in Geneva. The US delegation said that US spying has not been used to suppress dissent or for unfair business advantage. However, the US government has used spying to stalk and entrap activists, spy on the media, and imprison whistleblowers. Further, the US government has used the NSA spying for insider knowledge for business and trade. **During the Universal Periodic Review**, the US delegation **concealed the facts** of the imprisonment of migrant children, the murder of women and children during **drone assassinations**, and the truth about US **torture** and **renditions**. Chad's representative Awada Angui told the UN Human Rights Council, "Chad considers the United States of America to be a country of freedom, but recent events targeting black sectors of society have tarnished its image." The US concealed its prisons for profit empire, which has resulted in the imprisonment of migrants, blacks, American Indians and Chicanos for corporate profit. The US **did not mention** its political prisoners. The US did not provide the facts of the **murder of migrants** by US Border Patrol agents, or of the **rape and abuse** carried out by US Border Patrol agents. The US delegation did not reveal that hundreds of US Border Patrol and ICE agents have been convicted for **drug smuggling** and serving as "spotters" for the drug cartels to bring their load across the Mexican border. Tohono O'odham and other Indigenous Peoples living along the border are the victims of violence carried out by the US Border Patrol agents and drug cartels. During its responses, the US attempted to cover up the widespread rape within the US military and the **extensive homelessness** and **failed medical services** for veterans in the US. The majority of the **predominantly docile UN Human Rights Council** representatives seemed to believe the US public relations spin asserting that all problems in Indian country have been solved. The US did not reveal that coal mining, power plants and uranium mining are poisoning Native American communities. The US did not reveal that Navajos and Pueblos in the Southwest live in a cancer alley created by uranium mines, and dirty coal-fired power plants.

1ar – xt: lie

They'll lie – May's review proves

Norrel 5/12/15 – staff reporter at numerous American Indian newspapers and a stringer for AP and USA Today (Brenda, US lies to UN Human Rights Council about spying, torture, imprisonment of migrant children, The Narcosphere, http://narcosphere.narconews.com/notebook/brenda-norrell/2015/05/us-lies-un-human-rights-council-about-spying-torture-imprisonment-mi)//JJ

The US delegation concealed the fact that the **imprisonment of whistleblowers** and **assassinations by drones** have **accelerated** during the Obama administration. During the review on Monday, the United States was **not held accountable** for arming the drug war in Mexico by providing drug cartels with assault weapons. The ATF's Project Gunrunner, Operation Wide Receiver and Fast and Furious have armed the drug cartels in Mexico since 2005, beginning on the Texas border and continuing on the Arizona border, according to US Dept. of Justice documents. Further, the US delegation concealed the fact US Homeland Security gave the US border surveillance **contract to Israel's Apartheid security** contractor Elbit Systems, responsible for the security surrounding Palestine. Currently Elbit holds the contract to construct US spy towers on the Arizona border, including those on the sovereign Tohono O'odham Nation. The most **egregious cover-ups** by the US delegation were the fantasy claims by the US delegation regarding the fairy tale array of services for migrant children. Migrant children have been imprisoned in large numbers, in violation of international law. The US fantasy claims included the denial of torture, and assurances that all inmates in Guantanamo had access to fair trials. While one member of the US delegation asserted that the US had gone too far in its torture program, and steps had been taken to halt it, **another member of the US delegation** from the Joint Chiefs of Staff assured the Human Rights Council that inmates at Guantanamo were **treated in accordance** with domestic and international law.

2ac – surv. compliance now

Surveillance compliance now –

DS 2/6/15 – U.S. Department of State (UPR Report of the United States of America, Department of State Diplomacy in Action, http://www.state.gov/j/drl/upr/2015/237250.htm)//JJ

83. The United States strives to **protect privacy and civil liberties** while also protecting national security. We have an **extensive and effective framework** of protections that applies to privacy and intelligence issues, including electronic surveillance. The Foreign Intelligence Surveillance Act governs, among other matters, electronic surveillance conducted within the United States for the purpose of gathering foreign intelligence or counterintelligence information. In establishing the Foreign Intelligence Surveillance Court, FISA sets forth a system of **rigorous, independent judicial oversight** of the activities it regulates to ensure that they are lawful and effectively address privacy and civil liberties concerns. Such activities are also subject to oversight by the U.S. Congress and entities in our Executive Branch. 84. Signals intelligence collection outside the FISA context is also regulated, and must have a valid foreign intelligence or counterintelligence purpose. In January 2014, the President issued **Presidential Policy Directive-28**, which enunciates standards for the collection and use of foreign signals intelligence. It emphasizes that we do not collect foreign intelligence for the purpose of suppressing criticism or dissent, or for disadvantaging any individual on the basis of **ethnicity**, **race**, **gender**, **sexual orientation**, or **religion**, and that agencies within our intelligence community are required to adopt and make public to the greatest extent feasible procedures for the protection of personal information of non-U.S. persons. It also requires that privacy and civil liberties protections be **integral** in the planning of those activities, and that personal information be protected at appropriate stages of collection, retention, and dissemination. 85. PPD-28 recognizes that all persons should be treated with dignity and respect, regardless of nationality or place of residence, and that all persons have legitimate privacy interests in the handling of their personal information collected through signals intelligence. It therefore requires U.S. signals intelligence activities to include **appropriate safeguards** for the personal information of all individuals. 86. Further, our intelligence community is required to report on such programs and activities to Congress, where these issues are vigorously debated. Agencies within our intelligence community have privacy and civil liberties officers. The National Security Agency, for example, has recently established a **Civil Liberties and Privacy Officer** who advises on issues including signals intelligence programs that entail the collection of personal information.

2ac – upr bad

The UPR is a joke – no credibility

Pollak 5/11/15 – lost to my cousin in the 2010 Illinois's 9th congressional district election, editor-in-chief for Breitbart, AB from Harvard, JD from Harvard, MA from Cape Town (Joel, Obama Complains to UN About America's 'Human Rights' Violations, Breitbart, http://www.breitbart.com/national-security/2015/05/11/obama-complains-to-un-about-us-human-rights-violations/)//JJ

The State Department report, released Monday as part of the Universal Periodic Review (UPR) at the UN Human Rights Council, reads less like an accounting of human rights issues and more like the **platform of the Democratic Party [chirp chirp]**–and invites the world to judge America harshly. The **so-called** "human rights" problems cited in the report include: Police brutality, including the Michael Brown case in Ferguson, Missouri Discrimination against Muslims who want to build or expand mosques Voter identification laws in Texas and elsewhere Predatory lending in home mortgages Suspension of black children in schools Women earning "78 cents on the dollar" (a false statistic) In addition, the report boasts of progress in the following areas: Promoting same-sex marriage Fighting discrimination against transgender children in school Executive action on illegal immigration Helping illegal alien children who cross the border Protecting privacy rights against government surveillance Trying to close the Guantánamo Bay prison for terror detainees Revoking "torture" memos for interrogating terrorists Passing Obamacare Expanding food stamps Regulating "carbon pollution" to fight climate change The apologetic, left-liberal report echoes one filed by the Obama administration five years ago, during which the State Department proudly told the Human Rights Council that the administration opposed Arizona's new immigration law, among other alleged American misdeeds. Critics of the UN note that "the UPR has become a place where **abusers are applauded** and **democracies are heavily criticized**," and "Iran, Libya, China, Cuba, and Saudi Arabia" are treated lightly. Al-Jazeera America reported that the U.S. was subjected to scathing criticism from a **variety of dictatorships** after filing its report, including Chad, Pakistan, Russia, and China. Iran, for example, complained about racial discrimination in the United States, among other criticisms, calling on the U.S. to "protect the rights of African-Americans against police brutality." (The Iranian regime **brutally represses** its own population, and used police and paramilitaries to crush a pro-democracy protest in 2009.) The Qatar-owned network piled on with a **misleading headline**: "US cited for police violence, racism in scathing UN review on human rights." The story implied that it was the UN that had targeted the United States, rather than the Obama administration targeting America–a **rather telling conflation** of America's enemies with the Obama administration itself. A representative of the Obama administration offered meekly: "The tragic deaths of Freddie Gray in Baltimore, Michael Brown in Missouri, Eric Garner in New York, Tamir Rice in Ohio and Walter Scott in South Carolina have renewed a long-standing and critical national debate about the even-handed administration of justice. "These events challenge us to do better and to work harder for progress–through both dialogue and action." The Obama administration also boasted to the UN about challenging "racially discriminatory voting laws in North Carolina and Texas," though **many UN member states** have laws requiring voter photo identification, and similar laws have been upheld in the recent past by the U.S. Supreme Court as **constitutional and non-discriminatory.**

1ar – xt: upr bad

UPR won't solve – hypocritical process

Sherrif 5/11/15 – visiting scholar at the Arthur L. Carter Journalism Institute, journalist for NYU, Luce Research Fellow in Religion and Digital Media at NYU's Center for Religion and Media((Natasja, US cited for police violence, racism in scathing UN review on human rights, Aljazeera America, http://america.aljazeera.com/articles/2015/5/11/us-faces-scathing-un-review-on-human-rights-record.html)//JJ

Under the UPR, every U.N. member state is subject to the same peer-review of its human rights record on a four-year cycle. The UPR was created as part of the mandate of the Human Rights Council, established by the U.N. General Assembly in 2006 to replace the widely discredited Human Rights Commission, which included among its members some of the world's most egregious human rights abusers. The council consists of elected members which, when electing new members, according to the resolution that created it, should "take into account the candidates' contribution to the promotion and protection of human rights and their voluntary pledges and commitments made thereto." Still, according to Freedom House — an organization advocating for democracy and human rights — repressive regimes nonetheless **gain council membership** and can **weaken the effectiveness** of the council and the UPR. And the process is **not without hypocrisy**, as countries that **frequently abuse** the rights of their citizens line up to offer their critiques of and recommendations for other member states. "Obviously, everybody has improvements they can make to their human rights record. We do believe that everybody from the most powerful country on down should be called to task on their rights records, and we value the opportunity to do so," said Morales. "We like to focus on the substance of the comments rather than the source of them," she added.

More – the UPR is terminally flawed

Schaefer and Groves '10 --- fellow in international regulatory affairs at Heritage's Margaret Thatcher Center for Freedom and senior research fellow (Brett D, and Steven, "The U.S. Universal Periodic Review: Flawed from the Start," The Heritage Foundation, http://www.heritage.org/research/reports/2010/08/the-us-universal-periodic-review-flawed-from-the-start)//Mnush

Established in Human Rights Council Resolution 5/1 of June 18, 2007, the UPR process reviews countries on several bases, including, but not limited to: (a) the charter of the United Nations; (b) the Universal Declaration of Human Rights; (c) human rights instruments to which the state is a party; and (d) voluntary pledges and commitments made by states, including those undertaken when presenting their candidatures for election to the Human Rights Council.¶ While the UPR offers an unprecedented opportunity to hold the human rights practices of every country open for public examination and criticism, **it has proven to be a flawed process hijacked by countries seeking to shield themselves from criticism—a flaw that the HRC shares with the broader human rights efforts in the U.N. system.**¶ There are two key problems with the UPR: (1) contributions to the process by nongovernmental organizations (NGOs) are strictly curtailed; and (2) countries use points of order and other procedures to intimidate NGOs from making statements or to strike their comments from the record.[5] These two issues have tainted the UPR and resulted in numerous farcical human rights reviews. For instance:¶ China laughably claimed in its UPR report that it "adheres to the principle that all ethnic groups are equal and implements a system of regional ethnic autonomy in areas with high concentrations of ethnic minorities," that elections are "democratic" and "competitive," that "citizens enjoy freedom of speech and of the press," and that China respects the right to religious freedom.[6]¶ Cuba's UPR report claimed that its "democratic system is based on the principle of 'government of the people, by the people and for the people'" and that the right to "freedom of opinion, expression and the press" is guaranteed and protected, as are the rights of assembly and peaceful demonstration.[7]¶ North Korea asserted that it

"comprehensively provides" for fundamental rights and freedoms, including "the right to elect and to be elected, the freedoms of speech, the press, assembly, demonstration and association, the rights to complaints and petitions, work and relaxation, free medical care, education and social security, freedoms to engage in scientific, literary and artistic pursuits, and freedoms of residence and travel."[8]¶ These patently false reports were accepted at face value and approved by the majority of member states in the council.¶ A U.S. Grilling in the Offing¶ The U.S. review is unlikely to go as smoothly as those for China or Cuba. Countries deeply resentful of the U.S. and its practice of criticizing their human rights records in its annual Country Reports on Human Rights Practices will seize with great glee the opportunity to accuse the U.S. of violating the rights of its citizens (and non-citizens). Human rights NGOs (including organizations based in the U.S.) will eagerly join them to make sure that their complaints, which are often unsupported if not specious, are highlighted.¶ Aside from the Administration's obvious self-aggrandizement (President Obama is referred to over 20 times in the 25-page report, and his health care reform is credited with vast achievements that have yet to be realized, if they ever will), the U.S. UPR report generally defends America's strong record in the preservation of human rights. To its credit, the report provides a robust defense of the U.S. Constitution as the basis for and protection of human rights in the U.S. The report properly emphasizes the primacy of civil and political rights (dedicating over 12 pages to those rights) as opposed to so-called "economic and social rights" (of which the report discussed only three and asserted that they were pursued as "a matter of public policy" rather than as human rights obligations). That emphasis will likely displease the HRC, which tends to give equal if not greater weight to economic and social "rights" when analyzing a nation's human rights record.¶ Yet some of what the Obama Administration wrote in the official U.S. report will be cannon fodder to the HRC during the U.S. review. For instance, one particular paragraph in the U.S. report demonstrates the type of self-flagellation that the HRC expects of the U.S.:¶ We are not satisfied with a situation where the unemployment rate for African Americans is 15.8%, for Hispanics 12.4%, and for whites 8.8%, as it was in February 2010. We are not satisfied that a person with disabilities is only one-fourth as likely to be employed as a person without disabilities. We are not satisfied when fewer than half of African-American and Hispanic families own homes while three-quarters of white families do. We are not satisfied that whites are twice as likely as Native Americans to have a college degree.[9]¶ This paragraph's emphasis on group rights and achieving "equality of results" rather than only "equality of opportunity" is consistent with the HRC's often wrongheaded perspective on the nature of human rights.¶ It remains to be seen how the HRC will react to the U.S. report this November in Geneva. But the UPR process thus far has been **closer to farce than fact**. Those countries bent on attacking the U.S. will no doubt come armed with plenty of criticisms regarding the U.S. record. The UPR report will provide them with some additional, unnecessary ammunition. However, U.S. participation in the UPR process itself already provides **undue legitimacy to their complaints**.

2ac – noko war da

UN human rights action triggers North Korea nuclear response

Oakford 14 – UN correspondent at VICE News (Samuel, North Korea Threatens 'Nuclear War' Over Human Rights Reprimand, VICE News, 11/24/14, https://news.vice.com/article/north-korea-threatens-nuclear-war-over-human-rights-reprimand)//JJ

A week after the passage of a **UN resolution** condemning North Korea's human rights record, the reclusive regime has ratcheted up threats against the US and Japan, warning its Pacific neighbor "will **disappear from the world map** for good." The bluster came in a statement issued Sunday by North Korea's National Defense Commission (NDC). In it, the country — known officially as the Democratic People's Republic of Korea — predicted "time will prove what high price those who unreasonably violated the dignity of the DPRK despite its repeated warnings will have to pay." The NDC also referred to the specter of "**nuclear war**" **on the Korean peninsula**, and intimated that the country may be considering a further nuclear test. The statement was a **direct response** to the passage of a resolution last Tuesday in the General Assembly's Third Committee that urged the Security Council to consider referring North Korea's human rights abuses to the International Criminal Court. Though both China and Russia are expected to veto such a move, the resolution — overwhelmingly approved by member states — was highly symbolic, and upped pressure on the isolated nation. North Korea warns of 'serious consequences' after UN human rights reprimand. Read more here. For months prior to the vote, North Korea had engaged in a diplomatic charm offensive aimed at averting attention from the results of a UN Commission of Inquiry that investigated human rights abuses in the country. In an April report, the Commission found the government in Pyongyang has systematically murdered, starved, and raped its own citizens, imprisoning tens of thousands of people in political prisons. "The UN as a body has never come out in this way to criticize North Korea," Charles Armstrong, professor of Korean Studies at Columbia University, told VICE News. "This will be **hanging over them** for some time to come."

Causes escalatory global nuclear war

Yenko 6/30/15 – reporter for the Morning News (Athena, North Korea Threatens US To Extinction, Morning News USA, http://www.morningnewsusa.com/north-korea-threatens-us-to-extinction-2325630.html)//JJ

North Korea vowed to launch a nuclear counter-attack that will extinguish the United States into flames the moment it ignites a **nuclear war on the peninsula**. A statement from the National Defense Commission of the DPRK brandished a warning that it is ready for conventional, nuclear or cyber wars against U.S. The statement comes after U.S. deployed USS Chancellorship and Global Hawk at a U.S. military base in Yokosuka, Japan. U.S. will **perish in the flames** North Korea has called for the U.S. to pay heed to the DPRK's warning that it is ready for conventional or nuclear or cyber war. "The U.S. would be well advised to bear in mind that the DPRK has already put in place powerful strike group equipped with strategic and tactical rockets to cope with its missile threat," the statement from its defense department reads as reported by KCNA. "It is as clear as a pikestaff that if the U.S. nuclear maniacs ignite a nuclear war on the peninsula at any cost, they will perish in the flames kindled by themselves," the statement declared. The heavy-worded statement comes as U.S. deploys the USS Chancellorship and Global Hawk at a U.S. military base in Yokosuka, Japan. North Korea's defense department said if the U.S. pushes through its plan to deploy USS Ronald Reagan at the end of this year, there will already be 14 warships in the U.S. Navy base in Yokosuka, Japan. The number will be the largest-ever warship fleet in Japan by U.S. since World War II. Remember Hiroshima and Nagasaki North Korea said the U.S. is daydreaming if it thinks that it can launch a nuclear attack tantamount to dropping atomic bombs over Hiroshima and Nagasaki. North Korea's fear over the same attack was sparked as U.S. said that the deployment of warships in Japan is part of military strategy to contain North Korea and China. "All these military moves under the pretext of 'containing the DPRK and China' are aimed to kick up an **overall nuclear war** racket against the DPRK in the ground, air and seas," KCNA said in its report. "This fully revealed once again the aggressive nature of the U.S. imperialists who are making no scruple of periodically disturbing peace and stability in the region to attain their strategic and avaricious purposes," the report stated. Morning News USA has recently reported that Pentagon has called for the advancement of its nuclear deterrent capability. Deputy Defense Secretary Bob Work said that ongoing nuclear upgrades by **Russia**, **China** and

North Korea should compel U.S. to maintain a strong nuclear deterrent force at present or in the immediate future.

1ar – xt: noko war da

Turn

AFP 14 – Associated Free Press (North Korea warns 'catastrophic consequences' over UN rights ruling, The Telegraph, 11/23/14, http://www.telegraph.co.uk/news/worldnews/asia/northkorea/11248559/North-Korea-warns-catastrophic-consequences-over-UN-rights-ruling.html)//JJ

North Korea's top military body on Sunday warned of "catastrophic consequences" for supporters of the latest UN censure on its human rights record, as state media reported leader Kim Jong Un presided over fresh military drills.

A resolution asking the UN Security Council to refer North Korea's leadership to the International Criminal Court (ICC) for possible charges of "crimes against humanity" passed by a resounding vote of 111 to 19 with 55 abstentions in a General Assembly human rights committee last week.

Introduced by Japan and the European Union and co-sponsored by some 60 nations, the resolution drew heavily on the work of a UN inquiry which concluded in February that the North was committing human rights abuses "without parallel in the contemporary world."

The North since then has repeatedly slammed the bill as a political "fraud" and warned that it was being pushed into conducting a fresh nuclear test.

The National Defense Commission (NDC), chaired by Kim, said Sunday the bill amounted to a "war declaration" taking issue with the North's leader, Kim Jong-Un.

Related Articles

North Korean leader Kim Jong Un, left, and then Vice Chairman of the National Defense Commission Jang Song Thaek

North Korean linked to Kim Jong-un's purged uncle 'goes missing' in Paris 21 Nov 2014

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Comment: If Kim Jong-un won't face a war crimes court, then who on earth will? 19 Nov 2014

UN panel demands North Korea human rights investigation 19 Nov 2014

The resolution makes no mention of Kim but notes the UN inquiry finding that the "highest level of the state" holds responsibility for the rights abuses.

The dignity of its leader "cannot be bartered for anything," NDC said in a statement, adding Japan as well as South Korea and the US - co-sponsors of the UN bill - were Pyongyang's "primary target."

"The US and its followers will be wholly accountable for the unimaginable and catastrophic consequences to be entailed by the frantic 'human rights' racket against the (North)," it said.

As Pyongyang ramped the up angry threats, Kim guided a large military drill involving maritime transport and amphibious landing, the state-run KCNA said.

The NDC also said that Seoul's leader Park Geun-Hye would not be safe "if a nuclear war breaks out" on the Korean peninsula, and its attacks could make Japan "disappear from the world map for good."

The isolated and nuclear-armed state has staged three atomic tests - most recently in 2013, which was its most powerful test to date.

This week, the US-Korea Institute at Johns Hopkins University said on its closely followed 38 North website that new satellite imagery suggested Pyongyang may be firing up a facility for processing weapons-grade plutonium - a major source for a nuclear test.

South Korea said last week its military was on stand-by, and the US said Thursday that the renewed threat of a nuclear test in the North was a "great concern."

2ac – permutation

The permutation solves the net benefit – US taking the lead gives credibility to the UN

Schaefer and Groves ’10 --- fellow in international regulatory affairs at Heritage’s Margaret Thatcher Center for Freedom and senior research fellow (Brett D, and Steven, “The U.S. Universal Periodic Review: Flawed from the Start,” The Heritage Foundation, http://www.heritage.org/research/reports/2010/08/the-us-universal-periodic-review-flawed-from-the-start)//Mnush

By legitimizing the HRC through U.S. membership, the Obama Administration will give credibility to a farcical UPR process that has become little more than a “mutual praise society”[3] for repressive regimes and created the opportunity for human rights abusers to take unjustified shots at America’s human rights record. The Obama Administration was mistaken to believe it could improve the HRC from within and should press for fundamental reforms at the mandatory 2011 review of the council.

AT: States CP- JDI

AT States CP – Solvency (Supremacy Clause)

States can't cut off power to federal agencies – it's unconstitutional and violates the supremacy clause – the counterplan will get rolled back

Andrew **Kloster**, 2/12/**2014**, [Kloster is a legal fellow in the Edwin Meese III Center for Legal and Judicial Studies at The Heritage Foundation], The Daily Signal, "Maryland's attempts to cut off NSA utilities are unconstitutional," http://dailysignal.com/2014/02/12/marylands-attempts-cut-nsa-utilities-unconstitutional/, mm

Since the Edward Snowden leaks to The Guardian began last year, the National Security Agency (NSA) has been a political hot potato. Yet, whatever you think of the NSA, it is clearly a federal agency authorized by federal statute. Some lawmakers in the state of Maryland—home to the NSA's headquarters in Ft. Meade—have recently proposed an unconstitutional fix: They want to cut off electricity and water to the building.¶ This scheme forgets the basics of our constitutional system. Changes to the NSA must come at the federal level: Congress can direct legislative changes; the President can manage the agency consistent with statute and his Article II authority; federal courts can ensure that the NSA's actions comply with statute and the Constitution. States, however, have no business discriminating against federal agencies.¶ Article VI, clause 2 of the Constitution—the Supremacy Clause—reads:¶ This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and 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.¶ Ever since 1819, in a case called McCulloch v. Maryland, the Supreme Court of the United States has held that "the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government." Nearly 200 years later it seems Maryland has still not learned that lesson.¶ If the law authorizing the NSA is constitutionally valid, then such direct, obvious attempts to interfere with the NSA by state legislators are clearly unconstitutional. These attempts are so plainly out of bounds that the taxpayers of the state of Maryland might even be on the hook for Department of Justice (DOJ) attorneys' fees when the DOJ **inevitably sues in federal court to keep the power on and the water running.**

CP can't solve – the Supremacy Clause blocks states from impeding the federal government

Josh **Peterson**, 1/20/**2014**, Watchdog, "US constitution could keep state officials from going to jail for helping NSA," http://watchdog.org/124570/nsa-2/, mm

Certain states are considering legislation that would criminalize helping the National Security Agency, but ironically, none other than the U.S. Constitution might put a stop to that.¶ Two days before President Obama was scheduled to announce reforms to NSA's collection activities, lawmakers in Washington state last week joined the growing chorus of state legislators across the country looking to rein in the agency's powers with whatever legal tools were at their disposal.¶ Basing their reasoning on what is called the Anti-Commandeering Doctrine, Washington state Rep. David Taylor, R-Moxee, and Luis Moscoso, D-Mountlake Terrace, dropped a bill that would criminalize state officials and state government contractors providing material support and state assistance to the federal government's warrantless electronic surveillance activities.¶ While those concerned about the federal government's electronic spying activities are quick to cite the Fourth Amendment as their defense, in this case, the U.S. Constitution also might side with the federal government in keeping a potential local lawbreaker out of jail.¶ Bradley Moss, a Washington, D.C.-based national security lawyer, told Watchdog.org in a recent interview that he believed the courts would view the debate as a "Supremacy Clause" issue.¶ The Supremacy Clause — Article 6, Clause 2 of the Constitution — defers authority to the federal government in the event that an actual conflict over power between the federal and local governments takes place.¶ "Given the existing precedent, it is my professional view that the courts would view this as a Supremacy Clause issue," said Moss, "that it would preempt the Washington (state) statute, that you can't criminalize actions by state officials attempting to coordinate with the federal government in a lawful exercise of its national security and foreign intelligence activities."¶ Moss said that the issue was "tricky" from both a political and legal standpoint.¶ "That's why that clause was specifically put there," he said, "to prevent the state from obstructing the federal government's ability to do what it is authorized to do by the Constitution itself."

The Supremacy Clause guts solvency for the CP – it trumps the anti-commandeering doctrine

Josh **Peterson**, 1/24/**2014**, Watchdog, "Arizona, New Hampshire, Tennessee lawmakers target NSA," http://watchdog.org/125238/nsa-3/, mm

State lawmakers in New Hampshire and Arizona introduced legislation this week pushing back against the federal government's warrantless data collection programs.¶ The bills are modeled on legislation drafted by the OffNow.org coalition, a state level organization challenging the federal government's warrantless electronic surveillance activities.¶ In New Hampshire, HB1533, sponsored by two Republican state representatives, Neal Kurk and Emily Sandblade, and Democrat state Rep. Tim O'Flaherty, would prohibit a state official from searching a portable electronic device without a warrant.¶ Any official caught in willful violation could be charged with a Class-A misdemeanor, which under New Hampshire state law means immediate jail time upon conviction, along with a possible fine and probation.¶ HB1619, also sponsored by Kurk, "affirms a reasonable expectation of privacy in information from sources including, telephone; electric, water and other utility services; internet service providers; social media providers; banks and financial institutions; insurance companies; and credit card companies," OffNow.org said in a statement.¶ The bill makes an exception for federal agents to collect data without a warrant, but bars state agencies from receiving and using the information in court.¶ In Arizona, SB1156, which has 14 Republican sponsors, was introduced by state Sen. Kelli Ward. It would bar the state from providing material support to the agency's activities and ban any data collected without a warrant from being used in court.¶ Ward announced her intentions in December to introduce a bill that would keep Arizona from supporting the NSA.¶ Tennessee state lawmakers Sen. Stacey Campfield, R-Knoxville, and State Rep. Andy Holt, R-Dresden, introduced companion bills earlier in the week that would ban state officials from providing material support to an NSA code-breaking facility at Oak Ridge.¶ The bill mirrors similar legislation introduced Jan. 15 by two Washington state lawmakers seeking to deny material support and state funds to a NSA listening post at the U.S. Army's Yakima Training Facility.¶ OffNow.org's legal reasoning behind supporting the states refusing to help NSA is based in the Supreme Court legal precedent of the anti-commandeering doctrine, which recognizes that states can refuse to comply with federal laws and programs.¶ The principle is disputable under the U.S. Constitution's Supremacy Clause, however, which defers authority to the federal government in the event a conflict over power takes place between the federal and local governments.

AT States CP – Solvency – Federal Action Key

State action won't solve – even the founder of the movement agrees – federal action is key

Joe **Wolverton**, 5/4/**2015**, The New American, "BBC: States assert sovereignty to shut down NSA facilities," http://www.thenewamerican.com/usnews/constitution/item/20798-bbc-states-assert-sovereignty-to-shut-down-nsa-facilities, mm

During his interview on NPR, Boldin recognized that regardless of the power of the weapon of nullification, the fight against constitutional disregard and constant federal surveillance will not be easily won.¶ "Now, if anybody tells you that you can just introduce one bill on a state level and it's like a silver bullet, it's going to stop the NSA from spying on you, from violating the Fourth Amendment, **they're lying to you**," Boldin admitted. "I don't want to be a snake-oil salesman. I want to come up with a real strategy that can work."¶ According to the BBC report, the future is in the hands of the people and the legislators they elect to represent them in state government:¶ "We need to get creative because we have a duty to our citizens regardless of the circumstances," [Stickland] says. "Hopefully the federal government will get into its place and proper role when the states start fighting back."

AT States CP – Nuclear Power Turn

The counterplan opens Pandora's box – states will openly ignore environmental regulations

Anthony **Zurcher**, 4/27/**2015**, BBC, "US states take aim at NSA over warrantless surveillance," http://www.bbc.com/news/world-us-canada-32487971, mm

Another objection raised to the anti-NSA legislation is that the strategy - denying state support to objectionable government activities - **could open a Pandora's box where legislators use the tactic on** other political targets, like Planned Parenthood offices that provide abortion counselling or **agencies enforcing unpopular federal environmental regulations**.

Strong adherence to federal environmental standards key to the nuclear power industry

Sergio **Chapa**, 6/8/**2015**, San Antonio Business Journal, “Are new EPA regulations an opportunity for nuclear energy?” http://www.bizjournals.com/sanantonio/news/2015/06/08/are-new-epa-regulations-an-opportunity-for-nuclear.html, mm

The Environmental Protection Agency is expected to toughen the nation's air pollution standards in the fall giving nuclear energy a possible opportunity to grow in the United States.¶ Hundreds of nuclear energy professionals are gathering at the Grand Hyatt in downtown San Antonio for the American Nuclear Society's annual meeting all this week.¶ The conference comes at time when the EPA is considering lowering ground-level ozone standards from 84 parts per billion to between 65 and 70 parts per billion forcing many American cities, including San Antonio, to look at ways to reduce emissions before they affect permitting for new businesses.¶ Participants at the conference's opening plenary said renewables such as wind and solar energy are not practical in many areas of the United States but nuclear energy dramatically reduces emissions and delivers clean, reliable, safe and affordable power but faces immense regulatory hurdles and a negative public image.¶ With two coal-fired plants, San Antonio's municipally-owned utility company CPS Energy is the number one contributor to the region's ground-level ozone in the region.¶ CPS Energy CEO Doyle Beneby told conference attendees that the utility company remains committed to its 40 percent stake in the South Texas Nuclear Project near Bay City. The nuclear power plant currently produces around one-third of CPS Energy's total electricity.¶ With a planned investment of close to $400 million, CPS Energy plans to be a 7.625 percent stakeholder in two more nuclear reactors that will be built on the site.¶ Beneby told attendees world leaders want to eliminate the use of all fossil fuels by the year 2100 leading CPS Energy and others to look at a nuclear energy solution.¶ "Clearly, nuclear will play an important role in the energy dynamic of the United States going forward," Beneby said.

Nuclear power solves warming and prevents extinction

Matthew **Lewis**, Winter **2007**, Issues in Science and Technology, "Book review: The End is Near," http://issues.org/23-2/br_lewis-10/, mm

At age 87, James Lovelock remains the indefatigable proponent of the Gaia hypothesis, which depicts Earth as a living entity. In The Revenge of Gaia, he warns that Gaia is not well. Earth is running a worrisome fever, and unless drastic action is taken immediately, **the coming heat wave will prove catastrophic**. By the end of the century, Lovelock fears, humanity will be reduced to a small fraction of its current size, largely limited to arctic and polar refuges.¶ Lovelock's warnings are rather apocalyptic but hardly exceptional. Almost all environmental scientists worry about global warming, and for good reason. Lovelock's prescription for avoiding collapse, on the other hand, is rarely encountered. The only thing that can save the world, he vigorously argues, is nuclear power.

AT States CP – 1AR – Nuclear Power Solves Warming

Nuclear power can rapidly solve warming

David **Biello**, 12/12/**2013**, Scientific American, "How nuclear power can stop global warming," http://www.scientificamerican.com/article/how-nuclear-power-can-stop-global-warming/, mm

In addition to reducing the risk of nuclear war, U.S. reactors have also been staving off another global challenge: climate change. The low-carbon electricity produced by such reactors provides 20 percent of the nation's power and, by the estimates of climate scientist James Hansen of Columbia University, avoided 64 billion metric tons of greenhouse gas pollution. They also avoided spewing soot and other air pollution like coal-fired power plants do and thus have saved some 1.8 million lives.¶ And that's why Hansen, among others, such as former Secretary of Energy Steven Chu, thinks that nuclear power is a key energy technology to fend off catastrophic climate change. "We can't burn all these fossil fuels," Hansen told a group of reporters on December 3, noting that as long as fossil fuels are the cheapest energy source they will continue to be burned. "Coal is almost half the [global] emissions. If you replace these power plants with modern, safe nuclear reactors you could do a lot of [pollution reduction] quickly."¶ Indeed, he has evidence: the speediest drop in greenhouse gas pollution on record occurred in France in the 1970s and '80s, when that country transitioned from burning fossil fuels to nuclear fission for electricity, lowering its greenhouse emissions by roughly 2 percent per year. The world needs to drop its global warming pollution by 6 percent annually to avoid "dangerous" climate change in the estimation of Hansen and his co-authors in a recent paper in PLoS One. "On a global scale, it's hard to see how we could conceivably accomplish this without nuclear," added economist and co-author Jeffrey Sachs, director of the Earth Institute at Columbia University, where Hansen works.

Only nuclear power can solve – renewables can't fill the gap

Fiona **Harvey**, 5/3/**2012**, The Guardian, "nuclear power is only solution to climate change, says Jeffrey Sachs," http://www.theguardian.com/environment/2012/may/03/nuclear-power-solution-climate-change, mm

Combating climate change will require an expansion of nuclear power, respected economist Jeffrey Sachs said on Thursday, in remarks that are likely to dismay some sections of the environmental movement.¶ Prof Sachs said atomic energy was needed because it provided a low-carbon source of power, while renewable energy was not making up enough of the world's energy mix and new technologies such as carbon capture and storage were not progressing fast enough.¶ "We won't meet the carbon targets if nuclear is taken off the table," he said.¶ He said coal was likely to continue to be cheaper than renewables and other low-carbon forms of energy, unless the effects of the climate were taken into account.¶ "Fossil fuel prices will remain low enough to wreck [low-carbon energy] unless you have incentives and [carbon] pricing," he told the annual meeting of the Asian Development Bank in Manila.¶ A group of four prominent UK environmentalists, including Jonathon Porritt and former heads of Friends of the Earth UK Tony Juniper and Charles Secrett, have been campaigning against nuclear power in recent weeks, arguing that it is unnecessary, dangerous and too expensive. Porritt told the Guardian: "It [nuclear power] cannot possibly deliver – primarily for economic reasons. Nuclear reactors are massively expensive. They take a long time to build. And even when they're up and running, they're nothing like as reliable as the industry would have us believe."¶ But Sachs, director of the Earth Institute and professor of sustainable development at Columbia University in the US, said the world had no choice because the threat of climate change had grown so grave. He said greenhouse gas emissions, which have continued to rise despite the financial crisis and deep recession in the developed world, were "nowhere near" falling to the level that would be needed to avert dangerous climate change.¶ He said: "Emissions per unit of energy need to fall by a factor of six. That means electrifying everything that can be electrified and then making electricity largely carbon-free. It requires renewable energy, nuclear and carbon capture and storage – these are all very big challenges. We need to understand the scale of the challenge."¶ Sachs warned that "nice projects" around the world involving renewable power or energy efficiency would not be enough to stave off the catastrophic effects of global warming – a wholesale change and overhaul of the world's energy systems and economy would be needed if the world is to hold carbon emissions to 450 parts per million of the atmosphere – a level that in itself may be inadequate.¶ "We are nowhere close to that – as wishful thinking and corporate lobbies are much more powerful than the arithmetic of climate scientists," he said.

AT States CP – Cybersecurity Turn

Shutting off power to the NSA creates security lapses – that causes cyber terrorism

Steven **Nelson**, 2/20/**2015**, US News and World Report, "Mikulski Denounces Bill that would deny NSA 'material support' in maryland," http://www.usnews.com/news/articles/2014/02/20/mikulski-denounces-bill-that-would-deny-nsa-material-support-in-maryland, mm

Sen. Barbara Mikulski, D-Md., isn't pleased with a bill pending in her state's legislature that would prohibit state and local support for the National Security Agency.¶ The legislation was proposed Feb. 6 by eight Republicans in the 141-member Maryland House of Delegates and would deny the NSA "material support, participation or assistance in any form" from the state, its political subdivisions and companies with state contracts.¶ The spy agency's national headquarters are located in Fort Meade, Md., and the agency is often described as one of the state's largest employers, although the precise number of employees who work there is unclear.¶ The bill would theoretically deprive NSA facilities of water and electricity carried over public utilities, ban the use of NSA-derived evidence in state courts and prevent state universities from partnering with the NSA on research.¶ "I'm shocked that the Republicans would go ahead and do that to the National Security Agency," Mikulski tells U.S. News.¶ "When I think back to Ronald Reagan and how strong he was on defense and the way he led the end of the Cold War, I am shocked that the Republicans would want to negatively impact the National Security Agency," she says. "I think it is misguided and really could, under their misguided efforts, really advocate **unilateral disarmament in the world of cybersecurity**."¶ Mikulski, first elected to the U.S. Senate in 1986, says she's generally reluctant to comment on bills pending in the state legislature, but considers the NSA's work extremely important.¶ "We do want to prevent the attacks on the United States from terrorists," she says, adding: "Anything we deal with in the world of surveillance – which is different from cybersecurity – needs to be constitutional, legal, authorized by the president and necessary."¶ Del. Michael Smigiel, the bill's lead sponsor, agrees that the NSA is important to national security, but says it must follow the Constitution, something he alleges it does not currently do with programs that collect his constituents' communications without individualized warrants.¶ "The Constitution's not debatable, it's not negotiable, there are not certain people who are exempt," says Smigiel, a Republican. "Collecting information on American citizens, you can't do that without a warrant, that's what our Constitution says."¶ Smigiel says that five of the eight original bill sponsors have dropped their participation.¶ "It's easy to defend the Constitution when it's not under attack," he says. Smigiel plans to round up more sponsors next week, ahead of the bill's March 6 judiciary committee hearing.¶ The Maryland bill is the latest in a series of state efforts to cut off the NSA one jurisdiction at a time for allegedly ignoring the Fourth Amendment with its dragnet collection of phone and Internet records.¶ The legislative wave has been spearheaded by the Tenth Amendment Center, which along with the Bill of Rights Defense Committee launched the OffNow coalition last year seeking to cut off water to the NSA's just-built Utah Data Center.¶ Lawmakers in Arizona, California, Tennessee, Utah, Washington and other states have filed similar bills based on model legislation from the Tenth Amendment Center. Several of the bills were offered by bipartisan sponsors frustrated with the slow pace of federal reform to surveillance programs disclosed last year by exiled whistle-blower Edward Snowden.¶ "I'm not shocked by Mikulski's comments," Mike Maharrey of the Tenth Amendment Center says. "After all, this is a senator who voted no on extending Patriot Act wiretap [authority] in 2005 when Bush was president, but then turned

around and voted to extend Patriot Act roving wiretap provisions in 2011 with Obama in the White House. Still, it's really weird for me to hear a Democrat vigorously defending George W. Bush's spy legacy. Defending civil liberties and privacy rights shouldn't be a partisan issue."¶ If the Maryland bill were to pass, **it might have serious consequences for the NSA**. The agency recently signed a contract with Howard County, Md., for wastewater to cool a computer center under construction at Fort Meade, The Washington Post reported Jan. 2. The deal reportedly involves up to 5 million gallons of water a day in exchange for nearly $2 million a year.¶ As of 2006, the agency was Baltimore Gas and Electric's largest customer, The Baltimore Sun reported, using as much electricity as the city of Annapolis.

Cyber insecurity risks mass systems disruptions – this causes instability and escalating conflicts that causes extinction

Adhikari '09 (Richard,- leading journalist on advanced-IP issues for several major publications, including The Wall Street Journal "Civilization's High Stakes Cyber-Struggle: Q&A With Gen. Wesley Clark (ret.)")

The conflicts in the Middle East and Afghanistan, to name the most prominent, are taking their toll on human life and limb. However, the escalating cyberconflict among nations **is far more dangerous,** argues retired general Wesley Clark, who spoke with TechNewsWorld in an exclusive interview. That cyberconflict will take a far greater toll on the world, contends Clark, who last led the NATO forces to end the ethnic cleansing in Albania. There is a pressing need for new institutions to cope with the ongoing conflict, in his view. Clark is a member of the boards of several organizations. He has a degree in philosophy, politics and economics from Oxford University and a master's degree in military science from the U.S. Army's Command and General Staff College. Background: In November 2008, the Center for Strategic and International Studies, a Washington-based bipartisan think tank, presented recommendations on national security to the then-incoming Obama administration. These called for an overhaul of the existing national cybersecurity organization. Since then, the state of national cybersecurity has appeared chaotic. In August, White House cybersecurity adviser Melissa Hathaway resigned for reasons that echoed the departure in 2004 of Amit Yoran, who then held essentially the same post. In an exclusive interview earlier this year, Yoran told TechNewsWorld that national cybersecurity was still a mess. TechNewsWorld: Security experts warn that nations are preparing for a new cyberwar. Is our government doing enough to protect our national cyber-infrastructure? Or is it in the process of protecting the cyber-infrastructure? Gen. Wesley K. Clark: I think we're in the process of trying to get it protected, but unlike conventional security considerations, where one can easily see an attack and take the appropriate response, the cyberstruggle is a daily, ongoing affair. It's a matter of thousands of probes a day, in and out, against systems that belong to obvious targets like the United States Department of Defense; not-so-obvious targets like banks and energy companies; and individual consumers or taxpayers. It's ongoing, it's undeclared, it's often unreported, and it's very much an ongoing concern at all levels -- business, commerce and individual privacy. TechNewsWorld: The national security infrastructure has repeatedly been reported to be sorely lacking. Is the government moving fast enough? Does it need to do more? Clark: It does need to do more. It's in the process of doing more, and there's a tremendous amount of public and private sector effort going into cybersecurity right now. Whether it's going to be adequate or not is not the issue. There are many approaches to this problem that are mainly based on software, but software is vulnerable. When you open up to communicate with the Web, when you bring in data and programs from another source, when you bring in applications -- all that entails huge risks. It's dealing with those risks and trying to gain the rewards of doing so that make it such a difficult proposition. Online banking was a novelty 20 years ago. Now, everything happens on the Internet. People pay their bills, they do business, they do their work with customers. People don't fax documents any more if they don't have to -- they do webinars and briefings. All of this exposes the opportunity for mischief. You don't know the source of the mischief. You don't know whether it's individuals trying to solve a difficult technical challenge on their own or if they're connected to governments, or if they're cells attached to governments -- and it's very difficult to pin down ... incoming probes to a source. TechNewsWorld: While it's generally agreed that **the next war may be a cyberwar**, much of our infrastructure is either hooked up to the Internet or in

the process of being hooked up to the Internet. Electricity companies, for example, are agitating for the use of smart meters. That being the case, and with hackers increasing the frequency and sophistication of their attacks, does the increasing pace of hooking everything up to the Internet pose a real security threat? Clark: We're going into completely digitized medical records, which could lead to a huge invasion of privacy. It could also lead to things like blackmail and is physically dangerous because people can tamper with records of vital signs, or can alter prescriptions. There's no telling just what could be done. Companies could lose their supply chain management, lose their accounting records, lose their customer lists. Trying to rebuild this on paper when we've all been interconnected on the Internet will cause **years of economic decline.** We are, as a civilization, quite vulnerable to disruption, and this security problem doesn't just affect one nation but the whole global economic infrastructure. You can't conceive of the threats from the point of view of a traditional war. Cyber-efforts are ongoing today; we're in a cyber-struggle today. We don't know who the adversaries are in many cases, but we know what the stakes are: continued economic vitality and, ultimately, global civilization.

AT: States Courts CP

Permutation

The permutation is preferable – lockstep agreement on constitutional questions solves best

Gardner '03 --- professor of law @ State University of New York (James A, "State Constitutional Rights as Resistance to National Power: Toward a Functional Theory of State Constitutions," Georgetown Law Journal, June 2003, 91 Geo. L.J. 1003)//Mnush

In any event, there is a more benign way to understand lockstep analysis. Lockstep analysis, one might say, does not necessarily reveal an abandonment by state courts of their responsibilities to protect liberty and to reflect meaning-fully upon the best ways to do so. On the contrary, it might well represent a discharge of those responsibilities, but in circumstances where the state court feels that the national government is already doing a reasonably good job. In those circumstances, a state court might reasonably conclude that there is no need, at least for the moment, to explore in any greater depth the possibilities presented by the state constitution to protect liberty any more or less vigorously than it is already protected by the national judicial analysis. Lockstep analysis thus **need not** represent an absence of independent constitutional judgment; it can just as easily represent the outcome of a **fully-informed exercise of independent state judicial judgment**.

Perm solves best

Bennett ’15 --- fellow in national security law @ the Brookings Institution and managing editor of Lawfare (Wells C, “Civilian drones, Privacy, and the Federal-State Balance,” Brookings, 2015, http://www.brookings.edu/research/reports2/2014/09/civilian-drones-and-privacy)//Mnush

We thus can review the bidding: states have a loose, largely untested framework in place for regulating nongovernmental, aerial surveillance. This in turn is supplemented by tiny pockets of federal activity, which have expanded modestly since 2012. The nascent trend is to tinker with this arrangement rather than to reshape it radically—say, by enacting an all-encompassing, state-law-preempting privacy statute. Exhibit A is Congress’s command to the FAA to study privacy issues further, following the agency’s issuance of FAA-enforced privacy rules for test sites; Exhibit B, the White House’s order and forthcoming NTIA principles. The latter reportedly will not address all privacy dilemmas associated with all forms of unmanned surveillance. Instead, after consulting with various stakeholders, NTIA eventually will issue voluntary privacy guidelines, which in turn will apply to commercial drone operations only, and which, as before, will reserve the defense of “private” privacy largely to background law.43¶ It is easy to imagine policy ideas that would keep the above architecture intact. By way of example, Congress could condition authorization to fly on a pledge to respect privacy. The FAA might insist that before receiving permission to operate an unmanned aircraft, a business or individual first would have to commit to observing applicable privacy laws.44 Thereafter, the FAA would have discretion to rescind the operator’s flight credentials, upon submission of proof that a court or similar body has faulted the operator for serious privacy violations under state law. The “seriousness” criterion here also could—and, so as not to jack up the cost of deploying a critical technology too much, likely should—be made stiff enough so as to capture only the worst varieties of unmanned aerial surveillance.45¶ How you feel about the evident regulatory gap probably has to do with how you feel about likely sources and locations of unmanned aerial surveillance.¶ Keep in mind the scope. The FAA’s regulatory powers don’t extend everywhere and to every mode of unmanned flight. The limitation has implications for any FAA measure affecting privacy. For example, hobbyists’ “model aircraft” are mostly exempted from FAA regulation.46 Going forward, how you feel about the evident regulatory gap probably has to do with how you feel about likely sources and locations of unmanned aerial surveillance. Thus, if you worry most about rampant Quadcopter eavesdropping, then the above proposal might not do that much to assuage you; such machines seemingly can be operated as “model aircraft,” and thus require no FAA license. Conversely, an FAA-based oversight approach to privacy might help considerably, if you predict that the most intrusive surveillance technologies will be paired with larger-sized drones—that is, drones likely to come within the FAA’s jurisdiction, and to require operator certification and training.47 ¶ A proposal like the above (or one like it) would mean only incremental change. After all, the FAA already exercises a comparable authority over operators of the six test ranges established under FMRA. It wouldn’t take too much to have the FAA carry forward, on a permanent basis and with respect to unmanned aircraft within its jurisdiction, a variant of the humble privacy responsibilities it already has taken on unilaterally. Doing so would not obligate the FAA to “regulate privacy” in some broad or agency-inappropriate fashion, either. Instead the states would do the regulating, and afterwards, private litigants and state regulators would do the litigating and state courts the adjudicating. The FAA would only get into the mix afterwards, and only in the most deserving of cases. ¶ Of course, that the above or any other policy change would fit nicely with existing institutional arrangements does not justify that policy’s adoption. But there are good reasons to extend federal oversight of drones and “private” privacy, while the adequacy of the underlying state law framework comes into sharper focus. Take the idea sketched out above. The largest companies have the greatest ability to acquire the most sophisticated unmanned aircraft, and thus also to engage in the most far-reaching surveillance. It happens that those same companies could be best situated to withstand the kinds of ex post remedies courts typically impose upon rampant privacy violators—injunctions, money damages, and the like. In that respect, the scheme above might prove helpful, by deterring the worst privacy violations—not the marginal or the really bad, but the worst—in advance of wholesale domestic drone integration, and in advance of long and uncertain litigation in state courts. But whatever the policy might ultimately look like, the federal government’s competence in civilian drones and privacy, such as it is, should be brought to bear

State Courts Fail

State courts can't check national power

Gardner '03 --- professor of law @ State University of New York (James A, "STATE COURTS AS AGENTS OF FEDERALISM: POWER AND INTERPRETATION IN STATE CONSTITUTIONAL LAW," William & Mary Law Review, March 2003, 44 Wm. & Mary L. Rev. 1725)//Mnush

Missing from this picture, however, is any obvious role for the state judicial branch in efforts by the state to resist abuses of national power. In a way, this gap is not surprising. Courts in the American tradition are essentially passive institutions, and their ability to participate in the resolution of political issues depends greatly on whether litigants bring such disputes before them. n34 Yet unlike federal courts, state courts are unlikely to adjudicate lawsuits attacking purported abuses of national power by national officials, or to have any legitimate and binding authority to resolve them. First, although state courts typically have jurisdiction to hear cases brought against organs of the national government, **national officials have an absolute right to remove such cases to federal court**, n35 a right which the United States Justice Department exer-cises routinely as a matter of basic policy. n36 Second, state courts are [*1739] required to obey national law, n37 and are in any event subject to direct appellate oversight by the United States Supreme Court, n38 drastically limiting their ability to strike out at the national govern-ment. It is true, of course, that state courts could join the fray by defying federal law, as state legislative and executive branches have sometimes done, but this is a particularly unattractive option for courts, which are, after all, uniquely dedicated to upholding law, not defying it. n39 Thus, anything a state court might gain in successfully resisting national power through illegal means might in the long run work to that court's disadvantage by undermining its claim to legitimacy as an impartial instrument of the law.

State courts don't have the power to enforce anything

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State courts obviously cannot serve as agents of federalism in the same way as federal courts because they have no ability to control the content of national law or to enforce it against national actors. Assuming, then, that a state court does have authority to act as an agent of federalism, how might it assert that authority? What tools, in other words, might a state court employ to resist national power? State courts, it must be conceded, possess far fewer resources to deploy against national power than do the state executive and legislative branches. State courts typically lack binding authority over organs of the national government n91 and are subject to direct national judicial oversight on questions of national law. n92 Further-more, although state courts are typically more active and involved in policy formation than federal courts, they still are relatively passive institutions. Unlike the governor and state legislature, state courts cannot simply voluntarily insert themselves into pressing disputes, but must ordinarily wait for problems to come to them before acting. Nevertheless, state courts do have one fairly powerful tool at their disposal: their control over state law, and, more particularly, over the state constitutions.

The counterplan disrupts the SOP

Gardner ’03 --- professor of law @ State University of New York (James A, “STATE COURTS AS AGENTS OF FEDERALISM: POWER AND INTERPRETATION IN STATE CONSTITUTIONAL LAW,” William & Mary Law Review, March 2003, 44 Wm. & Mary L. Rev. 1725)//Mnush

Strict constructionists might first object that the self-consciously instrumental use of the power to interpret a constitution is by definition an abuse of judicial power. For a court to engage in result-oriented interpretation for the purpose of resisting national power or for any other purpose, it might be said, is deliberately to manipulate the document's meaning rather than to discern it, an approach inconsistent with a proper understanding of judicial power. Judicial power rightly understood, strict constructionists might say, cannot be used instrumentally because it is not a tool to be used self-consciously to achieve ends; rather, the judicial role is merely to apply the law. n135 A court that used its powers instrumentally would be making law rather than applying it, yet courts should never take it upon themselves to make law because doing so usurps power allocated to other organs of government. n136

Links to Net Benefit

State court rulings incur *more* backlash than federal rulings

Gardner '03 --- professor of law @ State University of New York (James A, "STATE COURTS AS AGENTS OF FEDERALISM: POWER AND INTERPRETATION IN STATE CONSTITUTIONAL LAW," William & Mary Law Review, March 2003, 44 Wm. & Mary L. Rev. 1725)//Mnush

Nevertheless, these changes seem very far from having penetrated public consciousness. If actual litigation decisions are any guide, state courts today appear to be less trusted than federal courts when it comes to the protection of individual rights. Although evidence is difficult to come by, it appears that litigants, given a choice between suing in state and federal court, **prefer to bring civil rights claims in a federal forum.** n216 Even when they proceed in a state court, litigants tend overwhelmingly to raise civil rights claims under the United States Constitution rather than under their state constitution, n217 suggesting that **they have more faith in the body of constitutional law developed by federal courts than in the similar body of law developed by state courts** construing state constitutions.

AT: Specter CP

Blanket Immunity Plank

Fails – 2ac

Legal in roads to blanket immunity allow for functional checks against overstretch- Attorney General specifically answers their author

Sanchez, 08 (Julian, American libertarian writer living in Washington, D.C.. Currently a Senior fellow at the Cato Institute, he previously covered technology and privacy issues as the Washington Editor for Ars Technica;

There are 50 ways to leave your lover, but only five ways for a company to be entitled to immunity under the FISA Amendments Act. Three are versions of "they provided assistance, but it was lawful under the statutes in effect at the time." Another is not to actually have provided any assistance. The final, and most contentious, is the new form of retroactive amnesty provided by the law: The attorney general can assert that the company provided assistance calculated to prevent a terrorist attack on the United States in the wake of 9/11, pursuant to a written directive from a high administration official assuring them that the surveillance had been authorized by the president and determined to be legal. ¶ Mukasey's certification says only that one or more of these excuses applies to all the defendants in the consolidated wiretap litigation, asserting that the public disclosure of any more specific information about the grounds for immunity "would cause exceptional harm to the National Security of the United States." It's therefore impossible to know which of the defendant telecoms provided assistance, or under what circumstances.¶ The attorney general also denied EFF's contention that, in addition to narrowly targeted eavesdropping on suspected Al Qaeda affiliates, there was any broader program of "dragnet collection on the content of plaintiffs' communications." Precisely what this latter contention means is unclear: As Ars noted last week, there is some legal controversy over when, precisely, the "collection" of a communication takes place. Therefore Mukasey's denial could mean that, despite the evidence provided by AT&T whistleblower Mark Klein, there was no blanket interception of communications for keyword analysis. But it could as easily mean that the attorney general does not believe that whatever form of "inside the box" analysis of those communications NSA conducted counts as "collection" for the purposes of FISA or the Fourth Amendment.

Doesn't Solve Terrorism – 2ac

Telecommunication blanket immunity is key to stop terror attacks- their author

Etzioni, 3/9/15 (Amitai, prof. of IR at George Washington, senior adviser to the Carter White House and taught at Columbia University, Harvard University, and the University of California at Berkeley; "Do Tech Companies Owe It to the Public to Cooperate With Surveillance?"; http://www.theatlantic.com/politics/archive/2015/03/tech-companies-owe-it-to-the-public-to-cooperate-with-surveillance/387094/)//JPM

For decades**, the communication companies, led by AT&T, played a key (and quiet) role in helping to protect national security**. The government regularly gained access to their communication hubs and collected billions of phone records, email messages, and other communications to search for patterns that would identify which people pose a risk to the United States. This close cooperation lasted throughout the Cold War and intensified after 9/11. Edward Snowden shattered this cozy relationship by publicly revealing the details of these arrangements and by claiming that they led to abuses.¶ The Snowden revelations greatly troubled the corporations involved for more reasons than one. Some nations, like Brazil, considered setting up their own versions of the Internet to protect their citizens from American snooping—a move that would harm the business of companies such as Google and Facebook that greatly benefit from the unified World Wide Web. (Google is used by 1.17 billion people worldwide, while 1.35 billion use Facebook.) These same corporations also feared that Americans would stop using their services if they felt that their privacy was compromised. Many of their CEOs hold the libertarian view that that government regulations are a costly burden and that the government that governs least governs best. And they still seem to hold on to the vision that cyberspace is a new world that can govern itself.¶ High-tech corporations decided to use high-power encryption methods that will secure privacy for their customers—and that law enforcement and security agencies will be unable or at least will find it very difficult to crack. Some of these measures are designed so that even the companies themselves cannot decrypt the messages. Hence even if a court ruled that there are compelling reasons to seek the records of a person who is suspected to be a terrorist or a serial killer, the companies would be unable to decode the messages.

Cooperation with telecommunications companies are vital to stopping terror attacks

CBS, 08 (CBS News; 2/12/2008; "Bush: No More Debate Over Spy Program"; http://www.cbsnews.com/news/bush-no-more-debate-over-spy-program/)//JPM

President Bush pressured the House on Wednesday to pass new rules for monitoring terrorists' communications, saying "terrorists are planning new attacks on our country ... that will make Sept. 11 pale by comparison."¶ Mr. Bush said he would not agree to giving the House more time to debate a measure the Senate passed Tuesday governing the government's ability to work with telecommunications companies to eavesdrop on phone calls and e-mails between suspected terrorists. The bill gives phone companies retroactive protection from lawsuits filed on the basis of cooperation they gave the government without court permission - something Mr. Bush insisted was included in the bill.¶ About 40 lawsuits have been filed against telecom companies by people alleging violations of wiretapping and privacy laws. The House did not include the immunity provision in a similar bill it passed last year.¶ "**In order to be able to discover ... the enemy's plans, we need the cooperation of telecommunication companies**," Mr. Bush said. "**If these companies are subjected to lawsuits that**

could cost them billions of dollars, they won't participate. They won't help us. They won't help protect America."

Econ DA

Blanket immunity provisions stops the Telecom. Industry from being subject to expensive lawsuits and upholds governmental cooperation key to the overall industry

(same card as below)

Etzioni, 3/9/15 (Amitai, prof. of IR at George Washington, senior adviser to the Carter White House and taught at Columbia University, Harvard University, and the University of California at Berkeley; "Do Tech Companies Owe It to the Public to Cooperate With Surveillance?"; http://www.theatlantic.com/politics/archive/2015/03/tech-companies-owe-it-to-the-public-to-cooperate-with-surveillance/387094/)//JPM

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Spills over to the global economy

Chi et al, 2014 (Jian, China Unicom; Wenji Chen, China Center for Information Industry Development; Yaoqiang Han, China Center for Information Industry Development; Jing Li; Master Candidate

School of Software and Microelectronics, Peking

University; "Research on Fourth Generation 4G Mobile¶ Communication Industry Spillover Effect¶ Empirical Case Study of Beijing"; file:///Users/jpmickyd/Downloads/lemcs0573.pdf)//JPM

Abstract—Along with the development of information¶ technology, the impact of information on global economic¶ and social has become more and more profound. **Mobile¶ communication (4G) industry has brought huge spillovers to¶ the economic and social benefits.** This paper combines¶ theoretical analysis and empirical research to analyze it's¶ spillovers effect. It uses the input-output model to carry an¶ empirical study of mobile communications (4G) spillovers¶ effect. At last, from the perspective of both qualitative and¶ quantitative, it analyzes the contribution of mobile¶ communication (4G) industry to the economy and society.¶ Keywords- mobile communications (4G); spillovers effect;¶ empirical research¶ I. INTRODUCTION¶ With the accelerating informatization all around the¶ world, the application of information technology not only¶ promote the optimal allocation of global resources and¶ innovation of

development model, but also profoundly affect the politics, economy and culture of society. National Twelfth Five-Year Development Plan proposes to speed up the upgrading of industrial restructuring to cope with the increasingly fierce international competition, which presents new challenges to industrial technological innovation. Information and communication industry as a support, high permeability basic industries, the development of the whole economy and society has a considerable contribution rate. As a supportive and high permeability basic industry, **telecommunication industry makes a considerable contribution to the development of the whole economy and society**. 4G **technology is an important component of the** next generation of information technology, which has become a new growth point of **world economy**. The world's major telecom operators will or have started to deploy 4G commercial network. By 2015, the global industry scale of communication, including 4G, will reach 1.5 billion Yuan.

<Extend Econ Impact>

---Ext. Telecom K2 Econ

Telecommunications key to overall US econ growth

Hogendorn, 10 (Christaan, Associate Professor of Economics

Wesleyan University; May 2010; Rutgers Center for Research

in Regulated Industries Eastern Conference, Skytop, PA; "Spillovers and Network Neutrality"; http://chogendorn.web.wesleyan.edu/spillovers.pdf)//JPM

Magnitude of GPT Spillovers. Several studies find that spillovers from GPTs, and from¶ information technology (IT) in particular, are very large and affect entire economies.¶ Jorgenson and Stiroh (1999) estimate that **one sixth of the United States' productivity¶ growth from 1990–96 was attributable to IT**. Röller and Waverman (2001) find that up¶ to **one third of OECD economic growth** 1970–90 **is attributable to telecommunications¶ infrastructure**. Czernich et al. (2009) find that an increase of 10% in broadband¶ penetration increases annual GDP growth by 0.9–1.5 percentage points. Jorgenson et¶ al. (2008) show that U.S. productivity growth in the early 2000s was based on a wide¶ variety of industries adopting new forms of IT in production. Indeed, most research on¶ economic growth and GPTs suggests that economies need GPTs in order to grow. (LCB,¶ Jovanovic and Rousseau 2005)

TSP Plank

Fails – 2ac

TSP fails to solve attacks – worse than the sqou, guts FISA effectiveness

Anderson, 08 (Austin, J.D./M.B.A from Ohio State Moritz College of Law

and Fisher College of Business, Class of 2009. He received a Bachelor of Arts degree in

Political Science from Baylor University in 2004; 2008; "The Terrorist Surveillance Program:¶ Assessing the Legality of the Unknown";
http://moritzlaw.osu.edu/students/groups/is/files/2012/02/Anderson.pdf)//JPM

Despite the dearth of information regarding the TSP,¶ commentators have frequently condemned the program as a violation¶ of FISA.34 These critics assert that the procedures codified in FISA¶ represent the sole method through which the executive branch can¶ conduct electronic surveillance, a relationship unchanged by¶ subsequent legislation.¶ It is generally accepted that the president has the power to conduct¶ electronic surveillance.36 However, this power is not unlimited: the¶ Constitution serves as a fundamental check on the executive's power¶ to conduct electronic surveillance.37 Furthermore, Congress enacted¶ FISA to regulate the executive branch's use of electronic surveillance¶ when gathering foreign intelligence information.38¶ The real debate centers on the degree to which FISA regulates or¶ limits the executive's power to conduct electronic surveillance. The¶ U.S. Code explicitly states that FISA is "the exclusive means by which¶ electronic surveillance . . . may be conducted."39 In light of this¶ language, critics argue that FISA regulations governed the activities¶ conducted through the TSP.40¶ However, FISA contains a provision that permits Congress to¶ amend the Act through subsequent legislation.41 The Bush¶ administration believes that, since Congress empowered the president¶ to conduct the war in Afghanistan through the AUMF, it amended¶ FISA by implication to allow the TSP.42 However, critics deny the¶ contention that the AUMF, or any other statute, has repealed the¶ procedural constraints on electronic surveillance contained in FISA.43¶ In countering the president's claims, critics frequently employ a¶ variety of interpretive tactics. Critics are quick to point out that the¶ law disapproves of repeals by implication.44 Commentators assert that¶ Congress would not silently amend FISA through a statute that never¶ once refers to the NSA, electronic surveillance of U.S. citizens, or FISA itself.45 In fact, Congress has amended FISA five times since the¶ September 11th attacks without any mention of the AUMF.46¶ Critics also reject the administration's assertion that the AUMF¶ impliedly repeals FISA based on a simple dissection of the plain¶ meaning of the AUMF.47 The AUMF authorizes the president "to use¶ all necessary and proper force" to defend the U.S. against terrorists.48¶ In Hamdi v. Rumsfeld, the administration convinced the Supreme¶ Court that the detention of enemy combatants was a "necessary and¶ appropriate force" to fighting a war.49 Here, the administration¶ arguably encounters more difficulty in characterizing electronic¶ surveillance as "force."¶ The administration's attempts to broadly interpret the language of¶ the AUMF appear to be inconsistent with Congress' intent. While the¶ Court is not likely to consider congressional reaction, Congress'¶ response to the TSP provides some evidence of congressional intent.¶ Senator Tom Daschle stated that the government considered granting¶ the president authorization to use "appropriate force in the United¶ States and against those nations [that support terrorists]. . . ," before¶ ultimately deciding to limit the authorization to "appropriate force¶ against those nations."50 Senator Daschle explained that the Senate¶ rejected the former language because it "would have given the¶ president broad authority to exercise expansive powers not just¶ overseas—where we all understood he wanted authority to act—but¶ right here in the United States."51¶ The Hamdi v. Rumsfeld decision could provide useful insight in¶ grasping how the

Supreme Court is likely to interpret the AUMF. In Hamdi, the Supreme Court interpreted the clause in the AUMF that authorizes the president "to use all necessary and appropriate force against those nations . . . he determines planned . . . the terrorist attacks."52 The Court held that the clause "necessary and appropriate force" provided the president with the authority to detain enemy combatants because the detention of troops was a "fundamental incident of waging war."53 Some critics contend that the use of electronic surveillance is not a fundamental incident to war. On its face, a more likely interpretation is that the act of capturing a prisoner of war on the battlefield is far easier to classify as a "fundamental incident of waging war" than intercepting communication between U.S. citizens and suspected terrorists abroad.54 Furthermore, wiretaps gather a broader range of information without discerning whether the content has any relation to national security.55 The existence of a congressionally approved manner of using wiretaps necessitates the finding that this less discerning method of gathering information is not a "fundamental incident to war."56 As previously noted, FISA contains two exceptions that provide conditions where the government may conduct electronic surveillance without first obtaining a warrant.57 Some critics believe that the presence of the second exception reinforces the illegitimacy of the TSP. Suzanne Spaulding, who served as the executive director of the National Commission on Terrorism, noted: FISA anticipates situations in which speed is essential. It allows the government to start eavesdropping without a court order and to keep it going for a maximum of three days. And while the FISA application process is often burdensome in routine cases, it can also move with remarkable speed when necessary, with applications written and approved in just a few hours.58 Additionally, the special court overseeing FISA warrants has been extremely accommodating over the years; through December 25, 2005, only four of 5,645 applications for warrants were denied.59 Critics contend that the collective weight of these arguments proves that Congress did not amend FISA through the AUMF. With FISA surviving without amendment, the TSP was subject to the procedural guidelines established in the Act. The TSP indisputably operated outside the FISA regulations; therefore, critics conclude that the program was a clear violation of federal law.

Ext. Fails

CP can't solve privacy – infringes on 1st and 4th amendment rights

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http://moritzlaw.osu.edu/students/groups/is/files/2012/02/Anderson.pdf)//JPM

The Bush administration and critics of the TSP predictably differ¶ as to the program's constitutionality. The Department of Justice warns¶ that congressional intrusion into the President's implied power to¶ gather intelligence could be unconstitutional.80 Alternatively, critics¶ assert that Congress operated within its constitutional power in enacting FISA81 and that the TSP raises First and Fourth Amendment¶ issues.82¶ The president's powers are established in Article II of the U.S.¶ Constitution.83 Among those powers granted to the president are the¶ powers to act as the Commander-in-Chief of the Armed Forces and to¶ tend to the United States' foreign affairs.84 The Justice Department¶ proposes that the duty to protect the U.S. from foreign enemies is¶ entwined within these constitutionally-guaranteed powers.85¶ The right to collect intelligence follows the duty to protect the U.S.¶ from its enemies: the president needs information to make informed¶ decisions regarding matters of national security. The Supreme Court¶ has frequently determined that the president has authority to employ¶ espionage to gather information necessary to protect the country.86¶ Consequently, the Bush administration has warned that any attempt to¶ limit the president's power to obtain foreign intelligence could be an¶ unconstitutional infringement on the executive's Article II power.87¶ Many critics maintain the TSP is unconstitutional despite the¶ presidential power to guard the U.S. from foreign enemies.88 Some¶ dissenters doubt the administration's assertion that the Constitution¶ grants the president the power to gather foreign intelligence;89¶ however, even assuming that the administration does have this power,¶ some critics argue that congressional authority to legislate in the field¶ of foreign intelligence is well established.90 Therefore, they insist FISA is the product of constitutionally permissible congressional¶ action.91

Prefer empirics- previous court cases prove it's illegal and violates FISA

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http://moritzlaw.osu.edu/students/groups/is/files/2012/02/Anderson.pdf, HeinOnline)//JPM

The response to the revelation of the TSP in The New York Times has been significant.161 Several law schools across the nation have held symposia on the topic.162 Members of Congress, from both parties, introduced a number of bills on the topic in 2006. In January 2007, The New York Times described the controversy as "13 months of bruising national debate."163 Perhaps the most relevant response to the TSP is the recent litigation challenging the abandoned program's legality. In August 2006, the American Civil Liberties Union won a judgment against the National Security Agency.164 In the opinion, District Judge Taylor found the TSP unconstitutional in that it violated the Fourth Amendment and FISA.165 The administration appealed the case, and the Sixth Circuit vacated the district court's judgment in July 2007.166 The Circuit Court's decision turned on the Plaintiffs' standing, rather than the constitutionality of the TSP.167 Another case, Al-Haramain Islamic Foundation, Inc. v. Bush, has made national headlines in 2007.168 Al-Haramain sued the Bush administration for allegedly conducting warrantless surveillance on the organization and its directors.169 The district court denied the government's motion to dismiss or, in the alternative, for summary judgment, a decision from which the Defendants appealed.170 The case appeared before the United States Court of Appeals for the Ninth Circuit on August 15, 2007, for oral arguments,171 and the Court held that Plaintiffs could not establish standing because the state secrets privilege presently empowered the government to withhold evidence.172 However, the Ninth Circuit remanded the case to the district court for a determination on the issue of whether FISA could preempt the state secrets privilege.17

AT: Self Restraint Counterplan & Presidential Powers D.A

2AC Strategy Notes

The core weakness of this CP is that the advantages of the Aff stem primarily from the *perception* of unfettered surveillance rather than the actual existence of the program. If the executive cutails surveillance but no checks exist to prevent this from happening in the future (or continue in secret) and other countries don't change their perception of the US then the CP would solve very little of the affirmative harms.

So the most important arguments in the 2AC is to challenge the solvency of the CP for the aff harms and to make an argument that a permutation (a combination of the Aff and Neg) would resolve the potential harms to presidential power. That said, don't forget to make a "no link" argument – if you only rely on answering the CP but don't answer the impact or link to the presidential power DA the other team could just win on the DA alone and not make any more arguments about the CP.

I've put stars (**) next to some of the cards I think should be in the 2AC but don't forget to include analytic arguments. We have multiple cards in the 1AC that argue for the necessity of oversight for international credibility/solvency, don't let those great cards get lost! Try to make at least one analytic argument between every card and don't forget to make a permutation!

No Solvency – Long Term – 2AC

**CP doesn't limit authority and future presidents roll back

Bendix and Quirk 15 (assistant professor of political science at Keene State College; Phil Lind Chair in U.S. Politics and Representation at the University of British Columbia)
(William Bendix and Paul J. Quirk, Secrecy and negligence: How Congress lost control of domestic surveillance, Issues in Governance Studies, March 2015, http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf)

> For the immediate future, however, Congress appears to have gone out of the business of determining policy for antiterrorism surveillance. In the near term, the best hope for privacy interests is for President Obama to make good on his post-Snowden pledge, repeated in his 2015 State of the Union Address, to reform surveillance programs in order to instill "public confidence…that the privacy of ordinary people is not being violated." He promised to work with Congress on the issue. If Congress is not capable of acting, the executive branch can impose its own constraints on surveillance practices.57 But the maintenance of self-imposed executive-branch constraints would depend entirely on the strength of the administration's commitment—and, in two years' time, on the disposition of the next president. Because of the president's central responsibility for national security, the presidency is hardly a reliable institutional champion for privacy interests.

No Solvency – Long Term – 1AR

Not using a power doesn't set a precedent

Marshall '8 (William, William Rand Kenan, Jr. Distinguished Professor of Law at UNC, J.D., University of Chicago (1977)
B.A., University of Pennsylvania (1972), Deputy White House Counsel and Deputy Assistant to the President of the United States during the Clinton Administration, "Eleven Reasons Why Presidential

Power Inevitably Expands and Why It Matters," Boston University Law Review, https://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf)

> 2. The Precedential Effects of Executive Branch Action Presidential power also inevitably expands because of the way executive branch precedent is used to support later exercises of power.34 Many of the defenders of broad presidential power cite historical examples, such as President Lincoln's suspension of habeas corpus, as authority for the position that Presidents have considerable powers in times of war and national emergency.35 Their position is straight-forward. The use of such powers by previous Presidents stands as authority for a current or future President to engage in similar actions.36 Such arguments have considerable force, but they also create a one-way ratchet in favor of expanding the power of the presidency. The fact is that every President but Lincoln did not suspend habeas corpus. But it is a President's action in using power, rather than forsaking its use, that has the precedential significance.37 In this manner, every extraordinary use of power by one President expands the availability of executive branch power for use by future Presidents.

No Solvency – Credibility/Signal – 2AC

Oversight key to solve global perceptions – that's the ONLY relevant solvency question. None of our advantages stem directly from the surveillance itself

Lewis 14 (senior fellow and director of the Strategic Technologies Program at the Center for Strategic and International Studies)
(James Andrew, Underestimating Risk in the Surveillance Debate, http://csis.org/files/publication/141209_-Lewis_UnderestimatingRisk_Web.pdf)

> These six steps would address the concerns created by surveillance programs. Now is not the time to dismantle them. But the use of communications surveillance for security must be reexamined and carried out in ways that do not pose risks to the values that are the ultimate foundation of our strength. Strong oversight mechanisms and greater transparency are the keys to acceptance and credible accountability. While every nation must undertake some activities in secret, democracies require that national priorities and policies be publicly debated and that government be accountable to the citizens for its actions. To rebuild trust and strengthen oversight, particularly for collection programs that touch U.S. persons, greater openness is essential. Too much secrecy damages national security and creates the risk that Americans will perceive necessary programs as illegitimate.

No Solvency – Credibility/Signal – 1AR

Only a clear signal can solve

Otto 14
(Greg, JULY 30, 2014 9:22 AM, Is NSA's PRISM program ruining cloud computing's growth?, http://fedscoop.com/nsa-prism-cloud-computing/)

> "Ensuring that a strong version of USA FREEDOM becomes law is only the first step toward repairing the damage that the NSA has done to America's tech economy, its foreign

relationships, and the security of the Internet itself," said Kevin Bankston, OTI's policy director
Castro said even with meaningful reform, he doesn't think it will change the perception that companies are fighting an uphill battle with NSA in order to protect their products
"I don't think the companies themselves can solve this problem," he said. "The issue is that these foreign and domestic buyers don't trust the U.S. government right now. Until there is a clear signal that the intelligence community is turning the page through policies, I don't think we are going to see a change in perception."

Perm Solves Credibility

****Working together solves global cred which is the only determinate of solvency**
FitzGerald '13 (12-18 Ben,- senior fellow and director of the Technology and National Security Program at the Center for a New American Security "NSA revelations: Fallout can serve our nation")

Loss of trust, however, remains the fundamental issue. Washington cannot fix this just by acceding to reforms suggested by others. The administration, with congressional support, must launch a proactive reform agenda, which would demonstrate an understanding of citizens' concerns — allies and businesses alike. The components are straightforward: public outreach to concerned constituencies, such as Tuesday's meeting with technology leaders, amendments to policy and law — for example, updating the Safe Harbor frameworks for privacy protection — and review of the National Security Agency's oversight mechanisms. While these procedural steps are clear, the government can do more. The Snowden revelations are about trust as much as technological frontiers — so Washington's efforts must focus on confidence building. Security and openness need not be mutually exclusive and technological capability should not be the key to defining operational limits. Confidence can be re-established through government-led development of the explicit principles that set a better balance between security and openness. These principles must be formalized in government agencies' policies, federal laws, Supreme Court rulings and congressional oversight establishing the government mechanisms to balance security and openness. Credibly addressing this balance represents Washington's best chance to rebuild the trust that has been so eroded. It is also an opportunity to recast the Snowden revelations as a reason to establish international norms that will govern all nations that are now developing and using similar surveillance capabilities. What is required is to establish standards that Washington can hold itself and others to in terms of healthy collaboration with business, productive relationships with allies and appropriate protections for the data of private citizens. Powerful surveillance capabilities will only grow over time. The United States must therefore establish a new "higher ground" in the international community to lead morally as well as technologically and ensure mutual accountability among governments. The key is to act quickly. Though the United States needs to retain robust foreign surveillance, it is clear that the fallout from the NSA revelations will continue until proactive steps — rooted in trust, policy and law — are taken.

Perm Solves the Link – Congress Takes Cover – 2AC

****Perm solves pres powers – congress will follow his lead**
Bendix and Quirk 15 (assistant professor of political science at Keene State College; Phil Lind Chair in U.S. Politics and Representation at the University of British Columbia)
(William Bendix and Paul J. Quirk, Secrecy and negligence: How Congress lost control of domestic surveillance, Issues in Governance Studies, March 2015, http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf)

Lacking any settled disposition on surveillance issues, Congress will respond to the leadership, and sometimes merely the political cover, provided by other institutions—especially the president, the intelligence agencies, and the FISA Court. It may take cues from the Justice Department or other executive agencies, and it will defer to rulings by the regular federal courts. In the end, Congress's performance in protecting privacy may depend on the design of the

legislative arrangements for dealing with secret programs and on the structures and missions of relevant administrative and judicial institutions.

Perm Solves the Link – Key to PP – 2AC

Domestic backlash to spying crushes prez powers – only the perm can preserve presidential power

Wu '06 (Edieth,- Associate Dean and Professor, Thurgood Marshall School of Law "DOMESTIC SPYING AND WHY AMERICA SHOULD AVOID THE SLIPPERY SLOPE")

In response to the recent revelations of secret domestic surveillance and the concomitant upset of the balance of government powers, a disturbing divide has developed among the American public.107 According to an AP-Ipsos poll, 56% of respondents said the government should be required to obtain a warrant before conducting domestic surveillance, while 42% do not believe that a warrant should be required.108 If the government continues with the current spying program, the divide in public opinion will surely become more contentious, and it will likely result in protests and legal attacks reminiscent of those which addressed the overzealous immigration enforcement immediately following September 11. In April 2002, for example, the Center for Constitutional Rights filed a nationwide class action challenging the "government's pretextual use of immigration authority to detain Arab and Muslim foreign citizens long after they ha[d] agreed to leave the country."109 Contentious litigation effectually results in a filtering down of information to the American public. Other legal battles over "rule of law" violations have occurred in New York, New Jersey and the District of Columbia.110 As a result of such litigation, and particularly due to outcomes favoring civil liberties, information is filtering down to the American public and creating in it a broader appreciation of the importance of respecting the rule of law in the United States.111 Specifically, the propositions stating that (1) "respect for basic human rights is as integral to our security as fighting terrorism," and (2) "we are in danger of losing sight In response to the recent revelations of secret domestic surveillance and the concomitant upset of the balance of government powers, a disturbing divide has developed among the American public.107 According to an AP-Ipsos poll, 56% of respondents said the government should be required to obtain a warrant before conducting domestic surveillance, while 42% do not believe that a warrant should be required.108 If the government continues with the current spying program, the divide in public opinion will surely become more contentious, and it will likely result in protests and legal attacks reminiscent of those which addressed the overzealous immigration enforcement immediately following September 11. In April 2002, for example, the Center for Constitutional Rights filed a nationwide class action challenging the "government's pretextual use of immigration authority to detain Arab and Muslim foreign citizens long after they ha[d] agreed to leave the country."109 Contentious litigation effectually results in a filtering down of information to the American public. Other legal battles over "rule of law" violations have occurred in New York, New Jersey and the District of Columbia.110 As a result of such litigation, and particularly due to outcomes favoring civil liberties, information is filtering down to the American public and creating in it a broader appreciation of the importance of respecting the rule of law in the United States.111 Specifically, the propositions stating that (1) "respect for basic human rights is as integral to our security as fighting terrorism," and (2) "we are in danger of losing sight law, which "has never been more critical"120 than at this juncture in America's history. In an age where the American public is generally aware of the restrictions on presidential powers, people are increasingly reluctant to accept that "the commander in chief clause" of the Constitution trumps all others.121 The president must remember that the commander in chief powers are at their strongest when the president acts in conjunction with congressional authorization.122 Consequently, a divided nation, and thus a divided Congress, will make it difficult for the president to act within the "expressed or implied will of Congress, [and] his power [will be] at its lowest ebb."123

Perm Solves the Link – Key to PP – 1AR

The perm gives president the most power

Bellia, Law Professor at Notre Dame, 02

Patricia L Bellia, Associate Law Professor for Notre Dame Law School, "Executive power in Youngstown's shadows", LexisNexus.com, 02

Justice Jackson suggested that presidential powers "are not fixed but fluctuate, depending upon their disjunction or conjunction with those of Congress." (59). He offered the following grouping of presidential actions and their legal consequences: 1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate. 2. When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility. In this area, any actual test of power is likely to depend on the imperatives of

events and contemporary imponderables rather than on abstract theories of law. 3. When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive presidential control in such a case only by disabling the Congress from acting upon the subject. (60)

No Link – Aff Doesn't Kill Pres Powers

****Congressional oversight in one small area of surveillance doesn't spill over to destroy all the powers that their impact evidence assumes – war powers prove**

Linn 2K (Alexander C., "INTERNATIONAL SECURITY AND THE WAR POWERS RESOLUTION", in William & Mary Bill of Rights Journal, from Lexis Nexis 8 Wm. & Mary Bill of Rts. J. 725)

Both the executive and legislative branches have a constitutional role to play in the use of force, but the legislative branch has primacy in committing forces to hostile theatres. History reveals, however, a shift in the war power from the legislative to the [*727] executive branch. Executive authority in Vietnam revealed a strong need for Congress to check executive power. An amended view of war powers and the Resolution should now be constructed to meet the modern parameters of international politics. A small subset of Congress should have the ability to play an influential role in executive troop commitments in a way that does not unconstitutionally impair the President's ability to commit U.S. forces quickly to multilateral operations.

CP Doesn't Solve Pres Powers

Doesn't solve pres powers – no spillover

Kreider '6 (Kyle L. Kreider, Assistant Professor of Political Sciences at the Political Science Department, Wilkes University June 2006 [http://www.bsos.umd.edu/gvpt/lpbr/subpages/reviews/warber0606.htm)

A part of the strategic environment surrounding executive orders is what Congress is likely to do in response. As Warber sees it, Congress has two options: apply verbal pressure or pass legislation "to nullify or reform existing executive orders" (p.108). While Congress has these two options, the data show that "Congress devotes a small portion of its time debating executive orders" (p.114) and "has been relatively inactive in reforming and eliminating specific executive orders issued by presidents who served between the Kennedy and George H. W. Bush administrations" (p.120). Warber concludes with a cursory examination of President George W. Bush's use of executive orders and some thoughts on where future research should go. While his political opponents and some members of the media criticize President Bush for his penchant for acting unilaterally (in both domestic and foreign affairs), expanding the powers of the presidency, and sometimes bypassing the expertise found in Congress, "the results demonstrate that Bush has not significantly departed from previous presidents regarding the types and quantity of executive orders that he issued during his first term" (p.124). However, what has been different under President Bush is his willingness to change existing public policy by revoking, superseding, or amending executive orders made by previous presidents. Yearly averages show President Bush to be second only to President Carter in revising inherited executive orders. A key finding of this book is that "presidents have not dramatically expanded their power with [executive orders] across the modern presidency" (p.128). Though Warber does not have the specific answers as to why presidents have not increased their use of executive orders over time, he speculates the stasis in presidential directives to a number of [*437] factors, one being the continued existence of separation of powers—specifically Congress's ability to pass legislation to revoke or revise executive orders and the federal courts' authority to decide upon their constitutionality

PP Bad – Heg

****Pres powers collapse heg – enables entanglements abroad**

Paul '98 (Paul R**,** Professor @ University of Connecticut School of Law "The Geopolitical Constitution: Executive Expediency and Executive Agreements" California Law Review, 86 Calif. L. Rev. 671, Lexis)

> Second, the growth of executive power has created a bias in favor of internationalism that has often led to failure. Possessing a virtual monopoly power over foreign relations has tempted presidents to send troops abroad or to make foreign commitments. Time and again the executive has stumbled into foreign conflicts, like Bosnia, Lebanon, Iran and Somalia, with tragic results. n32 At a minimum, congressional [*680] participation might have slowed decision-making, leaving time for public deliberation. n33 Third, the absence of congressional debate has often accounted for the lack of public support for foreign commitments. When U.S. forces have suffered casualties, such as in Somalia or Beirut, public opinion turned against the executive. Without the popular will to stay the course, presidents have withdrawn U.S. forces in some cases. As a result, U.S. policy has often lacked coherence. Though Congress was blamed for this inconsistency in many cases, one reason members of Congress so readily changed their minds was that they were not politically invested in the policy.

Empirically proven – Iraq

Holt '7 (Pat, former chief of staff of the Senate Foreign Relations Committee "Between Congress and the president, a power seesaw" Christian Science Monitor, Feb 1, Lexis)

> American involvement in Iraq appears to be an unresolvable dilemma: the United States can neither stay in nor get out. It cannot stay in because the public will not support it. It cannot get out because, after four years there, the US has wrecked the country. It would be unconscionable now simply to walk away and leave a nation of impoverished Iraqis among the ruins. America cannot start writing a new policy on a clean slate. But what it can do is adjust the imbalance of power between the executive and legislative branches. Too much deference to the White House got the US into this predicament. A more-assertive Congress might help bring about a solution, and more important, avoid a similar situation in the future. The Iraq war represents a constitutional failure of American government, but it was not the institutions of government that failed; it was the people who were supposed to make those institutions work. The Constitution provides for a separation of powers among the legislative, executive, and judicial branches. It is the separation of powers that creates the crucial checks and balances that enable one branch to keep another in line. A good deal of the thinking that went into this structure was based on skepticism and distrust. From long experience, the framers of the Constitution were skeptical and distrustful of power, and they wanted to build this into the new government. Perhaps the biggest failure with respect to Iraq was in Congress. Members were far too deferential to the White House; they failed to question President Bush's reactions to 9/11 as they were duty-bound to do. Among Republicans on Capitol Hill, there was an exaggerated sense of party loyalty to the president. Among both parties, there was an exaggerated sense of partisanship. The party system and the separation of powers are incompatible. Parties do not work well without cohesion and discipline. The separation of powers does not work well without independence. This conflict was foreseen by the framers. In one of the Federalist papers, James Madison warns against "the pestilential influence of party animosities." The Constitution has been called "an invitation to struggle" between the president and Congress for the control of foreign policy. On Iraq, Congress did not accept the

invitation. Republicans reveled in Mr. Bush's popularity. Democrats were afraid of it. Only after the public began to turn against the war did Congress began to follow. Meanwhile, the president was left unchecked. The history of the constitutional struggle between president and Congress is a seesaw with first one branch up and then the other. Congress probably reached its post-World War II high at the end of the Vietnam War when it used its control of money to force the US to end its support of South Vietnam. When President Johnson left office in 1969, a congressional observer remarked that it would take to the end of the 20th century to restore presidential powers to where Johnson found them. Bush became president in 2001 determined to hasten that restoration. He showed his hand early when he supported Vice President Dick Cheney's refusal to name the participants in a committee studying energy policy. The war on terror provided further opportunities. By 2006, the president's end of the seesaw was at a post-World War II high. Now there is an opposite movement propelled, as before, by an unpopular war. With respect to both Vietnam and Iraq, Congress did not assert itself until corrective action became prohibitively difficult. The principal lesson we can learn from the Iraq dilemma is that Congress should join the struggle with the president earlier in the development of a problem. It should combat the natural tendency to let the president take the lead in foreign crises.

PP Bad – Democracy

Restraint solves democracy better – checks and accountability

Deats '10 (Caleb, J.D. Candidate, Columbia Law School, 7/2/10, "Obliging The Executive Branch To Control Itself," http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1633922)

1. Restraining the Executive's Interpretive Power Makes Constitutional Interpretation Less Representative. --- First, one might argue that, because only the executive branch is directly accountable to the public as a whole, restraining the executive's power to interpret the Constitution unduly limits the public's role in that interpretation. Professor Kramer argues that the founders intended "'the people themselves'---working through and responding to their agents in government---[to be] responsible for seeing that [the Constitution] was properly interpreted and implemented."43 Today, the public can best play the role celebrated by Professor Kramer through its influence over the executive branch. As Professor Franklin notes, "the President is the closest thing we have to an embodiment of the national popular will."44 In contrast to the executive branch, the judiciary is structurally removed from public control, and Congress's fragmentation limits its accountability to the electorate as a whole.45 Thus, restraining the executive's interpretive power by encouraging deference to the other branches arguably removes the Constitution from the public's influence, undermining our foundational commitments and diminishing the representativeness of our government's most fundamental law. However, while restraining the executive's interpretive power may disserve our commitment to popular constitutionalism, doing otherwise might undermine an equally important founding commitment, namely that to checks and balances.46 As Professor Franklin points out, particular instances of executive constitutional interpretation---specifically that undertaken in connection with the NSA's domestic surveillance program---show "no regard for the checking function of the other branches."47 Moreover, even if the public exercises more control over the executive than it does over other branches, the conclusion that the executive will interpret the Constitution according to the majority's wishes does not follow. For example, if the President understands the Constitution to allow her to proceed in secrecy, as President Bush did with regard to the NSA surveillance program, then the public has no opportunity to hold her accountable where it disagrees.48 Finally, that the Constitution does not provide for the election of judges raises questions---both of founding intent and of policy---about how large a role the public should play in constitutional interpretation.49 Thus, while restraining the executive's interpretive power may in some ways reduce the public's influence on our understanding of the Constitution, this reduction may actually increase the public's influence on other constitutional matters and best promote "thicker conceptions of democracy."50

Secrecy destroys the democratic process – turns credibility

Cooper '2 (Phillip J, Professor of Public Administration in the Hatfield School of Government at Portland State University, B.A. in Government at California State University, Sacramento, M.A. and Ph.D. the Maxwell School of Citizenship and Public Affairs of Syracuse University, "By Order of the President: Use and Abuse of Executive Direct Action," University of Kansas Press (2002), p. 143-44)

> Few Americans really understand the negative impressions that people in other countries have about the United States. In some parts of the world, particularly in developing countries that were the battlegrounds of the cold war as the United States and the Soviet Union fought to control ever larger spheres of influence, that attitude today has something to do with how little Americans know about the way we have conducted ourselves over time. Is there some particular reason why many Iranians react so badly to anything American? Why is it that Latin Americans have little or no trust in America's pious pronouncements? How is it that the United States could find itself so often in difficulty in Asia? One element involved in answering those questions is simply that many Americans do not know, and have not been truthfully or fully informed, about U.S. policy in a particular part of the world and by what means that policy was carried out. Nor are many Americans aware that what may seem to be laudable purposes in the abstract have sometimes been pursued by means that do not fit the purposes. Frequently, the mechanisms by which those activities have been undertaken have been NSDS. When Americans come to understand how these directives have been involved in the Iran-Contra debacle, the U.S.-sponsored coup d'etat in 1953 in Iran that put the Shah back on the throne, the bloody U.S. coup that ousted the Arbenz government in Guatemala, and the real decisionmaking behind the prosecution of the Vietnam War, it becomes more obvious that NSDs have been tools for destruction as well as for the straightforward implementation of foreign policy. What may come as far more of a surprise, perhaps even as a shock, is that some administrations have employed national security directives not only to best foreign adversaries but also for domestic purposes. Sometimes such practices have even led members of the president's own cabinet to rebel.

PP Bad – A2: Checks Solve

Theoretical checks don't solve – Congress can't or won't

Covington '12 (Megan, School of Engineering, Vanderbilt University, Vol 8 (2012): July 2012 - Humanities and Social Sciences, "Executive Legislation and the Expansion of Presidential Power," http://ejournals.library.vanderbilt.edu/index.php/vurj/article/view/3556/1738)

> Challenges to Executive Legislation Theoretically, the president's use of executive orders and other forms of presidential directives is well restrained by the system of checks and balances between the three branches of government. Congress can overturn or nullify the effects of any executive order by passing new legislation or refusing to approve any necessary funds.41 In the event the president vetoes this new piece of legislation, Congress can override its veto with a 2/3 vote in both houses. Congress could pass and then over ride the inevitable veto on a bill specifically designed to curb executive power, perhaps by banning constitutional signing statements. If the president were to ever seriously overstep his constitutional bounds, Congress could always draw up articles of impeachment. If Congress is unwilling or unable to challenge executive legislation, the Supreme Court can overturn it through judicial review. All executive orders must be reported to the Federal Register to be published unless they contain confidential information, preventing presidents from using executive orders in secret. 42 This requirement also allows for the media to play watchdog and monitor the president's actions. Finally, any executive order can be nullified by a future president's executive order, meaning there is no guarantee that any single executive order is permanent.43 These constraints on the presidency are designed to prevent abuse of executive power and preserve the individual authority of the other two branches of government. In actuality, however, Congress is generally unwilling or unable to respond to the president's use of executive legislation. Congress can override a presidential veto but does not do it very often; of 2,564 presidential vetoes in our nation's history, only 110 have ever been overridden. 44 The

2/3 vote of both houses needed to override a veto basically means that unless the president's executive order is grossly unconstitutional – and thus capable of earning bipartisan opposition - one party needs to have a supermajority of both houses. Even passing legislation to nullify an executive order can be difficult to accomplish, especially with Congress as polarized and bitterly divided along party lines as it is today. Congress could pass legislation designed to limit the power of the president, but such a bill would be difficult to pass and any veto on it – which would be guaranteed – would be hard to override. In addition, if such legislation was passed over a veto, there is no guarantee that the bill would successfully limit the president's actions; the War Powers Act does little to restrain the president's ability to wage war.45 Impeachment is always an option, but the gravity of such a charge would prevent many from supporting it unless the president was very unpopular and truly abused his power. Congress's best weapon against executive legislation is its appropriations power, but this only gives it power over orders that require funding. Members of Congress may even support a president's use of executive legislation to establish policy when gridlock occurs on the floor. Congressmen can include policy changes made through executive legislation as part of their party's recent accomplishments for the next election cycle, giving them more incentive to support executive legislation.47 These factors combined mean that Congress has only modified or challenged 3.8% of all executive orders, of which there have been over 13,000 total, leaving them an ineffective check on the president's legislative power.48 Essentially the only times Congress can and will challenge an executive order are when the president has extremely low support, when in a divided government the party in power of Congress has a supermajority of both houses, or when a president seriously and obviously abuses his power in such a way as to earner opposition from both parties.

The same applies to the courts

Covington '12 (Megan, School of Engineering, Vanderbilt University, Vol 8 (2012): July 2012 - Humanities and Social Sciences, "Executive Legislation and the Expansion of Presidential Power," http://ejournals.library.vanderbilt.edu/index.php/vurj/article/view/3556/1738)

The Supreme Court constitutes the other major check on presidential power. Executive legislation – specifically executive orders and signing statements - is considered law, so the Supreme Court has the jurisdiction to deem an executive order unconstitutional using judicial review.49 If a case challenging a president's legislation comes before the court, the judges can choose to hear the case and overturn the legislation if they think it represents a severe violation of the Constitution.50 Unfortunately, the Supreme Court is generally unwilling to intervene in the president's use of executive legislation, even when the directives used are "of – at best dubious constitutional authority [or] issued without specific statutory authority."51 In addition, the wide and vague grounds the president can use in his defense can make challenging the president problematic.52 Of the executive orders passed in our nation's history, only 14 have actually been challenged by federal courts and only 2 were completely overturned, showing how very rare it is for the Supreme Court to challenge executive legislation.53

The same applies to the public

Covington '12 (Megan, School of Engineering, Vanderbilt University, Vol 8 (2012): July 2012 - Humanities and Social Sciences, "Executive Legislation and the Expansion of Presidential Power," http://ejournals.library.vanderbilt.edu/index.php/vurj/article/view/3556/1738)

Public knowledge of executive orders and other forms of executive legislation is extremely low, in part because presidential directives are not usually part of the basic discussion of the government. Citizens generally are "disconnected from politics, dislike political conflict, distrust political leaders, [and] possess low levels of information about specific policies,"54 so there is no reason to

believe the average American understands the complex use and nature of executive legislation. Since so many executive orders, signing statements, and memoranda are used for routine, symbolic, or house-keeping purposes, their use does not always make for an interesting story, meaning that the press does not always pay attention to or cover the use of executive legislation and the public hardly ever hears about it. Phillip J. Cooper insists that "the idea that the president could [...] govern in no small part by decree is a concept of which most Americans are blissfully unaware. If they were alert […], many would most likely be aghast that the president could, in effect, write law."55 This ignorance of the masses ensures that the president does not really have to worry about the people's opinion when he uses executive legislation, removing one potential limit on his unilateral power.

AFF A2 Secrecy CP

2ac leaks

Leaks are inevitable – only transparency solves perception

Lake 14 (Eli Lake, Daily Beast, citing Gen. James Clapper, Director of National Intelligence, former Director of the NSA, Steve Aftergood, Director of the Federation of American Scientists' Project on Government Secrecy, and Ben Rhodes, deputy national security adviser for strategic communications, "Spy Chief James Clapper: We Can't Stop Another Snowden," 2-23-2014, http://www.thedailybeast.com/articles/2014/02/23/spy-chief-we-can-t-stop-another-snowden.html)

Clapper said that in retrospect it would have been **better for the government to acknowledge** the **collection** of call records when the program started after 9/11. Even long-time critics applaud him for that. "I think he deserves credit for rethinking the calculation over secrecy," said Steve Aftergood, the director of the Federation of American Scientists' Project on Government Secrecy. "I think post-Snowden, he quickly realized that declassification and disclosure would serve the interests of the intelligence community." Clapper also acknowledges that the very **human nature** of the **bureaucracy** he controls virtually insures that more **mass disclosures are inevitable**. "In the end," he says, "we will **never ever be able to guarantee** that there will not be an Edward Snowden or another Chelsea Manning because this is a large enterprise composed of human beings with all their idiosyncrasies." Ben Rhodes, deputy national security adviser for strategic communications, concurs: "I do think he recognizes that we are in a new normal after Snowden where we can't operate with the expectation where nothing will get out," he said. "If you are going to be dealing with the world where there are these disclosures you have to be more transparent to make the case to the public what you are doing and not doing."

--xt yes leaks

Competing bureaucratic interests guarantee leaks – empirics

Wilson 98 (Professor of Political Science at UCLA, and John J. DiIulio, Professor of Political Science at Princeton, 1998, American Government: Institutions and Policies, p. 291)

American government is the **leakiest in the world**. The **bureaucracy**, members of **Congress**, and the **White House** staff **regularly** leak stories favorable to their interests. Of late the leaks have become geysers, gushing forth torrents of insider stories. Many people in and out of government find it depressing that our government seems **unable to keep anything secret** for long. Others think that the public has a right to know even more and that there are still too many secrets. However you view leaks, you should understand why we have so many. The answer is found in the Constitution. Because we have separate institutions that must share power, each branch of government **competes** with the others to get power. One way to compete is to try to **use the press to advance your pet projects** and to **make the other side look bad**. There are far fewer leaks in other democratic nations in party because power is centralized in the hands of a prime minister, who does not need to leak in order to get the upper hand over the legislature, and because the legislature has too little information to be a good source of leaks. In addition, we have no Official Secrets Act of the kind that exists in England; except for a few matters, it is not against the law for the press to receive and print government secrets.

--a2 counter-leaks solve

Even if, not effective for years

MacKenzie 14 (Drew MacKenzie, Newsmax, "Report: US May Take Years to Prevent Another Snowden," 8-18-2014, http://www.newsmax.com/Newsfront/security-Edward-Snowden-NSA-surveillance/2014/08/18/id/589383/)

U.S. intelligence officials are months or even years away from preventing classified information from being leaked in cases similar to fugitive NSA contractor Edward Snowden, The Daily Beast reported. The officials say that due to the vast number of computer systems and networks in the 70 U.S. agencies dealing with secret data, it will be a long process before they are able to keep an eye on the computers of federal employees with security clearance. The intelligence officials are almost a year away from being able to monitor public databases for clues that government workers have transgressed federal laws or run into financial hardship, the Beast said. Due to the delays in mounting a sweeping monitoring service to "watch the watchers," the intelligence agencies are also struggling to keep an eye on its employees. The setbacks resulted in a "second Snowden," who leaked secret files to The Intercept from the National Counterterrorism Center, the Beast said. Snowden, now living under asylum in Russia, leaked thousands of classified documents from the National Security Agency, putting American intelligence agents in danger while also exposing the mass phone and Internet surveillance by the agency.

--xt turns perception

Means they don't solve perception internals

Greenwald 2014 (Glenn [Constitutional lawyer- patriot]; CONGRESS IS IRRELEVANT ON MASS SURVEILLANCE. HERE'S WHAT MATTERS INSTEAD; Nov 19; https://firstlook.org/theintercept/2014/11/19/irrelevance-u-s-congress-stopping-nsas-mass-surveillance/; kdf)

**Chart omitted

2) Other countries taking action against U.S. hegemony over the internet. Most people who claim nothing has changed from the Snowden disclosures are viewing the world jingoistically, with the U.S. the only venue that matters. But the real action has long been in other countries, acting individually and jointly to prevent U.S. domination of the internet. Brazil is building a new undersea internet infrastructure specifically to avoid U.S. soil and thus NSA access. That same country punished Boeing by denying the U.S. contractor a long-expected $4.5 billion contract for fighter jets in protest over NSA spying. Another powerful country, Germany, has taken the lead with Brazil in pushing for international institutions and regulatory schemes to place real limits on NSA mass surveillance. **U.S. diplomatic relations** with numerous **key countries** have been severely hampered by revelations of mass surveillance. In July, Pew reported that "a new…survey finds widespread global opposition to U.S. eavesdropping and a decline in the view that the U.S. respects the personal freedoms of its people" and that, while the U.S. remains popular in many countries, particularly relative to others such as China, "in nearly all countries polled, majorities oppose monitoring by the U.S. government of emails and phone calls of foreign leaders or their citizens." After just one year of Snowden reporting, there have been massive drops in the percentage of people who believe "the U.S. government respects personal freedom," with the biggest drops coming in key countries that saw the most NSA reporting: All of that has significantly increased the costs for the U.S. to continue to subject the world, and the internet, to dragnets of mass surveillance. It has resulted in serious political, diplomatic, and structural impediments to ongoing spying programs. And it has meaningfully altered world opinion on all of these critical questions.

2ac lying da

Lying is bad – d-rule

Murphy 96 (Mark C. Murphy, 1996, 41 Am. J. Juris. 81)

Bok's remarks capture the insight that what disturbs people about lying is not fundamentally that lies are contrary to the good of knowledge, though lies certainly are contrary to that good. What is most troubling about being lied to is that lies infect the decisionmaking process, undermining the good of practical reasonableness. Thus, the account of the moral absolute against lying defended here does justice to what bothers reflective people about being the victim of lies. 39 I have argued that although Finnis is right to think that the lie is an act directed against the intrinsic good of knowledge, the wrongfulness of lying is most adequately explained by reference to the good of practical reasonableness. Lying is absolutely morally forbidden, in last analysis, because refraining from lying is necessary to show adequate respect for the status of other agents as practical reasoners. On this matter, at the very least, natural law theory should affirm its agreement with Kant. 40

2ac secrecy da

CP undermines democracy

Jaffer 13 (Jameer Jaffer, fellow, Open Society Foundations, "Secrecy and Freedom," New York Times, 6-9-2013, http://www.nytimes.com/roomfordebate/2013/06/09/is-the-nsa-surveillance-threat-real-or-imagined)

Your claim about the pervasiveness and banality of government secrecy elides the fact that there are many kinds of secrecy. Not all of them present the same threat to democracy. I don't think our democracy is made weaker by the government's withholding of information about the technical means it uses to effect surveillance. I don't think our democracy is made weaker by the government's withholding of information about the specific targets of its surveillance — so long as the surveillance is in fact limited to specific targets and so long as there is some mechanism that permits the public to evaluate the government's conduct after the investigation is complete. Secrecy about government policy, though, seems to me a very different thing. The whole point of democracy is to make government accountable to the public. How can the public hold government accountable if it doesn't know what the government's policies are? How can the public lobby Congress to amend the Patriot Act if it has no idea how the government has interpreted it? This is why I think that you have it backward when you say that "objections to the secrecy of the N.S.A. program are thus really objections to our political system itself." It's objections to transparency about the N.S.A. program that have this character. The argument that the government shouldn't be required to tell the public what its policies are is an argument that we shouldn't have a democracy.

AT: Referendum CP

Theory

Perm Do Both – Advisory

Perm do both – have Congress pass the plan after putting forth an advisory referendum to the public regardless of the outcome of the referendum.

Advisory referendums pressure the government to act – still a form of direct democracy. Counterplan links to theory too – Congress would debate the results of all referendums, binding or not. And, ensures solvency – they'll never win 100% chance the referendum passes

The permutation solves --- Advisory referendums allow direct democracy while avoiding constitutional rollback.

Duvivier 2006

KK, assoc. prof. @ Univ. of Denver College of Law, THE UNITED STATES AS A DEMOCRATIC IDEAL? INTERNATIONAL LESSONS IN REFERENDUM DEMOCRACY, Legal Research Paper Series, Working Paper No. 07-13, http://ssrn.com/abstract= 960319

Although binding referendums may violate the legislative procedure established in the Constitution, the Petition Clause appears to implicitly authorize use of advisory referendums. The First Amendment explicitly provides citizens with the right to petition the government.314 Early cases acknowledged that the right to petition included a right to submit legislative proposals. These same cases, however, made clear that the right to submit did not come with a collateral obligation on the part of Congress to act. Nonetheless, in the early days of the Republic, Congress in fact had in place rules that made consideration mandatory. These internal rules that required Congress to consider citizen petitions lasted only until 1836. In that year, Congress amended its rules to prohibit receipt of any petitions addressing the abolition of slavery, effectively putting a gag on the topic.315 Although the constitutionality of the gag rule was never challenged in the courts,316 the Supreme Court has indicated that the right to petition does not embody a corresponding right to a response. In Smith v. Arkansas State Highway Employees Local 1315,317 the Court noted: The First Amendment right to associate and to advocate "provides no guarantee that a speech will persuade or that advocacy will be effective." The public employee surely can associate . . . . But the First Amendment does not impose any affirmative obligation on the government to listen, to respond or, in this context, to recognize the association and bargain with it.318 Other cases have made similar pronouncements.319 Even though the right of petition may not include a right of response, it still embodies more than the free speech right to address elected representatives.320 Although its placement at the end of the First Amendment might make it appear to be an afterthought, in fact "[p]etitioning was the most important form of political speech the colonists had known, not just because of its expressive character, but also because of the ways in which it structured politics and the processes of government."321 Consistent with the Petition Clause, a system that permitted citizens to adopt advisory referendum "petitions" and submit them to Congress would pose no threat to representative government.322 A citizen referendum could serve to meet this petition function as a separate opportunity for citizens to submit to Congress a document with signatures requesting legislative action.323 Moreover, this advisory right would provide citizens an opportunity to influence Congress and to participate more directly in their democracy.

Intrinsic Perm

Perm: <Plan> and initiate a national level referendum on <issue of PC based politics disad>. Solves the net benefit, garners democracy. Obama can push on <aff> and have the public pass <politics disad>.

<Card about the subject of the politics disad being popular with the public>

Illegitimate/No legal precedent

No legal precedent – current legislation doesn't allow for national referenda in the United States

Fiat doesn't extend to illegal action – must assume some form of normal means for politics

Steinberg and Freely 5 [Austin J. Freely, Suffolk University, attorney who focuses on criminal and civil rights law; David L. Steinberg, University of Miami director of debate, former president of CEDA, AFA and NCA officer, lecturer in communication studies and rhetoric; advisor to Miami Urban Debate League; "Argumentation and Debate: Critical Thinking for Reasoned Decisonmaking" pg 271; 13th Edition, Wadsworth; 2005; accessed 07/05/2015; <https://books.google.com/books?id=CC6urxsG4H4C&lpg=PR10&dq=argumentation%20and%20debate%20critical%20thinking%20for%20reasoned%20decisionmaking&pg=PA1#v=onepage&q&f=false>.]

4.Counterplans and Fiat. It is generally (but not universally) accepted that negatives have some ability to assume fiat for implementation of their counterplans. One approach to negative fiat is to assume that it is reciprocal: If the affirmative can fiat federal government action, so can the negative. Another is to assume that the negative's fiat ground is based in alternative agents: If the affirmative uses the federal government, the negative can use the states or the United Nations. Remember that fiat is not a magic wand, that fiat must assume some normal means of implementation, and that one cannot fiat workability.

It's a voter – no way the affirmative can prepare to debate a counterplan with no literature base. Predictability is the only way we can ensure debates with sufficient clash for in depth education

Solvency

Say No

Polls aren't trustworthy metrics – sample size, obscured source, leading questions, biased additional information, limited choices, misleading representations of results, changing opinion, and tendency to avoid commitment

Messerli 12 [Joe Messerli, degree in Finance from University of Wisconsin, auditor for National Audit; "Why Polls Shouldn't Be Used To Make Decisions"; 01/07/2012; accessed 07/03/2015; <http://www.balancedpolitics.org/editorial-the_case_against_polls.htm>.] *Evidence has been gender modified

Is this a good thing? To a certain extent, yes, it is. After all, a politician is specifically elected to represent a collection of people. Who would want an official in government who never listens to the people? Polls are a way to make the voice of the individual citizen heard. Unfortunately, things aren't all that simple. Polls are inherently bad vehicles for making a decision. Although they should always be taken into consideration, polls are a very poor way to determine the correct course of action. Let's examine the reasons polls have limited usefulness. Poll Results Aren't Always Reliable Polls can be inaccurate for a number of reasons: Samples can be too small in size or unrepresentative of the population It's normally too expensive or time-consuming to survey everyone in population; thus, we must rely on samples to gauge the opinions of everyone. A reliable, scientific poll questions a large enough sample of people to ensure statistical accuracy and includes a representative selection of respondents. Thus, a poll designed to represent American public opinion wouldn't be very reliable if it only included 10 people or included only white males. It's rare that news reports will mention details of the information sample or how the survey was conducted. Viewers and readers usually just take the poll results as fact. For example, what if I reported a poll that said 96 percent of Americans are pro-choice? This obviously doesn't reflect American public opinion, but if the source was a survey of the feminist magazine Bitch readers, the results would be understandable. A clever or sloppy journalist can obscure the source and portray public opinion in an inaccurate way. Think about all the polls that are done today and how easy results can become unrepresentative. Web polls exclude people without web access and those who don't visit that particular site. Polls also exclude those that don't have the time or interest to respond. Think about TV polls. Fox generally has more conservative viewers; CNN generally has more liberal viewers. Thus, their polls results may be skewed to the conservative or liberal side regardless of the issue. The chances for error or bias are endless. Polls can ask leading questions Questions can be worded in a way that leads a respondent to an answer that may or may not reflect his their true feelings. For example, I could ask the question "Do you want to stop the war in Iraq so the lives of innocent civilians can be spared?" Virtually every American wants to prevent innocent loss of life, so many respondents may answer yes to this question, even if they think the war is morally just. But reporters summarizing the results may say "...95 percent of respondents answered yes when asked if they wanted to stop the war". The questioner can also surround the question with information that biases the answer. For example, "Seventy percent of homeless shelter residents are single mothers and their children. Should the next fiscal budget include an increase in funds to local shelters?" Respondents may believe the money is better spent on other areas, but the extra information points people in the direction of one answer. Polls can omit some of the possible answers, leading to either-or answers that don't reflect reality Answers to poll questions are often more complicated that yes-no or among a small list of choices. For example, a poll may ask "Do you support a war with Iran?" The only choices may be yes or no. But many people may say "Yes, but only if they are making nuclear weapons" or "Yes, but only if it is sanctioned by the U.N." Another

example is a consumer confidence question that asks, "Do you consider yourself rich or poor?" Many people will want to answer something in between, but that isn't a choice. People recording survey results may be dishonest or sloppy in recording results Whether the poll is done in person, by phone, by mail, or by web, a human being usually has to eventually tally & report the results. That causes problems for two reasons. One, a human is prone to mistakes. If you're tallying thousands of responses, you're bound to make mistakes. Even if a computer handles the tally, computers are still programmed by humans. Second, the person may be dishonest and wants to achieve a certain result. For example, assume I'm a passionate advocate for banning the death penalty and am taking a phone survey. A strong poll result showing the public in favor of a death-penalty ban may convince some politicians to take action. When taking a poll, it's easy for me to put some extra chalk marks in the anti-death penalty column even when people are answering pro-death penalty in the phone calls. Eventually, I may just achieve the poll result that I want. Poll results can be presented in a misleading way Most news stories don't present the raw data behind a poll and let you draw your own conclusion. Instead, the results will be presented in summary format as part of an analysis article. For example, a poll question may ask "Do you support military action to unseat the Islamic fundamentalist regime of Iran (Yes | No | Unsure)?" The raw data result may be: 29 percent support, 28 percent oppose, 43 percent unsure. The correct conclusion to draw from this poll is that the public generally hasn't made up its mind or needs more information. However, a biased reporter may selectively draw from the results and give the wrong impression. For example, "The idea of military action against Iran is increasingly unpopular. A recent poll concluded that only 29 percent support action, handcuffing the hawks of the Bush administration." Even if polls are scientifically accurate and are done by unbiased, profession polling organizations, there are still other problems that make polls unreliable. Results Change Daily Depending on the Latest News, Speeches, Moods, Etc. Public opinion follows a cyclical flow depending on the latest current events and mood of the public. If you took a poll on 9/12/2001 asking what the President's primary concern should be, over 90 percent of the public would answer the War on Terror. If you asked the same question now, the War on Terror would likely finish behind the health care, energy prices, and the economy. This is just one example of how public opinion changes constantly. The presidential approval rating almost always will spike up in the aftermath of war or after a State of the Union address. After a particularly bad weekend in the Iraq invasion in which several servicemen were captured, a helicopter crash occurred, and a few dirty Iraqi tactics resulted in American deaths, polls showed that almost 60 percent of the public thought the initial phase of the war would last over three months (it actually took 3 weeks). It's pretty clear that you can't depend on public opinion polls to make decisions when opinions are so wide and fleeting. The Toughest Decisions are the Easiest to Put Off Most human beings are notorious procrastinators. Facing challenges or change is never easy. When decisions are too difficult to decide, the easiest thing to do is ignore it, hoping it will go away, or leave it for someone else. All things being equal, people will usually take the safer decision or the one that results in the least immediate sacrifice. Most public opinion polls around the world showed a firm anti-Iraq war opinion even among people who thought Saddam would have to be dealt with sooner or later. The choice came down to whether we deal with the hardship & risk now or do we deal with it later. Naturally, most people chose later. Politicians are especially prone to putting off tough decisions since it usually doesn't hurt their campaign to do nothing, but it may destroy their political careers if they make a choice and it turns out to be wrong. Think of all the other tough decisions facing us. Do we remove affirmative action policies? A politician may feel the removal is the best thing to do for the country, but any such removal would likely alienate black voters; thus, he they puts off the decision. Any tough action is going to be vocally opposed

by a portion of the public. The courageous politician is one who will act. Leaders Influence Public Opinion Political leaders shouldn't depend entirely on polls since they themselves have a significant impact on it. During the Iraq war debate, Tony Blair faced polls showing almost 85 percent opposed the war without UN approval. However, he steadfastly stuck to his guns, never wavering in his support. By the time the war had started, 50-60 percent of the public backed him. Before President Bush gave his UN speech advocating the return of weapons inspectors, only 40 percent of the public backed a war in Iraq. By the start of the war, over 70 percent of Americans supported it. On the flip side, war opposition continued to increase in countries such as France and Germany. Not coincidentally, their leaders were vocally opposed to the war. National leaders receive loads of attention. When they persuasively get their message out, public opinion polls can change dramatically. Clearly, they shouldn't depend on polls given before a case has been made. The Public May Not Have All the Information that the Government Does It seems self-evident that a person should collect all relevant information before making a decision. That said, how many people who vote in public opinion polls have all the relevant information? How many have researched the issue and weighed all arguments for and against? How many have the historical, scientific, political, and economic background knowledge? How many know of the behind-the-scenes political dealings and classified intelligence? The answer to these questions is probably very few. Consider the Iraq war debate. Over 40 percent of the American public couldn't identify Iraq on a world map before the debate started. Most didn't know (and still don't know) the history of Saddam, the Iran-Iraq War, the first Persian Gulf War, the gassing of the Kurds, the former weapons inspectors, etc. The government also had plenty of sensitive intelligence information including weapons of mass destruction, terrorist connections, and Saddam's atrocities. Although a sizeable minority of people devoted the time to diligently study the issue and come to an intelligent decision, most Americans were basing their decisions on such things as whether or not they were Republican or Democrat. As the opening quote illustrates, making decisions based on polls is based on the collective ignorance of the population. Opinions of the Public Aren't Always the Correct Ones Perhaps the greatest reason decisions shouldn't be based on public opinion polls is that the general public is often outright wrong. The vast majority of Germans supported the Nazis prior to World War II. Were their opinions correct? The vast majority of colonial Americans thought blacks weren't much different from animals. Prior to the 1970s, the majority of psychologists thought homosexuality was a psychological disorder; it even was classified in their Diagnostic and Statistical Manual of Psychological Disorders. I'm willing to bet that less than 10 percent of Americans would have answered 'yes' to the question "Is Islamic terrorism a significant threat to national security?" on 9/10/2001. Clearly, there are too many factors left to chance when a politician depends on public opinion polls. The 9/11 carnage and the dancing celebration of liberated Iraqis have shown us that we need leaders who will put their political careers on the line to do what's right. The very definition of a leader is one who will do what he or she they knows is right, no matter what the election impact. A leader's relevant decision makers should be his their heart and mind, not his their political consultants and Gallup polls readouts.

No solvency – The public says no – Special interest groups use fear tactics to manipulate voters.

Rourke et al. 1992

John, University of Connecticut, Richard Hiskes, and Cyrus Ernesto Zirakzadeh, Direct Democracy and International Politics, pg. 58-59

A terrifying variant of this general argument made by Magleby is provided by Bachrach, who says his personal political theorizing is strongly democratic. He believes that Americans today are inadequately experienced in making decisions about complicated policies and argues that referendums are most likely to occur when selfish minorities that have money, organization, and rhetorical skills enlist the support of large majorities through "hate" campaigns that play upon the majorities' unreasoned fears. Bachrach contends that recent domestic referendums on busing, pornography, and abortion illustrate just how manipulative referendums can be.5 One can easily extend Bachrach's argument to the realm of foreign policy, saying that today's international-issue referendums are tools of well-organized and well-financed groups trying to manipulate everyday voters on issues where their emotions run high and their knowledge is low. Such issues might include foreign aid, support for the United Nations, escalation of defense expenditures, and undertaking "winnable" wars.

1AR Say No

---Independently, elite manipulation of the referendum process destroys direct democracy.

Martin 1996

Brian, Democracy without Elections, Social Anarchism, Number 21, 1995-96, pp. 18-51.

In practice, referendums have been only supplements to a policy process based on elected representatives. But it is possible to conceive of a vast expansion of the use of referendums, especially by use of computer technology [14]. Some exponents propose a future in which each household television system is hooked up with equipment for direct electronic voting. The case for and against a referendum proposal would be broadcast, followed by a mass vote. What could be more democratic? Unfortunately there are some serious flaws in such proposals. These go deeper than the problems of media manipulation, involvement by big-spending vested interests, and the worries by experts and elites that the public will be irresponsible in direct voting. A major problem is the setting of the agenda for the referendum. Who decides the questions? Who decides what material is broadcast for and against a particular question? Who decides the wider context of voting? The fundamental issue concerning setting of the agenda is not simply bias. It is a question of participation. Participation in decision-making means not just voting on predesigned questions, but participation in the formulation of which questions are put to a vote. This is something which is not easy to organise when a million people are involved, even with the latest electronics. It is a basic limitation of referendums. The key to this limitation of referendums is the presentation of a single choice to a large number of voters. Even when some citizens are involved in developing the question, as in the cases of referendums based on the process of citizen initiative, most people have no chance to be involved in more than a yes-no capacity. The opportunity to recast the question in the light of discussion is not available.

1AR A2: Polls

---General preferences don't translate into approval.

Magleby 1994

David, prof. at Brigham Young Univ, "Direct Legislation in the American States," Referendums Around the World, p. 256

Much of the battle of direct legislation is definition: which side can more effectively define the issue for voters in ways they will understand and remember. This often means that the campaign on an initiative focuses on only one part of the actual proposal. It is therefore problematic to conclude that the vote on a particular initiative or referendum reflects an understanding of the issue more broadly defined. The American system, reflecting the antirepresentative views of the Progressives, allows voters to vote on the text of laws rather than on general policy questions. As a result, voters may prefer a policy but reject an initiative that embodies that policy.

---Polls don't predict ballot-box results --- Campaigns and consequences change minds.

Butler & Ranney 1994

David, American Enterprise Institute and Austin, prof. emeritus @ UC Berkeley, Referendums Around the World, "Theory," p. 262

These outcomes militate against the contention that opinion polls offer an economical substitute for referendums. Opinion polls do offer a continuous measure of public opinion on major issues. But many people vote differently when faced with a choice of government in a general election from the way they vote in a by-election, when only a single seat is at stake and the voters can send a message to elected leaders without going so far as to remove them from office. Similarly, voters may say one thing to a pollster when they know what they say will not have any real-life consequences, but they may well say another at the end of a serious referendum campaign, when they know that the outcome will control what government does or refrains from doing.

Delay

Direct democracy causes overwhelming delays

Maduz 2010

Linda, University of Zurich, Center for International and Comparative Studies, Direct Democracy, Living Reviews in Democracy, http://democracy.livingreviews.org/index.php/lrd/article/viewFile/lrd-2010-1/21

Studies concluding that direct democracy has an overall beneficial effect on a country's economy are challenged by scholars, such as Borner and Rentsch (1997) whose research focuses on direct democracy's effects on economic growth. According to their

theoretical argumentation and empirical findings, direct democratic instruments compromise the conditions that allow an economy to grow successfully. The existence of a direct democratic system would have a negative impact on a country's capacity to innovate and to adapt to changing circumstances; it would give interest groups the power to slow down reform processes and may even enable them to render a coherent and consistent strategy impossible. In this perspective, direct democracy is presented as a danger for stable, foreseeable framework conditions. The primacy of popular sovereignty would lead to arbitrariness in state actions, and hinder the political system in the setting of clear priorities. The uncertainty related to such a political system would also negatively impact on a country's external relations – another factor considered to be vital for the prosperity of a country's economy. As a particularly striking example in this context Borner and Rentsch cite Switzerland's rejection of entering the European Economic Area in 1992, which, according to them, can be traced back to the country's institutional setting, i.e. Switzerland's direct democratic system.

Rollback

Binding referendums are unconstitutional and will be rolled-back.

Duvivier 2006

KK, assoc. prof. @ Univ. of Denver College of Law, THE UNITED STATES AS A DEMOCRATIC IDEAL? INTERNATIONAL LESSONS IN REFERENDUM DEMOCRACY, Legal Research Paper Series, Working Paper No. 07-13, http://ssrn.com/abstract= 960319

A. Constitutional Prohibitions Against Binding Referendums A system that would permit citizens to pass binding referendums would not pass constitutional muster absent an amendment to the Constitution. The Constitution provides no express mechanism for these types of initiatives. Such an approach also conflicts directly with the method of government ensconced in the Constitution.302 To become law, both the House and the Senate must pass proposed legislation, and the President must sign it into law. A mandatory referendum presumably would bypass this process and circumvent congressional and presidential approval. Past efforts to "end-run" the President's power to veto legislation have not fared well. In INS v. Chadha,303 the United States Supreme Court declared that unilateral action by the House of Representatives could not invalidate decisions by the Executive Branch.304 Such a "one-House veto" is unconstitutional, the Court reasoned, because "the prescription for legislative action in Art. I, §§ 1, 7, represents the Framers' decision that the legislative power of the Federal Government be exercised in accord with a single, finely wrought and exhaustively considered, procedure."305 Similarly, the Supreme Court has invalidated efforts to diminish Congress's role in the legislative process. In Clinton v. New York,306 the Supreme Court concluded that the Line Item Veto had the "legal and practical effect" of allowing the President to repeal portions of legislation without following the constitutional procedure of vetoing an entire bill.307 Consequently, the Court concluded "that the Act's cancellation provisions violate Article I, § 7, of the Constitution."308 Also, because the Line Item Veto Act does not follow "the 'finely wrought' procedure commanded by the Constitution," the Court did not find it necessary to address "the District Court's alternative holding that the Act 'impermissibly disrupts the balance of powers among the three branches of government.'"309 A mandatory citizen referendum, therefore, likely would meet the same fate at the hands of the U.S. Supreme Court. To the extent such a referendum mandated the adoption of legislation and sidestepped both Congress and the President, Chadha and Clinton strongly indicate such a measure would not survive constitutional scrutiny.

Referendums fail – history of courts overturning depresses confidence in democratic ideals

Magleby 98 [David B. Magleby; professor of Political Science at Brigham University; "Ballot Initiatives and Intergovernmental Relations in the United States" pg 151-152; The State of American Federalism Vol 28 No 1; Winter 1998; accessed 07/01/2015; <http://mavdisk.mnsu.edu/parsnk/2011-12/Pol680-fall11/POL%20680%20readings/direct%20democracy-%20wk%209/ballot%20initiatives.pdf>.]

Successful initiatives face another high hurdle prior to implementation: an almost certain constitutional challenge. State courts are often first involved in adjudicating disputes concerning the electoral rules of

direct legislation.'6 The Progressives were so distrustful of intermediary institutions that they minimized the role of elected officials in overseeing the process. Hence, disputes about signature collection and verification, ballot title and summary, and subject-matter limitations are routinely referred to state courts.17 State courts also regularly rule on the constitutionality of successful initiatives. State and federal courts have often overturned a vote of the people on either state or federal constitutional grounds. The legal challenge to successful initiatives generally arises immediately after the election and can delay implementation of an initiative for years. The willingness of the state and federal judiciaries to invalidate initiatives has generated controversy. In California, the frequency of the state supreme court's rejection of initiatives played a role in defeating Chief Justice Rose Bird and two associate justices in a judicial retention election in 1986. Because the federal judiciary is more independent, UCLA law professorJulian N. Eule believes the federaljudiciary should decide the constitutionality of initiatives.'8 Others contend that fear of defeat injudicial retention elections means state court judges are less inclined to declare entire initiatives unconstitutional, opting instead to invalidate only parts of the measures. The willingness of federal courts to overturn state initiatives on U.S. Constitutional grounds is an important manifestation of federalism. This assertion of federal constitutional supremacy over the vote of the people was expressed forcefully in the landmark 1964 California open-housing initiative decision. The U.S. Supreme Court and the California Supreme Court agreed that the proposition violated the equal protection clause of the Fourteenth Amendment.20 Chief Justice Warren Burger observed: "It is irrelevant that the voters rather than a legislative body enact [this law] because the voters may no more violate the Constitution by enacting a ballot measure than a legislative body may do so by enacting legislation."21 Federal courts have struck down successful initiatives on the death penalty, abortion, homosexual rights, term limits, physician-assisted suicide, and illegal immigration. Criticism of federal judicial review has been expressed in the two most recent Congresses where legislation passed in the House in 1995 to require that any challenge to a statewide referendum should be referred to a panel of three judges not one.22 There has even been some skirmishing between appellate and district courts in the federal system. A three-judge appellate panel wrote against a federal district judge who enjoined Proposition 209 (affirmative action): "A system which permits one judge to block with a stroke of the pen what 4,736,180 [actually 5, 268,462] state residents voted to enact as law tests the integrity of our constitutional democracy."23

1AR Constitutional Rollback

---Cp is unconstitutional & gets rolled back.

Duvivier 2006

KK, assoc. prof. @ Univ. of Denver College of Law, THE UNITED STATES AS A DEMOCRATIC IDEAL? INTERNATIONAL LESSONS IN REFERENDUM DEMOCRACY, Legal Research Paper Series, Working Paper No. 07-13, http://ssrn.com/abstract= 960319

Citizen participation in national affairs through referendums has a long tradition in Europe, and the trend toward allowing participation keeps increasing worldwide. Nevertheless, the United States, once a leader in the concept of democracy, has fallen behind and now rests as one of only four major democracies in the world that have never held a nationwide referendum.300 Implementing a system of mandatory citizen-initiated referendums could not survive constitutional challenge in the United States. The efforts of the Founding Fathers to devise a government with limited direct democracy effectively blocked efforts in this direction. Nonetheless, an avenue for direct democracy remains available. Under the Petition Clause of the First Amendment, the United States could institute, without amending the Constitution, a system of citizen-initiated nonbinding referendums.301

Delay

History proves national referenda are impossible – 108 failed proposals, too radical, no precedent for amending the constitution, and unbalances Federal v. State power

Polhill 14 [Dennis Polhill, Senior Fellow in Public Infrastructure at the Independence Institute writing on the role of democracy in the United States; "The Issue of a National Initiative Process"; Initiative & Referendum Institute at the University of Southern California; ©2014; accessed 07/07/2015; <http://www.iandrinstitute.org/National%20I&R.htm>.]

At the Congressional level, between 1895 and 1943, 108 proposals to amend the U.S. Constitution by adding national I&R were submitted. Seven would have created a general I&R, that would have allowed for consideration of any issue. The others created I&R for specific issues only or that had issue-specific prohibitions. For example, Abourezk would not permit the declaring of war, calling up troops, or amending the constitution and would permit statutory modifications by Congress with a two-thirds majority or simple majority after two years. Implementation of national I&R is more complicated in the U.S. than in other nations due to the unique Constitutional division of responsibilities between the Federal and State governments. In most countries, governments are centralized to either a greater or lesser extent. Other variations of national I&R that have been proposed in the U.S. include: The first proposal for national I&R was in 1895 by Populist Party U.S. Senator William Peffer from Kansas. It provided for a national vote on an issue when 20% of voters nationwide or 20% of state legislatures requested it. In 1907 U.S. Representative Elmer Lincoln Fulton from Oklahoma suggested that 8% of the voters in each of 15 states could put either a constitutional amendment or statute proposal to a national vote or that 5% of the voters in each of 15 states or their state legislatures could challenge a statute passed by Congress. In 1911 Senator Bristow from Kansas proposed that the Initiative be used to reign in the court. Any law held unconstitutional by the Supreme Court would go to a vote of the people. This was the first proposal for using I&R as the method by which to reconcile conflicts between the equal branches of the Federal government. Socialist Party U.S. Representative Victor Berger of Wisconsin introduced the most radical proposal ever. It would have abolished the Presidency, the Senate and the Supreme Court. Five percent of the voters in three-fourths of the state could propose a law or challenge a law passed by Congress. U.S. Senator Bob La Follette from Wisconsin in 1916 proposed a non-binding national advisory referendum that would be held when 1% of the voters in 25 states petitioned. The National approach would require some percentage (usually in the range of 3%) of voters nationwide to sign a petition. Because elections are managed by the states and there are no national voter rolls or other election systems, leaving states out of the process would require changes in election management. Nullification advocates in the 1980s and 1990s suggested that Federal statutes should go to a nationwide vote when 10% of the voters in 1/3 of the states sign a petition challenging it. Nullification proposals were in reaction to "unfunded mandates" and directives imposed upon the states by Congress. A nullification mechanism would effectively be a national application of the referendum petition or challenge petition.

Even if Congress did propose an amendment, chances of passage are low, time consuming, and undercut democracy

Gorham 11 [Will S. Gorham, news researcher and online editor, former staffer in the United States Senate; “Of 11,000 attempts to amend U.S. Constitution, only 27 amendments have passed”; Politifact; 08/30/2011; accessed 07/07/2015; <http://www.politifact.com/truth-o-meter/statements/2011/aug/30/xavier-becerra/11000-attempts-amend-us-constitution-only-27-amend/>.]

Amendments can be proposed two ways: in Congress or by a national convention assembled at the request of the two-thirds of the states legislatures. The national convention approach has been attempted twice but has never been successful. So the successful amendments have all originated in Congress. And according to a congressional tally, Becerra is just about right on target: Congress has considered "approximately 11,372 amendments" from 1789 through December 31, 2008, the most recent tally available, according to the Statistics and Lists section of the United States Senate website. Why is it "approximately" 11,372? The site says that's because of a number of factors, including inadequate indexing of legislation in the early years of Congress. Of those 11,372 proposed amendments, only 27 have been approved by Congress and ratified by the states. Why such a low success rate? Senate Historian Donald Ritchie told us that amending the Constitution is "an extremely complicated process" and an amendment "essentially only gets adopted when there’s a broad national consensus on the issue." University of Pennsylvania law professor Kermit Roosevelt agreed, noting that "the founders wanted the bar set high because they believed that most issues should be left to the ordinary political process. A constitutional amendment takes an issue away from the normal process of democratic politics, quite likely forever. So it makes sense to require an extraordinary consensus to resolve it permanently." Most proposals aren’t inspired by a broad national consensus, however. The motivation for introducing a constitutional amendment is often political. "Every time the Supreme Court makes a ruling some member of Congress doesn’t like, someone pushes for a constitutional amendment on the matter," Ritchie told us. For example, the day after the Supreme Court ruled flag burning to be protected speech in 1989, U.S. Rep. Michael Bilirakis, R-Fla., introduced an amendment outlawing desecration of the flag. Amendments to ban flag burning have been introduced in every session of Congress since, spanning more than two decades. Many amendments are introduced many times. An amendment defining marriage as between one man and one woman has been introduced numerous times in the last decade, including four times in a single session of Congress. Some are introduced many times but with variations. Following the terrorist attacks of Sept. 11, 2001, members of Congress introduced amendments that would provide for the continuity of Congress in the event of a sudden mass vacancy in the Capitol. The amendments varied on what constituted that "mass vacancy" and how replacement lawmakers would be chosen. None of the amendments passed. Back to Becerra. He was correct that only a tiny percentage of amendments ultimately pass and are ratified. He said 11,000; the official count puts the number at approximately 11,372. That's close enough to earn a True.

Experts Key

Only experts have the capability to understand rapidly changing technology relevant to surveillance and understand intelligence gathering and law enforcement missions with a comprehensive background

Clarke et. al 13 [Richard A. Clarke, former National Coordinator for Security, Infrastructure Protection, and Counter-terrorism for the United States; Michael J. Morell, former deputy director of the Central Intelligence Agency, serving as acting director twice in 2011 and from 2012-2013; Geoffrey R. Stone, American law professor at U Chicago's Law School and noted First Amendment scholar.; Cass R. Sunstein, American legal scholar, particularly in the fields of constitutional law, administrative law, environmental law, and law and behavioral economics; Peter Swire, Nancy J. and Lawrence P. Huang Professor in the Scheller College of Business at the Georgia Institute of Technology and internationally recognized expert in privacy law; Report and Recommendations of The President's Review Group on Intelligence and Communications Technologies; "Liberty and Security in a Changing World" pg 120-121; 12/12/2013; accessed 07/07/2015; <https://www.whitehouse.gov/sites/default/files/docs/2013-12-12_rg_final_report.pdf>.]

We recommend that the government should commission a study of the legal and policy options for assessing the distinction between metadata and other types of information. The study should include technological experts and persons with a diverse range of perspectives, including experts about the missions of intelligence and law enforcement agencies and about privacy and civil liberties. Are there any circumstances in which the government should be permitted to collect and retain meta-data in which it could not collect and retain other information? One question concerns the meaning of "metadata." In the telephony context, "meta-data" refers to technical information about the phone numbers, routing information, duration of the call, time of the call, and so forth. It does not include information about the contents of the call. In the e-mail context, "meta-data" refers to the "to" and "from" lines in the e-mail and technical details about the e-mail, but not the subject line or the content. The assumption behind the argument that meta-data is meaningfully different from other information is that the collection of meta-data does not seriously invade individual privacy. As we have seen, however, that assumption is questionable. In a world of ever more complex technology, it is increasingly unclear whether the distinction between "meta-data" and other information carries much weight.120 The quantity and variety of meta-data have increased. In contrast to the telephone call records at issue in the 1979 case of Smith v. Maryland, 121 today's mobile phone calls create meta-data about a person's location. Social networks provide constant updates about who is communicating with whom, and that information is considered meta-data rather than content. E-mails, texts, voice-over-IP calls, and other forms of electronic communication have multiplied. For Internet communications in general, the shift to the IPv6 protocol is well under way. When complete, web communications will include roughly 200 data fields, in addition to the underlying content. Although the legal system has been slow to catch up with these major changes in meta-data, it may well be that, as a practical matter, the distinction itself should be discarded. The question about how to govern content and meta-data merits further study. Such a study should draw on the insights of technologists, due to the central role of changing technology. Economists and other social scientists should help assess the costs and benefits of alternative

approaches. The study should include diverse persons, with a range of perspectives about the mission of intelligence and law enforcement agencies and also with expertise with respect to privacy and civil liberties.

No Turnout

The U.S. has a referendum turn out problem – can't gather enough participation until the 2016 election, and voters will fail to cast a vote on the referendum, at best a solvency deficit and at worst a takeout

Le Duc 6 [Lawrence LeDuc, political science professor at the University of Toronto; "Referendums and Deliberative Democracy" pg 19-20; prepared for presentation at the International Political Science Association World Congress; 07/09/2006; accessed 07/06/2015; <http://paperroom.ipsa.org/papers/paper_5268.pdf>.]

Turnout tends to fluctuate more widely in referendums than it does in national elections. In general, it tends to be lower, but can sometimes rise to much higher levels when a particular issue engages wide voter interest or when a more intense campaign is waged by interested groups. When turnout is low, the ability to mobilize one's own supporters counts for more. When it rises, it is generally because the issue itself is perceived as an important one for most voters, sometimes generating new sources of participation. Some important referendums in which turnout registered higher than that of a comparable national election are the 1994 EU membership referendum in Norway, both Quebec sovereignty referendums, the 1992 Canadian constitutional referendum, and the Danish and Swedish referendums on the Euro (table 6). But there are also several cases in which turnout was very low in comparison with the levels generally obtained in elections. The Spanish referendum on the EU constitution drew a participation of only 42 percent of the electorate – 35 percentage points lower than in the general election of the pervious year. Turnout in both Irish referendums on the Nice treaty was very low in comparison with national elections, and the low turnout of only 35 percent of voters in the first (2001) referendum was widely blamed for the defeat of the treaty. Polls in the run-up to the referendum shown a majority of the Irish public in support of the treaty. But the combination of low levels of information regarding its content, a lackluster campaign, and widespread disinterest 20 in the vote combined to defeat it. Turnout is often also low in Swiss initiative and referendum votes, sometimes even falling below 40 percent. But turnout also tends to be low in Swiss elections, and referendum participation is frequently higher than electoral participation, depending on the salience of the particular issue being considered. In the case of the 2002 initiative on UN membership, for example, turnout was a full 13 percent higher than in the federal assembly election held the following year. It was also higher than that recorded for any other initiative votes held in 2002, which ranged as low as 42 percent in the vote on two other items held only three months later (table 2). Turnout is also a serious problem in many of the initiative and referendum votes held in the U.S. states. Typically, such items appear on an electoral ballot together with a vote for other public offices. But the turnout then depends largely on the election in which the vote is occurring, and not on the propositions per se. Because turnout in U.S. presidential elections tends to be higher than in off year or state elections, items that appear on a presidential ballot achieve higher levels of participation. In the two California examples considered here (see table 3), the basic turnout of voters in the 2004 presidential election in the state was 57 percent, compared to 36 percent in the 2002 election when seven propositions were on the ballot together with state and Congressional offices. But turnout on U.S. ballot propositions must also be measured in terms of the total vote cast on the specific item, rather than as a percentage of those going to the polls, since many voters will fail to vote on some or all of the propositions appearing on the ballot. A "drop-off" of as much as ten percent is fairly typical, but for some propositions it can be much higher. In the 2002 vote for example, the total vote cast on the court consolidation proposal (proposition 48)

was 14 percentage points lower than in the election as a whole, meaning that only 22 percent of the eligible California electorate cast a vote on this item. Although 73 percent voted YES on proposition 48, it can nevertheless be said that this decision was effectively made by only 16 percent of eligible California voters.

Precedents

Their evidence creates democracy in the context of long term referendum use. The counterplan can only fiat one referendum, not long term referendum use.

Net Benefits

2AC A2: Direct Democracy Impact

---National referendums don't result in direct democracy

(A.) Party politics.

Cox, Their Author, 2012

William John, retired police officer, prosecutor, public interest lawyer, author and political activist, A Peaceful Political Evolution, http://thevoters.org/

As effective as a national referendum may be to establish government policy, little good will come of it unless those we elect are forced to pay attention to our interests and to actually carry out our policies. As it is, presidential candidates say one thing and do another to the extent they believe they can get away with it, and because of party politics, we keep getting stuck with having to decide upon the lesser of two evils.

(B.) Low voter turnout.

Landow 2011

Charles, associate director of the Civil Society, Markets, and Democracy Initiative at the Council on Foreign Relations, Direct Democracy and Its Dangers, http://www.cfr.org/democracy-and-human-rights/direct-democracy-its-dangers/p23763

But popular policymaking has significant drawbacks. First, an initiative said to be approved by "the people" might well be approved by only a small percentage. The recent Swiss initiative on expelling criminals, for example, passed with 52.9 percent of the vote in a referendum with 52.6 percent turnout. Of course, the same thing happens in elections, and this is a serious shortcoming -- but it is all the more damaging for popular referendums given the common assumption that direct democracy conveys the people's views.

(C.) Discursive barriers.

Hendriks 2009

Carolyn M., Crawford School of Economics and Government @ Australia National University, Securing public legitimacy for long-term energy reforms, PUBLIC POLICY NETWORK CONFERENCETHE AUSTRALIAN NATIONAL UNIVERSITY, CANBERRA29-30 JANUARY

These proposals offer useful options for how to improve the legitimacy (and accountability)of governing long term energy reforms. There are, however, some particular challenges with these 'democratic solutions', most notably the difficulties in determining and incorporating the views of those potentially affected by policies, such as futuregenerations. Further, when there are varying degrees of affectedness, should those mostaffected have more say, and if so, who determines degree of affectedness? Perhaps the most serious limitation of these democratic strategies is their feasibility in any given policy context. In my empirical work of the Netherlands I have found that it is often the discursive barriers that influence the extent to which democratic matters are taken into consideration in energy reforms, for example negative ideas on the public's capacity and willingness to engage in policy issues (Hendriks 2009b).

2AC A2: Direct Democracy First

---Direct democracy has no intrinsic benefit --- Democratic participation cannot be separated from larger assessment of aggregate consequences.

Budge 1996

Ian, Prof @ U. of Essex, The New Challenge of Direct Democracy, p. 34

Proponents of participation on the other hand have tended to feel that once the moral case for it was made - and it is, probably, unanswerable - this was all they had to do. But in a multi-valued world where stability, order and justice might be argued to be the first concerns of the State, the effects of unlimited participation on these and other values have to be weighed up. This is what critics of direct democracy have done when they have ventured beyond their opening feasibility gambit. And they have a point. If participation, however valuable in itself, has negative effects on other values, then it may need to be limited to secure a balance of benefits. Whether this is in fact the case we shall see in the following chapters.

Democracy

Referendums are tools of the elite which advance discriminatory and nationalist policies – empirics prove

Koinova 14 [Dr. Maria Koinova, Associate Professor of Politics and International Studies at the University of Warwick; "Referendums: A Legitimate Democratic Tools or a Mechanism for Nationalist Cooptation[sic]?"; Research on South Eastern Europe; 06/08/2014; accessed 07/06/2015; <http://blogs.lse.ac.uk/lsee/2014/06/08/referendums-a-legitimate-democratic-tool-or-a-mechanism-for-nationalist-co-optation/>.]

This is an indisputably wide range of using referendums to legitimate policies. But how democratically legitimate are such policies indeed? As a tool of direct democracy – in contrast to representative democracy – referendums are considered highly authoritative because they allow for an unmediated expression of the popular will. But, as Qvortrup (2014) argues, referendums are considered legitimate, when the rules of their engagement are negotiated between the stakeholders in advance, and the referendum is conducted afterwards. This was definitely not the case in the recent referendums in Ukraine, nor in other historical cases, when benign and not-so-benign autocrats – threatened domestically or internationally – have used referendums to justify their policies. At the end of the Soviet Union the communist leader Michael Gorbachev resorted to the use of referendum, as did nationalist leaders of the disintegrating Yugoslavia. I take this discussion further and focus particularly on the relationship between referendum and liberal democracy. In the past decade and especially after the economic crisis hit Europe and other parts of the world, anti-migrant and anti-minority sentiments have been growing, and populist and ultranationalist parties have been thriving. Operating in political systems with no viable alternative to democracy, such nationalist and exclusivist groups have been adapting to the established democratic "rules of the game," and seeking to co-opt them. They have been using the procedure of referendum, or the threat of a referendum, to justify their nationalist goals. In the processes, they have been undermining liberal democracy. Let me demonstrate this argument by way of some examples. In my recently published book "Ethnonationalist Conflict in Postcommunist States" (University of Pennsylvania Press, 2013), I discuss the role of the Macedonian diaspora, primarily from Australia, which inaugurated a civic referendum together with the Macedonian nationalist VMRO-DPMNE party in 2004. They wanted to oppose the decentralization reforms aimed at giving more self-government rights to the minority Albanians in Macedonia. The referendum asked voters whether they supported a proposal to retain the municipal boundaries existing before the Ohrid Framework Agreement which put an end to the brief 2001 internal warfare between Albanian guerrillas and the Macedonian army. The EU and the US put enormous efforts to keep the voters away from the polls. The EU launched a massive public campaign linking nonparticipation in the referendum with commitment to EU integration. The US provided a highly tangible benefit by recognizing the country with its constitutionally proclaimed name. The referendum went ahead, but gathered only 27% turnout, and eventually failed. Thus, the ruling coalition was further enabled to introduce decentralization reforms. The EU exerted similar pressure to prevent the conduct of a referendum in Republika Srpska, a constitutive part of Bosnia-Herzergovina. Milorad Dodik, Republika Srpska's President, called in 2011 for the inauguration of a referendum "to reject Bosnia's state war crimes court and special prosecutor's office established in 2005 by international decree." This presented one of the most serious crises that Bosnia-Herzegovina experienced with the EU after the Dayton Peace Accords (1995), since the referendum attempted to roll back the existing democratic achievements. If the referendum were in fact

conducted, it would have resulted in heavy EU sanctions towards Republika Srpska, as the High Representative to Bosnia-Herzegovina, Valentin Inzko, claimed. In my book I also discuss the highly controversial role of the ultra-nationalist party Ataka in Bulgaria, especially in exacerbating ethnic tensions and attacking Muslims and ethnic Turks. Former Prime Minister Boyko Borissov, of the populist Citizens for the European Development of Bulgaria (GERB) party, who depended until July 2011 on Ataka's parliamentary support for his government, agreed easily to a 2009 proposition of Ataka's leader Volen Siderov to hold a popular referendum on whether Turkish language broadcasts should continue in the Bulgarian media. This policy had been introduced as an effect of EU conditionality to increase minority representation in the state media. Only a quick outcry from other Bulgarian parties and the European Parliament convinced Borissov to withdraw his support for the referendum. Being part of the EU does not preclude parties or groups from using referendum for exclusivist purposes. In December 2013, less than six months after Croatia joined the EU, a Catholic citizens group called "On Behalf of the Family" inaugurated a referendum to ban same-sex marriage. Unlike in the referendums in previously discussed countries, this one was conducted and succeeded. Much to the dismay of EU officials, but not to local politicians, 65% of Croatians voted to change the constitutional definition of marriage to be considered "a living union of a woman and a man." On the pages of the Guardian Horvat argued: "Anti-minority moves in Croatia are symptomatic of a Europe-wide slide back to the worst nightmares of the 20th century." For him Croatia is not an outlier, but is getting close to other countries in Western and Eastern Europe, where anti-minority sentiments are growing rapidly. In Greece, for example, there was a recent proposal to hold a referendum to ban the erecting of a mosque in Athens, although Athens has been heavily criticized of being the only capital in Europe that has no mosque. In conclusion, most of the current discussion on referendums is focused on whether and when referendums become legitimate. While this discussion is fruitful from the perspective of a procedural democracy, scholars and practitioners need to delve deeper into how such referendums affect liberal democracy. They can be co-opted by various groups to advance nationalist and exclusivist political agendas. In a world of growing anti-minority sentiments, we need more than less of this discussion.

California proves – selfish and unorganized referendum government is easily controlled by the rich, disenfranchising minority, poor, and disabled people

Reynolds 88 [Pamela Reynolds, award winning writer for the Boston Globe; "Referendum Trend Hurts Government"; Orlando Sentinel; 11/06/1988; accessed 07/07/2015; <http://articles.orlandosentinel.com/1988-11-06/news/0080150059_1_ballot-measures-local-government-shasta-county>.] Concede the counterplan sets a precedent and win that referenda are bad. *Card has been modified for ableist language

Residents of the rural county of 137,000 people, located about 125 miles north of Sacramento, had been given an option at the ballot box. Either they could keep their libraries open by approving a flat $24-a-year special ''per- parcel'' tax to be levied on each homeowner, or they could watch their 10 libraries shut down for good. The county simply couldn't keep the libraries open any longer without new revenue. Apparently, voters felt the extra $24 could be spent on better things, perhaps a night at the movies. By a margin of 55 percent, Shasta County residents voted to shelve the libraries. ''Bring your own books,'' Michael Johnson, Shasta County administrative officer, wryly jokes these days. California legislators, however, are not laughing. They are appalled by what they say is a gloomy new trend in the

Golden State: government by referendum. In communities throughout California, from Sacramento County to Los Angeles, voters are sorting through a plethora of referenda on their ballots. According to observers, this latest political reality raises grave questions about the nature of democracy, the future of local government, the willingness of middle-class voters to support social services from which they do not benefit. The referendum has become a way of life in California, and it is precisely this fact that worries lawmakers and academics. ''It's a terrible way to run our government'' said John McClure, a city councilman in Rialto, Calif. ''It raises very serious questions of equity,'' said Peter Detwiler, consultant to the California Senate Local Government Committee in Sacramento. While some say that the growth of the referendum is both desirable and beneficial, leading as it may to a more democratic system in which American citizens are allowed an even greater capacity to tinker with the great engine of government, others dread the type of society such haphazard governing is likely to produce. Many fear it is likely to create a society where selfishness reigns, where busy citizens, earnest but uninformed, are forced to vote on a list of highly technical issues. In referendum politics, government is likely to be seized by a highly organized, well-financed ''initiative industry'' composed of advertising firms, pollsters, lawyers and direct-mail advertisers who charge hefty fees to help groups or individuals sponsor and pass their ballot measures. Minorities, the poor, the handicapped disabled, are likely to be left out of the process altogether, since many in these groups lack the funds to push an initiative onto the ballot. ''I think we want to treat this as some idyllic process,'' said David Magleby, professor of political science at Brigham Young University and the author of a book on ballot measures. ''But this is very much an upper-middle-class process,'' he said. Government by referendum has settled on many states around the country, including Colorado, Ohio, Michigan, Oregon, Washington and, to some degree, Massachusetts. But it is especially the way of life in California in the wake of Proposition 13, the famous 10-year-old voter initiative that rolled back property-tax assessments. Proposition 13 required that revenue-hungry communities send every tax-increase proposal to the voters for approval by a two-thirds margin. Therefore, Californians no longer have the luxury of letting legislators they've elected do most of the governing. Rather, citizens, piecemeal, must legislate on their own.

Capitalism

Referendums cede power to rich political elites who control the issue more than they could in representative democracy

Magleby 98 [David B. Magleby; professor of Political Science at Brigham University; "Ballot Initiatives and Intergovernmental Relations in the United States" pg 148-149; The State of American Federalism Vol 28 No 1; Winter 1998; accessed 07/01/2015; <http://mavdisk.mnsu.edu/parsnk/2011-12/Pol680-fall11/POL%20680%20readings/direct%20democracy-%20wk%209/ballot%20initiatives.pdf>.]

Compared to agenda-setting in other contexts, the initiative empowers those who use the process to take their issue directly to the voters of the locality or state. The opportunity to bypass the institutions of representative democracy is seen by those who use the process as an advantage. Direct legislation is often faster than the legislative process, and the proponents of the issue control the wording of the issue. Agenda-setting by initiative means that proponents need to meet the minimum signature requirement which, in most states, requires either a large number of highly motivated volunteers or ample funds to hire signature collectors. Since there is difficulty qualifying for the ballot, the initiative is less and less a grass-roots phenomenon and more and more dominated by large and well organized interests. While the authors of initiatives control the wording of their propositions, the campaign serves to define what the issue means for voters. Initiative campaigns are largely fought in thirty- and sixty-second commercials using attention-getting advertisements that motivate people either to care about a problem and vote for the proposition, or to create doubts about the initiative and scare voters into voting "no."5 Not surprisingly, the issue as defined by the opponents is not at all what the proponents desire or intended. Well organized and well funded opposition campaigns win about two-thirds of the time.6 Agenda-setting and campaign management in initiatives is thus primarily organized by elites but must involve mass audiences in qualifying for the ballot and winning on election day. The mass-politics side of initiatives is largely carried out by paid consultants and organized by elites. As the process has become more visible and more central to the politics of a dozen or more states, an initiative industry that specializes in such services as petition circulation, polling, media management, direct mail, and legal advice has grown accordingly.7 Those who use this tool include citizens who can link their concerns to other organized groups like the sponsors of recent California initiatives on immigration and affirmative action, governors or legislators who want to take their issue directly to the voters or enhance their own standing, and interest groups.

Politics

Links to politics, and EU proves – politicians debate the substance of referenda before they are put to a vote

Kirk 15 [Ashley Kirk, data analyst and reporter, Masters in Interactive Journalism at City University London; “EU referendum: MPs clash over voting franchise and reforms in debate”; City AM News and Politics; 06/09/2015; accessed 07/07/2-15; <http://www.cityam.com/217535/eu-referendum-mps-clash-over-voting-franchise-and-reforms-debate>.]

Members of Parliament filled the House of Commons to debate the government's proposed EU referendum, as parties clashed over the future of the UK and the EU. Foreign secretary Phillip Hammond introduced the EU Referendum Bill, calling it a "simple but vital piece of legislation". He said that the EU is often seen as "something done to [British citizens], not for them". "EU's democratic mandate is wafer thin" He pointed to the lowest ever turnout in last year's European referendum, where it dropped to 13 per cent in some EU countries. He said the Conservatives would deliver on their promise to give voters an in-out referendum, claiming that the way the EU has changed since the last referendum in 1975 had "eroded the democratic mandate for our membership to the point where it is wafer thin and demands to be renewed". While the bill had support from the main opposition, the government faced unrest from its backbenchers. Former Tory chancellor and pro-European Ken Clarke said he would not vote for the Referendum Bill. He said: The idea that we somehow advance our future prosperity[sic] by withdrawing from the biggest, organised trading bloc in the world, at the same time the Conservative Party being an advocate of free trade wherever can be obtained, will be an absurdity. Ukip MP Douglas Carswell was also vocal during the debate, while supporting the referendum. "The answers lie in cooperation" Hilary Benn, shadow foreign secretary, said that Labour supported the referendum, but also supported Britain's membership of the EU. He said the referendum presented a "clear and simple question", but one whose "answer will a profound impact" on the country. Benn mocked Cameron on his perceived u-turn about whether ministers should be given the freedom to campaign for British withdrawal of the EU. On jobs, economic growth, climate change and terrorism, Benn said, "the answers lie in cooperation" and "work[ing] with others".

Court rollbacks get the government involved - <go to the rollback debate>

Poverty

Nonunique net benefit - violence, crime, and poverty are decreasing as democracy grows worldwide

Jose 14 [Coleen Jose, multimedia journalist and documentary photographer based in New York City writing on international news and U.S. foreign policy; “Good news: The world is becoming more democratic than ever”; Mic; 11/04/2014; accessed 07/06/2015; <http://mic.com/articles/103294/good-news-the-world-is-becoming-more-democratic-than-ever>.] Concedes that democracy solves the impacts the neg reads

Evidence also shows we are becoming less violent and more tolerant, and poverty around the world is declining. The conclusions seem far-fetched considering the daily news of airstrikes, natural disasters and images of loss from the conflict in Iraq, Syria or the Central African Republic, but Roser argues that kind of thinking is far too micro in what is a very macro discussion. "It is not possible to understand how the world is changing by following the daily news," Roser wrote. "Disasters happen in an instant, but progress is a slow process that does not make the headlines." In the past 200 years of governmental changes, democracies have grown dramatically. "Democracy is contagious and brings about more democracy because it is very successful," Roser told Mic. "Thinking about the future, maybe the most promising development is that the young generation around world is much better educated than before." Why is the world becoming more democratic? As the narrative and pattern of history has shown — from the French Revolution to the Arab Spring — a common grievance of the masses can topple autocratic rule. One of the catalysts for the spike in democratic regimes is growing economic inequality. "In nondemocratic societies, the poor are excluded from political power, but pose a revolutionary threat, especially during periods of crisis," wrote political scientists Daren Acemoglu and James A. Robinson. "The rich will try to prevent revolution by making concessions to the poor, for example, in the form of income redistribution," yet the elite can also resist and in doing so create an environment for their downfall. The latest example of the death knell for one autocratic rule unraveled in Burkina Faso last week. A similar pattern of inequality was observed when the West African country's President Blaise Compaoré attempted to amend the constitution to extend his 27-year rule, and tens of thousands of Burkinabé protested across the country in response. Another factor leading up to resistance is simply one's ability to purchase food. Data scientists at the New England Complex Systems Institute presented examples when high food prices led to mass uprising, Mic reported. Yaneer Bar-Yam of the NECSI "charted the rise of the Food and Agriculture Organization Food Price Index — a UN measure that maps food costs over time — and saw that whenever that figure rose above 210, riots broke out around the world." Bar-Yam's hypothesis became reality during the 2008 economic collapse and the Tunisian protests in 2011. He also predicted the Arab Spring weeks before it reached a tipping point in Egypt. But almost no matter what the causes are, more democracy across the world is undoubtedly a good thing. "Taking all these and more long-run trends into account paints a very positive picture of how the world is changing," Roser told Mic. "If you look at this over the long run, then we see the change from a world where everyone but a few enlightenment thinkers thought that democracy is impossible to a world in which half the world population lives in democracies." Talk about change we can believe in.

Mongolia proves – democracy alone won't solve poverty, and collapses public confidence

Tuya 13 [Nyamosor Tuya, foreign and domestic policy expert on international affairs, former democracy activist; "Democracy and Poverty: A Lesson from Mongolia"; Brookings Institute; 04/2013; accessed 07/07/2015; <http://www.brookings.edu/research/opinions/2013/04/09-mongolia-tuya>.]

The case of Mongolia on poverty and democracy is instructive. The country started transitioning to democracy over twenty years ago and, for almost as long, the rate of poverty has stood at 30 percent and above. In the 1990s, much of it could be attributed to the disruptions caused by changes in its political and economic system. Harsh weather has been an intermittent factor, too. But no significant progress has been registered in later years, when the economy has grown at an annual average of 9 percent in the past decade. The latest available figure (2011) shows that poverty still stands at 29.8 percent, despite the double-digit economic growth in the past two years. The gap between poor and rich has continued to grow, and infrastructure has languished in a chronically decrepit state. Corruption, on the other hand, has continued to increase. Between 1999 and 2011, while the economy was growing, the country's corruption ranking has managed to drop from a place where it was comfortably ahead of some of its fellow post-communist countries in Europe to a dismal 120th place out of some 180 countries surveyed by Transparency International. The implications for democracy were grave: most reforms stalled, vote buying became a serious concern, and public trust in the institutions of democracy was shaken. In a survey conducted in June 2012, over 80 percent of respondents believed that government policies were "always" or "often" failing to solve their concerns, chief among them unemployment and poverty.

Warming

Direct democracy fails to address the scientific level of policymaking surrounding global warming – no solvency

Holden 2 [Barry Holden, senior lecturer in politics at the University of Reading and co-director of the Centre for the Study of Global Change and Governance, editor of and contributor to The Ethical Dimension of Global Change.; "Democracy and Global Warning" pg 88-90; Political Theory and Contemporary Politics; 2002; accessed 07/06/2015; <https://books.google.com/books?hl=en&lr=&id=1GiVxFAaATMC&oi=fnd&pg=PA1&dq=democracy+and+global+warming&ots=i1KSRPkseg&sig=PeNY_s6cBItDPuAjxcaEouQvkRU#v=onepage&q=democracy%20and%20global%20warming&f=false>.]

Underlying the contention that decisions about global warming are properly the concern of scientists rather than the mass of the people is Plato's critical distinction between knowledge and opinion. It was the dependence of government upon opinion that was the object of classical critiques of Athenian democracy by Plato in The Republic, on the grounds that knowledge (epirtéme'), not opinion (doxa), should steer the ship of state' (Weale.1999: 14). In today's world science is frequently seen as providing episte'mé. Stemming from Plato, then, the central traditional arguments against democracy derive from the idea of 'guardianship'. As Dahl puts it: A perennial alternative to democracy is government by guardians. . . . Ordinary people, these critics insist, are clearly not qualified to govern themselves. The assumption by democrats that ordinary people are qualified. they say, ought to be replaced by the opposing proposition that rulership should be entrusted to a minority of persons who are specially qualified to govern by reason of their superior knowledge and virtue. Most beautifully and enduringly presented by Plato in The Republic, the idea of guardianship has exerted a powerful pull throughout human history. (Dahl, 1999: 52) Down the ages, then, the central criticism of democracy has been that as government is a matter for those with knowledge and virtue the ordinary people are net qualified to rule. As Dahl says (1999: 65), '{m]uch of the persuasiveness of the idea [of guardianship] stems from its negative view of the moral and intellectual competence of ordinary people'. We have already seen that the guardianship argument was central to 'ecoauthoritarianism', with Ophul's justification of his anti-democratic stance [being] basically the traditional argument of "the ship of state" requiring the best pilots, and the dangers of "rule by the ignorant" when faced with such a complex and complicated issue as social-environmental dilemmas' (Barry, 1999: 195). And, of course, the global warming problem amounts to, or poses, a - if not the - major social-environmental dilemma of our time. We have here, then, the grounds for key arguments against the involvement of ordinary people in policy-making concerning global warming. Initially I shall focus on knowledge regarding the phenomenon of global warming itself, rather than on knowledge relating to the 'social-environmental dilemmas' it poses. The former raises issues that deserve some separate consideration, especially regarding the nature and role of scientific knowledge. However, the full complexity of the global warming problem does, of course, involve both the nature of the phenomenon and the possible responses to it by society, or societies. Clearly, then, knowledge relating to both is necessm'y, and I shall take up the latter below, in this and later chapters (remembering that it includes matters such as the workings of the international syStem). I am at this point, too, primarily concerned with (to use Dahl's terms) the intellectual rather than the moral competence of the ordinary people. Originally the two could not be separated since the original idea of guardianship centred on moral knowledge knowledge of moral truths. In modern thought, however, separation is quite common. This flows from a critical distinction in modern discourse -

especially salient in the case of science - between knowledge and moral evaluation, according to which it is denied that there can be ‘moral knowledge'. Now, it is true that this distinction and denial are often challenged. And criticisms of guardianship continue to be made that focus upon moral know- ledge. But these can still be applied to knowledge of other kinds. As Harrison (1993: 160) says in his critique of Platonic guardianship arguments, 'the same points as were made [about moral knowledge] go through for other kinds of knowledge'. Since the essential points concern knowledge as such, it is to non-moral knowledge that they must be applied if this is the only kind of knowledge there is. But even if we go along with the modern invalidation of moral knowledge', and the concomitant assertion of a distinction between intellectual and moral competence, we should more that when we come to the ‘social-environmental dilemmas' posed by global warming there is a blurring of this distinction. There is an important dimension to the question of the competence of the ordinary people to engage with the global warming problem which cuts across, or overlaps, this distinction. It concerns the capacity of ordinary people to curb their avarice and to think and act in ways which involve sacrificing their short-term interests. To those who doubt that the people have this capacity, this is partly a matter of lack of knowledge - knowledge of the nature and importance of adverse long-term consequences of anions that further short-term interests. But it is also a matter of lack of will - the will to sacrifice short-term interests even where adverse long-term consequences are known? Such lack of will can be seen as a moral defect. And even if balancing short- and long-term self-interest is not a moral matter, and hence the lack of a will to avoid long-term damage to one's own interests is not a moral defect, there are other dimensions. The long- term consequences in question may be adverse for other people instead of, or as well as, oneself. And in the case of global warming such ‘other people' includes future generations. Clearly here moral questions are involved; but these will be considered later and for the moment I shall concentrate on the issue of knowledge. What I am concerned with at this point, then, is the argument that decision-making regarding the global warming problem should be in the hands of experts - those who have knowledge of the nature and causes of global warming - rather than in the hands of the ignorant mass of the people.3 We shall see below that the argument has various Other asPeCts, implications and assumptions, but these undoubtedly also draw strength from its general form, which, as I have already remarked, is that of the guardianship attack on democracy. In my critical assessment, then, I shall take up the democrats’ general critique of guardianship and consider its applicability to the particular argument regarding global warming. The central idea in the general guardianship argument is the notion that only an elite has appropriate knowledge (episléme’) and that because of this it, and not the ignorant masses. should govern. This idea rests on the notion that there is a special set of objective truths of which members of the relevant elite have superior knowledge.

AT: Exports PICs

AT: Net Benefits

2AC L/ to Politics

Counterplan links to politics – maintaining export controls is uniquely unpopular

Douglas M. **Stinnett** and Bryan R. **Early 11** (Academic Advisor at the Center for Policy Research-University at Albany and Faculty Expert in Economic Sanctions, "Complying by Denying: Explaining Why States Develop Nonproliferation Export Controls", August 3rd 2011, http://onlinelibrary.wiley.com/doi/10.1111/j.1528-3585.2011.00436.x/full)

Combating proliferation through export controls has many of the characteristics of a collective action problem. First, **it can be economically or politically costly**. Implementing and administering export controls will impose financial costs on industry due to administrative burdens (Cupitt et al. 2001) and lost market share for exports (Beck and Gahlaut 2003). Restricting the transfer of sensitive technology can also hinder the pursuit of foreign policy goals by some states. Recent research on the supply-side of proliferation demonstrates that states transfer nuclear technology to further their strategic objectives. Fuhrmann (2009a), for example, concludes that states use civilian nuclear cooperation agreements as a means of strengthening friends and allies and pursuing strategic objectives.

AT: Militarization NB

Impact of DA inevitable – other states will just export the tech

Douglas M. **Stinnett** and Bryan R. **Early 11** (Academic Advisor at the Center for Policy Research-University at Albany and Faculty Expert in Economic Sanctions, "Complying by Denying: Explaining Why States Develop Nonproliferation Export Controls", August 3rd 2011, http://onlinelibrary.wiley.com/doi/10.1111/j.1528-3585.2011.00436.x/full)

The problem of compliance with nonproliferation norms stems from this combination of costly compliance and unevenly distributed benefits. States may be tempted to free ride in order to achieve strategic goals or maintain exports markets while letting others shoulder the burden of addressing global security. Bergenäs (2008), in particular, notes that implementing export controls has the features of a tragedy of the commons. In restricting the trade of dual-use technology, there is always the possibility of "undercutting," which occurs when a government denies approval for the export of an item to a particular party only to have another government approve that same transaction to that party (Gahlaut and Zaborsky 2004). Thus, states may not view export controls as worthwhile when the likelihood of undercutting is high. If enough suppliers of a controlled good defect, the efforts of those states imposing export controls may have little effect on proliferators' ability to acquire what they seek.

No reason US is uniquely key – Pakistan will get its dual use tech from Europe – empirics prove

Rizwana **Abbasi 12** (PhD in International Security and Nuclear Non-proliferation from the University of Leicester, "Studies in the History of Religious and Political Pluralism, Volume 7 : Pakistan and the New Nuclear Taboo : Regional Deterrence and the International Arms Control Regime", Published by Peter Lang, May 2012)

By March 1979, Pakistan faced a new challenge, when the CIA informed the US government that Pakistan was busy on a centrifuge plant to produce weapons-grade uranium. Britain and the United States tightened their export regulations. When the CIA, in coordination with other intelligence agencies, prepared a report on Kahuta, Malik reveals that Pakistan had already acquired all the material and components needed for the enrichment plant. The export control policies were weak, security at the global level was lax, and the dual-use technology which Pakistan acquired was not covered by the Zangger Committee or the Nuclear Suppliers Group (NSG) list. Riffat Hussain, Hans Blix, James Acton, and others interviewed for this study admitted that this was indeed the case. Khan himself stated that it was not possible for us to make each and every piece of equipment or component within the country. Attempts to do so would have killed the project in the initial stage. We devised a strategy by which we would go all out to buy everything that we needed in the open market to lay the foundation of a good infrastructure and would then switch over to indigenous production as and when we had to. 144 He further stated, 'my long stay in Europe and intimate knowledge of various countries and their manufacturing firms was an asset. Within two years we had put up working prototypes of centrifuges and were going at full speed to build the facilities at Kahuta'. 145 When interviewed, General Ehsan revealed that it was lust for money and greed which made foreign firms sell dual-use technology to Pakistan. Khan states: we received many letters and telexes and people chased us with figures and details of equipment they had sold to Almelo, Capenhurst etc. They literally begged us to buy their equipment. We bought what we considered suitable for our plant and very often asked them to make

changes and modifications according to our requirements. One should realise that all this equipment was what we call conventional technology. It was normal chemical process and vacuum technology equipment which had a thousand and one uses in other disciplines. 146 Indeed, 'almost all the equipment in Kahuta was imported from Europe'. 147 Khan had full authority, independently, to import the required technology to complete his goal of building centrifuges at the Kahuta plant. Furthermore, lax security at FDO, loopholes and inadequate guidelines of the London Club, and inadequate export regulations gave Khan a capability to reach the international market for making any necessary purchases. Khan was staying ahead of Western export control laws, in order to circumvent export restrictions and was able to procure much-needed technology and components from the international market.

Indian and Pakistani nuclear facilities are far behind and they get their tech from other countries

Gary **Milhollin 02** (founder of the Wisconsin Project on Nuclear Arms Control, "The Use of Export Controls to Stop Proliferation", April 15th 2002, http://www.iranwatch.org/our-publications/speech/use-export-controls-stop-proliferation)

Both India and Pakistan have tested nuclear weapons, but still have progress to make. Both countries are trying to develop missiles with longer ranges, and smaller warheads to mount on these missiles. This will require better guidance systems, testing equipment, machine tools, and high-speed computers. Both countries will continue to try to procure these items. Both India and Pakistan have developed their nuclear and missile programs almost exclusively with imports. Virtually every element of the programs in both countries have been imported or based on foreign designs. India's plutonium comes from reactors supplied by Canada that run on heavy water imported from China, Russia and Norway through a German broker. The United States also sold heavy water to India. India's rockets use solid fuel stages copied from U.S. designs, liquid fuel stages based on Russian and French designs, and a guidance system developed with help from Germany. Pakistan's nuclear warheads use a Chinese design and are fueled with enriched uranium made with help from China, Germany, Switzerland and other countries. Pakistan's missiles come from China and North Korea. In the future, we must expect India to develop the ability to deliver nuclear weapons by surface ships, submarines and long-range bombers as well as long-range missiles. Pakistan can now produce its own short-and medium-range missiles and has nuclear capable F-16 fighter-bombers from America. Each country will continue to have enough nuclear warheads to inflict immense damage on the other. In a nuclear war, India would lose its high-tech industry, and lose its bid to be seen as a significant actor on the world stage - the opposite of what India's nuclear weapons appear designed to achieve. Pakistan could lose its status as an independent nation.

Solvency Deficit

2AC Transparency

The only way to solve the aff is through greater transparency – all states should be treated equally or it turns the aff - causes mistrust and kills relations

Rizwana **Abbasi 12** (PhD in International Security and Nuclear Non-proliferation from the University of Leicester, "Studies in the History of Religious and Political Pluralism, Volume 7 : Pakistan and the New Nuclear Taboo : Regional Deterrence and the International Arms Control Regime", Published by Peter Lang, May 2012)

Secondly, dual-use technologies are critical. There is a need to address sensitive technologies more clearly, and to consider their registration carefully. **In the case of dual-use technology, all states should be treated equally. There is need for greater transparency in nuclear export controls**. Export control measures undertaken through the ZC and the NSG should be open and transparent. These measures should be promoted within a framework of dialogue and cooperation among those states which participate in negotiations with non-party states. The NSG countries pursue a cartel policy (the 'no undercutting' principle), while **Pakistan and India are expected to follow the NSG guidelines without having been made beneficiaries of the 'no undercutting' principle**. The question arises as to why these non-NPT states should be expected to put themselves at a commercial disadvantage in the trade of dual-use technologies? Also with no information regarding denials – as NSG states share denial notices only among themselves – states like Pakistan, even if they wanted to, cannot take informed decisions regarding the export of dual-use technology. The implementation of NSG export controls requires better sharing of best practice at the international level.

Perms

2AC Perm DB

Perm do the plan and the counterplan – it's not severance because the specification of maintaining controls of Pakistan is a mandate of the counterplan so it includes all of the plan and part of the CP

2AC Perm do the CP

Perm do the CP – it's an example of the way the plan can be done – and it's justifies <insert PICs bad>

AT: FDA PIC

Aff

2AC—Whistleblowers Solve

Whistleblowers provide key info on fraud suspects and prevent harmful use of FDA data.

Davis and Abraham 13 —Courtney Davis, senior lecturer in sociology, and John Abraham, professor of sociology, 2013 ("Is there a cure for corporate crime in the drug industry?," BMJ, February 6th, Available Online at: http://www.bmj.com/content/bmj/346/bmj.f755.full.pdf, Accessed: 7-28-2015)

Nearly 30 years ago, Braithwaite's Corporate crime in the Pharmaceutical Industry showed that unethical and corrupt behaviour was endemic in the sector. Sadly, there is growing evidence that little has changed. Recent research suggests that violation of the law continues to be widespread. Most new medicines offer little or no therapeutic advantage over existing products, so promotion plays a huge role in achieving market share. In a crowded and competitive marketplace the temptation for companies to resort to misleading claims is great. According to Gøtzsche (doi:10.1136/bmj.e8462),1 as of July 2012, nine of the 10 largest drug companies were bound by corporate integrity agreements under civil and criminal settlements or judgments in the United States. The corporate activity that has led to recent government investigations has involved unethical and unlawful practices that are well beyond mere administrative offences. Whistleblowers' and other "insider" accounts in the US typically include allegations that companies systematically planned complex marketing campaigns to increase drug sales, which involved illegal and fraudulent activities. These included active promotion of off label, or otherwise inappropriate, use of drugs, despite company knowledge that such use could seriously harm patients.2

2AC—No Impact

Pandemics are unlikely — new technology and better medical practices prevent spread.

Song 14 — Liting Song, Hope Biomedical Research, PostDoc Position, University of Toronto 2014 ("It is Unlikely That Influenza Viruses Will Cause a Pandemic Again Like What Happened in 1918 and 1919," Frontiers in Public Health, May 7th, Available Online at: http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4019839/, Accessed: 7-28-2015)

Nowadays, we travel faster, and we travel more frequently and globally, and we have more complicated social activities and lifestyles, thereby increasing the chances of viral mutation; and we realize that influenza viruses are even easier to reassort, recombine, and mutate in nature than many other RNA viruses. However, we are now living in a technologically, economically, and socially much better and advanced society. I believe influenza virus infections are controllable and preventable, with the increased population health and immunity, with the WHO Global Influenza Surveillance and Response System, and with standard/routine epidemiological practices, and with new effective anti-viral agents and vaccines in production in the future. Now, I first predict that influenza viruses will unlikely again cause a pandemic on a level comparable to what happened in 1918 and 1919. Hopefully, one day we could consider a strategy to produce a universal vaccine that can prevent people from infections of all influenza virus strains, or we could produce some very effective anti-influenza virus drugs; then influenza would not be a problem anymore. We should learn lessons from the mistakes we made in the past. It is reasonable and necessary to be cautious about influenza viruses, but overreactions or catastrophic reactions should be avoided in the future. My opinion is anti-traditional; the purpose of this article is to influence public health policy, and to save some of the limited resources and money for more important diseases like heart diseases, cancer, diabetes, AIDS, hepatitises, and tuberculosis (15).

AT: Foreign Students PICs

China

2ac- S/D STEM

China is the most important country for US STEM

Lane and Kinser 13 [Jason E. Lane and Kevin Kinser @ The Nelson A. Rockefeller Institute of Government, the public policy research arm of the State University of New York, conducts fiscal and programmatic research on American state and local governments. May 2013. "The US Relies Heavily on Foreign Students to Support STEM Fields and the Knowledge Economy: Could the Foreign Talent Bubble Burst?" http://www.rockinst.org/observations/lanej/2013-05-Is_Bubble_Bursting.aspx//jweideman]

There has been much talk recently in the United States about a higher education bubble bursting. The growing student loan debt is a big bubble that's about to pop, if it hasn't already. Some pundits and politicians in the United States have also begun to point to increasing costs and continued high unemployment as an indicator that higher education writ large is creating a new bubble. Only time will tell if these trends are part of a new norm or if these booms are soon to be busts. One other bubble that has gotten less attention, however, may be on the verge of popping. And if it does, it could have a transformative effect on higher education and the nation's knowledge economy. Colleges and universities in the United States have become increasingly reliant on international students to fill Science, Technology, Engineering, and Mathematics (STEM)-related graduate programs and support their STEM-related research agendas and patent generation. Moreover, because demand among foreign students for a U.S. degree seems unlimited, many colleges and universities have seen them as a quick fix for offsetting lagging interest among domestic students in graduate education, especially in STEM fields. These international students represent real revenues and significant enrollments. According to the latest data from National Center for Educational Statistics, international students account for around 10 percent of all graduate enrollments (compared to about 3 percent in undergraduate programs). In many fields, programs would not be viable if not for the significant international enrollment they draw. Many pay full fees and those that don't are critical for supporting external grant funding that provides an important source of funding for universities — funding that often relies on international graduate students as research assistants and postdocs. Much like the easy-to-obtain loans prevalent before the housing market crash in 2008, international students have been considered a triple-A investment with reliable returns. But a recent report from the Council of Graduate Schools (CGS) reveals that the credit line may be starting to dry up. The number of international applications to graduate school increased by only 1 percent this year, following three consecutive years of about 10 percent growth. Maybe a 1 percent growth rate is not that alarming — especially following so many years of near double-digit growth. It's probably only a small blip that will rebound next year, right? Perhaps. But we think the 1 percent increase could be a leading indicator of a more troublesome future and we think state and university leaders would be wise to consider the implications. First, international graduate students provide a substantial amount of talent in science and engineering — the fields that tend to drive the knowledge economy. The National Science Foundation (NSF) reports that 84 percent of foreign students who earned doctoral degrees in the period of 2001-11 did so in high-demand areas in the fields of science and engineering. The NSF also reports that the percentage of science and engineering doctorates awarded to foreign students peaked at 41 percent in 2007. About 35 percent of postdocs are temporary visa holders. Finally, according to a report by the Partnership for a New American Economy, foreign students, postdocs, and other nonfaculty researchers were behind 54 percent of the patents issued by universities in 2011. This means that any "blip" in international student enrollments will disproportionately affect the areas of science and engineering. Second, about half of all foreign applicants are from one nation: China. In fact, the NSF reports that about 40 percent of all foreign students who received doctoral degrees from 2001-11 came from China. According to the CGS report, applications to graduate school from China declined by 5 percent. This is a dramatic reversal following seven consecutive years of double-digit increases in Chinese applications. In an ideal scenario, the proportion of applications would be distributed among enough nations that a downturn in one country is offset by an increase in another. And, in fact, the decline in Chinese applications was offset by a 20 percent increase in applications from India. But that is only shifting, not diversifying, the source. In fact, the NSF data reveals that individuals from China, India, and South Korea account for half of all doctoral degrees in science and engineering awarded to foreign visa holders. When most foreign applicants come from just a few source countries, what happens when those students suddenly start deciding to go somewhere else?

1ar S/D- STEM

Chinese students are key to the economy

Freifelder 14 [Jack, China Daily USA. Citing data from the Brookings Institution. 9/1/14, "China makes up largest share of foreign students in US" http://usa.chinadaily.com.cn/epaper/2014-09/01/content_18522649.htm//jweideman]

China remains **by far** the largest source country for foreign students coming to the US for higher education, according to a new report from the Brookings Institution. From 2008 to 2012, more than 1.1 million foreign students attended school in the US, and China comprised the largest portion of that group, with 285,000 students entering the US with F-1 student visas, showed the new study The Geography of Foreign Students in US Higher Education: Origins and Destinations on Aug 29. During that time foreign students studying in the US contributed more than $21 billion in tuition and close to $13 billion in living costs to the American economy. But just 45 percent of these students extended their visas after graduation and got jobs in the US. "Chinese students are coming to the US to study in fields that are highly sought out, and to get the skills to compete in this global economy," Neil G. Ruiz, an associate fellow at Brookings, who wrote the new study, told China Daily. "**China is special because the numbers are so large**, but a lot of foreign students are coming from newly-emerging cities in China, like Nanjing, Guangzhou, Wuhan, etc," Ruiz said, "so Beijing and Shanghai are not the only cities that these students are coming from because of the high demand for an American education." The report shows that **two-thirds of foreign students are studying in "STEM** (science, technology, engineering and math) or business, management and marketing fields," compared to 48 percent of their US counterparts. "America has a lot of top universities and the US takes in 21 percent of all foreign students studying abroad," Ruiz said. "Students will continue to want to come to the US because it is a center of research and development, and our universities have research facilities in all types of fields." Foreign students attending colleges and universities in the United States bring significant amounts of money to the US economy, but more can be done to encourage their interest in remaining in the US post-graduation, the report says.

A decrease in Chinese applications is the worst situation possible

ICEF 13 [ICEF organises international student recruitment workshops, makes student recruitment management software and offers recruitment consulting services. 2013. "American graduate schools see alarming drop in applications from Chinese students" http://monitor.icef.com/2013/04/american-graduate-schools-see-alarming-drop-in-applications-from-chinese-students///jweideman]

The 5% decrease among Chinese students may result in a huge blow to many American universities, since as of a year ago, Chinese students accounted for half of all foreign applicants to American graduate schools and one-third of those enrolled. Other countries contributing to percentage declines in US graduate school applications this spring are South Korea and Taiwan (-13% each) and Mexico (-11%). These source countries are often prioritised in national and institution-specific recruitment targeting, so the decreases here are also very notable. Debra W. Stewart, president of the Council of Graduate Schools, is on record as being very concerned about the Chinese drop in particular, calling it "disturbing" and "precipitous" … "a post-9/11 kind of drop." She attributed at least part of the decrease to a restricted funding environment for students attending US schools, and said: "As a country, we simply can't afford to maintain obstacles to international graduate study, especially as other countries are decreasing these barriers for highly qualified students."

Relations A/O

The plan solves U.S. China Relations

Chang 14 [Anthony, Writer for the Diplomat. 6/20/14, "Is Overseas Study Helping US-China Relations?" http://thediplomat.com/2014/06/is-overseas-study-helping-us-china-relations///jweideman]

Both the number and growth of Chinese students at American universities is one of the more startling phenomena in higher education. A welcome one, too: study abroad would seem to promise a future where U.S.-China relations might be characterized by greater firsthand knowledge of American culture among the Chinese. By generating greater understanding, their experience in the U.S. should also expand their sense of **common interests, brightening prospects for cooperation** between the world's main powers. While few would object to such a future as a goal of foreign policy, how realistic is it? Unsentimental Education Let's start with the numbers: the Institute of International Education reports there were more than 235,000 Chinese students in the U.S. during the 2012/2013 academic year, a 21 percent increase from the year prior, making China the number one source of foreign students in America for four years running. Nearly half of these students are studying either business or engineering; adding math and the hard sciences would account for over two-thirds. These are ultimately more applied subjects that tend to be less popular among other international students, let alone among Americans: in 2011/2012, for instance, only 16 percent of U.S. bachelor's degrees were conferred in these fields. Of course, it isn't just academic majors that determine the character of study abroad, but even so, there are few indications Chinese students' experiences are especially representative, independent of what their coursework looks like. That means less class participation, less involvement in extracurricular activities, and fewer friendships with Americans, even compared with other foreign students, despite the fact most American consider all these things inseparable elements of university life. And if Chinese students' time abroad isn't reflective of that broader U.S. experience, then one should ask to what extent their studies are really maximizing their understanding of America. Given that Chinese numbers have surged only recently, it might be unrealistic to expect this kind of integration so quickly. Plus, these challenges can face students no matter where they originally come from, especially places where university culture may differ dramatically. But the stakes involved in helping China's youth obtain a more representative view of the U.S. are frankly higher, and both the number of international students (not to mention the tuition they often pay in full) can actually make it harder for universities to take their acculturation seriously. The more Chinese choose to study in America, the more tempting it becomes to measure success by the revenue they bring than educational quality, even as these students find it easier to spend their days with compatriots. Mandarin Is the (Distant) Future (Maybe) At the same time, educational exchange is a two-way street. While more and more Chinese arrive on U.S. campuses, there is no comparable trend in the other direction, making one question just how well America's next generation will know the Chinese. In 2011/2012, fewer than 15,000 Americans were hitting the books in China, a mere two percent increase from the previous year, and only half the number studying abroad in Italy. And among this already small group, only 2,200 of them are actually pursuing a degree in China, a number that encompasses programs taught in English. Even high-profile initiatives like the Schwarzman Scholars program – a kind of Rhodes Scholarship to attend Tsinghua University – will have all its courses taught in English, despite the program's founder saying, "In the 21st century, China is no longer an elective course." Yet here is a course that currently has few requirements.

Absent mutual understanding, US-China war is inevitable and goes nuclear

Fisher 11 [Max Fisher is a former writer and editor at The Atlantic. Currently a journalist at VOX. 10/31/11, "5 Most Likely Ways the U.S. and China Could Spark Accidental Nuclear War" http://www.theatlantic.com/international/archive/2011/10/5-most-likely-ways-the-us-and-china-could-spark-accidental-nuclear-war/247616///jweideman]

After 10 years of close but unproductive talks, the U.S. and China still fail to understand one another's nuclear weapons policies, according to a disturbing report by Global Security Newswire. In other words, neither the U.S. nor China knows when the other will or will not use a nuclear weapon against the other. That's not due to hostility, secrecy, or deliberate foreign policy -- it's a combination of **mistrust** between individual negotiators and **poor communication**; at times,

something as simple as a shoddy translation has prevented the two major powers from coming together. Though nuclear war between the U.S. and China is still extremely unlikely, because the two countries do not fully **understand** when the other will and will not deploy nuclear weapons, the odds of starting an accidental **nuclear conflict are much higher**. Neither the U.S. nor China has any interest in any kind of war with one other, nuclear or non-nuclear. The greater risk is an accident. Here's how it would happen. First, an unforeseen event that sparks a small conflict or threat of conflict. Second, a rapid escalation that moves too fast for either side to defuse. And, third, a mutual misunderstanding of one another's intentions. This three-part process can move so quickly that the best way to avert a nuclear war is for both sides to have **absolute confidence** that they understand when the other will and will not use a nuclear weapon. Without this, U.S. and Chinese policy-makers would have to guess -- perhaps with only a few minutes -- if and when the other side would go nuclear. This is especially scary because both sides have good reason to err on the side of assuming nuclear war. If you think there's a 50-50 chance that someone is about to lob a nuclear bomb at you, your incentive is to launch a preventative strike, just to be safe. This is especially true because you know the other side is thinking the exact same thing. In fact, even if you think the other side probably won't launch an ICBM your way, they actually might if they fear that you're misreading their intentions or if they fear that you might over-react; this means they have a greater incentive to launch a preemptive strike, which means that you have a greater incentive to launch a preemptive strike, in turn raising their incentives, and on and on until one tiny kernel of doubt can lead to a full-fledged war that nobody wants. The U.S. and the Soviet Union faced similar problems, with one important difference: speed. During the first decades of the Cold War, nuclear bombs had to be delivered by sluggish bombers that could take hours to reach their targets and be recalled at any time. Escalation was much slower and the risks of it spiraling out of control were much lower. By the time that both countries developed the ICBMs that made global annihilation something that could happen within a matter of minutes, they'd also had a generation to sort out an extremely clear understanding of one another's nuclear policies. But the U.S. and China have no such luxury -- we inherited a world where total mutual destruction can happen as quickly as the time it takes to turn a key and push a button. The U.S. has the world's second-largest nuclear arsenal with around 5,000 warheads (first-ranked Russia has more warheads but less capability for flinging them around the globe); China has only about 200, so the danger of accidental war would seem to disproportionately threaten China. But the greatest risk is probably to the states on China's periphery. The borders of East Asia are still not entirely settled; there are a number of small, disputed territories, many of them bordering China. But the biggest potential conflict points are on water: disputed naval borders, disputed islands, disputed shipping lanes, and disputed underwater energy reserves. These regional disputes have already led to a handful of small-scale naval skirmishes and diplomatic stand-offs. It's not difficult to foresee one of them spiraling out of control. But what if the country squaring off with China happens to have a defense treaty with the U.S.? There's a near-infinite number of small-scale conflicts that could come up between the U.S. and China, and though none of them should escalate any higher than a few tough words between diplomats, it's the unpredictable events that are the most dangerous. In 1983 alone, the U.S. and Soviet Union almost went to war twice over bizarre and unforeseeable events. In September, the Soviet Union shot down a Korean airliner it mistook for a spy plane; first Soviet officials feared the U.S. had manufactured the incident as an excuse to start a war, then they refused to admit their error, nearly pushing the U.S. to actually start war. Two months later, Soviet spies misread an elaborate U.S. wargame (which the U.S. had unwisely kept secret) as preparations for an unannounced nuclear hit on Moscow, nearly leading them to launch a preemptive strike. In both cases, one of the things that ultimately diverted disaster was the fact that both sides clearly understood the others' red lines -- as long as they didn't cross them, they could remain confident there would be no nuclear war.

ME

S/D ISIS

Can't solve the ISIS advantage—The counterplan is massive discrimination against middle eastern students that plummets goodwill—that's Zeman

S/D and link turn

The aff solves extremism, and the Middle East is the growing in importance to US STEM

IIE 14 [The Institute of International Education. Non-Profit. 11/17/14, "Open Doors 2014: International Students in the United States and Study Abroad by American Students are at All-Time High" http://www.iie.org/Who-We-Are/News-and-Events/Press-Center/Press-Releases/2014/2014-11-17-Open-Doors-Data//jweideman]

"International education is crucial to building relationships between people and communities in the United States and around the world. It is through these relationships that together we can solve global challenges like climate change, the spread of pandemic disease, **and combatting violent extremism**," said Evan M. Ryan, Assistant Secretary of State for Educational and Cultural Affairs. "We also need to expand access to international education for students from more diverse backgrounds, in more diverse locations of study, getting more diverse types of degrees. Only by engaging multiple perspectives within our societies can we all reap the numerous benefits of international education - increased global competence, self-awareness and resiliency, and the ability to compete in the 21st century economy," Assistant Secretary Ryan remarked. "International experience is one of the most important components of a 21st century education, and study abroad should be viewed as an essential element of a college degree," said IIE's President Dr. Allan E. Goodman. "Learning how to study and work with people from other countries and cultures also prepares future leaders to contribute to making the world a less dangerous place." In 2013/14, there were 66,408 more international students enrolled in U.S. higher education compared to the previous year. While students from China and Saudi Arabia together account for 73 percent of the growth, a wider range of countries contributed to the increase, with India, Brazil, Iran and Kuwait together accounting for an additional 18 percent of growth. The number of Indian students increased by 6 percent to 102,673, reversing a three-year trend of declining numbers of Indian students at U.S. campuses. The fastest growing student populations in the United States in 2013/14 were from Kuwait, Brazil, and Saudi Arabia, all countries whose governments are investing heavily in scholarships for international studies, to develop a globally competent workforce. The fastest growing region this year was the Middle East and North Africa, with an increase of 20 percent in students enrolled in U.S. higher education. There were eight percent more students from Latin America and the Caribbean, which has benefited from support from 100,000 Strong in the Americas, a public-private partnership led by the U.S. State Department. Students from Asia increased by 8 percent as well, driven by a 17 percent increase from China.

AT: Privacy Amendment CP

Solvency Deficits

2AC Courts Key

Supreme Court good for wide-spread informational privacy protections

Michael P **Seng 85**, co-executive director of The John Marshall Law School Fair Housing Legal Support Center and Fair Housing Legal Clinic, "THE CONSTITUTION AND¶ INFORMATIONAL PRIVACY, OR HOW¶ SO-CALLED CONSERVATIVES¶ COUNTENANCE GOVERNMENTAL¶ INTRUSION INTO A PERSON'S PRIVATE¶ AFFAIRS", 1985, http://library.jmls.edu/pdf/ir/lr/jmlr18/49_18JMarshallLRev871(1984-1985).pdf, AB)

Although the Supreme Court has not closed the door to a right¶ to informational privacy, its acceptance of the concept has been¶ somewhat less than enthusiastic. The Court has given limited recognition¶ to the right to be free from governmental disclosure, but¶ its rejection of an independent interest in one's honor and reputation¶ has made its support of this right somewhat tentative. The¶ Court's failure to recognize any limits to government surveillance¶ and data gathering beyond those contained in the fourth amendment¶ is troublesome, especially given the clear intent of the conservatives¶ on the Court to cut back on the protections accorded by¶ the fourth amendment. 122 Consequently, the right to informational¶ privacy in the United States may actually lag behind what is articulated¶ by international standards¶ While reliance on state law may provide some protection¶ against invasions by state and local governments and by private¶ groups and individuals, it leaves the federal government free from¶ such restraints. It is the proliferation of federal bureaucracies and¶ law enforcement schemes that pose perhaps the biggest threat to¶ privacy interests today. Legislation can provide some protection,¶ but legislation is always dependent upon the popular will and is unlikely¶ to provide a check if the majority is willing to tolerate an¶ invasion. This of course means that the privacy rights of minorities¶ will always be in jeopardy. While Americans are generally concerned¶ about their privacy, 12 3 many people are willing to put up¶ with some intrusions in order to enforce their own moral standards¶ upon the whole. 124¶ Conservatives on the Supreme Court may couch their opinions¶ in terms of judicial restraint and deference to Congress and the¶ states, but this is only a camouflage. No matter how they express¶ themselves they have made a value judgment that the Constitution¶ provides little or no protection to the individual against governmental¶ intrusions. The conservatives on the Court may not be saying¶ they like invasions of privacy, but they are in effect giving their¶ blessing to legislators or bureaucrats who want to intrude into private¶ affairs on one pretext or another. Just as the post-Civil War¶ Supreme Court proclaimed itself powerless to stop segregation and¶ thereby ushered in the "Separate but Equal" era,125 so might the¶ conservatives on this Court be ushering in an era of "Big Brother."¶ It is entirely true that recognition of a constitutional right to¶ information privacy will require the Court to reconcile the right¶ with freedom of the press and the public's right to know, but this¶ should not be a deterrent. In fact, this is the reason we have federal¶ judges whose pay and tenure is protected. It is their job under our¶ Constitution to make these decisions. Federal judges one way or¶ another do decide the underlying substantive issues.126 They either¶ do so explicitly in a well written opinion which tries to balance or¶ reconcile the particular values presented, or they do so implicitly¶ when they duck the issues and talk about judicial restraint and federalism.¶ Whichever way they proceed, the judges do decide and¶ should be held accountable for the substantive results which flow¶ there from.

The Supreme Court is key to provide a model for lower courts and executive action

Timothy **Azarchs 14**, Law Clerk at the IRS, University of Pennsylvania, "Informational Privacy: Lessons from Across the Atlantic," 2014, http://scholarship.law.upenn.edu/jcl/vol16/iss3/5/,

Ideally, the legislature would provide clearly defined privacy rights that protect individuals from infringements by the executive. If a general privacy right existed, the Equal Protection Clause could provide at least some protection to minority groups whose privacy is singled out. But in the absence of such a law, executive actors may act with impunity in circuits that have not found a constitutional right. And in the absence of any guidance from the Supreme Court, circuit courts continue to reach disparate results based on intuition instead of coherent principles. Following the European model, the Supreme Court could provide clear guidance to the lower courts on how and when to review executive action. "Legitimate expectations of privacy" would allow actions clearly authorized by statute to escape scrutiny altogether because there can be no legitimate expectation that a statute will not be enforced. But "legitimate expectations" would give the lower courts something more concrete to guide them than the hypothetical right and conflicting opinions they have now. Government action could receive deferential review appropriate to the reality that collecting and disseminating information can often be very useful to the government, but courts could still punish the egregious violations like purposeless disclosure of rape details,163 HIV status,164 or sex tapes.165 And recognition that informational privacy is an important right could affect the Court's decision-making when it balances that right against others.166 Regardless of what the legislature does, the law would benefit from a clear statement by the Court that the Constitution protects informational, and not just decisional, privacy.

Supreme Court adapts to technologies – Congressional approaches are too reactionary

Rebecca M**. Lee 12**, leader of an ISP project on the ALI's Restatement of Information Privacy Principles. Editor of the Yale Journal of Law and Technology, co-founder of a reading group on Internet law and policy, intellectual property legal assistant and at the Federal Communications Commission, "CONTESTED CONTROL:¶ European Data Privacy Laws and the Assertion of Jurisdiction¶ Over American Businesses", May 9 2012, https://s3.amazonaws.com/citpsite/teaching/certificate/RMLThesis.pdf, AB)¶

Constitutional privacy protections also took shape in the twentieth century. Because¶ constitutional privacy protections apply only against the government, they are not discussed¶ in great detail here. However, these Supreme Court decisions are illustrative of the¶ connection between technological innovation and the challenges of adapting and applying¶ existing legal principles to provide protection against emerging privacy threats.42¶ In Olmstead v. United States (1928), the Supreme Court held that the Fourth¶ Amendment did not require the government to obtain a search warrant before conducting¶ telephone wiretapping surveillance because wiretapping did not entail search or seizure.43¶ The Court later overturned Olmstead in Katz v. United States (1967), holding that the government wrongly wiretapped the defendant in a phone booth, where he had a¶ "reasonable expectation of privacy."44 The Court thus created a new, context-dependent¶ protection against governmental violations of privacy beyond physical search and seizure.45¶ In Griswold v. Connecticut (1965), the Supreme Court ruled against a governmental ban¶ on contraceptives, establishing protection for decisional privacy. Despite the absence of an¶ explicit mention of privacy in the Constitution, the Court reasoned that a right to privacy¶ emanated from the penumbra of the Bill of Rights and created a new legal foundation for¶ privacy protections. In Roe v. Wade (1973), the Court held that this right to privacy also¶ protected a woman's decision to have an abortion from governmental interference.46¶ In Whalen v. Roe (1977), the Supreme Court upheld the constitutionality of New York¶ statutes requiring the collection of prescription medication information. However, the Court¶ also recognized that the right to privacy embodied in the Bill of Rights also includes an¶ interest in "avoiding disclosure of personal matters,"47 or informational self-determination.¶ Since Whalen, the Court had not expanded on or clarified the right to informational privacy¶ with respect to the government until recently. In United States vs. Jones (2012), the Court ruled¶ that the Fourth Amendment prevented police from attaching a global positioning system¶ (GPS) device to a suspect's car without a search warrant¶ In the late twentieth century, the growth of

computers, digital databases, and early¶ ICTs led to increasing Congressional and regulatory awareness of commercial informational privacy issues. However, American commercial data privacy policy regime is primarily reliant¶ on market forces and self-regulation to protect privacy. Regulation through federal statutes¶ and administrative policies play a secondary, complementary role.¶ As James Whitman rightly argues, "[T]here are, on the two sides of the Atlantic, two¶ different cultures of privacy, which are home to different intuitive sensibilities, and which¶ have produced two significantly different laws of privacy."49 The American policy approach¶ to commercial data privacy is the product of a distinctly American legal, social, and political¶ culture of privacy. In the United States, privacy is traditionally conceptualized as a liberty¶ interest (as opposed to a dignity interest) in maintaining a sphere or zone of privacy that is¶ protected from intrusion, especially by the government.50 This conception of privacy reflects¶ distrust of the government and greater confidence in the market to respect privacy. In¶ addition to influencing the target of privacy protections, governmental distrust strengthens¶ societal reluctance to state regulation of commercial data privacy. The First Amendment and¶ the cultural importance of freedom of speech further constrain the government's ability to¶ regulate commercial data privacy. In American jurisprudence, freedoms of speech and access¶ to information supersede privacy claims when the two interests conflict.¶ Thus the American culture of privacy has resulted in limited regulation of¶ commercial data privacy through legislation. In Lessig's terms, the market is the primary¶ regulator of informational privacy in the United States. The American government's role in¶ protecting informational privacy from commercial abuses is limited and takes two forms.¶ First, the Federal Trade Commission (FTC) monitors industry compliance with stated¶ privacy practices to improve consumer information accuracy and facilitate the market for privacy. This policy approach reflects and reifies the conception of commercial¶ informational privacy as a consumer interest, as opposed to a fundamental human right. The¶ corollary is that personal data can be traded off, like a commodity, for economic gain or¶ other benefits including the use of free web services. In order to carry out this calculus,¶ consumers need accurate information about how businesses collect, process, and¶ disseminate personal data. Second, the government protects privacy in special cases through¶ sectoral federal statutes, which apply only to specific industries or types of sensitive personal¶ data.¶ The following federal informational privacy laws bear several important¶ characteristics. First, the American approach to legislating informational privacy protection is¶ ad hoc and reactive. Instead of attempting to anticipate and avert privacy threats, Congress¶ tends to pass legislation in response to privacy issues after their materialization. Second,¶ many of the federal statutes incorporate a limited or diluted version of the FIPs. Protection¶ is often limited to a few specific activities, like collection or disclosure.51 Lastly and most¶ importantly, federal informational privacy laws are sectoral and protect data in specific highstakes¶ contexts, complementing the default market-based mode of regulation for all other¶ types of data. There is no comprehensive commercial informational privacy statute.

2AC AT: Lower Courts

Lower Courts Fail

Timothy **Azarchs 14**, Law Clerk at the IRS, University of Pennsylvania, "Informational Privacy: Lessons from Across the Atlantic," 2014, http://scholarship.law.upenn.edu/jcl/vol16/iss3/5/,

It is easy to understand why the lower courts have been eager to find a constitutional protection of privacy. But leaving the interpretation up to the lower courts is a flawed solution. Without guidance on the scope or even the existence of the right, the lower courts have produced a morass of conflicting positions and left a hazy line that tells neither the government agent contemplating action nor the victim contemplating suit what side of that line a given action falls on. Without higher authority, many circuits are reluctant to extend the right as far as is deserved.

2AC Amendment Fails

Legislative action fails – doesn't protect minorities, unenforced, and vague

Timothy **Azarchs 14**, Law Clerk at the IRS, University of Pennsylvania, "Informational Privacy: Lessons from Across the Atlantic," 2014, http://scholarship.law.upenn.edu/jcl/vol16/iss3/5/,

However, legislative action is not always effective at protecting disfavored minority groups.103 The majority may wish to oust these outsiders, or it may simply lack the motivation to overcome the inertia of the legislative process. For instance, it might be easier to pass a law that allowed the government to collect information about immigrants—ostensibly because they are more likely to be terrorists or drug runners—than to pass a law that protects homosexuals from disclosure of their sexual orientations. The right to privacy is fundamentally a minority protection, allowing a sphere of autonomous decision-making and freedom from the fear of the majority's ridicule of one's personal choices. To lay the burden of protecting this right at the feet of the majority suffers from the same problems as asking the majority to decide whether one might engage in consensual homosexual relations or join the communist party.104 **Recognition by the courts that informational privacy is an important right with constitutional dimensions could help ensure that the courts will scrutinize such infringements, whether affirmatively enacted by the legislature or committed by the executive in the absence of legislative protections**. The idea that so important a right can exist on so shaky a ground–or indeed not exist at all—is fundamentally problematic. In addition, these gaps in legislative protections for the right to privacy have persisted for a very long time, and it is not altogether clear that the gears are turning to close them now.105 Even if legislative clarity is preferable to judicial clarity, one clear answer from the Supreme Court is preferable to twelve vague ones from the circuits. The current uncertainty has several detrimental effects. First, insofar as there is a "correct" answer to the question, a circuit split implies that one side or the other is "incorrect." Either constitutional rights are being underenforced in jurisdictions that improperly narrow the right, or nonexistent rights are being enforced in jurisdictions that improperly broaden it. Second, this assumed, but unconfirmed, right leaves the lower courts, government actors, and potential claimants with little guidance. As Justice Scalia suggested in his concurrence in NASA v. Nelson, this encourages an endless stream of hopeful plaintiffs to flood the courts with claims that are different on one or another dimension from decided cases because they have no grounds on which to determine whether those differences are relevant.106 A vague right may therefore result in even more litigation than a broad but clear one. Another possibility is that, for fear of prosecution, government agencies will be unwilling to cross a boundary whose location is uncertain and will be deterred from beneficial policies that approach but do not step over that boundary.107 The question should be settled, one way or the other, and the Supreme Court may be the only institution that can settle it.

2AC Amendment Backfires

Explicit constitutional right to privacy backfires

Mary **Fan 12**, Professor of Law at the University of Washington, "CONSTITUTIONALIZING INFORMATIONAL PRIVACY BY ASSUMPTION", 3/2012, https://www.law.upenn.edu/journals/conlaw/articles/volume14/issue4/Fan14U.Pa.J.Const.L.953(2012).pdf,

It is high time to call out the assumption for the hazy moral intuition that it is and situate the moral intuition in law, and as law, insofar as it is supportable. Resting a protection—even a hazy hypothetical protection—on a moral intuition is dangerous from a pragmatic as well as principled perspective. Moral intuitions are akin to "naïve theories" and heuristics—error-prone and intuition-guided generalizations—that suffer from the manifold cognitive biases identified in the judgment and decision making literature.18 Status quo bias is an example of a cognitive bias with the potential to chill policy innovations if we persist in an intuitive, feels-wrong approach to determining violations.19 New ideas rouse vague feelings of unease and disquiet because they disrupt the status quo, to which we are intuitively attached. We cannot always trust and use as a guide the affective sense that a particular policy seems disquieting in the change it wreaks. Moreover, inability to distinguish the chaff risks demeaning an important guide and principle for understanding what the liberty explicitly safeguarded by the Constitution means. This Article argues that the work of privacy as a constitutional concept is to adapt the idea of liberty in times of social change. Insofar as constitutionally relevant, the idea of informational privacy helps further define, and should be informed by, the freedoms safeguarded in the Constitution, such as the protections for liberty under procedural and substantive due process. There is a principled reason for distinguishing between the cases of HIV and sexual orientation outings by the state with the aim of marring employment, family, and friendships and cases where state employees want a job representing an important public trust but do not want to get drug tested like the rest of us. And it is more than the crude rule of thumb that we know a violation when we feel it.

Perms

2AC Perm DB

Perm do both solves and shields the link to the net benefit – no reason why a constitutional amendment can't be passed along with the Supreme Court ruling the Constitution contains a right to informational privacy in the 4th amendment

AT: Net Benefits

2AC L/ to Politics

CP links to politics – inclusion of action taken by Congress risks triggering the link to politics – only the plan avoids it – using the courts isn't perceived in the political process

The plan is ridiculously capital-intensive

Albert 14 (Richard Albert, Associate Professor at Boston College Law School, "Constitutional Disuse or Desuetude: The Case of Article V." Boston University Law Review 94, (2014): 1029-., http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1758&context=lsfp, AB)

"Nothing is 'easy,'" writes Henry Paul Monaghan, "about the processes prescribed by Article V."112 Scholars today describe the requirements of Article V as practically impossible to meet.113 For instance, Bruce Ackerman views Article V as establishing a "formidable obstacle course."114 Sanford Levinson argues that "Article V, practically speaking, brings us all too close to the Lockean dream (or nightmare) of changeless stasis,"115 and that it is "the Constitution's most truly egregious feature."116 Rosalind Dixon has described the "virtual impossibility of formal amendment to the Constitution under Article V."117 Jeffrey Goldsworthy observes that "the supermajoritarian requirements of Article V are so onerous as to be arguably undemocratic, by making it much too easy for minorities to veto constitutional amendments."118 Vik Amar explains that Article V establishes "particular and cumbersome processes."119 And Richard Fallon laments that "[e]ven under the best of circumstances, the requirement that three-fourths of the states must ratify constitutional amendments makes it nearly impossible to achieve significant change in our written Constitution through the Article V process."120 Article V, in short, is seen as a dead end. This is not a new perspective on the difficulty of successfully using Article V. Writing in 1885, Woodrow Wilson decried the "cumbrous machinery of formal amendment erected by Article Five."121 Even earlier, at the adoption of the Constitution, John DeWitt doubted whether it would ever be possible to amend the Constitution using Article V: "[W]ho is there to be found among us, who can seriously assert, that this Constitution, after ratification and being practiced upon, will be so easy of alteration?"122 DeWitt believed states would have views too different to meet Article V's required supermajority threshold: Where is the probability that three fourths of the States in that Convention, or three fourths of the Legislatures of the different States, whose interests differ scarcely in nothing short of everything, will be so very ready or willing materially to change any part of this System, which shall be to the emolument of an individual State only?123 The answer, he predicted, was that formal amendment would be rare.

Links to Circumvention

2AC

It's unpopular – this link turns the aff and causes circumvention

Albert 14 (Richard Albert, Associate Professor at Boston College Law School, "Constitutional Disuse or Desuetude: The Case of Article V." Boston University Law Review 94, (2014): 1029-., http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1758&context=lsfp, AB)

Political parties and increased political polarization may have exacerbated the difficulty of Article V. As American political parties have become nearly evenly divided across both the federal and state governments over the last two generations, writes David Kyvig, "divisions within society together with the requirements of Article V frustrated every attempt to bring about fundamental change."132 Kyvig adds that the close balance between political parties and among the forces of federalism alongside the "centripetal power of the federal government and the centrifugal strength of the states" have combined to inhibit agreement on formal amendment.133 Daryl Levinson and Rick Pildes observe that political parties in the United States "today are both more internally ideologically coherent and more sharply polarized than at any time since the turn of the twentieth century."134 Rick Pildes connects the onset of today's hyperpolarized politics to the adoption of the Voting Rights Act of 1965: [T]his polarization reflects the deep structural and historical transformation in American democracy unleashed in 1965 by the enactment of the VRA. That moment began the process of ideologically realigning the political parties and of purifying them, so that both parties are far more ideologically coherent, and differentiated from each other, than at any time in many generations. The culmination of that historical transformation – which can be seen as the maturation or full realization of American democracy – is today's hyperpolarized partisan politics.135 Pildes concludes that "[t]he reality is that the era of highly polarized, partisan politics will endure for some time to come."136 This only complicates an already difficult formal amendment process that relies on strong supermajorities across both the federal and state institutions. Nevertheless, as Christopher Eisgruber cautions, measuring amendment difficulty is itself difficult because amendment difficulty turns "upon a number of cultural considerations, such as the extent to which state politics differ from national politics and the extent to which people are receptive to or skeptical about the general idea of constitutional amendment."137 The difficulty of measuring amendment difficulty has not discouraged scholars from comparing amendment difficulty across nations. In such measures, the United States has ranked among the most difficult to amend.138

AT: SSRA PICs

Amash-Conyers CP

2ac S/D

The Counterplan solves none of the aff—it doesn't dismantle the legal architecture for surveillance which opens the door to executive circumvention.

The cp leaves databases and old data in place

Martin 13 [Kate Martin, Director, Center for National Security Studies. 7/23/13, "Amash-Conyers amendment to Defense Appropriations to stop bulk collection of Americans' telephone metadata." http://democrats.judiciary.house.gov/sites/democrats.judiciary.house.gov/files/images/CNSSAnalysis.pdf//jweideman]

Enacting this amendment will not leave the NSA "in the dark." As outlined above, there are other existing authorities that allow the collection of call data and such data is apparently already being kept by many of the major telephone companies for at least a year. Moreover, the government apparently already has an existing data-base of this information on millions if not billions of Americans' phone calls going back at least five years. This amendment does not address the retention or use of that database.

AT: Telephony metadata key

Telephone data collection doesn't solve terror—new studies

Nakashima 14 [Ellen Nakashima Reporter for the Washington Post. Cites a study by the New America Foundation, a Washington-based nonprofit group. 1.12.14, "NSA phone record collection does little to prevent terrorist attacks, group says" https://www.washingtonpost.com/world/national-security/nsa-phone-record-collection-does-little-to-prevent-terrorist-attacks-group-says/2014/01/12/8aa860aa-77dd-11e3-8963-b4b654bcc9b2_story.html//jweideman]

An analysis of 225 terrorism cases inside the United States since the Sept. 11, 2001, attacks has concluded that the bulk collection of phone records by the National Security Agency "has had no discernible impact on preventing acts of terrorism." In the majority of cases, traditional law enforcement and investigative methods provided the tip or evidence to initiate the case, according to the study by the New America Foundation, a Washington-based nonprofit group. The study, to be released Monday, corroborates the findings of a White House-appointed review group, which said last month that the NSA counterterrorism program "was not essential to preventing attacks" and that much of the evidence it did turn up "could readily have been obtained in a timely manner using conventional [court] orders." Under the program, the NSA amasses the metadata — records of phone numbers dialed and call lengths and times — of virtually every American. Analysts may search the data only with reasonable suspicion that a number is linked to a terrorist group. The content of calls is not collected. The new study comes as President Obama is deliberating over the future of the NSA's bulk collection program. Since it was disclosed in June, the program has prompted intense debate over its legality, utility and privacy impact. Senior administration officials have defended the program as one tool that complements others in building a more complete picture of a terrorist plot or network. And they say it has been valuable in knocking down rumors of a plot and in determining that potential threats against the United States are nonexistent. Director of National Intelligence James R. Clapper Jr. calls that the "peace of mind" metric. In an opinion piece published after the release of the review group's report, Michael Morell, a former acting CIA director and a member of the panel, said the program "needs to be successful only once to be invaluable." The researchers at the New America Foundation found that the program provided evidence to initiate only one case, involving a San Diego cabdriver, Basaaly -Moalin, who was convicted of sending money to a terrorist group in Somalia. Three co-conspirators were also convicted. The cases involved no threat of attack against the United States. "The overall problem for U.S. counterterrorism officials is not that they need vaster amounts of information from the bulk surveillance programs, but that they don't sufficiently understand or widely share the information they already possess that was derived from conventional law enforcement and intelligence techniques," said the report, whose principal author is Peter Bergen, director of the foundation's National Security Program and an expert on terrorism. In at least 48 instances, traditional surveillance warrants obtained from the Foreign Intelligence Surveillance Court were used to obtain evidence through intercepts of phone calls and e-mails, said the researchers, whose results are in an online database. More than half of the cases were initiated as a result of traditional investigative tools. The most common was a community or family tip to the authorities. Other methods included the use of informants, a suspicious-activity report filed by a business or community member to the FBI, or information turned up in investigations of non-terrorism cases.

Links to ptx

The amendment links to politics

O'Keefe 13 [Ed, staff writer for the Washington Post. 6/24/13, "Plan to defund NSA phone collection program defeated" http://www.washingtonpost.com/blogs/post-politics/wp/2013/07/24/plan-to-defund-nsa-phone-collection-program-has-broad-support-sponsor-says///jweideman]

A controversial proposal to restrict how the National Security Agency collects telephone records failed to advance by a narrow margin Wednesday, **a victory for the Obama administration**, which has spent weeks defending the program since media leaks sparked international outrage about the agency's reach. Lawmakers voted 217 to 205 to defeat the proposal by an unlikely political pairing: Rep. Justin **Amash** (R-Mich.), a 33-year-old libertarian who often bucks GOP leadership **and** Rep. John **Conyers** (D-Mich.), an 84-year old liberal stalwart and the chamber's second longest-serving member. Usually divergent in their political views, they joined forces in recent weeks in response to revelations about the NSA's ability to collect telephone and Internet records that were leaked by Edward Snowden, a former NSA contractor who is seeking asylum in Russia. Speaker John A. Boehner (R-Ohio), who as head of the House rarely votes on legislation, voted against the amendment. The plan would restrict how the NSA can collect bulk phone records and metadata under the Patriot Act. Agency officials would be able to continue collecting telephone records, but only for people connected to relevant ongoing investigations. The proposal also would require that secret Foreign Intelligence Surveillance Act (FISA) court opinions be made available to lawmakers and that the court publish summaries of each opinion for public review. Conyers said the proposal "would curtail the ongoing dragnet collection and storage of the personal records of innocent Americans." House Intelligence Committee Chairman Mike Rogers (R-Mich.) blasted the Amash-Conyers proposal Wednesday, calling it "inflammatory and certainly misleading." In an interview with a Michigan radio station, Rogers said that Amash was trying "to take advantage, at any rate, of people's anger" over various scandals such as the IRS investigation of conservative groups and the killing of the U.S. ambassador to Libya in Benghazi. Other Republicans agreed that the amendment would jeopardize ongoing counterterrorism operations. Rep. Tom Cotton (R-Ark.), a U.S. Army veteran who served tours of duty in Iraq and Afghanistan, said the amendment "takes a leaf blower and blows away the entire haystack."

Title iii CP

S/D: Internet

Title 3 causes law enforcement overreach and wrecks internet innovation

Smith et al 2 [Marcia S. Smith, Jeffrey W. Seifert, Glenn J. McLoughlin, and John Dimitri Moteff Resources, Science, and Industry Division at EPIC. Congressional Report. March 4, 2002. "The Internet and the USA PATRIOT Act: Potential Implications for Electronic Privacy, Security, Commerce, and Government" https://epic.org/privacy/terrorism/usapatriot/RL31289.pdf//jweideman]

However, some have raised concerns that Title III (as well as other provisions) may have a broader scope than many of its supporters intend.17 While many are concerned that the civil liberties of individuals may be compromised if law enforcement officials extend their reach, Title III may also have implications for a wide range of e-commerce activities. It is unlikely that the Act will immediately affect retail e-commerce (e.g., online catalogue orders) or business-to-business e-commerce (e.g., the use of the Internet for inventory ordering and management). While these forms of e-commerce are growing very rapidly, to date they have not been identified as being particularly susceptible to misuse by terrorists. Retail e-commerce and business-to-business e-commerce require verifiable information between parties that may include names, addresses, credit card numbers and other information, and can be traced relatively easily. However, some observers have not ruled out terrorists using existing e-commerce exchanges to facilitate their activities in the future.18

Title 3 is internet surveillance

Smith et al 2 [Marcia S. Smith, Jeffrey W. Seifert, Glenn J. McLoughlin, and John Dimitri Moteff Resources, Science, and Industry Division at EPIC. Congressional Report. March 4, 2002. "The Internet and the USA PATRIOT Act: Potential Implications for Electronic Privacy, Security, Commerce, and Government" https://epic.org/privacy/terrorism/usapatriot/RL31289.pdf//jweideman]

There are a number of provisions in the USA PATRIOT Act that are relevant to e-government interests. E-government involves using information technology, and especially the Internet, to improve the delivery of government services to citizens, business, and other government agencies.27 Most of these provisions are independent of one another, reflecting the often disparate and disconnected nature of e-government initiatives. Many of the provisions in the USA PATRIOT Act related to e-government focus on government-to-government (G2G) relationships, both within the federal government, and between federal, state, local, and foreign governments. Fewer of the provisions focus on government-to-business (G2B) or government-to customer (G2C) interactions. The relevant provisions can be found in titles III, IV, VII, IX, and X, and are briefly discussed in turn. ! Section 361 supercedes Treasury Order Number 105-08, establishes the Financial Crimes Enforcement Network (FinCEN) in statute, and charges the bureau with, among other things, establishing a financial crimes communication center to facilitate the sharing of information with law enforcement authorities. This section also requires FinCEN to maintain a government-wide data access service for information collected under anti-money laundering reporting laws, information regarding national and international currency flows, as well as information from federal, state, local, and foreign agencies and other public and private sources. ! Section 362 seeks to enhance cooperation between the federal government and the banking industry by directing the Security of Treasury to establish a "highly secure network" in FinCEN to enable financial institutions to file reports required by the Bank Secrecy Act and receive alerts regarding suspicious activities electronically.

S/D EU relations

Title 3 can't access EU privacy internal links

JonesDay 7 [Ranked among the world's most integrated law firms and best in client service, Jones Day has locations in centers of business and finance throughout the world. Written by Robert Graves. 2007 "Extraterritorial Application of the USA PATRIOT Act" http://www.jonesday.com/files/News/2df0b605-1cc3-4729-ae61-a0305551bbe5/Presentation/NewsAttachment/742ac421-2ea3-4f3f-b275-a25219eb8eee/Foreign%20Bank%20Compliance%20with%20PATRIOT%20Act.pdf//jweideman]

The effort of the U.S. government to expand its subpoena powers over records held abroad has created privacy concerns, particularly in Europe, where data protection is tightly regulated. The U.S. has no general law of financial privacy analogous to the various European laws implemented pursuant to the European Data Protection Directive. The Right to Financial Privacy Act18 protects against intrusion by the federal government without due process, but the private market is regulated only lightly by a variety of statutes that operate primarily on the basis of notice and opt-out. The landmark Supreme Court case of United States v. Miller, 425 U.S. 435 (1976), held that the U.S. Constitution does not provide for a right to financial privacy. Lawmakers reacted swiftly, drafting the Right to Financial Privacy Act, which provided limited protection against government access to customer financial records held by financial institutions. Regulation of financial data transferred among private entities is far more limited. The Fair Credit Reporting Act19 states the circumstances in which financial data collected by consumer reporting agencies may be disseminated to third parties. In limited circumstances, companies may share information regarding a customer's transactions with third parties without giving notice to the customer. A broader range of information may be provided to affiliated companies. The Electronic Funds Transfer Act20 gives consumers using electronic fund transfer systems the right to require financial institutions to provide information concerning disclosure of their account information to third parties. The Fair and Accurate Credit Transactions Act, which amended provisions of the Fair Credit Reporting Act, prohibits affiliated companies from sharing customer information for marketing solicitation unless the consumer is provided clear and conspicuous notification and an opportunity to opt-out.

Europeans are worried about financial information requirements

ROTENBERG 11 [MARC ROTENBERG, EXECUTIVE DIRECTOR, ELECTRONIC PRIVACY INFORMATION CENTER. 2011. "CYBERSECURITY AND DATA PROTECTION IN THE FINANCIAL SECTOR" Hearing before Congress. http://www.gpo.gov/fdsys/pkg/CHRG-112shrg72701/pdf/CHRG-112shrg72701.pdf//jweideman]

Now, the other question you raise, Senator, is also key in this area. We are in a global economy with global businesses. Particularly with the Internet, people are purchasing products all around the world and a lot of customer data moves around the world, particularly now that we have cloud computing services that are offered in many different jurisdictions. We have actually worked with the Administration to urge the development of a comprehensive framework for privacy protection, and there is interest. In fact, part of the White House cybersecurity strategy talks about the need to strengthen privacy safeguards for commercial data flows, particularly between the United States and Europe. We hope they will go further for many of the reasons that you have outlined. The Europeans are also concerned about what happens to their financial data. There is a need to establish there a common framework with clear legal protections. And I think what you are reading now about the data breaches, of course, it is not just customers in the U.S., it is people all around the world.

2ac: Title 3 ineffective

Title 3 fails to stop terrorism and curbs freedom

Rockett 8 [James M. co-chairs Bingham s Financial Institutions Corporate and Regulatory Group. He is a prominent banking lawyer who has spent more than 30 years exclusively representing banking and financial services clients. 2008. "FINANCIAL SERVICES AND E-COMMERCE THE UNDUE BURDENS OF THE BANK SECRECY ACT" PDF//jweideman]

This brings us to another question about the whole BSA/AML construct and that is: why has this been sold to the American public in such a disingenuous manner? The American public largely believes the PATRIOT Act was passed under anti-terrorism rubric. In fact, the banking **system is not and will never be an effective vehicle** to combat terrorist financing. The 9/11 terrorists used approximately $500,000 over a period of several years to finance their horrifying acts. During that time hundreds of trillions of dollars flowed through the banks of this country. There were no characteristics or patterns that would have distinguished the 9/11 terrorists from any other foreign students in the U.S. who received money from home and paid tuition and living expenses with those funds. **Nothing that U.S. banks are now being required to do will actually identify terrorists**; that job must be done by old-fashioned investigative work by intelligence agencies. And we could certainly craft laws that will allow them access to financial records if they have good cause to suspect terrorist financing is taking place. What this highlights is what I will call the "**equivalency" flaw** of the current BSA/AML construct. By this I mean that the laws and regulations and the manner of their enforcement make no distinction between, and basically equate terrorist financing with, maintaining an account for Augusto Pinochet10 or a common crime, such as check kiting or a Ponzi scheme.11 It is one thing to say that we are preventing terrorist financing by setting up this elaborate, costly, intrusive bank account spying network; it is quite another to burden our society with a blatantly ineffective regulatory scheme in order to prevent current or former foreign government officials from maintaining U.S. bank accounts. That could be handled much like Office of Financial Asset Control regulations. And to have check kites or Ponzi schemes governed by the same rules is just plain silly. Finally, the American public has to be told candidly that every financial transaction that they undertake is being monitored for suspicious characteristics and anything that they do that is out of pattern is reported to the government. At a time when financial privacy has become a rallying cry, **our citizens should know the truth about the unprecedented government scrutiny of their financial activities by deputizing their banks to indiscriminately spy on them.** And this spying 74 E n g a g e Volume 6, Issue 2 is not limited to "terrorist financing;" it is a general spy network that reports any unusual financial activity to the of abuse inherent in such a scheme. Back some 30 years ago, a quaint regulation called Reg Q allowed banks to give out toasters to new customers who opened bank accounts. How far we have come? Now, under the guise of the USA PATRIOT Act, the Bank Secrecy Act and the AML regulations, instead of toasters banks are required to give customers the **equivalent of ankle bracelets** to monitor their every move. This is not progress and should not be viewed as consistent with the freedoms that the U.S. Constitution was established to protect.

2ac: Banking turn

Kills the economy and banking

Rockett 8 [James M. co-chairs Bingham s Financial Institutions Corporate and Regulatory Group. He is a prominent banking lawyer who has spent more than 30 years exclusively representing banking and financial services clients. 2008. "FINANCIAL SERVICES AND E-COMMERCE THE UNDUE BURDENS OF THE BANK SECRECY ACT" PDF//jweideman]

Adverse Economic Impact of AML Environment The consequences of this lack of balance are predictable but need to be examined. First, and most obviously, banks are incurring **enormous compliance costs**. These are not small amounts of money that can be easily absorbed. Our largest banks are investing tens of millions of dollars each and mid-size and community banks are spending proportionately even more on everything: regulatorily required technology systems, compliance personnel, training account officers and new account clerks and tellers and loan officers and branch personnel, internal auditors, external consultants, independent auditors, executive management time, directors' time' monitoring accounts and financial transactions by customers; and filing largely meaningless SARs with the government. These monies are being taken from banks and their shareholders, under threat of regulatory enforcement penalties or even criminal prosecution, without any recompense from the government. These are not traditional "costs of doing business" nor are they routine processes of compliance that with time will be regularized. These are law enforcement expenses that should rightfully be borne by the government. Secondly, and even more importantly, the impact of the Bank Secrecy Act and Title III on the U.S. economy is staggering. This is a fact that has not been examined with any scholarly precision and is probably immeasurable in real dollars. But, cost structures of this magnitude have to be passed on to the users of banking services either directly or indirectly. These costs are also putting U.S. banks in an **uncompetitive position** in the rapidly globalizing world of financial services. There is also a significant but unquantifiable loss of foreign investment in the United States. Because of enhanced due diligence on foreign-originated transactions, many foreigners have become increasingly reluctant to do personal business or invest in the United States. **This trend is rapidly accelerating** and will only be greatly exaggerated by the Treasury Department's proposal to force U.S. financial institutions to collect and turn over data related to crossborder wire transfers.7 This also comes at a time when **the U.S. economy is most vulnerable** and can **least afford** such a foreign pullback. However it is not just the American consumer of banking services, or foreign investors, or the banks themselves that are paying the price. An entire industry of money services businesses is being driven out of the banking system and, in most instances, affecting those who can least afford it: the poor migrant and immigrant workers who come to the U.S. to perform labor at low wages and who want to cash a check or send funds back home to their families. Despite the Financial Crimes Enforcement Network (FinCEN) and the bank regulators having protested that they do not intend to create this result, the facts speak for themselves: money transmitters are viewed as "high risk" customers and the enhanced due diligence requirements are so onerous that bankers are faced with the Hobson's choice of either undertaking ongoing monitoring (of not just the bank customer but the customer's customer) at great expense or risking regulatory enforcement action. The only prudent decision is to withdraw from providing banking services to such money transmitters.8 But the money transmitters aren't alone in being deemed to be "high risk." In a list that on its face is preposterous, the bank regulators have identified the following "high risk" banking customers: · Foreign banks · Money Services Businesses (currency dealers or exchangers, check cashers, money transmitters, and issuers, sellers, or redeemers of travelers' checks, money orders and stored value cards) · Non-bank financial institutions (casinos (tribal and non-tribal), card clubs, brokers and dealers in securities) · Senior foreign political figures and their family members and close associates · Non-resident aliens and accounts of foreign persons · Foreign corporations with transaction accounts, particularly offshore corporations in high-risk geographies · Deposit brokers, particularly foreign deposit brokers · Cash intensive businesses (e.g., convenience stores, restaurants, retail stores, liquor stores, cigarette distributors, privately owned ATM operators, vending machine operators, and parking garages) · Non-governmental organizations and charities (domestic and foreign) · Professional service providers (attorneys, accountants, doctors, real estate brokers) · Import-export companies · Jewelry, gem and precious metal dealers · Travel agencies · Car, boat and airplane dealerships With this guidance for "high risk" is there any wonder banks are filing hundreds and thousands of useless SARs which are ignored by the very government that mandates them?9 Each new SAR builds an even denser haystack in which the needle becomes more imperceptibility embedded. And, if and when a terrorist attack actually takes place, somewhere an

ignored SAR will be languishing among the hundreds of thousands of SARs filed because of the current indiscriminate regulatory environment.

Expanded financial sector activity solves warming

Mazzeo and Dlugolecki et al 2 [Michael J. Mazzeo is an Associate Professor in the Department of Strategy, and a Faculty Associate at Northwestern University's Institute for Policy Research. He serves on the editorial board of the Review of Industrial Organization. With guidance from UNEP Finance Initiatives Project Coach Dr. Andrew Dlugolecki. 2002. "Climate Change & The Financial Services Industry" http://www.kellogg.northwestern.edu/faculty/mazzeo/htm/sp_files/021209/(4)%20Innovest/Innovest%20Publications/Innovest_UNEP2_10_15_02.pdf//jweideman]

History teaches us that for politically-driven market systems to function effectively, financial institutions must play a prominent role in the market evolution process. From the creation of initial demand for an underlying good or service (as in the U.S. SO2 market in the 1990s), to the promulgation of transaction regulations, the protection of property rights and enforceable legal ownership provisions, and the requirement for transparency and disclosure, the finance sector has a critical role to play in creating the right conditions for market-based, commodity-oriented solutions to thrive3. Valuable experience in creating markets around the energy sector has already been acquired, so that commentators believe that the process of developing a mature market for carbon may take as little as five years (see Figure 2). As Module I showed, policymakers are now united in their belief that market solutions will play a pivotal role in whatever course of strategy national and regional lawmakers take, whether this is the Kyoto Protocol; the voluntary carbon intensity method (as advanced by the U.S.); "Contraction and Convergence". And for market solutions to function effectively, financial institutions must play a full and active role in their development and operation (see box insert). From discussions with financial institutions and other GHG market specialists during the course of this study, the following suggestions can be made on how financial institutions can effectively deliver market solutions to the climate change problem:

o Helping to structure and monitor an efficient market system by working with securities and exchange regulators, actuaries, accountants and other agents of the financial markets

o Meeting statutory responsibilities and voluntary commitments to look at social and environmental issues and in doing so focus greater attention on climate change as an analytical factor.

o Working to create other conditions crucial to the formation of an efficient emissions trading system i.e., a standardized "commodity"; standardized trade characteristics, organized exchanges, etc.

o Creating and providing products and services that contribute towards adaptation and mitigation efforts (such as weather derivatives and catastrophe bonds)

o Reexamining the extent to which fiduciary duties may necessitate examining potential sector and company risk relating to climate change, and factoring this into their proxy voting strategies.

o Managing their own property risks arising from extreme weather events and pursuing leadership in areas such as energy efficiency within their own property portfolio.

Moreover, financial institutions have a key role to play in advising companies and investors on the potential market risks associated with climate change and government GHG regulation, in the raising of finance for GHG projects, in structuring deals for potential vendors and purchasers of emissions credits, and in developing solutions to manage financing risks. Indeed, banks and insurance companies are used to dealing with highly complex issues, and over the years have developed carefully conceived, proprietary quantitative risk management methodologies to help them characterize and value complex risk scenarios.

Climate change will result in extinction- IPCC agrees

Snow 15 [Anthony McMichael receives funding from The National Health and Medical Research Council. He is affiliated with The Climate Institute. Colin Butler receives funding from the Australian Research Council. He is co-director of the NGO Benevolent Organisation for Development, Health and Insight. Helen Louise Berry receives funding from the National Health and Medical Research Council and the Australian Research Council. She is a member of the Australian Labor Party.March 31, 2014 http://www.smh.com.au/environment/climate-change/climate-change-could-make-humans-extinct-warns-health-expert-20140330-35rus.html "Climate change could make humans extinct, warns health expert"] (Vaibhav)

The Earth is warming so rapidly that unless humans can arrest the trend, we risk becoming ''extinct'' as a species, a leading Australian health academic has warned. Helen Berry, associate dean in the faculty of health at the University of Canberra, said while the Earth has been warmer and colder at different points in the planet's history, the rate of change has never been as fast as it is today. ''What is remarkable, and alarming, is the speed of the change since the 1970s, when we started burning a lot of fossil fuels in a massive way,'' she said. ''We can't possibly evolve to match this rate [of warming] and, unless we get control of it, it will mean our extinction eventually.'' Professor Berry is one of three leading academics who have contributed to the health chapter of a Intergovernmental Panel on Climate Change (IPCC) report due on Monday. She and co-authors Tony McMichael, of the Australian National University, and Colin Butler, of the University of Canberra, have outlined the health risks of rapid global warming in a companion piece for The Conversation, also published on Monday. The three warn that the adverse effects on population health and social stability have been ''missing from the discussion'' on climate change. ''Human-driven climate change poses a great threat, unprecedented in type and scale, to wellbeing, health and perhaps even to human survival,'' they write. They predict that the greatest challenges will come from undernutrition and impaired child development from reduced food yields; hospitalisations and deaths due to intense heatwaves, fires and other weather-related disasters; and the spread of infectious diseases. They warn the ''largest impacts'' will be on poorer and vulnerable populations, winding back recent hard-won gains of social development programs. Projecting to an average global warming of 4 degrees by 2100, they say ''people won't be able to cope, let alone work productively, in the hottest parts of the year''. They say that action on climate change would produce ''extremely large health benefits'', which would greatly outweigh the costs of curbing emission growth. A leaked draft of the IPCC report notes that a warming climate would lead to fewer cold weather-related deaths but the benefits would be ''greatly'' outweighed by the impacts of more frequent heat extremes.

Under a high emissions scenario, some land regions will experience temperatures four to seven degrees higher than pre-industrial times, the report said. While some adaptive measures are possible, limits to humans' ability to regulate heat will affect health and potentially cut global productivity in the warmest months by 40 per cent by 2100. Body temperatures rising above 38 degrees impair physical and cognitive functions, while risks of organ damage, loss of consciousness and death increase sharply above 40.6 degrees, the draft report said. Farm crops and livestock will also struggle with thermal and water stress. Staple crops such as corn, rice, wheat and soybeans are assumed to face a temperature limit of 40-45 degrees, with temperature thresholds for key sowing stages near or below 35 degrees, the report said.

XT: solves warming

A strong finance sector is key to warming resiliency and mitigation

Bowman 14 [HR Business Partner at Apple Past Director, Human Resources at Novelis, General Manager, Human Resources at Porsche Cars North America, Vice President of Human Resources at Abbott... Education Vanderbilt University - Owen Graduate School of Management, Harvard University. May 8 2014, "DEVELOPMENT AND GLOBAL SUSTAINABILITY: THE CASE FOR 'CORPORATE CLIMATE FINANCE'" http://www.hcs.harvard.edu/~res/2014/05/development-and-global-sustainability-the-case-for-corporate-climate-finance///jweideman]

In short, moving to a low-carbon global economy and increasing climate resilience in developing nations will require **significant capital** outside of normal government channels and beyond business as usual. Indeed it will involve one of the largest market and economic transitions in modern global society. Given this reality, the finance sector **has a key role** to play in helping address climate change in terms of assisting developing countries with **adaptation.** Public finance actors, such as the World Bank and the newly created Green Climate Fund, tend to take the spotlight here. Far less attention has been given to the potential of and processes for directly engaging private finance sector actors as positive societal change-agents. Specifically, transnational private sector financial actors that are headquartered in developed countries **are global economic gatekeepers** and financial intermediaries, making them **critical actors** in the transition to a **low-carbon global economy**. They comprise insurers (especially re-insurers), institutional investors (especially pension funds) and banks. The potential of these private finance actors to assist climate change adaptation in developing nations and also the shift to a low-carbon economy globally has been largely unnoticed by scholars and policy-makers. The purpose of this article is to demonstrate that we need to start paying attention now. Public Climate Finance The role of financial capital in addressing climate change becomes clear by examining its relevance to sustainable development and 'the environment' more generally. Financial support for projects and technological innovation will almost always have environmental effects of some kind whether adverse or beneficial. Wholesale decisions regarding future development often arise in the finance sector; so **this is where future pressures on the environment begin**. As Richardson notes: "[i]f sustainable development is understood to imply, among other things, maintenance of natural and human-made capital for posterity, the role of capital markets must be recognized as pivotal to this goal." (2006:309) Since the 2007 Bali Action Plan, international action on climate finance has centered on the provision of financial aid by developed countries to developing countries via public (usually multilateral or bilateral) institutions to build their resilience against climate variability (e.g. Chaum et al. 2011; Brahmbhatt 2011; Fankhauser and Burton 2011) and facilitate mitigation. For example, Climate Investment Funds are managed by the World Bank and implemented jointly with regional developing banks, which can leverage support from developed countries and buy-down the costs of low-carbon technologies in developing countries. Another option is the Green Climate Fund (GCF), a new multilateral fund that was agreed by Parties at the 2010 UNFCCC conference as an operating entity of the UNFCCC's financial mechanism. The GCF's purpose "is to promote, within the context of sustainable development, the paradigm shift towards low-emission and climate-resilient development pathways by providing support to developing countries to help limit or reduce their greenhouse gas emissions and to adapt to the unavoidable impacts of climate change." (Green Climate Fund 2014). It will do this by allocating funds pledged by developed nations – US$100 billion per year by 2020 – to both mitigation and adaptation activities in developing nations, especially the most vulnerable (Cancun Agreements, Decision 1, CP16). The GCF is still under construction; its Board will aim to decide essential matters of how the GCF will receive, manage, programme and disburse funds in May 2014 (Green Climate Fund 2014). There is no doubt that multilateral efforts are vital. In particular, the GCF is a most welcome and timely global initiative; however, there are at least two initial concerns. First, looking at the sums of money cited in the Introduction, US$100 billion is insufficient to meet the task at hand. Due to the limited availability of public funds, investments at scale will also require private sector funding. To this end, the GCF employs a Private Sector Facility (PSF) to promote the participation of private sector actors in developing countries, particularly "small and medium-sized enterprises and local financial intermediaries." (Green Climate Fund 2013:1). Private sector entities (like Google or Coca Cola) can provide funds through the GCF's External Affairs division, alongside public contributions. This raises the second concern: that a vital opportunity to directly engage the private finance sector will be missed under these arrangements. Neither the PSF nor the External Affairs (donations) division will capture or engage multinational and transnational financial intermediaries, such as a large U.S. pension fund or a European bank. Why does this matter? Private

finance sector actors are economic gatekeepers with access to large and multiple pools of money and the innate ability to move it around. Their raison d'être is to make intermediating decisions about where money (as an asset, debt or equity) comes from and where it flows to (via sourcing, allocation and advisory processes). In short, they have a central role to play in climate change efforts because, as noted by Lord Stern, "**reducing emissions** and adjusting to climate change **involves investment and risk**" (UNEPFI 2007:2).

XT: Warming impact

Warming is the only existential risk

Deibel '07 [Prof IR @ National War College Terry, "Foreign Affairs Strategy: Logic for American Statecraft," Conclusion: American Foreign Affairs Strategy Today. PDF//jweideman]

Finally, there is one major existential threat to American security (as well as prosperity) of a nonviolent nature, which, though far in the future, demands urgent action. It is the threat of global warming to the stability of the climate upon which all earthly life depends. Scientists worldwide have been observing the gathering of this threat for three decades now, and what was once a mere possibility has passed through probability to near certainty. Indeed not one of more than 900 articles on climate change published in refereed scientific journals from 1993 to 2003 doubted that anthropogenic warming is occurring. "In legitimate scientific circles," writes Elizabeth Kolbert, "it is virtually impossible to find evidence of disagreement over the fundamentals of global warming." Evidence from a vast international scientific monitoring effort accumulates almost weekly, as this sample of newspaper reports shows: an international panel predicts "brutal droughts, floods and violent storms across the planet over the next century"; climate change could "literally alter ocean currents, wipe away huge portions of Alpine Snowcaps and aid the spread of cholera and malaria"; "glaciers in the Antarctic and in Greenland are melting much faster than expected, and…worldwide, plants are blooming several days earlier than a decade ago"; "rising sea temperatures have been accompanied by a significant global increase in the most destructive hurricanes"; "NASA scientists have concluded from direct temperature measurements that 2005 was the hottest year on record, with 1998 a close second"; "Earth's warming climate is estimated to contribute to more than 150,000 deaths and 5 million illnesses each year" as disease spreads; "widespread bleaching from Texas to Trinidad…killed broad swaths of corals" due to a 2-degree rise in sea temperatures. "The world is slowly disintegrating," concluded Inuit hunter Noah Metuq, who lives 30 miles from the Arctic Circle. "They call it climate change…but we just call it breaking up." From the founding of the first cities some 6,000 years ago until the beginning of the industrial revolution, carbon dioxide levels in the atmosphere remained relatively constant at about 280 parts per million (ppm). At present they are accelerating toward 400 ppm, and by 2050 they will reach 500 ppm, about double pre-industrial levels. Unfortunately, atmospheric CO2 lasts about a century, so there is no way immediately to reduce levels, only to slow their increase, we are thus in for significant global warming; the only debate is how much and how serous the effects will be. As the newspaper stories quoted above show, we are already experiencing the effects of 1-2 degree warming in more violent storms, spread of disease, mass die offs of plants and animals, species extinction, and threatened inundation of low-lying countries like the Pacific nation of Kiribati and the Netherlands at a warming of 5 degrees or less the Greenland and West Antarctic ice sheets could disintegrate, leading to a sea level of rise of 20 feet that would cover North Carolina's outer banks, swamp the southern third of Florida, and inundate Manhattan up to the middle of Greenwich Village. Another catastrophic effect would be the collapse of the Atlantic thermohaline circulation that keeps the winter weather in Europe far warmer than its latitude would otherwise allow. Economist William Cline once estimated the damage to the United States alone from moderate levels of warming at 1-6 percent of GDP annually; severe warming could cost 13-26 percent of GDP. But the most frightening scenario is runaway greenhouse warming, based on positive feedback from the buildup of water vapor in the atmosphere that is both caused by and causes hotter surface temperatures. Past ice age transitions, associated with only 5-10 degree changes in average global temperatures, took place in just decades, even though no one was then pouring ever-increasing amounts of carbon into the atmosphere. Faced with this specter, the best one can conclude is that "humankind's continuing enhancement of the natural greenhouse effect is akin to playing Russian roulette with the earth's climate and humanity's life support system. At worst, says physics professor Marty Hoffert of New York University, "we're just going to burn everything up; we're going to heat the atmosphere to the temperature it was in the Cretaceous when there were crocodiles at the poles, and then everything will collapse." During the Cold War, astronomer Carl Sagan popularized a theory of nuclear winter to describe how a thermonuclear war between the Untied States and the Soviet Union would not only destroy both countries but possibly end life on this planet. Global warming is the post-Cold War era's equivalent of nuclear winter at least as serious and considerably better supported scientifically. Over the long run it puts dangers from terrorism and traditional military challenges to shame. It is a threat not only to the security and prosperity to the United States, but potentially to the continued existence of life on this planet

AFF UQ: Banks

Growth is limited by regulatory constraints

Smith and Eckenrode 15 [Kenny Smith, Vice chairman at Deloitte outlook firm. Jim Eckenrode, Executive director at delloitte. 2015. "2015 banking outlook: boosting profitability amidst new challenges" www2.deloitte.com/content/dam/Deloitte/global/Documents/Financial-Services/gx-us-fsi-outlook-banking-final.pdf//jweideman]

Focus for 2015 Despite an improving economy, new liquidity and capital constraints will create major headwinds for profitability in 2015, making balance sheet optimization a top priority. This is particularly so for the largest banks, which have to comply with the LCR rule in 2015. These institutions will have to hold enough liquid assets to weather 30 days of serious market stress. As a result, their balance sheets will be burdened with more low-yielding assets. This pressure and low loan originations have already resulted in a greater share of securities on banks' balance sheets, as shown in Figure 5. To minimize the pressure on NIM, firms will look to control funding costs by replacing wholesale funds with retail deposits. Yet, as interest rates rise, we could see a reversal in recent trends with deposits flowing into higher interest accounts (Figure 6). This pattern may in turn lead to higher interest expenses. These conflicting pressures in combination with the potential for lower asset yields may compress margins despite rising interest rates.6

AT: Third Party PIC

Aff Answers

2AC — No Solvency

No solvency — electronic data creates overload and massive cost overruns for public health institutions.

Lenert and Sundwall 12 — Leslie Lenert, with the Department of Medicine, and David N. Sundwall, with the Department of Family and Preventive Medicine, School of Medicine, 2012 ("Public Health Surveillance and Meaningful Use Regulations: A Crisis of Opportunity," U.S National Library of Medicine, March, Available Online at: http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3487683/, Accessed: 7-26-2015)

Meaningful use regulations pose a significant challenge for public health officials: they require public health institutions to be able to receive data transmissions in forms specified by ONC. This is likely to become a substantial problem because of the many types of health information technology (IT) systems, the number of different providers, the relative immaturity of standards, and the costs of becoming compliant with these requirements. If public health departments are not able to support connectivity, health care providers and hospitals in their jurisdiction are exempted from requirements to provide data to these departments.2

Furthermore, meaningful use requirements are designed to evolve rapidly: in stage 2, scheduled to begin in 2014, public health departments are expected to be able to receive data regularly from clinical providers for notifiable conditions, immunizations, and syndromic surveillance. In stage 3, beginning in 2015, electronic health records systems with new capabilities, such as the ability to work with public health alerting systems and on-screen "buttons" for submitting case reports to public health are envisioned.4 Public health departments will be required not just to upgrade their systems once, but also to keep up with evolving changes in the clinical care system prompted by meaningful use regulations.

The size of the task facing public health departments to manage receipt of data from the clinical care system **is daunting**. With more than 5000 individual hospitals (> 3700 independent hospitals)5 and more than 230 000 physician practices in the United States,6 each of which might require a unique connection to 1 or more public health departments at the state and local levels, the task of building an integrated infrastructure is significant. Even with anticipated consolidation of practices and hospitals through health information exchanges, it will be costly and difficult. Furthermore, the requirement for continual evolution of the types of communications proposed for meaningful use adds to the problem. Each connection between public health departments and clinical care providers may need to be revised several times as requirements evolve. Where are state and local public health departments to find the funds to adapt their IT systems to this massive and constantly evolving data stream?

1AR- No Solvency

Surveillance data overloads public health departments and prevents solvency —they don't have sufficient infrastructure or resources to deal with electronic data.

Lenert and Sundwall 12 — Leslie Lenert, with the Department of Medicine, and David N. Sundwall, with the Department of Family and Preventive Medicine, School of Medicine, 2012 ("Public Health Surveillance and Meaningful Use Regulations: A Crisis of Opportunity," U.S National Library of Medicine, March, Available Online at: http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3487683/, Accessed: 7-26-2015)

Data from a recent survey by the Association of State and Territorial Health Officers suggest that public health departments are ill prepared to meet even the initial requirements for surveillance systems.7 Fewer than 45% of state health departments reported being ready to test receiving meaningful use data on syndromic surveillance. Rates of reported readiness for testing of notifiable diseases and immunization data were higher, but additional work is needed. The most common obstacle, as might be expected (37 of 48 respondents), is a lack of funding. The benefits of upgrading to be able to receive messages from meaningful use are not clear: one survey respondent said,

Updating our [ELR] infrastructure … will cost over $100 000 including re-certification… . Updating … will not provide any real benefit to us as the Public Health Department.7(p13)

Local health departments likely face even greater challenges in responding to meaningful use. A recent National Association of City and County Health Officials survey of local health departments found that 72% identified insufficient funding among their top 3 barriers to system development.8 However, money is not the only problem. Lack of time or resources to divert from current programs and responsibilities was a top barrier to system development for 55% of survey respondents.

A further problem is growth in the volume of data that will come to the public health systems. Estimates from the Indiana Health Information Exchange suggest that automation of reporting for notifiable diseases will increase the volume of reported diseases about 4 to 10 times over that of manual reporting.9 New systems and work flows will be needed to process these reports, for example, automating access to electronic medical records to facilitate case investigation. Increases in the volume of data for syndromic systems could be much greater. Many local agencies with functional systems only receive syndromic data from a few hospitals in their jurisdiction.

Demands on immunization registries also will increase, because providers are essentially mandated to report immunizations to registries, potentially overwhelming existing infrastructure. New kinds of capabilities are also envisioned for later stages of meaningful use, such as linking electronic health records with chronic disease registries, buttons for reporting of notifiable diseases, and vaccine forecasting.4Therefore, public health readiness for meaningful use requires more than a 1-time investment: it requires ongoing upgrades of public health infrastructure.

2AC — No Impact

Bioterrorism is unlikely and alt causes to solvency — hard to access to technology and alarmism disprove.

Leitenberg 9 — Milton Leitenberg, Swedish Institute of International Affairs and the Center for International Studies Peace Program at Cornell University, and he has been a Senior Fellow at CISSM, 2009 ("THE SELF-FULFILLING PROPHECY OF BIOTERRORISM," Nonproliferation Review, March, Available Online at: http://cns.miis.edu/npr/pdfs/161_review_leitenberg.pdf, Accessed: 7-27-2015)

The intellectual history of touting the bioterrorist threat is a dubious one. It began in 1986 with an attack on the validity of the BWC by Douglas Feith, then an assistant to Richard Perle in President Ronald Reagan's Defense Department and more recently undersecretary of defense for policy until August 2005. Feith introduced the idea that advances in the microbiological sciences and the global diffusion of the relevant technology heighten the threat of BW use. Though advances in molecular genetics and globalization increased drastically by 2008 in comparison to 1986, the number of states that maintain offensive BW programs has not. And despite the global diffusion of knowledge and technology, the threat of terrorist networks creating BW is low. But the invocation of overly alarmist themes continues. In 2005, Tara O'Toole, chief executive officer and director of the Center for Biosecurity at the University of Pittsburgh Medical Center, said, ''This is not science fiction. The age of Bioterror is now.''31 It hardly comes as a surprise to learn that the office of Vice President Cheney was the driving force behind the Bush administration's emphasis on bioterrorism.32 But one vital point missed by Clark is that Cheney was influenced by, among other things, the very same ''Dark Winter'' scenario with which Clark opens his book. The other influences on Cheney were a veritable hysteria of fears and phantoms in the White House following the 9/11 and the Amerithrax attacks, several of which concerned the potential of terrorist use of BW and which reportedly led Cheney to believe he might soon become a victim.33 What must be noted is that although Al Qaeda's interest in BW failed, the group's efforts were specifically provoked by the severely overheated discussion in the United States about the imminent dangers of bioterrorism. A message from Ayman al-Zawahiri to his deputy on April 15, 1999, noted that ''we only became aware of them [BW] when the enemy drew our attention to them by repeatedly expressing concerns that they can be produced simply with easily available materials.''34 (In a similar vein, terrorism expert Brian Jenkins of the RAND Corporation has been at pains to point out that, ''We invented nuclear terror.'')35 If in the coming decades we do see a successful attempt by a terrorist organization to use BW, blame for it can be in large part pinned on the incessant scaremongering about bioterrorism in the United States, which has emphasized and reinforced its desirability to terrorist organizations.

No bioterrorism — four failed incidents disprove and future attacks are unlikely.

Leitenberg 9 — Milton Leitenberg, Swedish Institute of International Affairs and the Center for International Studies Peace Program at Cornell University, and he has been a Senior Fellow at CISSM, 2009 ("THE SELF-FULFILLING PROPHECY OF BIOTERRORISM," Nonproliferation Review, March, Available Online at: http://cns.miis.edu/npr/pdfs/161_review_leitenberg.pdf, Accessed: 7-27-2015)

Finally, the history of attempts by non-state actors to develop or use biological agents has been remarkably limited. The significant episodes are all well known, and Clark, a research scientist and professor of immunology, briefly summarizes them in Bracing for Armageddon? The first was the use of

Salmonella, a bacterium that causes diarrhea, in the United States in 1984 by the Rajneeshshee cult, in The Dalles, Oregon, in a failed attempt to influence a local election. The second was Aum Shinrikyo's 19901993 failed effort to obtain and culture strains of Clostridium botulinum and Bacillus anthracis and disperse the resulting products. The group never succeeded in obtaining a pathogenic strain of either organism, and its culturing and dispersal efforts also came to naught. The third was the effort by Al Qaeda in Afghanistan between 1997 and 2001 to obtain a pathogenic culture of B. anthracis and to initiate work with the organism. Once again, the effort failed, as the organization was unable to obtain a pathogenic strain of B. anthracis. Al Qaeda's work was incompetent in the extreme and had barely advanced beyond early speculation by the time a joint allied military team raided and occupied its facilities in December 2001. The last significant episode was the dispersal of a purified, dry powder preparation of B. anthracis sent through the U.S. postal system to multiple addressees in September and October 2001*the so-called Amerithrax incidents. The Al Qaeda and the Amerithrax events are the most significant. The barely initiated, rudimentary, and failed attempt by Al Qaeda is important because of the nature of the group*a true international terrorist organization with a wide organizational THE SELF-FULFILLING PROPHECY OF BIOTERRORISM 99 structure, demonstrated initiative, and a record of successful, albeit conventional, attacks. The Amerithrax attacks are significant because of the nature of the material prepared and the perpetrator; the mailings demonstrate what a professional is capable of, but identifying the perpetrator was essential to explaining who could make such a product and under what conditions. In other words, identification would provide critical insight into both the likelihood of international terrorist organizations developing similar capabilities and how quickly such a threat could emerge. It is notable that since the interruption of the Al Qaeda BW project in December 2001, there are no indications that the group has resumed those efforts.24 (Accounts of Al Qaeda offshoot groups in the United Kingdom, France, or Iraq producing ricin are all spurious.) There have also been no publicly identified indications that any other international terrorist group has initiated the development of BW agents in the intervening years

2AC — Public Health Surveillance Bad

Public health practices ignore privacy in the interest of national security —this undermines democracy and hurts disease prevention.

Bayer and Fairchild 10 — Ronald Bayer, Professor, Center for the History and Ethics of Public Health, Columbia University's Mailman School of Public Health, and Amy Fairchild, Associate Professor and Chair, Department of Sociomedical Sciences, Columbia University's Mailman School of Public Health, 2010 (" When Worlds Collide: Health Surveillance, Privacy, and Public Policy," Social Research, Vol 77, September 1st, Available Online at: http://web.a.ebscohost.com.turing.library.northwestern.edu/ehost/pdfviewer/pdfviewer?sid=134f036b-3bfa-496f-a0d2-6b5df6c6260b%40sessionmgr4002&vid=1&hid=4104, Accessed: 7-27-2015)

And yet privacy advocates remained uneasy about the apparent political consensus over public health surveillance. They argued that good public health and the protection of privacy need not be in tension. Indeed, proponents of privacy in the latter part of the twentieth century have invoked instrumental claims when warning of the consequences of intrusions on what they viewed as sacrosanct domains. They have When Worlds Collide 925 sought to demonstrate that limits on the confidentiality of the doctorpatient relationship would subvert not only clinical care but also the pubhc's health. In the context of anxieties about how national security considerations could narrow the purchase of privacy, Janlori Goldman wrote that The codification of vague promises that power will not be abused and good judgment will be employed ignores the historical lesson that during a crisis, privacy and civil liberties are given little weight in the balancing of competing law enforcement, national security, and commercial interests. Preserving public health and protecting privacy can— and must—go hand in hand (Goldman 2005:526). But alarm has extended beyond the issue of national defense. There are anxieties, too, about efforts to draw clinical medicine and public health into a closer relationship. Arguing for the most stringent protections of surveillance data, privacy advocates assert that it essential to address the question of whether an effective public health program always requires the use of personally identifiable reports. The conventions of public health surveillance dating firom the beginning of the twentieth century need not determine how we confront the challenges of the twenty-first. Finally, there were, they have argued, no necessary trade-offs between a robust commitment to privacy and good public health practice. An alternative view, one that we hold, sees the tension between privacy and the need to know on the part of public health agencies as enduring even if it is not always expressed in bitter controversy. On this view, it is the open recognition of tensions that holds out the prospect for recognizing both the claims of privacy and public health. **The vitality of democratic communities requires an ongoing effort** to negotiate and renegotiate the boundaries between privacy, society's "limiting principle," and public health, which at its best has sought to expand the role of govemment **as a guardian against disease and suffering**

AT: SOX PIC

SOX PIC Aff Answers

Movement in Squo prove the CP Non-Inherent

Loten 11, (Bill Seeks to Ease Sarbanes-Oxley for Small Firms, http://blogs.wsj.com/in-charge/2011/09/26/bill-seeks-to-ease-sarbanes-oxley-for-small-firms/is a New York-based reporter for The Wall Street Journal, where he writes about startups, entrepreneurship and small business)

In a bid to lower barriers to capital for fast-growth companies, **House legislation unveiled last week would allow small businesses to opt out of costly internal-control measures under the Sarbanes-Oxley Act for up to 10 years after going public.** The Startup Expansion Investment Act, introduced by Rep. Ben Quayle (R., Ariz.), would temporarily exempt companies with market valuations below $1 billion from section 404 of the act. **The current market-cap threshold to be exempt is $75 million**. **Small firms have long complained about onerous compliance costs under the act, known as SOX,** which was put in place nearly a decade ago after widespread accounting scandals erupted at Enron, WorldCom and other large, publicly-traded companies. Among other measures, section 404 requires all public companies to seek an outside audit of internal controls, **adding as much as $1 million in costs for small companies**, according to a recent survey by Protiviti, a global risk and business consulting firm. **Since its inception, delays and temporary reprieves have largely shielded these firms from the act's tougher measures.** Quayle's bill would create a permanent 10-year window. "Access to the public capital markets is vital for a company to expand and hire new workers," Quayle said in a statement. Similar measures were recently proposed in the Startup Act of 2011, unveiled in July by the Ewing Marion Kauffman Foundation, a Kansas City, Mo., research group. Robert Litan, the group's vice president of research, said in a statement that Quayle's bill was "**an important step as we try to increase the number of companies that go public**" and create jobs. Supporters of Sarbanes-Oxley say the law is necessary to protect shareholders from lax corporate accounting and fraud.

Turn – Small Corps. Exploit SOX by intentionally being valued under $75 Million

Gao 08, Unintended Consequences of Granting Small Firms Exemptions from Securities Regulation: Evidence from the Sarbanes-Oxley Act, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1014054, Associate Professor of Accounting at the University of Illinois at Chicago College of Business Administration)

Second, **we document a heretofore unrecognized consequence of SOX** – non-accelerated filers **keeping their public float below $75 million**. Prior studies suggest SOX can change a firm's costbenefit tradeoff of participating in U.S. public capital markets (Engel et al., 2007; Leuz et al., 2007; Piotroski and Srinivasan, 2007; Hostak et al., 2007; and Gao, 2007). Our results indicate that for **firms remaining public**, **SOX also altered their incentives to grow**. **Lower growth has social welfare implications if it affects employment, wealth creation, and real investment.** Finally, we provide additional evidence on the economic consequences of SOX and in particular, its Section 404 provisions on internal controls, for small public companies. **A common theme emerging from prior studies is that SOX more adversely affects small firms** (Engle et al., 2007; Leuz et al., 2007; and Piotroski and Srinivasan, 2007). Our findings add to this literature and are consistent with the view that Section 404 of SOX imposes net costs

AT: PCLOB Process CP

Solvency

Say No – 2AC

Congress will say no to the committee – previous rulings show no traction can be gained.

Schlanger, Henry M. Butzel Professor of Law, University of Michigan, 2015 Margo, ARTICLE: Intelligence Legalism and the National Security Agency's Civil Liberties Gap, 6 Harv. Nat'l Sec. J. 112

The PCLOB's two Republican appointees disagreed with the three Democrats both on the merits and on the Board's role. One wrote: This legal question will be resolved by the courts, **not by this Board,** which does not have the benefit of traditional adversarial legal briefing and is not particularly well-suited [*169] to conducting de novo review of long-standing statutory interpretations. We are much better equipped to assess whether this program is sound as a policy matter and whether changes could be made to better protect Americans' privacy and civil liberties while also protecting national security. 255 To be clear, the Democratic PCLOB members also addressed the policy considerations on their own merits, and urged that those considerations be implemented as new law. Having described the telephony metadata program as extending beyond current statutory parameters, the PCLOB emphasized that the solution was not simply shoring up FISA: The Board also recommends against the enactment of legislation that would merely codify the existing program or any other program that collected bulk data on such a massive scale regarding individuals with no suspected ties to terrorism or criminal activity. While new legislation could provide clear statutory authorization for a program that currently lacks a sound statutory footing, any new bulk collection program would still pose grave threats to privacy and civil liberties. 256 The telephony metadata program was insufficiently central to the counterterrorism enterprise to justify those threats, the Board argued. "Given the significant privacy and civil liberties interests at stake, Congress should seek the least intrusive alternative and should not legislate to the outer bounds of its authority." 257 It then proceeded to make several smaller gauge recommendations about operation of the telephony metadata program, presumably in case Congress rejected the first recommendation, and continued the program in existence. No experience facilitates evaluation of the PCLOB's effectiveness, but its 215 report is certainly adding to the current pressure for a new wave of intelligence reform. On the other hand, the independence exhibited by its first report may induce subsequent appointing Presidents to choose tamer members. The PCLOB's second report, about targeted surveillance of foreigners abroad, under FISA § 702, similarly looked at both law and policy. But on **this** one**, a divide among PCLOB members and inconsistent** [*170] **language** made the message much less clear. Much of Section 702 surveillance was appropriate, the report said. But: Outside of this fundamental core, certain aspects of the Section 702 program raise questions about whether its impact on U.S. persons pushes the program over the edge into constitutional unreasonableness. Such aspects include the scope of the incidental collection of U.S. persons' communications, the use of "about" collection to acquire Internet communications that are neither to nor from the target of surveillance, the collection of MCTs that predictably will include U.S. persons' Internet communications unrelated to the purpose of the surveillance, the use of database queries to search the information collected under the program for the communications of specific U.S. persons, and the possible use of communications acquired under the program for criminal assessments, investigations, or proceedings that have no relationship to foreign intelligence. 258 The Board declined to decide whether the 702 program was constitutional, statutorily authorized, or not. "[R]ather than render a judgment about the constitutionality of the program as a whole, the Board instead has addressed the areas of concern it has identified by formulating recommendations for changes to those aspects of the program." 259 It elaborated: Because the same factors that bear on Fourth Amendment reasonableness under a 'totality of the circumstances' test are equally relevant to an assessment based purely on policy, the Board opts to present its proposals for changes to the Section 702 program as policy recommendations, without rendering a judgment about which, if any, of those proposals might be necessary from a constitutional perspective. 260 The Board emphasized the room this approach opened to it. Constitutional avoidance, it stated: permits us to offer the recommendations that we believe are merited on privacy grounds without making finetuned determinations about whether any aspect of the status quo is constitutionally fatal, and without limiting our [*171] recommendations to changes that we may deem constitutionally required. 261 But other language the report used sounded rather more accepting. Rather than ducking the legal issues, on other pages it seemed that the Board was worried not whether the 702 program crossed the constitutional line, but whether it skirted a bit too close for comfort, while still remaining on the lawful side. For example: [C]ertain aspects of the Section 702 program push the entire program close to the line of constitutional reasonableness. . . . With these concerns in mind, this Report offers a set of policy proposals designed to push the program more comfortably into the sphere of reasonableness, ensuring that the program remains tied to its constitutionally legitimate core. This reading of the report as ratifying the legality (rather than declining to address the legality) of the 702 program was pushed by the Board's two Republicans, Rachel Brand and Elisebeth Collins Cook, each of them a former Bush Administration head of the Justice Department's Office of Legal Policy. 262 They emphasized in a separate statement that: The Board makes a few targeted recommendations to address concerns raised by . . . two aspects of the program. We stress that these are policy-based recommendations designed to tighten the program's operation and ameliorate the extent to which these aspects of the program could affect the privacy and civil liberties of U.S. persons. We do not view them to be essential to the program's statutory or constitutional validity. 263 Two members, Chair David Medine and former Judge Patricia Wald, opined in a separate statement that the recommendations were needed not merely to avoid a potential legal problem, but to solve both constitutional and statutory infirmities already extant: [W]e feel strongly that the present internal agency procedures for reviewing communications and purging those portions that are of no foreign intelligence value prior to use [*172] of the information are wholly inadequate to protect Americans' acknowledged constitutional rights to protection for private information or to give effect to the statutory definition of foreign intelligence information, which, as discussed below, provides a more stringent test for information relating to Americans. 264 Evidently, however, **they were unable to persuade their colleagues**, and their legal conclusions **were portrayed in media coverage as a dissent-type minority position**. Indeed, the Board was widely perceived as having blessed the program. The Washington Post, for example, summarized the report as "conclud[ing] that a major National Security Agency surveillance program targeting foreigners overseas is lawful and effective but that certain elements push 'close to the line' of being unconstitutional." 265 The fairer reading of the previously-quoted language of the report--that it avoided any determination on the legal question by an incompletely theorized agreement as to recommendations--received no play in the media. The PCLOB's ten recommendations relating to the 702 program **have not received nearly as much attention** as its 215 recommendations--**lacking the strong legitimating language of rights and compliance, its policy ideas seem not to be gaining much traction.**

Say No – 1AR

The counterplan won't get the aff passed –

1. Internal disagreements – differing ideologies taint the push by watering it down in partisanship and internal bickering.

2. Minority Position – even if the board is able to agree the plan is a good idea they'll be written off as being a dissent opinion and lacking in legitimacy and push.

That's Schlanger – Err aff – he does empirical analysis on the boards past efforts and concludes they all were failures – there is no reason why the board will be any more effective now.

3. And they lack funding to provide any teeth.

Anderson, J.D. Harvard Law, 2014 Tyler, ARTICLE: Toward Institutional Reform of Intelligence Surveillance: A Proposal to Amend the Foreign Intelligence Surveillance Act 8 Harv. L. & Pol'y Rev. 413

Many critics of the act have already suggested a watchdog agency. For example, Jack Balkin has argued that new legislative and judicial oversight based on "prior disclosure and explanation and subsequent regular reporting [*431] and minimization" 119 should be coupled with the creation of a new, independent agency charged with oversight. 120 Balkin describes such an agency as "a cadre of informational ombudsmen within the executive branch--with the highest security clearances--whose job is to ensure that the government deploys information collection techniques legally and nonarbitrarily." 121 This would heighten independent oversight and ensure congruence between the spirit and letter of the FAA and the FAA's application. Congress designed the Privacy and Civil Liberties Oversight Board (PCLOB) to perform **just such a function** following public outcry surrounding the passage of the PATRIOT Act, and later granted it independent status; **however, as of today the PCLOB still has little teeth** (for reasons **including its historical lack of funding**). 122 In fact, the PCLOB itself recently suggested that it **requires more access to information to adequately perform its job**. 123 Even before the Snowden disclosures, several critics of FISA had already suggested the PCLOB be strengthened so that it could effectively monitor intelligence surveillance activities. 124

4. Even Obama sidelined the group

Ackerman, 2014 Spencer, The Guardian Correspondent, "NSA surveillance: privacy board denies being sidelined by Obama" 1/16/2014 http://www.theguardian.com/world/2014/jan/17/nsa-surveillance-privacy-board-denies-being-sidelined-by-obama

Additionally the PCLOB has been **overshadowed by a surveillance review panel Obama handpicked in August**, whose recommendations have **captivated a Washington debate the PCLOB has yet to influence** – and one of those recommendations was to replace the PCLOB with a more institutionally powerful organization. "It appears as if the president is **thumbing his nose at the PCLOB's recommendations**," said Angela Canterbury of the Project on Government Oversight, a watchdog group. Julian Sanchez**, a privacy researcher at the Cato Institute,** said: "The timing here really seems **like a bit of a slap to the PCLOB**; you would think if only for the sake of appearances the White House would have waited a few weeks for the publication of their full analysis before announcing a policy agenda. "But the president may have decided it would be even more awkward to announce the rather flaccid reforms we've been led to expect after two of the government's own expert panels have concluded a more serious overhaul is needed." While the PCLOB gave Obama and Biden their recommendations about bulk domestic phone records collection and the Fisa court, the board **did not advise the president about its recommendations on the NSA's foreign-directed mass surveillance** under Section 702 of the Fisa Amendments Act. That surveillance dragnet – which includes communications between foreigners and Americans, and through which the NSA has authority to search for Americans' identifying information – will be the subject of a follow-on report from the PCLOB. Medine said the board still did not have a publication date. "When I say we're going to turn to 702 it's not that as if we're turning from scratch, it's based on the study, the research, the input we've received. We'll turn to the 702 report as soon as we finish the 215 report," Medine said, using a bureaucratic shorthand for mass domestic phone metadata collection. **The PCLOB has had a rocky first decade**. Despite being created in 2004 as a post-9/11 intelligence reform the board has not done any substantive work until this year, **struggling with independence from the White**

House and persistent vacancies that have left it unable to function as intended. "It's just been a total frustration," former New Jersey governor and 9/11 commissioner Tom Kean, one of the architects of the board, said in 2012 for a New York Times story about the board's "troubled life".

5. And if their politics links are true then it proves that congress will be too polarized and anti-plan to pass it. And cross apply all of this to the politics link debate – say no is a reason why it won't alter the political landscape.

6. The group is a sham – it'll just provide cover for the fed.

Moran, 2013 Rick, American Thinker Correspondent, "Obama to talk to sham privacy board about NSA snooping" 6/21
http://www.americanthinker.com/blog/2013/06/obama_to_talk_to_sham_privacy_board_about_nsa_snooping.html

The Hill has the background on the Privacy and Civil Liberties Oversight Board (PCLOB), a group that was created 8 years ago and just last month sawit's 5th and final member confirmed. **Does this sound like a sham to you?** The panel was first suggested in the 2004 report by the 9/11 Commission, and was first launched that year. In 2007, the group was granted independent powers, but both Presidents George W. Bush and Obama resisted nominating members for years. **The panel operated without offices or staff for years**, and the fifth and final member -- Chairman David Medine -- **was only confirmed last month**, by a narrow 53-45 party line vote. **The board still lacks a website**, and until Medine's appointment, had only two federal staffers pulled from other government agencies. It had held only two meetings before a briefing earlier this week, the first since the top-secret NSA programs were revealed by 29-year old defense contractor Edward Snowden. Still, the White House believes that meeting with the panel can help assuage privacy concerns voiced since the revelation of the NSA programs. The senior administration official said the board's functions included "ensuring that the need for such actions is balanced with the need to protect privacy and civil liberties." In an interview with the Associated Press, Medine said senior officials at the NSA, FBI, and Justice Department explained how some of the NSA programs functioned in a meeting with the five panelists Wednesday. "Based on what we've learned so far, further questions are warranted," he told the wire service. Medine also said the group plans a public meeting on July 9, and will publish a report that includes analysis of and recommendations for the NSA programs. By law, the board is required to report to Congress not less than semiannually. **This is a crock. Obama knows why this board was created - to give cover to the administration - and will use it to "assuage" the fears about privacy from American citizens. Just one more dishonest attempt to excuse the massive violations of privacy represented by the surveillance programs.**

7. Empirically proven the board will just get written off

Saenz, 2014 Arlette, abcnews correspondent, "White House Rejects Board Urging to Halt Surveillance"
http://abcnews.go.com/blogs/politics/2014/01/white-house-rejects-board-urging-to-halt-surveillance/

The White House **sharply disagreed today with a report from an oversight board that concluded the government's surveillance program is illegally collecting phone records** of Americans and recommended the practice be discontinued. "**We simply disagree with the board's analysis on the legality of the program**," White House Press Secretary Jay Carney said. The report by the Privacy and Civil Liberties Oversight Board comes one week after President Obama introduced his suggestions for reforming the National Security Agency's surveillance practices, including transferring the storage of metadata away from the government. The president met with the Privacy and Civil Liberties Oversight Board in the weeks prior to his final decision. The PCLOB's majority maintains that the Bush and Obama administrations **have subverted the law**, applying a section of the PATRIOT Act which the administration claims allows the NSA to collect and store vast troves of data on Americans' phone calls. What the government has been doing, the panel says, "bears almost no resemblance" to the text of Sec. 215 of the PATRIOT Act, and is therefore illegal.

8. Commissions on already politicized issues don't solve and cause greater backlash --- empirically proven

Campbell, 2002 – Colton C. Campbell, Associate Professor of Political Science at Florida International University, visiting Professor of Political Science at American University, 2002, Discharging Congress: Government by Commission, p. 134

The creation of an ad hoc commission should be the outcome of a wellconsidered decision that is better suited to resolving the policy problems in the field of its assignment than is the normal legislative process. In choosing to delegate, Congress should closely examine the advantages and disadvantages of using ad hoc commissions and check that the applicability of using a commission has been established with reasonable confidence.20 Many in Congress look to the Base Closure and Realignment Commission as a template. But the base-closing process cannot be replicated across all issues. Government by commission is not a panacea. It is important to distinguish between those commissions set up to recommend solutions to specific problems and those whose mandates are so broad that **they can succeed only if lawmakers have already begun to form a consensus.**21 **Sharply divided reports do little to resolve problems**. The National Economic Commission (1988–1989), modeled on the National Commission on Social Security Reform (1981–1983), was expected to produce bipartisan recommendations on how to reduce the federal budget deficit. Its members divided along partisan lines and issued a majority report accompanied by a sharp dissent from the minority. **The result was a continuation of previous conflict**.22 The Pepper Commission (named after Representative Claude Pepper [D-Fla.], an advocate for the elderly) was intended to produce a consensus on reform of the American health care system. Its members could not reach a consensus and issued a divided report, which **did nothing to promote either consensus or action in Congress**.23

9. Congress says no---Commission recommendations don't get adopted unless there's already consensus about what policy changes need to be made

Mayer 7 – Kenneth R. Mayer, Professor of Political Science at the University of Wisconsin-Madison, December 2007, "The Base Realignment and Closure Process: Is it Possible to Make Rational Policy?," online: http://users.polisci.wisc.edu/kmayer/Professional/Base%20Realignment%20and%20Closure%20Process.pdf

The second question is whether the BRAC model can succeed in other policy areas, where Congress has been similarly unable to act. The success of the BRAC process has spurred many efforts to replicate it on other controversial issues. In 1999, I argued that **independent commissions have a poor record;** there have been **very few instances where they have actually resolved legislative impasses** (Mayer 1999).5 The problem is that **legislators are usually reluctant to delegate substantial policy authority,** at least without strong procedural safeguards and ongoing monitoring. The conditions that made BRAC successful were the consensus on the goals, agreement about what precise policy steps were necessary, and the narrow range (at least initially) of the policy making authority. These conditions are rarely present, and clearly do not apply to, say, efforts to create BRAC-like commissions on entitlement reform, **where there is intense controversy over both goals and specific policies.**

10. Any risk that the plan won't be adopted means that there is a 100% risk of the affs impacts which outweigh the net benefit.

PCLOB Says No – 2AC

The board won't agree to push the plan – other agencies will interfere and prevent them from crafting independent decisions.

Davis, Previous member of the PCLOB, 2007 Lanny, Lawyer, The Hill Correspondent, ""Why I Resigned From the President's Privacy and Civil Liberties Oversight Board — And Where We Go from Here" https://thehill.com/blogs/pundits-blog/the-administration/34214-why-i-resigned-from-the-presidents-privacy-and-civil-liberties-oversight-board--and-where-we-go-from-here-

I had thought that the hybrid or even contradictory nature of that compromise could be reconciled if senior levels of the White House — up to and including the highest level — **insulated the Board and insisted on three words: "Leave them alone."** But I had **underestimated the culture of the vast array of alphabet soup agencies and bureaucracies in the national security apparatus that would resist that concept of independence**, or at least be unable to **resist the temptation to control and modify the Board's public utterances** so long as they were able to — i.e., so long as the Board was seen as part of the White House staffing structure. This phenomenon of control and management by the White House of entities considered to be part of the White **House is neither surprising** nor that unique to this particular Republican administration. Those who view this as a partisan issue to criticize a Republican administration and expect it would be completely different under a Democratic one are **missing the larger point**. I disagreed strongly with the view that just because the PCLOB was part of the White House it had to be part of White House management and control, although I do not question the motives of good faith of those who had that opinion. I was heartened to learn that the current White House counsel, Fred Fielding, who was a member of the 9/11 Commission and had supported an independent PCLOB, agreed at least in part that the Board's report to the Congress should not be substantively modified by White House or administration officials. And as a result Mr. Fielding admirably supported restoration of those deletions, some of which was also supported by other Board members. But the central question remains: Can this hybrid structure work? Fred Fielding cannot be expected to spend all his time intervening on behalf of the Board. And the White House culture of control and management of **the Board is likely to continue** so long as the Board continues to be part of the white House. It is possible, I suppose, that it could work if the president himself insisted on the Board's independence, i.e., if he put out an executive order confined to those three words, "Leave them alone." **But even then it is possible to imagine White House staff and executive agency officials would still find a way to try to influence the Board, as still part of the White House, while still believing they were "leaving the Board alone."**

CP Can't Solve – 2AC – Big Stick Aff

The CP isn't enough – it won't create effective restrictions.

Schlanger, Henry M. Butzel Professor of Law, University of Michigan, 2015 Margo, ARTICLE: Intelligence Legalism and the National Security Agency's Civil Liberties Gap, 6 Harv. Nat'l Sec. J. 112

Committee members (Senators) evidently believed that the congressional disclosure it urged **would facilitate liberty as well as accountability, allowing future lawmakers to intervene where salutary**, using either soft or hard methods, to appropriately balance liberty and security. As Loch Johnson- first Senator Church's special assistant, then the first staff director of the House Subcommittee on Intelligence Oversight, and then an intelligence scholar--has summarized, "The purpose of these new arrangements was to prevent a further erosion of American liberties at the hands of the intelligence agencies." 293 **Congressional disclosure has not in practice fulfilled these hopes**. New disclosure norms have indeed shifted information, power, and political risk to the White House and the Congress 294 (although the mandate [*179] operative since 1980, that the Intelligence Community "keep the congressional intelligence committees fully and currently informed of all intelligence activities, other than a covert action" 295 **has not always been scrupulously honored**). But obstacles to development of legislative expertise **and the ordinarily low political salience of intelligence**--both themselves rooted in secrecy--have meant that congressional interventions **have not played much of a civil-liberties-protective role**. 296 Only once, in 1994, has a statute unambiguously increased procedural protections against surveillance--and that amendment was passed in large part to shore up executive authority. 297 By contrast, the executive branch has been able, several times, to elicit congressional **acquiescence for statutes to expand surveillance authority**--the USA PATRIOT Act, the Protect America Act, [*180] and the FISA Amendments Act. 298 (The last of these included some protections along with the expansion of authority. 299) It is possible that the Snowden disclosures have shifted the political economy enough for Congress to pass a rights-protective measure in response, but the current prospects of serious legislated reform are dim and getting dimmer. 300 . Thus whatever the Church Committee's ambitions or expectations for their congressional successors, congressional disclosure has increased intelligence accountability but has **not so far provided an impetus for responsive additional civil liberties protections**. The civil liberties gap left by the limited ambit of constitutional law, and of FISA, **remains**. Present efforts in Congress to update the surveillance rules to be more liberty-protective in the era of big data may succeed and **align "can" with the reformers' ideas about "should"**--for a while and for high-salience issues. But even if this happens**, it is inevitable that for issues that have not made it into the press, or for issues in the future**, there will always be a disjunction **between what is legal and what even members of Congress themselves would find to be,** on full and public consideration, appropriate policy. **Areas of surveillance practice that have not so far leaked--or in which executive practice changes--will remain, and so, concomitantly, will at least some civil liberties gap.**

CP Can't Solve – 1AR – Big Stick Aff

The CP won't be enough to facilitate effective reform – absent the plan the NSA will sidestep the cp's restrictions which means they can't solve any of the aff – that's Schlanger. And NSA secrecy will undermine the ability for the PCLOB to garner sufficient info to cause congressional legislation.

Setty, Professor of Law and Associate Dean for Faculty Development & Intellectual Life, Western New England University School of Law, 2015 Sudha, SYMPOSIUM: Surveillance, Secrecy, and the Search for Meaningful Accountability, 51 Stan. J Int'l L. 69

B. Congressional Efforts at Oversight and Accountability Enforcement The extent of congressional knowledge regarding the NSA Metadata Program **is not fully known** to the public and has been the subject of significant debate. Nonetheless, even assuming that Congress was sufficiently informed as to the potential reach of the PATRIOT Act with regard to surveillance 59 and, therefore, that the statutory authority for the bulk data collection and storage was sound, **the ability of Congress to effect significant and meaningful ex post oversight appears to be severely limited.** Historically, congressional hearings and investigations have been a powerful tool to rein in executive branch overreaching. 60 However, it seems that the extreme secrecy surrounding the NSA surveillance programs **undermined the efficacy of these oversight powers**, to the point that they may have been reduced to an **ersatz form of accountability**. One prominent example stems from a Senate oversight hearing on March 12, 2013, in which Senator Ron Wyden specifically asked Director of National Intelligence James Clapper if the NSA was systematically gathering information on the communications of millions of Americans. 61 **Clapper denied this**, yet subsequent revelations confirmed that the broad scope of the data collection included metadata for telephonic communications, as well as content data for emails, texts, and other such writings. 62 After public discussion of the discrepancy in his testimony, Clapper commented that he gave the **"least most untruthful" answer possible under the circumstances**. 63 Senator Wyden expressed **disappointment and frustration that even while under oath at an oversight hearing, Clapper misled the Senate**. 64 The ability for congressional oversight is further hampered by a general lack of access to information about the details of the NSA Metadata Program 65 and [*82] **lack of ability to discuss publicly whatever knowledge is shared with Congre**ss. 66 In fact, it remains unclear whether senators, including Dianne Feinstein, Chair of the Senate Intelligence Committee, knew of the lapses in NSA procedure until **after such information was leaked to news sources**. 67 Further revelations indicate that administration statements made to Congress even after the Snowden disclosures were not entirely accurate. 68 These examples are not determinative, but taken together**, they raise significant doubt to the extent of accurate information regarding surveillance programs being made available to congressional oversight committees, and whether the oversight committees can function as effective accountability measures 69 without the benefit of illegally leaked information such as the Snowden disclosures.**

Recent reforms prove – the PCLOB won't be effective at drafting meaningful change because its bought out by corporate interests – only the plans full fledged reform can solve.

Blunden, 2/9/2015 Bill, Alternet correspondent, "Clear Proof Obama's Surveillance Oversight Board Is a Pathetic Sideshow" http://www.alternet.org/news-amp-politics/clear-proof-obamas-surveillance-oversight-board-pathetic-sideshow

In the aftermath of the Snowden revelations President Obama made a big show of ordering changes to how American spies operate. **Sadly, the reforms implemented by the U.S. intelligence community reveal that White House officials have opted for a bunch of cosmetic gestures** as the NSA adds 2,880,000 square feet of real estate and Obama openly boasts to Chinese leaders about tripling American cyber forces to 6,000 by 2016. On the whole not much has changed. Government spies

are still bulk collecting telephone metadata and international communiqués. **Spies be spying, that's what they do.** To see why this is the case, let's dig into some details. Specifically, check out the reform scorecard written up by the Privacy and Civil Liberties Oversight Board, an agency within the executive branch. The board recently published its evaluation of how the government instituted its recommendations regarding NSA spying. Over a year ago the board made a series of proposals for amending programs based on Section 215 of the Patriot Act and Section 702 of the Foreign Intelligence Surveillance Act. Section 215 covers telephone metadata collection and Section 702 deals with intercepting international communications that cross American borders. The board provided a summary of its recommendations in table form detailing the measures that were instituted. While there have been modest steps taken to address issues like transparency and introduce so-called privacy "safeguards" what's really interesting are the suggestions that were largely ignored. The oversight board reports that the recommendation to "End the NSA's Bulk Telephone Records Program" hasn't been implemented, and neither has the recommendation to "Develop a Methodology to Assess the Value of Counterterrorism Programs." **What we're witnessing is Reform Theater, a sort of kabuki act intended to provide the impression that, in the wake of Snowden's revelations, something is being done.** Officials create the perception of action by occupying themselves with narrow aspects of mass interception and this is intentional. **They wouldn't dare do anything substantial that would threaten the gears of the surveillance state. Instead they'll leave Big Brother's infrastructure in place and dither around the edges. Nor would they dare establish metrics to quantify the usefulness of mass interception. Doing so would only expose U.S. counter terrorism initiatives for the frauds that they are, leading the public to question the NSA's global panopticon or the FBI's habit of cultivating terrorism plots.** Whose national security do these secret programs safeguard? Remember J. Edgar Hoover's "Do Not File" stash or Richard Nixon's "Enemies" list? Recall how Truman wrote his wife about Hoover, lamenting that "all Congressmen and Senators are afraid of him." Noam Chomsky spells it out: "Policy must assure the security of state authority and concentrations of domestic power, defending them from a frightening enemy: the domestic population, which can become a great danger if not controlled." Chomsky's findings are in line with the conclusions of the NSA's own Snowden: "These programs were never about terrorism: they're about economic spying, social control, and diplomatic manipulation. They're about power." The NSA is aiming for "**global network dominance**," a term no doubt derived from the Pentagon's notion of "**full spectrum dominance**." The hyperbolic rhetoric of the Department of Defense in turn **reflects the broader agenda** described by Snowden and Chomsky, **a pathological desire to maintain control both at home and abroad.** Who benefits? Profound sources of influence outside of government; corporate factions that transmit their wishes through the American "Deep State." Anyone who doubts this should note how politicians eagerly lined up to audition for the Koch brothers' network of some 300 donors, an organization that has budgeted close to a billion dollars for the 2016 election cycle. Why did Mitt Romney drop out of the 2016 presidential race? Because funders denied their support. All told there are over 1,300 billionaires in the United States and the politically minded members of this demographic—both Democrats and Republicans—**have essentially succeeded in state capture**. The two-party system of the United States is actually a one-party system: **the corporate party. And U.S. spies are the Praetorian Guard of these "deciders."** So if it seems like nothing on the whole is being done to rein in mass interception, that assessment would be accurate. The NSA's all-seeing Eye of Providence, and the even larger corporate surveillance apparatus that supports it, **are incredible tools of control. The easiest way for leaders to manage public outcry is to put on an elaborate performance of mock reform. It appeases Main Street without offending the deep sources of wealth and power that tread the corridors of the Deep State.**

CP Can't Solve – 2AC – Sarbanes-Oxley

The counterplan doesn't solve the aff –

1. Authority – the PCLOB doesn't have authority over the plan, the PCAOB does – means they won't be able to get the plan adopted.

2. Empirically commissions won't solve – they're perceived as weakening US competitiveness.

Romano, Professor of Law at Yale, 2008 Oscar, "The Sarbanes-Oxley Act at a crossroads" http://www.rieti.go.jp/en/events/08062501/pdf/Romano_Paper.pdf

Only a few years post-enactment, however, widespread dissatisfaction has **been expressed** over the **regulatory burden imposed by SOX.** In particular calls for rolling back the most burdensome provision of SOX have been occurring with increased frequency, **receiving the endorsement of prominent government and private commissions**. The commission's recommendations have been **informed by a perceived weakening in the competiveness of US capital markets and the disproportionate impact of SOX on smaller public firms.** Their reports point, with varying degrees of emphasis, to a significant decrease in the number of new foreign listings and public offerings on US exchanges, and a commensurate increase in foreign delistings and domestic going private transactions, post-SOX.

3. Doesn't solve the economy internal links – certainty is key to resolve investor confidence.

CCIQ 12 Chamber of Commerce and Industry, "Businesses require certainty to grow confidence," https://www.cciq.com.au/news/businesses-require-certainty-to-grow-confidence/

According to the latest Commonwealth Bank CCIQ Pulse Survey of Business conditions, **business confidence** in Queensland has been **severely impacted** by **uncertainty** as a result of national and global economic concerns. Following the surge in business confidence reported in March, the CCIQ Pulse Survey of Business Conditions June quarter results have highlighted just how **fragile** the **confidence** of business owners and operators is as they face the challenges of a weakening two speed national economy, overseas uncertainty, a high Australian dollar and increased costs linked to the carbon tax, wage increases and productivity losses. CCIQ Chief Executive Officer Stephen Tait commented, "Following the state election in March, Queensland businesses expressed growing optimism as the incoming state government promised to stimulate the Queensland economy, reduce business costs and ease the burden of regulation." "As you work through the latest findings, it is clear from the responses we have received from businesses across the state, that the uncertainty in national and global markets is key to understanding the drop in confidence. "Time and time again, businesses were highlighting uncertainty over the impacts of the carbon tax, mineral resources rent tax, business operating costs and a continued drop off in consumer spending as the reasons for loss of confidence. "What **businesses** in Queensland **really require** is a period of **economic certainty** that will enable them to plan their future with confidence and security."

CP Can't Solve – 1AR – Sarbanes-Oxley

The counterplan doesn't solve the aff –

1. Influence – the PCLOB won't be able to lobby – they don't know anything about the act and won't be taken seriously.

2. Can't resolve our internal links even if they get the plan passed –

a) Perceptions – commissions set off the perception that the US economy is in the tanks – causes investor pullout which is key to solve the aff – that's Romano.

b) Certainty – businesses won't be able to compete due to regulatory uncertainty over the plan – that's CCIQ

3. Congress won't listen to commissions input on Sarbanes-Oxley – empirically proven

Bhattacharya, 2003 Utpal, briefly noted correspondent, http://object.cato.org/sites/cato.org/files/serials/files/regulation/2003/10/v26n3-noted.pdf#page=1

Without awaiting the Commission's recommendation, Congress included in the Sarbanes-Oxley Act a provision making ceo and cfo certification mandatory for all publicly listed firms. The Sarbanes-Oxley Act, which was enacted in July 2002, put teeth in the requirement by making the penalty for willfully certifying false earnings reports punishable by a maximum penalty of 20 years in prison, a fine of $5 million, or both.

Delay – 2AC

The counterplan results in mass delays – nobody wants to listen to it.

Stanley, Senior Policy Analyst, 2013 Jay, ACLU https://www.aclu.org/blog/small-significant-privacy-oversight-institution-almost-reality-after-pathetic-story-delay

Despite the **mouse-versus-elephant disparity** in scale between the PCLOB and the security establishment it is charged with overseeing, **the path to its creation is a pathetic story of foot-dragging and delay**. That painfully long road reflects **not only the extreme partisan gridlock of the times**, but also **a distinct lack of will within the executive branch to stand up a truly independent oversight body that could risk making the administration look bad**, as well as the Bush and Obama administrations' general deference to the interests of the national security establishment over checks and balances and civil liberties protections.

Delay – 1AR

The counterplan causes mass delay even if it can get the plan done –

a) Mouse vs elephant disparity – the PCLOB will have to fight an uphill battle to even get the plan adopted – that'll take years of lobbying

b) Foot-dragging – gridlock will cause the board to be pushed onto the backburner – delays in setting it up prove.

CP's delayed by years

Campbell, 2002 – Colton C. Campbell, Associate Professor of Political Science at Florida International University, visiting Professor of Political Science at American University, 2002, Discharging Congress: Government by Commission, p. 1-2

Generally speaking, a commission's mandate includes a termination date **more than three years after** the date of creation or at a specified date upon submittal of its recommendations or alternatives, which is anywhere from thirty to ninety days after its final report to Congress. Commissions come in various sizes and shapes, with membership ranging anywhere from nine to twenty commissioners, twelve to fifteen being the normal number of members. The final number of commissioners will generally accommodate equal appointments by the majority and minority in both the House and Senate as well as by the president.2

Links to Politics

Links to Politics – 2AC

The cp still links to ptx – even if congress likes the commission it'll ignore it and still be drawn into debates.

Chapman, 2014 Steve, member of the Tribune's editorial board, "Bipartisan commissions are a waste of time Politicians set them up but don't listen to them" 1/26 http://articles.chicagotribune.com/2014-01-26/opinion/ct-oped-chapman-0126-20140126_1_privacy-board-civil-liberties-oversight-board-president-barack-obama

In the polarized atmosphere of Washington, there is one thing that both parties can usually agree on: convening independent, bipartisan panels of respected experts to devise solutions to tough problems. **Actually, there's one more thing they can usually agree on: ignoring what those groups recommend.** Blue-ribbon panels were much in the news this past week. The Presidential Commission on Election Administration came out with a report making the case for expanding early voting options, allowing online voter registration and eliminating long lines at the polls. The little-known Privacy and Civil Liberties Oversight Board issued an analysis concluding that the National Security Agency's domestic phone records surveillance program is illegal and ineffectual. **Know what else is ineffectual? Recommendations from groups like these.** Perhaps the most famous is the 2010 National Commission on Fiscal Responsibility and Reform, known as Simpson-Bowles. It is habitually celebrated by Republicans and Democrats who have **somehow managed to avoid enacting most of the measures it proposed.** Likewise, the 2006 Iraq Study Group got positive reviews when it called for a phased withdrawal of U.S. forces from the country**. But in the nation's capital, positive reviews pack all the firepower of a T-shirt cannon.** President George W. **Bush did pretty much the opposite of what the study group proposed.** The lesson of these boards is that if they endorse what the crucial players in Washington already want to do, **their proposals will come into being, and if not, they won't. But we could cut out the middleman and ask Congress and let our leaders adopt their preferred policy without waiting for recommendations they could predict in advance.** The privacy board was particularly **superfluous**, because it was replowing ground freshly tilled by President Barack Obama's Review Group on Intelligence and Communications Technologies. That group also urged major changes in the National Security Agency programs. Obama responded by accepting a few of the ideas, **rejecting others and generally doing his best to please everyone.** Even his acceptances were **hedged**. One key proposal was to require the NSA to get judicial approval to gain access to the database. But the president made only a vague commitment to allow records "to be queried only after a judicial finding or in the case of a true emergency." And the White House press office assures me this commitment applies only during a 60-day "transition period," with no promise it will be permanent. **The privacy board's conclusions are likely to have even less effect on policy**. This group believes the mass collection of phone data is illegal under federal law? It uncovered not "a single instance involving a threat to the United States in which the telephone records program made a concrete difference in the outcome of a counterterrorism investigation"? So what? If a bunch of experts say one thing and the spies say the opposite, **you can expect the president to side with the spooks a lot more often than not.** A similar problem exists with respect to the elections panel, which obviously did its best to decide what changes would be fair, reasonable and good for democracy. But we need this group to tell us all that like we need it to tell us when the sun is shining. **The knowledge is present. What is absent among many elected representatives is the desire to act on it.** The decision of many states to reduce voting opportunities and reject electronic registration was not an act of carelessness or ignorance. It was typically **part of a deliberate Republican strategy to curb the voting strength of racial minorities, poor people, immigrants and students** — in other words, people who have the regrettable tendency to vote Democratic. **Noble ideals are no match for political self-interest.** That's why setting up independent bodies to assess the evidence and reach rational conclusions about policy is **usually a waste of time and effort. The documents are a glorious feast for editorial writers but a bowl of day-old dog food to the people who make policy.** As a rule, **the function of the panels is either to delay action on issues lawmakers want to duck or to provide a harmless outlet for the critics of policies that are set**

in stone. Ultimately, **they're the equivalent of those participation trophies handed out to every kid who plays in a sports league. They look nice on the shelf, but you can't take them seriously.**

Links to Politics – 1AR

The counterplan links to politics –

1. The board is perceived as superfluous and won't be able to garner influence over congress to create bipartisanship.

2. Ideology trumps – even if the formation of the board is Bipart, congress still defers to self-ideology over the board's recommendations – err aff – the National Commission on Fiscal Responsibility and Reform commission proves – even when a board is hailed as popular congress views them as day-old dog food.

3. Stall-tactics – reviews over the plan will just stall the debates – not alter them.

That's all Chapman. Err aff – even if it's a news source it has empirical studies regarding commissions which is necessary to understand how congress reacts to them while there's is a single professor's unwarranted opinion.

The counterplan doesn't resolve the residual links to the plan –

a) Tied to Obama because they're created by executive order

Wang, Ph.D. candidate in the Department of Political Science at University of Michigan, 2010 Yuhua, "Congressional Weakness, Political Capital, and the Politics of Presidential Agency Design", http://sitemaker.umich.edu/wangyh/files/presidential_agency_design_yuhua_wang.pdf

On August 22, 1996, President Clinton established the White House Commission on Aviation Safety and Security (WHCASS). The Commission's major function is to advise the President on matters involving aviation safety and security, and to develop and recommend to the President a strategy designed to improve aviation safety and security. This is but one example of **Clinton's executive orders**. Washington Times journalist Frank Murray (1999) noted, "President Clinton is literally writing his legacy with his own pen by signing one **controversial executive order** after another." By the time Clinton left office in 2001, he had posted 364 formal executive orders and generated a storm from opponents who say the orders push the limits of presidential power. Among these orders, **a fair number of them were about creating administrative agencies**. Not only President Clinton, as Lewis (2003) documents, since 1946, the president or his subordinates have created more than half of all administrative agencies in the **United States**. Many **executive-created agencies** are created with the implicit approval of Congress. Others, like the National Biological Survey (NBS) created by President Clinton in 1993, **are created over the objections of a significant number of members** (Lewis 2003: 88). Some are supported in principle by legislators **but opposed in practice because of objections to specific details of their design and policies**. Consequently, agency design by executive order has become an important presidential leverage over Congress and other branches of government.

b) Lobbying will still occur over whether to abide by the panel

Anderson 10 (Stuart, Executive Director – National Foundation for American Policy and Former Executive Associate Commissioner for Policy and Planning and Counselor to the Commissioner – INS, "Regaining America's Competitive Advantage: Making Our Immigration System Work", 8-12, http://www.uschamber.com/sites/default/fi les/reports/100811_skilledvisastudy_full.pdf)

One argument offered for a commission is it would keep politics out of immigration policy. A non-political commission in Washington, D.C. is **unlikely**. Elected officeholders would choose all of the members. Lobbying from all sides of the issue would move to these commission members. Employers would need to ask if the commission could certify certain types of employees, while the AFL-CIO and others would lobby the commission to oppose the entry of any workers. A commission would not end lobbying, but simply shift its focus to this new, unelected body of bureaucratic officials.

c) Fails to resolve the controversy but bolsters one side

Mayer 7 – Kenneth R. Mayer, Professor of Political Science at the University of Wisconsin-Madison, December 2007, "The Base Realignment and Closure Process: Is it Possible to Make Rational Policy?," online: http://users.polisci.wisc.edu/kmayer/Professional/Base%20Realignment%20and%20Closure%20Process.pdf

There is simply **far too much controversy** over what sorts of reforms are necessary. Should benefits be protected, or should cuts be considered? Should taxes be raised, and if so by how much? Should benefits be means tested? The retirement age raised? What should the transition period look like? **No legislator is likely to give up decision making rights in the presence of such controversy and uncertainty about the scope of the final policy.** And this is how it should be. Automatic delegation comes at the cost of accountability, which as a policy value is at least as important as rationality and efficiency. Delegating authority to an independent body, or governing via an automatic rule, is often **a "blame avoidance" mechanism** designed to obfuscate the ultimate responsibility and make it difficult for voters to connect cause and effect. As we have seen with BRAC, sometimes this works, at least in the sense of producing a generally preferred but politically difficult outcome that cannot be traced back to the actions of any legislator or group of legislators. But delegation, by itself, **does not resolve underlying disagreement and controversies**, and **the electorate ought to have enough information to assign blame or credit.** Ultimately, BRAC arose from an unusual set of circumstances, and it should **replicated with great caution.**

d) Perceived overuse by Congress causes controversy

Campbell 2 – Colton C. Campbell, Associate Professor of Political Science at Florida International University, visiting Professor of Political Science at American University, 2002, Discharging Congress: Government by Commission, p. xiv

Contemporary ad hoc commissions for policy formulation, as opposed to commissions to study specific problems of maladministration, disaster, or wrongdoing, are largely a development of the twentieth century. President Theodore Roosevelt was the first to employ the commission extensively, and he quickly became involved in **controversy with Congress** over its use, as legislators believed Roosevelt **used commissions to expand presidential parameters into policy areas that fell within legislative jurisdiction**. Ironically, today's commissions are attaining considerable importance in the arsenal of legislative devices and techniques for policy formulation against an expansive presidency. But as ad hoc commissions have proliferated and their visibility has increased, critics have charged that **Congress is debasing the ad hoc commission by excessive use**.3 Washington is awash in special congressionally mandated commissions, they say. **Too many commissions start with the expectation of doing something either that Congress does not want to do or that it does not want to do openly**.

Obama Gets the Blame – 2AC

The CP Links to politics – its tied to Obama.

Dalal, J.D. Yale Law, 2014 Anjali, ARTICLE: SHADOW ADMINISTRATIVE CONSTITUTIONALISM AND THE CREATION OF SURVEILLANCE CULTURE, 2014 Mich. St. L. Rev. 59

[*121] That is not to say that there have not been efforts to create an agency dedicated to representing civil liberties concerns within the executive branch. The Final Report of the National Commission on Terrorist Attacks upon the United States (9/11 Commission) recommended, "[T]here should be a board within the executive branch to oversee adherence to the guidelines we recommend and the commitment the government makes to defend our civil liberties." 275 As a result, the Privacy and Civil Liberties Oversight Board (PCLOB) was authorized in 2004. 276 However, the path from authorization to operationalization was a long one. Thanks in part to pressure from a bipartisan group of Senators, the Bush White House finally instituted the Board, and, on March 14, 2006, the PCLOB was finally up and running. 277 By June 2007, **the PCLOB had fallen apart** with one member resigning because he felt that the organization was not sufficiently independent to effectively do its job. 278 **The PCLOB was indeed far from independent**. As one report indicates: [The PCLOB] was located in the EOP [**Executive Office of the President**], an enclave of agencies **immediately serving the President**. Only two of its five members were subject to Senate approval, **and all five served at the pleasure of the President**. Its advice was to be "to the President or to the head of any department or agency of the executive branch." Although it was to report to Congress at least annually, it was not clear if its members or chair would testify before congressional committees or if the board could otherwise assist Congress. The board's budget was presented as an account within the funding request for the White House Office (WHO), suggesting that it was a subunit of the WHO (although the board's chartering legislation placed it in the EOP, making it a coequal agency to the WHO). 279

Obama Gets the Blame – 1AR – Booster

Particularly polarizing now – causes Obama to get the blame.

Boyer, 2015 (Dave, Washington Times, "Obama executive actions put Asia free trade deal at risk", http://www.washingtontimes.com/news/2015/jan/1/obama-executive-actions-put-asia-free-trade-deal-a/?page=all)

President **Obama's increasing use of executive power could backfire in the new Congress as he seeks to persuade lawmakers** to grant him special authority to negotiate his long-sought, mammoth free trade agreement with Pacific Rim nations. Republican lawmakers have been more inclined than Democrats to give the president trade promotion authority, which would boost his chances of completing the Trans-Pacific Partnership, centerpiece of his effort to focus U.S. policy on Asia. But **conservatives increasingly are balking at the idea of granting** Mr. **Obama any powers given his far-reaching executive actions**, which included granting deportation amnesty to millions of illegal immigrants and re-establishing diplomatic relations with Cuba after the midterm elections. "An increasing number of members see [trade promotion authority] as a way of giving more power to President Obama, and therefore the whole debate will be longer," said Anthony Kim, a specialist on free trade and economics at the conservative Heritage Foundation**. "After the November election, we knew that President Obama had limited political capital to spend. He basically wasted that."** Conservative activist Phyllis Schlafly has joined forces with Tea Party Nation founder Judson Phillips and former GOP presidential candidate Alan Keyes, trying to persuade Republican lawmakers to oppose giving Mr. Obama the "fast track" authority.

AT: CP Solves Reasons for Unpopularity

Commission delegation doesn't solve the link---it doesn't render any unpopular policy into a popular one---if the link is true, zero chance the plan gets enacted

Klein, 2010 – Ezra Klein, awesome political blogger, "Sins of Commission," February 19, 2010, online: http://voices.washingtonpost.com/ezra-klein/2010/02/sins_of_commission.html

There's nothing magic about a commission. Like a congressional committee, it puts together legislation that Congress later votes to accept, reject or delay. And as of now, **there's simply no reason to believe that the votes exist for any serious compromise**. Republican leaders, for instance, are arguing that the commission simply shouldn't consider tax increases, which makes a deal impossible. That was their rationale for filibustering the very formation of a commission, which is why Obama had to do this through an executive order. But elites still like the idea, in part because elites can see the outlines of a deal that elites would make. Greg Mankiw for instance, thinks Republicans should demand that the commission include a value-added tax and a carbon tax. I would support that. The problem is that the Republican Party **opposes both policies**, **and there's no reason to believe they're going to change their minds.**

Even if the commission is unanimous in its recommendation, it still links to politics because the GOP will assume Democrats will go beyond the commission's recommendations

Hennessey 10 – Keith Hennessey, economic policy analyst, January 20, 2010, "Error of Commission," online: http://keithhennessey.com/2010/01/20/error-of-commission/g

The President's commission **does not create any binding fast-track process**. Leader Reid cannot unilaterally bind 100 Senators to an up-or-down vote and no amendments. **Even if a commission were to produce unanimous recommendations**, **Republicans should fear** that a Democratic Senate majority would use those recommendations as a starting point, substitute even more tax increases for whatever spending cuts are in the recommendations, and then pass the bill. Scott Brown's election as the 41st vote has little effect on this dynamic, since the changes would probably happen in committee. **Any commission created by Executive Order has this weakness: it cannot bind Congress**. Only Congress can tie itself to the mast.

Permutations/Theory

PDCP – 2AC

Perm do the Counterplan- it's just normal means – recent debates show that the PCLOB will be involved regardless if they're requested to or not.

PDCP – 1AR

Perm do the CP – its not severance

a) Asking and requesting for input is inevitable – all our evidence elsewhere proves that congress will include other opinions.

b) AND--Should means desirable

Oxford Dictionary 13 http://oxforddictionaries.com/definition/english/should

verb (3rd sing. should) 1used to indicate obligation, duty, or correctness, typically when criticizing someone's actions: he should have been careful I think we should trust our people more you shouldn't have gone indicating a desirable or expected state: by now pupils should be able to read with a large degree of independence used to give or ask advice or suggestions: you should go back to bed what should I wear?

c) Resolved means by vote

Webster's 1998 Webster's Revised Unabridged Dictionary, 1998 (dictionary.com)

Resolved: 5. **To express, as an opinion** or determination**, by resolution and vote**; to declare or decide by a formal vote; — followed by a clause; as, the house resolved (or, it was resolved by the house) that no money should be apropriated (or, to appropriate no money).

d) Even if it is severance its justified due to the abusive nature of the counterplan

Legitimacy – 2AC

CP's that do the entire AFF are a voting issue –

1. Leveraging the AFF is impossible because we would need cards in the context of their external mechanism which rigs the game for the NEG

2. Wrecks education by crowding out topic specific strategies and warping what an opportunity cost is and incentivizing negs to go for stale process cps instead of specific args.

CP's have to be functionally and textually competitive-key to solve bad CP's like conditions, consult and delay.

Legitimacy – 1AR

The cp's illegitimate

1. Education – their model incentives teams to go for cps that do the entire aff over substantive and specific strategies – undermines the value of debate by shifting the debate from questions of should the plan be done to how which is the heart of this topic.

2. Structural side bias – the game will always be rigged to eliminate key aff offense which undermines clash and contestability which is necessary for decision making skills and fairness.

3. Prefer our model – functionally and textually competitive incentive better counterplans and better debate which solves their offense. Reject the team to set a precedent.

PDCP – 1AR – AT: Should

“Should” is distinct from “must”- it allows exceptions

Franzel, GAO Financial Management and Assurance director, 8

(Jeanette M., US Government Accountability Office, "Exposure Draft of Proposed Changes to the International Standards for the Professional Practice of Internal Auditing," 3-31-2008, www.gao.gov/govaud/cl_iia080331.pdf)

The second sentence of the “must” definition used in the exposure draft instructions is more aligned with the definition of “should” as used by other standards setters, including GAO. The definition of “should” **as used by GAO**, which is intended to be consistent with the definition used by the AICPA and the PCAOB, indicates a presumptively mandatory requirement and contains the following language: “…in rare circumstances, auditors and audit **organizations may depart from a presumptively mandatory requirement** provided they document their justification for the departure and how the alternative procedures performed in the circumstances were sufficient to achieve the objectives of the presumptively mandatory requirement.” Page 3 We suggest that the IIA move the second sentence of the “must” definition to the “should” definition. The definition of “must” needs to be clear that “must” indicates an unconditional requirement and that another procedure cannot substitute for a “must.” Also, we suggest adding language to the definition of “should” to indicate that substituting another procedure for a “should” requirement is allowed only if the auditors document their justification for the departure from the “should” and how the alternative procedures performed in the circumstances were sufficient to achieve the objectives of the “should” requirement. The IIA should review every “must” requirement in the Standards to determine whether there are acceptable alternatives to the procedure; **if so, “should” is the appropriate word.**

PDB – 2AC

Perm do the plan and have the commission review the plan and recommend it to congress. The permutation shields the link to the net benefit – simultaneous action will just be perceived as following the commission and avoids fights. Also guarantees double solvency.

Perm Do the Plan Via the Process – 2AC

Permutation – do the plan through the process of the counterplan – its not severance because it is still an immediate and certain decision to do the plan but adds the process of the counterplan.

AT: Offsets CP

note: you should probably put the answers to the net benefit between perms/theory args to make it easier for the judge to flow.

offsets cp

2ac- offsets cp

Perm do the CP- CPs must be textually competitive- it's the only objective standard.

Curtail means to reduce

American Heritage, 15 ('curtail', https://www.ahdictionary.com/word/search.html?q=curtail

cur·tail (kər-tāl ˈ) tr.v. cur·tailed, cur·tail·ing, cur·tails To cut short or reduce: We curtailed our conversation when other people entered the room. See Synonyms at shorten.

Reduce means to change forms

Eighth District Court of Appeals of Ohio, 1992- (10/22/92, "CLEVELAND INDUSTRIAL SQUARE, INC. Et Al., Appellees and Cross-Appellants, v. CLEVELAND BOARD OF ZONING APPEALS, Appellant and Cross-Appellee," accessed: 6/26/15 in hein online, fg)

"Incineration" means to incinerate. Webster's New World Dictionary (1983) 306. "Incinerate" means "to burn to ashes; to burn up." Id. "Reduction" means to reduce. Id. at 501. "Reduce" means "to lessen," or "to change to a different form." Id

Perm do both

Offsets CPs are bad --
1 - Steals the aff - mutes the entirety of the 1AC and makes it impossible to generate offense
2 - Education - the CP discourages forces a shallow understand by prioritizing many discussions of random programs over detailed discussions of the plan
3 - Resolutional Debate focus bad justifies Counterwarrants which artificially expands affirmative research burden making debate unfair

CP doesn't offset enough- we still result in a net decrease- there's no way to quantify how much individual policies affect overall levels of surveillance.

[insert offense/defense to the internal net benefit]

1ar- perm do both

Permutation do both --
1 - CP spots us a reason why we should do the aff and increase surveillance programs
2 - Perms don't have to be topical -- Affirmatives would always lose to CPs that "do the plan" and an untopical action like feeding Africa
3 - Solves the net benefit - the permutation leads to a decrease in the net curtailment of the plan

1ar- perm do the cp/textual competition good

Extend perm do the CP- the CP is plan-plus. It includes all the words in the plan text, which means it's not textually competitive.

Textual competition is the best standard-

1. **Real world- Congress wouldn't pass 2 bills with the same words; they'd just pass one or the other.**
2. **Moots the 1ac- if the counterplan includes the whole aff, it's impossible for us to get offense against it.**
3. **Best brightline- functional competition is totally subjective- textual competition is the only objective standard.**

at: perms have to be net topical/resolutional focus

Perms don't have to be net topical. The debate should be a question of whether the plan is good or bad, not the resolution as a whole. We just have to win that the plan text as of the 1ac are topical.

Plan focused debate is better than having each round test the whole rez-

1. **Depth of education- plan focused debate still means we talk about the whole topic; we just do it on a deeper level over the course of the season.**
2. **Forces the aff to defend the status quo- allows for contrived DAs that the plan doesn't cause, exploding neg DA ground so the aff can't keep up.**

AT: Nullification CP

2AC-Perm

Permutation do both---the cp links to the net benefit by making Obama look like a bafoon and it solves federalism---low threshold---status quo is enough

WSJ 1/17 ("Bills Proposed in Several States Would Nullify Affordable Care Act," http://blogs.wsj.com/law/2014/01/17/bills-proposed-in-several-states-would-nullify-affordable-care-act/)

The nullification trend in statehouses seems to be spreading. Law Blog wrote last week about California lawmakers who are proposing a Fourth Amendment Protection Act that would ban state workers from helping the federal government gather metadata on Americans without a specific warrant. That measure followed on the heels of several bills introduced in other regions of the country seeking to criminalize enforcement of federal gun laws. The latest target is the **Affordable Care Act**. Conservative lawmakers in at least seven states have proposed laws that would prohibit state agencies and officials from helping the federal government implement the federal healthcare law and would authorize the state's attorney general to sue violators. The Tennessean wrote about a bill introduced there on Thursday: Its ramifications reach far. The measure not only would bar state and local officials from enforcing the Affordable Care Act but also **would prohibit them from participating in it. That could cause immediate problems for TennCare**. Since Jan. 1, the state's Medicaid program has been using HealthCare.gov to sign up new enrollees until a new state-run website is completed. Similar bills have popped up in the statehouses of Georgia, South Carolina, Oklahoma, Missouri, West Virginia and Indiana.

2AC Courts Rollback

It'll get overturned—Cooper v. Aaron and 1st amendment

Farivar 14 (Cyrus Farivar; Jan. 30th 2014; Senior Business Editor at Ars Technica, and is also an author and radio producer. His book, The Internet of Elsewhere – about the history and effects of the Internet on different countries around the world, including Senegal, Iran, Estonia and South Korea – was published by Rutgers University Press in April 2011. He previously was the Sci-Tech Editor, and host of "Spectrum" at Deutsche Welle English, Germany's international broadcaster. He has also reported for the Canadian Broadcasting Corporation, National Public Radio, Public Radio International, The Economist, Wired, The New York Times and many others; "How to stop the NSA? Start with new bills at each statehouse, activists say"; Ars Technica; http://arstechnica.com/tech-policy/2014/01/how-to-stop-the-nsa-start-with-new-bills-at-each-statehouse-activists-say/) jskullz

But even legal experts who might want some of these changes admit that states' abilities to make an end-run around federal law is merely symbolic at best. At worst, it's perhaps illegal. "This strikes me as bad policy, but irrespective of that, it is plainly unconstitutional under the First Amendment," Fred Cate, a law professor at Indiana University, told Ars. However, Cate added that while he is "wildly sympathetic with the frustration motivating these bills," he believes this approach is misguided. "Many of the statutes would criminalize providing 'material support, participation, services, or assistance in any form to any federal agency' that doesn't use warrants when searching or seizing data," Cate said. "That exceptionally broad language would certainly include talking to, meeting with, or providing information to those agencies, all of which are protected by the First Amendment. Note that the language isn't limited to providing assistance relating to searching or seizing data." For the moment, nearly all the bills that have been proposed or floated appear to come from a group calling itself "Nullify NSA." Its website provides no contact information beyond a Twitter account and a Bitcoin address. The site provides "model legislation" at the state and local level, and it says a "campus resolution" is coming soon. In an e-mail, "Michael B." told Ars that Nullify NSA was organized by the Tenth Amendment Center and the Bill of Rights Defense Committee. These are groups that advocate constitutional nullification, the legal theory that an American state can nullify, invalidate, or ignore federal law that it doesn't like. In 1958, the Supreme Court unanimously decided in Cooper v. Aaron, a case involving de-segregation of Arkansas schools, that states do not have the right to nullify federal law. However, other Supreme Court decisions established that states cannot be compelled to expend state resources to enforce federal law and that federal authorities can enforce federal law in any state.

Nullification's a pipe dream—supremacy clause causes it to be overturned and it would make legislation impossible.

Rakove 14 (Jack N. Rakove; 2014; William Robertson Coe Professor of History and American Studies, and Professor of Political Science and (by courtesy) Law, Stanford University; "Some Hollow Hopes of States'-Rights Advocates"; Arkansas Law Review; Lexis) jskullz

Nullification is the easiest concept to eliminate. De minimis, beyond its plain absence from the text of the Constitution, nullification faces two major objections. The [*83] first objection is the Supremacy Clause. n7 This momentous provision generated remarkably little discussion at Philadelphia, but it silently evolved into one of the most powerful tools of the final text. In its origins within the

Constitutional Convention, the Supremacy Clause appeared as an element in the New Jersey Plan, and it first gained traction after the framers rejected James Madison's congressional negative on state laws. n8 Initially, the Clause bound state judges only to federal laws and treaties, "any thing in the respective laws of the individual States to the contrary notwithstanding." n9 Article VI of the New Jersey Plan was silent, however, on what might happen should a state constitution impose some version of a loyalty test on provincial judges. n10 This language survived when Luther Martin moved to substitute it for Madison's negative on state laws on July 17, the day after the ostensible, if misnamed, Great Compromise over representation. n11 The decision to substitute was non-controversial, n12 but so were the subsequent changes that made the Federal Constitution - as well as national laws and treaties - superior to the constitutions and laws of the individual states, requiring state judges to abide thereby. n13 The change came in two parts: first, by the work of the committee of detail; and then, in an amendment proposed by John Rutledge of South Carolina, which made the Constitution the supreme law of the land. n14 **No one** at the time suggested that the states should retain some opt-out mechanism to negate federal laws they found deeply objectionable. The strongest complaint came later from Luther Martin, who claimed that the changes in the Clause rendered his original proposal ""worse than useless'" [*84] because national acts ""were intended to be superior [only] to the laws of our state government, where they should be opposed to each other,' but not "to our constitution and bill of rights.'" n15 Yet at the time, Martin evidently did not object to the non-controversial amendments. n16 Thus, the Supremacy Clause provides a sufficient basis for rejecting the idea of nullification. But beyond the Supremacy Clause, one further consideration weighs heavily against nullification. The whole premise of rethinking American federalism in 1787, as seen from Madison's perspective, was to make national laws directly enforceable on the people of the United States - rather than allowing the states to implement the resolutions of the national government, as had been the case under the Articles of Confederation. n17 That premise was the genius of Madison's brilliant assessment of the underlying federalism problem of the Articles of Confederation in item seven of the Vices of the Political System of the U. States. n18 Any system of federalism that allowed the states to judge the propriety and necessity of federal decisions, Madison concluded, "will never fail to render federal measures abortive." n19 In this sense, the states should be thought of in relation to the Union as counties were in relation to the states. "If the laws of the States were merely recommendatory to their citizens, or if they were to be rejudged by County authorities, what security, what probability would exist, that they would be carried into execution?" n20 Whatever homage one would pay to the later genius of John C. Calhoun - and there is no doubt that his was indeed a formidable mind - he was not a founder of the federal [*85] republic. Nullification is a terribly interesting argument, but it is neither part of the Constitution nor consistent with its meaning. Nullification advocates in South Carolina in the late 1820s and early 1830s understood that the ordinary state legislature could not apply the doctrine - saying a great deal about the doctrine's authority. n21 To make nullification effective, it had to be pronounced by a specially elected convention - one whose authority would somehow become tantamount to that of the ratification conventions of 1787-1788. n22 This convention would revive a potential exercise of popular sovereignty in a way that the ordinary processes of political representation and legislation could not, bringing the people of South Carolina closer to the original condition that permitted ratification of the Constitution in 1788. n23 **No system of national legislation could work if states retained the capacity to threaten nullification**. What possibility of collective deliberation would exist if states, somehow acting though their delegations, could ratchet up their opposition to particular measures and thwart the

decision of constitutionally qualified majorities? However, a lesser version of state opposition to national legislation exists that is distinguishable from outright nullification: interposition.

2AC-Modeling

Can't solve modeling---cp sends the opposite signal

Guelzo 11 (Allen, is Henry R. Luce III Professor of the Civil War era, director of Civil War–era studies, and associate director of the Civil War Institute at Gettysburg College. "Nullification Temptation," National Review. https://www.nationalreview.com/nrd/articles/309339/nullification-temptation)

Unfortunately, like other nuclear options, nullification is a dangerous weapon to brandish. Its danger lies in how easily it could destroy not just Obamacare, but **the entire Constitution**. **Nullification has been tested before** — and found wanting. At the time of the Constitution's ratification, several of the states tried to add reversion declarations that provided some measure of restraint on the operation of unpopular federal laws. Thomas Jefferson and James Madison both wrote legislative resolutions in 1798 threatening state nullification of the Alien and Sedition Acts. In 1832, a South Carolina state convention adopted a nullification ordinance to prevent the collection of "the tariff of abominations," and in the 1850s the Wisconsin Supreme Court tried to nullify the Fugitive Slave Law by ordering the release of Sherman Booth, an abolitionist who had helped a runaway slave escape to Canada, from federal custody. At no point, however, did nullification prevail. The state ratifying conventions in 1788 could issue as many reversion declarations as they pleased, but as Robert Bork once wrote, it is the act of ratifying the Constitution, not of issuing nullification declarations, that enjoys legal standing. Neither Kentucky nor Virginia actually nullified the Alien and Sedition Acts, and Madison himself hastened to add in 1800 that the nullification he had had in mind was more an "expression[] of opinion" about the constitutionality of federal acts than a declaration of their invalidity. South Carolina's nullification of the tariff earned a resounding rebuke from Pres. Andrew Jackson, himself no lover of centralized government. "I consider . . . the power to annul a law of the United States, assumed by one State, incompatible with the existence of the Union, contradicted expressly by the letter of the Constitution," and "inconsistent with every principle on which it was founded," Jackson thundered. When federal marshals arrested Sherman Booth and refused to release him to Wisconsin state custody, he had to wait for a presidential pardon before he could walk free in 1860. The Constitution is nicely specific about the relationship between federal and state power: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and 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." So it is worth asking just what it is that modern nullificationists don't understand about supreme. The wonder only deepens when we remember that the states are expressly forbidden by the Constitution to exercise the greater prerogatives of sovereignty: "No State shall enter into any Treaty, Alliance, or Confederation . . . coin Money; emit Bills of Credit . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility . . . lay any Imposts or Duties on Imports or Exports . . . keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War." If the states lack these powers under the Constitution, how can they retain the much greater power to nullify national laws? Nullification collides with more than just the letter of the Constitution. It also assaults its spirit. The guarantee that each state will give "Full Faith and Credit . . . to the public Acts, Records, and judicial Proceedings of every other State" **is undermined** whenever a state nullifies a law and other states refuse to recognize the nullification. And it collides with the rights and obligations of U.S. citizens, since the state nullification of an unwanted federal law ends up restraining a U.S. citizen living in that state

from following that law. “The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States,” says the Constitution — but not in a state where the local legislature has nullified certain of them that it deems objectionable. What the nullifying state is doing is, in effect, canceling the U.S. citizenship of the people living within its borders by asserting supreme jurisdiction over them. One reply to this argument is that it merely represents the “nationalist theory” of the Constitution (according to which the document creates a single, unified nation, and the states are subordinate to federal authority), as opposed to the “compact theory” (according to which the Constitution creates a league or alliance of independent sovereignties). But it’s not easy to say what a compact theory means in the real world, much less whether it allows nullification. Theories according to which the Constitution is a “compact” also fly in the face of what the Framers thought they were doing. James Madison, both during and after the Constitutional Convention, believed that the national government ought to have the authority “to negative all laws passed by the several States, contravening in the opinion of the National Legislature the articles of Union . . . and to call forth the force of the Union against any member of the Union failing to fulfill its duty under the articles thereof.” And George Washington was so intent on having the federal government be the government of all the people, and not just of states, that any other result would cause him “deep regret at having any agency in this business.” Nor it is really persuasive to claim that the Tenth Amendment’s reservation to the states of powers “not delegated to the United States by the Constitution” was intended to include the power to nullify. It would be strange that the Framers spelled out an amending process but not a process for nullification. **Nullification is the spirit of anarchy**. It sees real enough dangers in the non-enforcement of law, or even perverse lawmaking, but retaliates by setting aside the entire mechanism of lawmaking. **It is impatient with** the slow, prudent working of the checks **and balances in the federal system**, and announces (in the words of Donald Livingston of the Abbeville Institute) that “**Congress cannot restrain itself, and elections don’t work.”** At its worst, nullification places the immediate will of a minority over the process of majority rule. It appeals to special interests and European-style proportional-representation schemes, in which factions and splinter groups are the tail that wags the nullifying dog. Have nullification if you like, but understand that it is as destructive of the Constitution and **the rule of law** as the legislation it takes aim at, **and rejected by our history as well.**

No modeling – Countries are losing interest in the American Dream

Moravcsik 05 (Andrew, Professor of Politics at Princeton University, “Dream On, America.” Newsweek, http://www.newsweek.com/dream-america-116645) // BW

Not long ago, the American dream was a global fantasy. Not only Americans saw themselves as a beacon unto nations. So did much of the rest of the world. East Europeans tuned into Radio Free Europe. Chinese students erected a replica of the Statue of Liberty in Tiananmen Square. You had only to listen to George W. Bush's Inaugural Address last week (invoking "freedom" and "liberty" 49 times) to appreciate just how deeply Americans still believe in this founding myth. For many in the world, the president's rhetoric confirmed their worst fears of an imperial America relentlessly pursuing its narrow national interests. But the greater danger may be a delusional America--one that believes, despite all evidence to the contrary, that the American Dream lives on, that America remains a model for the world, one whose mission is to spread the word. The gulf between how Americans view themselves and how the world views them was summed up in a poll last week by the BBC. Fully 71 percent of Americans see the United States as a source of good in the world. More than half view Bush's election as positive for global security. Other studies report that 70 percent have faith in their domestic institutions and nearly 80 percent

believe "American ideas and customs" should spread globally. Foreigners take an entirely different view: 58 percent in the BBC poll see Bush's re-election as a threat to world peace. Among America's traditional allies, the figure is strikingly higher: 77 percent in Germany, 64 percent in Britain and 82 percent in Turkey. Among the 1.3 billion members of the Islamic world, public support for the United States is measured in single digits. Only Poland, the Philippines and India viewed Bush's second Inaugural positively. Tellingly, the anti-Bushism of the president's first term is giving way to a more general anti-Americanism. A plurality of voters (the average is 70 percent) in each of the 21 countries surveyed by the BBC oppose sending any troops to Iraq, including those in most of the countries that have done so. Only one third, disproportionately in the poorest and most dictatorial countries, would like to see American values spread in their country. Says Doug Miller of GlobeScan, which conducted the BBC report: "President Bush has further isolated America from the world. Unless the administration changes its approach, it will continue to erode America's good name, and hence its ability to effectively influence world affairs." Former Brazilian president Jose Sarney expressed the sentiments of the 78 percent of his countrymen who see America as a threat: "Now that Bush has been re-elected, all I can say is, God bless the rest of the world." The truth is that Americans are living in a dream world. Not only do others not share America's self-regard, they no longer aspire to emulate the country's social and economic achievements. The loss of faith in the American Dream goes beyond this swaggering administration and its war in Iraq. A President Kerry would have had to confront a similar disaffection, for it grows from the success of something America holds dear: the spread of democracy, free markets and international institutions--globalization, in a word. Countries today have dozens of political, economic and social models to choose from. Anti-Americanism is especially virulent in Europe and Latin America, where countries have established their own distinctive ways--none made in America. Futurologist Jeremy Rifkin, in his recent book "The European Dream," hails an emerging European Union based on generous social welfare, cultural diversity and respect for international law--a model that's caught on quickly across the former nations of Eastern Europe and the Baltics. In Asia, the rise of autocratic capitalism in China or Singapore is as much a "model" for development as America's scandal-ridden corporate culture. "First we emulate," one Chinese businessman recently told the board of one U.S. multinational, "then we overtake." Many are tempted to write off the new anti-Americanism as a temporary perturbation, or mere resentment. Blinded by its own myth, America has grown incapable of recognizing its flaws. For there is much about the American Dream to fault. If the rest of the world has lost faith in the American model--political, economic, diplomatic--it's partly for the very good reason that it doesn't work as well anymore.

No modeling – corruption and inequality make the American constitution undesirable to model

Moravcsik 05 (Andrew, Professor of Politics at Princeton University, "Dream On, America." Newsweek, http://www.newsweek.com/dream-america-116645) // BW

Once upon a time, the U.S. Constitution was a revolutionary document, full of epochal innovations--free elections, judicial review, checks and balances, federalism and, perhaps most important, a Bill of Rights. In the 19th and 20th centuries, countries around the world copied the document, not least in Latin America. So did Germany and Japan after World War II. Today? When nations write a new constitution, as dozens have in the past two decades, they seldom look to the American model. When the soviets withdrew from

Central Europe, U.S. constitutional experts rushed in. They got a polite hearing, and were sent home. Jiri Pehe, adviser to former president Vaclav Havel, recalls the Czechs' firm decision to adopt a European-style parliamentary system with strict limits on campaigning. "For Europeans, money talks too much in American democracy. It's very prone to certain kinds of corruption, or at least influence from powerful lobbies," he says. "Europeans would not want to follow that route." They also sought to limit the dominance of television, unlike in American campaigns where, Pehe says, "TV debates and photogenic looks govern election victories." So it is elsewhere. After American planes and bombs freed the country, Kosovo opted for a European constitution. Drafting a post-apartheid constitution, South Africa rejected American-style federalism in favor of a German model, which leaders deemed appropriate for the social-welfare state they hoped to construct. Now fledgling African democracies look to South Africa as their inspiration, says John Stremlau, a former U.S. State Department official who currently heads the international relations department at the University of Witwatersrand in Johannesburg: "We can't rely on the Americans." The new democracies are looking for a constitution written in modern times and reflecting their progressive concerns about racial and social equality, he explains. "To borrow Lincoln's phrase, South Africa is now Africa's 'last great hope'." Much in American law and society troubles the world these days. Nearly all countries reject the United States' right to bear arms as a quirky and dangerous anachronism. They abhor the death penalty and demand broader privacy protections. Above all, once most foreign systems reach a reasonable level of affluence, they follow the Europeans in treating the provision of adequate social welfare is a basic right. All this, says Bruce Ackerman at Yale University Law School, contributes to the growing sense that American law, once the world standard, has become "provincial." The United States' refusal to apply the Geneva Conventions to certain terrorist suspects, to ratify global human-rights treaties such as the innocuous Convention on the Rights of the Child or to endorse the International Criminal Court (coupled with the abuses at Abu Ghraib and Guantanamo) only reinforces the conviction that America's Constitution and legal system are out of step with the rest of the world.

Slowed economic growth and increased levels of poverty prevent federalism from being modeled

Moravcsik 05 (Andrew, Professor of Politics at Princeton University, “Dream On, America.” Newsweek, http://www.newsweek.com/dream-america-116645) // BW

The American Dream has always been chiefly economic--a dynamic ideal of free enterprise, free markets and individual opportunity based on merit and mobility. Certainly the U.S. economy has been extraordinarily productive. Yes, American per capita income remains among the world's highest. Yet these days there's as much economic dynamism in the newly industrializing economies of Asia, Latin America and even eastern Europe. All are growing faster than the United States. At current trends, the Chinese economy will be bigger than America's by 2040. Whether those trends will continue is not so much the question. Better to ask whether the American way is so superior that everyone else should imitate it. And the answer to that, increasingly, is no. Much has made, for instance, of the differences between the dynamic American model and the purportedly sluggish and overregulated "European model." Ongoing efforts at European labor-market reform and fiscal cuts are ridiculed. Why can't these countries be more like Britain, businessmen ask, without the high tax burden, state regulation and restrictions on management that plague Continental economies? Sooner or later, the CW goes,

Europeans will adopt the American model--or perish. **Yet this is a myth**. For much of the postwar period Europe and Japan enjoyed higher growth rates than America. Airbus recently overtook Boeing in sales of commercial aircraft, and the EU recently surpassed America as China's top trading partner. This year's ranking of the world's most competitive economies by the World Economic Forum awarded five of the top 10 slots--including No. 1 Finland--to northern European social democracies. "Nordic social democracy remains robust," writes Anthony Giddens, former head of the London School of Economics and a "New Labour" theorist, in a recent issue of the New Statesman , "not because it has resisted reform, but because it embraced it." This is much of the secret of Britain's economic performance as well. Lorenzo Codogno, co-head of European economics at the Bank of America, believes the British, like Europeans elsewhere, "will try their own way to achieve a proper balance." Certainly they would never put up with the lack of social protections afforded in the American system. Europeans are aware that their systems provide better primary education, more job security and a more generous social net. They are willing to pay higher taxes and submit to regulation in order to bolster their quality of life. Americans work far longer hours than Europeans do, for instance. But they are not necessarily more productive--nor happier, buried as they are in household debt, without the time (or money) available to Europeans for vacation and international travel. George Monbiot, a British public intellectual, speaks for many when he says, "The American model has become an American nightmare rather than an American dream." Just look at booming Britain. Instead of cutting social welfare, Tony Blair's Labour government has expanded it. According to London's Centre for Policy Studies, public spending in Britain represented 43 percent of GDP in 2003, a figure closer to the Eurozone average than to the American share of 35 percent. It's still on the rise--some 10 percent annually over the past three years--at the same time that social welfare is being reformed to deliver services more efficiently. The inspiration, says Giddens, comes not from America, but from social-democratic Sweden, where universal child care, education and health care have been proved to increase social mobility, opportunity and, ultimately, economic productivity. In the United States, inequality once seemed tolerable because America was the land of equal opportunity. But this is no longer so. Two decades ago, a U.S. CEO earned 39 times the average worker; today he pulls in 1,000 times as much. Cross-national studies show that America has recently become a relatively difficult country for poorer people to get ahead. Monbiot summarizes the scientific data: "In Sweden, you are three times more likely to rise out of the economic class into which you were born than you are in the U.S." Other nations have begun to notice. Even in poorer, pro-American Hungary and Poland, polls show that only a slender minority (less than 25 percent) wants to import the American economic model. A big reason is its increasingly apparent deficiencies. "Americans have the best medical care in the world," Bush declared in his Inaugural Address. Yet the United States is the only developed democracy without a universal guarantee of health care, leaving about 45 million Americans uninsured. Nor do Americans receive higher-quality health care in exchange. Whether it is measured by questioning public-health experts, polling citizen satisfaction or survival rates, the health care offered by other countries increasingly ranks above America's. U.S. infant mortality rates are among the highest for developed democracies. The average Frenchman, like most Europeans, lives nearly four years longer than the average American. Small wonder that the World Health Organization rates the U.S. healthcare system only 37th best in the world, behind Colombia (22nd) and Saudi Arabia (26th), and on a par with Cuba. The list goes on: ugly racial tensions, sky-high incarceration rates, child-poverty rates higher than any Organization for Economic Cooperation and Development country except Mexico--where Europe, these days, inspires more admiration than the United States. "Their solutions feel more natural to Mexicans because they offer real solutions to real, and seemingly intractable, problems," says Sergio Aguayo, a

prominent democracy advocate in Mexico City, referring to European education, health care and social policies. And while undemocratic states like China may, ironically, be among the last places where the United States still presents an attractive political and social alternative to authoritarian government, new models are rising in prominence. Says Julie Zhu, a college student in Beijing: "When I was in high school I thought America was this dreamland, a fabled place." Anything she bought had to be American. Now that's changed, she says: "When people have money, they often choose European products." She might well have been talking about another key indicator. Not long ago, the United States was destination number one for foreign students seeking university educations. Today, growing numbers are going elsewhere--to other parts of Asia, or Europe. You can almost feel the pendulum swinging.

Militarism prevents modeling of U.S. federalism worldwide

Moravcsik 05 (Andrew, Professor of Politics at Princeton University, "Dream On, America." Newsweek, http://www.newsweek.com/dream-america-116645) // BW

U.S. leaders have long believed military power and the American Dream went hand in hand. World War II was fought not just to defeat the Axis powers, but to make the world safe for the United Nations, the precursor to the --World Trade Organization, the European Union and other international institutions that would strengthen weaker countries. NATO and the Marshall Plan were the twin pillars upon which today's Europe were built. Today, Americans make the same presumption, confusing military might with right. Following European criticisms of the Iraq war, the French became "surrender monkeys." The Germans were opportunistic ingrates. The British (and the Poles) were America's lone allies. Unsurprisingly, many of those listening to Bush's Inaugural pledge last week to stand with those defying tyranny saw the glimmerings of an argument for invading Iran: Washington has thus far shown more of an appetite for spreading ideals with the barrel of a gun than for namby-pamby hearts-and-minds campaigns. A former French minister muses that the United States is the last "Bismarckian power"--the last country to believe that the pinpoint application of military power is the critical instrument of foreign policy. Contrast that to the European Union--pioneering an approach based on civilian instruments like trade, foreign aid, peacekeeping, international monitoring and international law--or even China, whose economic clout has become its most effective diplomatic weapon. The strongest tool for both is access to huge markets. No single policy has contributed as much to Western peace and security as the admission of 10 new countries--to be followed by a half-dozen more--to the European Union. In country after country, authoritarian nationalists were beaten back by democratic coalitions held together by the promise of joining Europe. And in the past month European leaders have taken a courageous decision to contemplate the membership of Turkey, where the prospect of EU membership is helping to create the most stable democratic system in the Islamic world. When historians look back, they may see this policy as being the truly epochal event of our time, dwarfing in effectiveness the crude power of America. The United States can take some satisfaction in this. After all, it is in large part the success of the mid-century American Dream--spreading democracy, free markets, social mobility and multilateral cooperation--that has made possible the diversity of models we see today. This was enlightened statecraft of unparalleled generosity. But where does it leave us? Americans still invoke democratic idealism. We heard it in Bush's address, with his apocalyptic proclamation that "the survival of liberty in our land increasingly depends on the success of liberty in other lands." But fewer and fewer people have the patience to listen. Headlines in the British press were almost contemptuous: DEFIANT BUSH DOES NOT MENTION THE WAR,

HAVE I GOT NUKES FOR YOU and HIS SECOND-TERM MISSION: TO END TYRANNY ON EARTH. Has this administration learned nothing from Iraq, they asked? Can this White House really expect to command support from the rest of the world, with its different strengths and different dreams? The failure of the American Dream has only been highlighted by the country's foreign-policy failures, not caused by them. The true danger is that Americans do not realize this, lost in the reveries of greatness, speechifying about liberty and freedom.

2AC Immigration

Spills over into immigration

Hanson 11 (Victor, Senior Fellow at the Hoover Institution, Military Historian, "Federal Nullification Is a Bad Idea," National Review, 2/25/11 http://www.nationalreview.com/corner/260729/federal-nullification-bad-idea-victor-davis-hanson)

Since the November elections, some state legislatures have introduced Tea Party–inspired legislation concerning guns and law enforcement that would, in effect, **nullify federal law.** This is a bad idea, because it **could lead to even more extreme measures** — sanctuary cities that declare themselves de facto exempt from federal immigration law and forbid their law-enforcement officers from cooperating with ICE officials; or state laws that do not allow federal officials to ensure that citizens are in compliance with federal immigration laws. And **then we would have veritable anarchy.**

State immigration regulation collapse multilateral cooperation---the impact is nuclear prolif

Steinberg, former Texas Public Affairs school dean, 2010

(James, "Chapter 5 Foreign Relations", http://www.state.gov/documents/organization/194015.pdf, ldg)

Second, H.B. 56 antagonizes foreign governments and their populations, both at home and in the United States, likely making them less willing to negotiate, cooperate with, or support the United States across a broad range of foreign policy issues. U.S. immigration policy and treatment of foreign nationals **can directly affect the United States' ability to negotiate and implement favorable trade and investment agreements, to secure cooperation on counterterrorism and counternarcotics trafficking operations, and to obtain desired outcomes in international bodies on priorities such as nuclear nonproliferation**, among other important U.S. interests. Together with the other recently enacted state immigration laws, H.B. 56 is already complicating our efforts to pursue such interests. H.B. 56's impact is liable to be especially acute, moreover, not only among our critical partners in the region but also among our many important democratic allies worldwide, as those governments are the most likely to be responsive to the concerns of their constituents and the treatment of their own nationals abroad. • **Third, H.B. 56 threatens to undermine our standing in regional and multilateral bodies** that address migration and human rights matters, and to hamper our ability to advocate effectively for the advancement of human rights and other U.S. values. Multilateral, regional, and bilateral engagement on human rights issues and international promotion of the rule of law are high priorities for the United States. Consistency in U.S. practices at home is critical for us to be able to argue for international law consistency abroad. By deviating from national policy in this area, H.B. 56 may place the United States in tension with our international obligations and commitments, and compromise our position in bilateral, regional, and multilateral conversations regarding human rights. 10. Furthermore, when H.B. 56 is considered in the context of the unprecedented surge in state legislative efforts to create state-specific immigration enforcement policies, each of these threats is significantly magnified, and several additional concerns arise. • **First, by creating a patchwork of immigration regimes**, states such as Alabama make it substantially more difficult for foreign nationals to understand their rights and obligations, rendering them more vulnerable to discrimination and harassment. • Second, this patchwork creates cacophony as well as confusion regarding U.S. immigration policy, and thereby undermines the United States' ability to speak with one voice in the immigration area, with all its sensitive foreign policy implications. • **Third, this**

patchwork fosters a perception abroad that the United States is becoming more hostile to foreign nationals, corroding a reputation for tolerance, openness, and fair treatment that is critical to our standing in international and multinational fora, our ability to attract visitors, students, and investment from overseas, our influence in a wide range of transnational contexts, and the advancement of our economic and other interests. 11. In light of these broad, overlapping, and potentially unintended ways in which immigration activities can adversely impact our foreign affairs, it is critically important that national immigration policy be governed by a uniform legal regime, and that decisions regarding the development and enforcement of immigration policy be made by the national government. In all matters that are closely linked to U.S foreign relations, including immigration, the United States is constantly engaged in weighing multiple competing considerations and choosing among priorities in order to develop an overall foreign policy strategy that will most effectively advance U.S. interests and values. The United States likewise is constantly seeking the support of foreign governments, through a delicately navigated process, across the entire range of U.S. policy goals. Only the federal government has the international relationships and information, and the national mandate and perspective, to be able to appropriately evaluate these choices on a continuing basis in response to fluctuating events on the world stage. The proliferation of state laws advancing state-specific approaches to immigration enforcement represents a serious threat to the national control over immigration policy that effective foreign policy demands.

Immigration Turn

State Immigration policy fails and leads to racial profiling and ignores structural issues

Will 10 – (George, staffwriter for the Seattle Times, "Arizona's immigration law is a worthwhile experiment in federalism" http://seattletimes.com/html/opinion/2011738942_will30.html)//BW

Misguided and irresponsible" is how Arizona's new law pertaining to illegal immigration is characterized by Speaker Nancy Pelosi. She represents San Francisco, which calls itself a "sanctuary city," an exercise in exhibitionism that means it will be essentially uncooperative regarding enforcement of immigration laws. Yet as many states go to court to challenge the constitutionality of the federal mandate to buy health insurance, scandalized liberals invoke 19th-century specters of "nullification" and "interposition," anarchy and disunion. Strange. It is passing strange for federal officials, including the president, to accuse Arizona of irresponsibility while the federal government is refusing to fulfill its responsibility to control the nation's borders. Such control is an essential attribute of national sovereignty. America is the only developed nation that has a 2,000-mile border with a developing nation, and the government's refusal to control that border is why there are an estimated 460,000 illegal immigrants in Arizona and why the nation, sensibly insisting on first things first, resists "comprehensive" immigration reform. Arizona's law makes what is already a federal offense — being in the country illegally — a state offense. Some critics seem not to understand Arizona's right to assert concurrent jurisdiction. The Mexican American Legal Defense and Education Fund attacks Gov. Jan Brewer's character and motives, saying she "caved to the radical fringe." This poses a semantic puzzle: Can the large majority of Arizonans who support the law be a "fringe" of their state? Popularity makes no law invulnerable to invalidation. Americans accept judicial supervision of their democracy — judicial review of popular but possibly unconstitutional statutes — because they know that if the Constitution is truly to constitute the nation, it must trump some majority preferences. The Constitution, the Supreme Court has said, puts certain things "beyond the reach of majorities." But Arizona's statute is not presumptively unconstitutional merely because it says that police officers are now required to try to make "a reasonable attempt" to determine the status of a person "where reasonable suspicion exists" that the person is here illegally. The fact that the meaning of "reasonable" will not be obvious in many contexts does not make the law obviously too vague to stand. The Bill of Rights — the Fourth Amendment — proscribes "unreasonable searches and seizures." What "reasonable" means in practice is still being refined by case law — as is that amendment's stipulation that no warrants shall be issued "but upon probable cause." There has also been careful case-by-case refinement of the familiar and indispensable concept of "reasonable suspicion." Brewer says, "We must enforce the law evenly, and without regard to skin color, accent or social status." Because the nation thinks as Brewer does, airport passenger screeners wand Norwegian grandmothers. This is an acceptable, even admirable, homage to the virtue of "evenness" as we seek to deter violence by a few, mostly Middle Eastern, young men. Some critics say Arizona's law is unconstitutional because the 14th Amendment's guarantee of "equal protection of the laws" prevents the government from basing action on the basis of race. Liberals, however, cannot comfortably make this argument because they support racial set-asides in government contracting, racial preferences in college admissions, racial gerrymandering of legislative districts, and other aspects of a racial spoils system. Although liberals are appalled by racial profiling, some seem to think vocational profiling (police officers are insensitive incompetents) is merely intellectual efficiency, as is state profiling (Arizonans are xenophobic). Probably 30 percent of Arizona's residents are Hispanics. Arizona police officers, like officers everywhere, have enough to do without being required to seek arrests by violating settled law

with random stops of people who speak Spanish. In the practice of the complex and demanding craft of policing, good officers — the vast majority — routinely make nuanced judgments about when there is probable cause for acting on reasonable suspicions of illegality.

Iraq

The collapse of the doctoral regime in Iraq has led to a devastating civil war

Rayburn, 14 – (Joel, senior research fellow at the National Defense University, is a historian who served as an adviser to Gen. David Petraeus in Iraq, "The coming disintegration of Iraq" http://www.washingtonpost.com/opinions/the-coming-disintegration-of-iraq/2014/08/15/2b3efd80-2300-11e4-958c-268a320a60ce_story.html)//BW

Nouri al-Maliki may have agreed to step down as prime minister of Iraq on Thursday, but the damage he has wrought will define his country for decades to come. The stunning collapse of the Iraqi state in its vast northern and western provinces may be Maliki's most significant legacy. After nine decades as the capital of a unitary, centralized state, Baghdad no longer rules Kurdistan, nor Fallujah, nor Mosul, and might never rule them again. To his likely successor, Haider al-Abadi, Maliki will bequeath an Iraqi state that has reverted to the authoritarian muscle memory it developed under Saddam Hussein. But it will be a state that effectively controls not much more than half the territory Hussein did. As Maliki and his loyalists succeeded in consolidating control of the government and pushing rivals out of power, they drove the constituencies of those they excluded — especially Sunni Arabs and Kurds — into political opposition or armed insurrection. Their drive for power alienated Iraqis across all communities from the central state whose wards and clients they had once been, leaving almost no provincial population trustful of the central government. Maliki has held sway in Baghdad, but whole swaths of Iraq have fallen out of his control: The tighter he grasped the state, the more the country slipped through his fingers. The current crisis in Iraq goes far beyond the question of who will lead the next government in Baghdad. Iraqis have entered into a civil war whose logical conclusion is the breakup of the country. What we are witnessing in Iraq today is the beginning of a process that could become at least as destructive and bloody as the breakup of Yugoslavia. The longer it is allowed to unfold, the less likely it will be stopped, and the more likely it will spill over on a large scale to destabilize the surrounding region. It is tempting to conclude that the U.S.-led regime change of 2003 inevitably led to sectarian violence and politics in Iraq by opening up the country's preexisting fractures. But the deep sectarianism of the past decade was neither foreordained to follow Hussein's fall nor completely natural in Iraqi society. It was instead a calculated objective of the powerful, mainly expatriate parties that arrived in Baghdad after April 2003, bringing with them sectarian agendas that had been decades in the making. These groups, which included Maliki and the Dawa party , as well as almost all of Iraq's major Islamist and ethnic parties, have had independent but complementary interests in polarizing the country, turning a mixed-sect, multiethnic nation into one of homogeneous ethnic and sectarian political constituencies. The result has been a devastating civil war, and an Iraq more thoroughly sorted by sect and ethnicity than ever before. As Iraq's major parties have carved the nation into political empires, they have in many regions allowed the state to recede from the streets, creating power and security vacuums that militant and criminal groups have been quick to fill. The creeping takeover of Sunni neighborhoods by Islamic State fighters and their fellow travelers has been well documented, but in other areas Shiite Islamist militants have roamed freely for years, with the state absent or complicit. Away from the Islamic State's atrocities in the far north, Shiite militant groups trained by Iran to fight U.S. troops until 2011 now seem poised to insulate Baghdad and the Shiite south from the Islamic State threat. They eventually may evict Sunnis from the region around Baghdad in the name of counterterrorism, with the assistance of the Iranian regime and Lebanese Hezbollah, and with the

political blessing of the Shiite Islamist political parties that on Monday nominated Abadi as their premier.

Federalism in Iraq will result in war – states would be in endless conflict over land and resources

Rayburn, 14 – (Joel, senior research fellow at the National Defense University, is a historian who served as an adviser to Gen. David Petraeus in Iraq, "The coming disintegration of Iraq" http://www.washingtonpost.com/opinions/the-coming-disintegration-of-iraq/2014/08/15/2b3efd80-2300-11e4-958c-268a320a60ce_story.html)//BW

For years now, some outsiders and some Iraqi factions have called for the partition of the country as a matter of policy — a solution to the intractable political disputes. Perhaps the best-known instance was in 2006, when then-Sen. Joe Biden and Leslie Gelb of the Council on Foreign Relations called for the division of the country into three autonomous regions, based on sect, with a central government that would "control border defense, foreign affairs and oil revenues." Invoking the example of Bosnia, Biden and Gelb offered their plan as a way to keep the country intact and prevent sectarian warfare from escalating. But as we are likely to find out in the coming years, there is no way for Iraq to be divided into three homelands for Shiites, Kurds and Sunnis without experiencing exactly the massive human misery that Biden, Gelb and others hoped partition might forestall. No clean ethno-sectarian lines already exist in Iraq, meaning that the boundaries of the various statelets would have to be fought over. The populations of northern and central Iraq in particular are so intertwined that separating people into sectarian enclaves would immediately prompt violent sectarian cleansing on a scale sure to exceed that of Yugoslavia. At least a quarter of a million non-Sunnis would probably be forced to leave Sunni-majority territories, while more than half a million Sunnis would probably be expelled from the greater Baghdad region, with those Sunni Baghdadis that remain herded into ghettos in and around the city. There would also be millions of Iraqis caught in limbo. What would become, for example, of the large minority population that is not Sunni, Shiite or Kurd? And what would become of Iraq's more than 1 million Turkmen? What would become of the millions of Iraqis in intermarried families of Shiite and Sunni or Arab and Kurd? The fragmenting of the country into sectarian cantons would leave these millions with no clear place to go. Nor is it likely that the fragmentation of Iraq, once begun, would stop at just three sections. The country would be far more likely to split effectively into four pieces or more. The Sunnis of Anbar and Mosul, who have a long-standing rivalry, would be unlikely to consent to living together in one Sunnistan, where one region might be dominated by the other. They would be more likely to live in competing Tigris and Euphrates regions or statelets. Nor is it clear that, once unmoored from Baghdad, the major Kurdish parties would live together in one region where one party could rule the others. Lastly, the shrunken Shiite-majority section would be a rump Iraq stretching from Samarra to the Persian Gulf, rich in oil but certain to fall into the Iranian regime's orbit for the foreseeable future. Nor would the creation of these sections be the end of the matter, as then-Deputy Prime Minister Saleh al-Mutlak, a Sunni, warned in a 2011 CNN interview: "Dividing the country isn't going to be smooth, because dividing the country is going to be a war before that and a war after that." The new states or quasi-states of the former Iraq would surely enter into a long series of wars that none would be strong enough to decisively win, with a death toll unlikely to be less than the roughly quarter-million killed in the Yugoslav wars and a total displacement of perhaps one-quarter of Iraq's population. If Iraq

fragments in this manner, either formally or de facto, there will be no way to preserve a meaningful central structure in which the different sectarian enclaves together defend the country's borders and share natural resources. In the north in particular, Sunni Arabs, Turkmen and Kurds are more likely to war over the oil-rich disputed territories, while the governments in Baghdad and Irbil will never share oil revenue with Sunni provinces that are at war with the Shiites and Kurds. And since there are no bodies of water or mountain ranges separating Iraq from its western and southern neighbors, these conflicts will not be physically contained as the Balkan wars were. They are sure to spill over, eventually drawing in every neighbor even more deeply than they are already. Iraq's prospects for political stability are dim, and the country faces fundamental questions that Maliki's impending departure will do little to solve. Reintegrating the Sunni community and provinces back into the Iraqi state would be the necessary starting point for leaders who wish to preserve their country. But the political environment that Maliki will leave behind is largely devoid of the trust necessary for partnerships and power-sharing. One reason Maliki and his allies have mightily resisted leaving power is that after eight years of rough rule, no member of his group can be fully assured that a successor party will leave them to live in peace. Similarly, what Kurdish leader believes that Sunni Arabs, if ever back in power, would not immediately attempt to push the Kurds back into the mountains and crush Kurdish nationalism? And after a decade of attempting to make Sunnis a permanent minority underclass, what Shiite supremacist does not fear what Sunnis would do if they ever regained control of Baghdad? The enduring dilemmas that have dogged modern Iraq — the relationship between the people and the state, the relationship between Kurdistan and Arab Iraq, the relationship between Sunnis and Shiites, the relationship between Baghdad and its 18 provinces — remain unsettled. It would take a leader or movement of extraordinary vision to settle them peacefully, and no such visionary is on the horizon. It is Iraq's strongmen, sectarians and Islamist resistance who control the path to conflict resolution. The longer they hold sway, the smaller the chance that Iraq will hold together. **It is not too late for Iraq**. But soon, it will be. The civil war of the past decade has been many things: a struggle between terrorists and the state, between religious extremes, between Maliki loyalists and their rivals, between regional proxies, between sects and ethnicities that have not relearned how to coexist. But it has most essentially been a war on Iraqi society itself, slowly draining the lifeblood of one of the world's oldest countries, which after five millennia has begun to expire before our eyes.

Iraqi decentralization causes civil war

al-Khoei 11 (Hayder, The Guardian, "Iraq is not ready for division", December 27, http://www.guardian.co.uk/commentisfree/2011/dec/27/iraq-federalism-division)//BW

In an article last Thursday, Ranj Alaaldin argued that Iraq's current problems can be traced back to the centralisation of power in Baghdad, and suggested that the country must turn towards federalism in order to overcome these issues. This is the worst possible solution for Iraq now. To implement federalism in this highly charged atmosphere sends the wrong message to the people of Iraq and to the world. Federalism as a solution misdiagnoses the crisis. The real problem is not centralised government but politicians who have failed the people. Iraq must wait until a rational debate on federalism can focus on good governance as opposed to defending sectarian identities. Otherwise, if calls for partition drown out those calling for calm and patience, there will be another bloodbath reminiscent of the civil war in 2006-08. It would be impossible to implement widescale federalism now without engaging in violent conflict. Theory is one thing, but the reality on the ground tells a different story. Iraq has never in its history been neatly geographically divided along ethno-sectarian lines. If the wheels of division were to

come into motion, Sunni, Shia and Kurdish forces would scramble to seize control of mixed and disputed territories. Iraqis are not born savages who are incapable of living together peacefully. Foreign-backed terrorists have long been exploiting domestic quarrels to incite sectarian violence. Iraq must not fall into their trap. Federalism may have worked wonders for the Kurds, but their success cannot be taken as a blueprint for the rest of the country. The Kurds are an exception because they have had de facto autonomous rule since 1991. That was a consequence of the brutality of the Ba'ath regime. Today, Iraqi villages are not being gassed, mass graves are not being filled with hundreds of thousands of corpses, and entire towns and cities are not being cleansed by the central government. The Kurdish example, however, also illustrates that mere autonomy is not enough to resolve conflict. In the mid-90s, the Kurds fought each other over resources in a bloody civil war that left thousands dead as rival political factions jockeyed for power. Today, the Kurdish region does fare better economically and in terms of security, but politically the Kurds are mired by the same problems that affect the rest of Iraq: corruption, nepotism, lack of transparency and accountability. These are the real issues holding Iraq back and they need to be addressed more urgently than the debate over federalism. It is equally important to highlight the nature of sectarianism in Iraq. We must be able to distinguish between pent-up hatreds that date back centuries and shrewd political manipulation. Professor Eric Davis, a political scientist whose research includes the relationship between state power and historical memory in modern Iraq, argues that the ethno-confessional model used to frame politics leads to a vicious cycle that shapes the realities on the ground and adds to the misunderstanding. He argues that the one-dimensional analysis fits the thinking of many policymakers who need to digest information quickly. A self-reinforcing cycle is created whereby analysts feed the elite, whose decisions only encourage further reductionist and simplistic approaches. We are in a real danger of talking Iraq to death. Perception is dangerous in a country where even the most well-intentioned calls for keeping a check on Baghdad can be translated as ripping apart the country. This isn't healthy for anyone except maybe those posed to gain immediately by their newfound power.

Econ

Federalism doesn't lead to innovation – other countries have surpassed the US

Engel, the Business Journal, **13** (Jeff, "Innovation, patented in the USA," 2/4/13, http://upstart.bizjournals.com/news/technology/2013/02/04/brookings-us-innovation-on-the-rise.html?page=all, not ldg) //BW

The United States hasn't seen this much patenting activity since the Industrial Revolution, according to a new report from the Brookings Institution Metropolitan Policy Program. The report analyzed patenting trends on a regional level from 1980 to 2012 and found three decades of growth, although 92 percent of the innovation is concentrated in only 100 of the nation's 360 metropolitan areas, home to 59 percent of U.S. residents, the report found. While the United States remains a global leader in research and development, it has fallen behind in some areas, the report found. "While R&D spending per capita is second in the world and U.S. universities are dominant, the United States ranks ninth on patents per capita and just 24th on the share of its young-adult population graduating with four-year degrees in STEM (science, technology, engineering and mathematics) fields," said Jonathan Rothwell, associate fellow and lead author of the report for Washington, D.C.-based Brookings. Per person, the leading metro areas in patent activity are San Jose, California (with 5,066 per million residents); Burlington, Vermont; Rochester, Minnesota; Corvallis, Oregon; and Boulder, Colorado. Other highly inventive metro areas are scattered across the country, especially near universities with leading science research programs and metropolitan areas with high concentrations of degree holders in STEM fields. The strongest growth rates in patenting took place in the information and communication industries, followed by computer software and semiconductor devices. Despite criticism of the patent system, various quality indicators suggest important inventions are still being patented and patent-intensive industries are becoming more competitive, the report said. There are more scientists working today, as a share of all workers, than ever before, and R&D spending per capita is at a record high, even while the federal share of R&D spending has fallen and R&D as a share of gross domestic product has not increased. The report's authors call for growth in federal funding for innovation, even though they acknowledge tightening budget pressures. "If we are to maintain our position among the most innovative nations in the world, federal and regional policymakers must continue to support R&D funding and investments in innovative capacity," said Mark Muro, a Brookings senior fellow and report co-author.

Heg

Federalism kills heg – human rights concerns and SCOTUS rulings

Law and Versteeg, 12 (David S. and Mila, Professor of Law and Professor of Political Science, Washington University in St. Louis, June 2012. NEW YORK UNIVERSITY LAW REVIEW)//BW

There are growing suspicions, however, that America's days as a constitutional hegemon are coming to an end. n12 It has been said that [*767] the United States is losing constitutional influence because it is increasingly out of sync with an evolving global consensus on issues of human rights. n13 Indeed, to the extent that other countries still look to the United States as an example, their goal may be less to imitate American constitutionalism than to avoid its perceived flaws and mistakes. n14 Scholarly and popular attention has focused in particular upon the influence of American constitutional jurisprudence. The reluctance of the U.S. Supreme Court to pay "decent respect to the opinions of mankind" n15 by participating in an ongoing "global judicial dialogue" n16 is supposedly diminishing the global appeal and influence of American constitutional jurisprudence. n17 Studies conducted by [*768] scholars in other countries have begun to yield empirical evidence that citation to U.S. Supreme Court decisions by foreign courts is in fact on the decline. n18 By contrast, however, the extent to which the U.S. Constitution itself continues to influence the adoption and revision of constitutions in other countries remains a matter of speculation and anecdotal impression.

Climate

Only the national government can solve the environment – Too many barriers and lack of cooperation

Ledewitz, 05 (Bruce, Professor of Law, Duquesne University School of Law, "The Present and Future of Federalism", http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1932324)//BW

The same point can be made with regard to the environmental challenges that face humankind in the 21" century. It is true that efforts by sub-national governments to fight global warming— such as California's recently proposed auto emission standards or New Jersey's agreement with the Netherlands [to cooperate on global warming abatement issues]"can represent important experiments in the best tradition of federalism." Yet, in the end, only comprehensive, national legislation can deal with environmental systems, which are by their nature systemic. When the United States Supreme Court pretends that comprehensive systems can be divided into fragmented and unrelated parts, in the name of federalism, the Court is ignoring simple science. Scientifically speaking, there is no such thing, for example, as intrastate water." All such water has moved across state borders in the past and, of course, will do so again in the future. While that fact does not determine what level of government should regulate such bodies of water, it should inform the vocabulary of such determinations. The final illustration of the doubtful relevance of federalism in the future is globalization—the interrelated issues raised by a rapidly integrating world economy. The challenges of globalization cannot be met at the sub-national level. This is the case whether one applauds globalization or harbors skepticism towards it. Positively speaking, major international lenders often mandate economic reforms at the nation state level. More negatively, international corporations sometimes play one sub-national government off another in their efforts to find the most advantageous terms for investment. But to allow corporations to spark a "race to the bottom" in terms of corporate regulation is to endanger national standards protecting labor, the environment and the rights of indigenous peoples.

Terror

Federalism Crushes the war on terror—makes terrorism attack inevitable

Rubin 12 (Edward, Professor of Law at Penn, Jan, "Federalism Won't Work," http://www.bostonreview.net/forum/right-fight/federalism-wont-work) //BW

Richman is certainly correct to suggest that this approach is counterproductive, and that national-security agencies should develop more-cooperative relationships, particularly with local authorities. But his effort to link this proposal to the spirit of federalism is misplaced. The fragmentation of government encouraged by federalist rhetoric has led to inefficient duplication of facilities and a lack of coordination at the national level. The FBI was created as a partial solution to these problems, but without a truly national approach, they have persisted and will continue to do so.¶ Moreover, federalism does not establish or encourage the respect for local authorities that Richman urges. It grants legal rights to states and declares, as a subsidiary premise, that local governments, as creatures of states, possess no legal status of their own. A structure of this sort impedes the important relationship between the national government and local governments, subjecting these local governments to unnecessary state control. The problem is particularly serious for America's large cities, whose economies, social services, and security are of national concern but which regularly find themselves constrained by rurally oriented state governments that are hostile to their interests. Faced with these impediments to a direct relationship with city governments, it is not surprising that the national government has tried to do things on its own. Federalism is not the solution to this problem but one of its principal causes. If we want better coordination of anti-terrorist activities between the national government and the cities, we need to abandon our outmoded federalist rhetoric and develop a coherent, coordinated approach to the relationship between national and local governments.

Terrorists don't care about federalism

Althouse, '04 (Ann, University of Wisconsin Law School Professor, Brooklyn Law School, 69 Brooklyn L. Rev. 1231, Summer) //BW

Over the course of United States history, conditions have changed, causing people to look more and more to the national government for solutions to modern-day problems. It would seem that the war on terrorism can only increase the demand for the national government to extend its reach into more and more aspects of American life. One might well predict, then, that the war on terrorism will finish off the Rehnquist Court's federalism revival: Federalism neurotics n141 will **need to snap out of their nostalgia and face the hard realities of a brutally changed world**. What can survive of the Madisonian "double security . . . to the rights of the people"? How can the states play an important role in controlling abuse by the federal government when we are forced to look to the federal government to deal with such monumental threats?

War

Federalism does not work to solve conflicts

McGarry and O'Leary, 94. (John Warren and Brendan, "The political regulation of national and ethnic conflict." Parliamentary Affairs v47.n1 pp94)//BW

Unfortunately, federalism has a poor track record as a conflict-regulating device in multi-national and polyethnic states, even where it allows a degree of minority self-government. Democratic federations have broken…Federal failures have occurred because minorities continue to be outnumbered at the federal level of government. The resulting frustrations, combined with an already defined boundary and the significant institutional resources flowing from control of their own province or state, provide considerable incentives to attempt secession, which in turn can invite harsh responses from the rest of the federation…genuine democratic federalism is clearly an attractive way to regulate national conflict, with obvious moral advantages over pure control. The argument that it should be condemned because it leads to secession and civil war can be sustained only in three circumstances: first, if without federalism there would be no secessionist bid and, second, if it can be shown that national or ethnic conflict can be justly and consensually managed by alternative democratic means; and third, if the secessionist unit is likely to exercise hegemonic control (or worse) of its indigenous minorities.

AT:: PCLOB CP

Politics

Congress Reps hate PCLOB: trying to tapper PCLOB's power

Nakashima 6/10/15 (a national security reporter for The Washington Post. She focuses on issues relating to intelligence, technology and civil liberties. Upset over op-ed, lawmakers seek to curb privacy board. https://www.washingtonpost.com/world/national-security/upset-over-op-ed-gop-lawmakers-seek-to-curb-privacy-board/2015/06/10/11ee864e-0f12-11e5-adec-e82f8395c032_story.html., 6/10/2015, AJZ)

Republicans on the House Intelligence Committee, upset by an opinion piece penned by the chairman of a government watchdog on privacy issues, **have advanced a measure to block** the agency's access to information related to U.S. covert action programs. The provision, in the 2016 intelligence authorization bill, takes a jab at the Privacy and Civil Liberties Oversight Board, an independent executive-branch agency whose job is to ensure that the government's efforts to prevent terrorism are balanced with the need to protect privacy and civil liberties. David Medine**,** the board's chairman, co-authored an essay in April arguing that if the United States were to continue killing U.S. citizens by drone strikes, an independent review panel was needed to assess whether targeting decisions are appropriate. In the piece, Medine, who was speaking for himself, suggested that the PCLOB would be a good candidate to serve as that review board. That article "really stirred the pot," said one congressional aide, who like others interviewed for this article was not authorized to speak on the record. The committee majority saw that suggestion, along with other reviews the board was undertaking, the aide said, as "mission creep." The provision, which the committee approved by voice vote last week, was an attempt by Republicans to make sure the board members "stay in their lane," as another aide put it. "Covert action, by its very definition, is an activity that the United States cannot and should not acknowledge publicly," said the committee's chairman, Devin Nunes (R-Calif.). "Review of such activity is ill-suited for a public board like the PCLOB."

Congress trying to decrease PCLOB's power

Aftergood June 10th 2015 (directs the FAS Project on Government Secrecy. The Project works to reduce the scope of national security secrecy and to promote public access to government information. House Intelligence Bill Would Limit PCLOB Oversight, http://fas.org/blogs/secrecy/2015/06/hpsci-pclob/. , 6/15/2015, AJZ)

The House Intelligence Committee inserted language in the pending intelligence authorization bill that would bar access by the Privacy and Civil Liberties Oversight Board (PCLOB) to classified information pertaining to covert action. "Nothing in the statute authorizing the Privacy and Civil Liberties Oversight Board should be construed to allow that Board to gain access to information the executive branch deems to be related to covert action," according to the new Committee report on the Intelligence Authorization Act for FY 2016 (section 306), published yesterday. To the extent that covert action is employed against terrorism and is therefore within the scope of PCLOB's charter, the House Committee action would preclude PCLOB oversight of the implications of such covert actions for privacy and civil liberties. That "unduly restricts" PCLOB's jurisdiction, according to Rep. James Himes (D-CT), a member of the House Intelligence Committee who unsuccessfully sought to modify the provision. It is possible that there is some tacit rivalry between PCLOB and the congressional intelligence oversight committees,

particularly since the PCLOB found that the Section 215 program for collection of telephone metadata was unlawfully implemented while the oversight committees had approved and embraced it. (The recurring failure of the intelligence oversight committees to accurately represent broader congressional and public perspectives over the past decade is a subject that remains to be addressed.) By contrast, the same House bill directed that the DNI shall provide the Government Accountability Office with the access to information that it needs to perform its authorized functions. The relevant directive (ICD 114) "shall not prohibit the Comptroller General [i.e., the head of the GAO] from obtaining information necessary to carry out an audit or review at the request of the congressional intelligence and defense committees."

PCLOB Isn't Real

PCLOB is so secret that we wouldn't even notice if it didn't exist.

Roberts, Washington Bureau Chief @ The Guardian, 13 (Dan Roberts – previously national editor of the Guardian. "Mysterious privacy board touted by Obama has deep government ties" Pub. June 21, 2013 The Guardian Online Mysterious privacy board touted by Obama has deep government tieshttp://www.theguardian.com/world/2013/jun/21/privacy-civil-liberties-obama-secretive Accessed 7/19/15 DH)

The body charged by President Obama with protecting the civil liberties and privacy of the American people exists in shadows almost as dark as the intelligence agencies it is designed to oversee. The Privacy & Civil Liberties Board (PCLOB) was due to meet Obama at the White House on Friday afternoon at 3pm in the situation room to discuss growing concerns over US surveillance of phone and internet records – or, at least, that's what unnamed "senior administration officials" said would happen. The meeting did not appear on the president's official diary issued to journalists, nor has the PCLOB issued much public confirmation beyond saying "further questions were warranted". To be fair, that might be because the PCLOB does not have a website, nor an email address, nor indeed any independent full-time staff. Its day-to-day administration is currently run by a government official on secondment from the office of the Director of National Intelligence. In fact, even the office address given out by the PCLOB in the few public letters that exist does not appear to be functioning. A security guard at the federal buildings on 2100 K Street in Washington said he had no record of the mystery body that claimed to occupy suite 500. On Tuesday, Obama announced that the PCLOB would be at the heart of his efforts to address the growing scandal over the National Security Agency's surveillance programmes. "I'll be meeting with them and what I want to do is to set up and structure a national conversation not only about these two programs but also about the general problem of these big data sets because this is not going to be restricted to government entities," he told Charlie Rose in a TV interview. Yet, the White House appears to be scrambling to set up infrastructure that can support such a conversation and has placed its trust in a body with a chequered history of independent scrutiny. Set up as an agency within the Executive Office of the President in 2004, the PCLOB for many years had no members at all. After criticism, in the words of a congressional report, that it "appeared to be presidential appendage, devoid of the capability to exercise independent judgement and assessment or to provide impartial findings and recommendations", it was reconstituted as an independent agency in August 2007 on the recommendations of the 9/11 commission. But even then, oversight moved at a glacial pace. Obama nominated two members in January 2011 and a further three in December 2012 but the Senate only confirmed four of them in August 2012. The fifth, chairman David Medine, was confirmed just last month. Obama told Charlie Rose that it was "made up of independent citizens, including some fierce civil libertarians". But there is little in the published biographies to elaborate on that. Medine was a partner in the DC law firm WilmerHale and previously served as a senior advisor to the White House National Economic Council. From 1992 to 2000, he worked at the Federal Trade Commission and previously worked at the Consumer Financial Protection Bureau and US Securities and Exchange Commission. The White House says he has long been interested in "internet privacy and data security". Three of the others meeting Obama on Friday have also worked for the government or courts. Rachel Brand is now a regulatory lawyer at the US Chamber of Commerce, but formerly worked at the Department of Justice. Patricia Wald is a former DC appeals court judge and Elisebeth Collins Cook is also a lawyer at Wilmer Hale, who once worked for the Department of Justice. Only Jim Dempsey, of the

Center for Democracy and Technology, does not appear to have worked for the government or served on the judiciary. The Washington Post described him as "a reasoned and respected civil liberties advocate routinely summoned to [Capitol] Hill by both political parties to advise lawmakers about technology and privacy issues." Following a meeting with intelligence chiefs on Wednesday, Medine said: "Based on what we've learned so far, further questions are warranted." He told the Guardian by email on Friday that the board would issue a statement after the meeting with Obama. NSA director Keith Alexander implied it understood the need for such programmes. "My deputy met with the board yesterday and actually briefed them for a couple of hours on both programs so that they understood," he told a Senate Appropriations Committee hearing on Thursday. Official board meetings of the PCLOB are closed to the public, because of the classified issues to be discussed, a notice published on the Federal Register said.

PCLOB *isn't real*, it doesn't exist.

Wogan, Masters in public policy @JHU and Staff Writer for Politifact 12 (JB Wogan is a staff writer for Governing newsletter, The Seattle Times, and winner of the News Writer of the Year from the "Washington Newspaper Publishers Association" Pub. June 22, 2012 Tampa Bay News Online, Politifact Edition, Retrieved Lexis Online Accessed 7/20/15 DH)

In theory, the Privacy and Civil Liberties Oversight Board is an independent watchdog that makes sure national intelligence efforts against terrorism don't infringe on people's privacy and civil liberties. The key phrase is, "in theory." In practice, the board does not exist. It doesn't have any confirmed members and can't have a meeting. As a candidate, Barack Obama said he would strengthen the board with subpoena powers and reporting responsibilities. The board came out of recommendations from the 9/11 Commission. A law passed in 2007 mandated that the board would be bipartisan, an independent agency within the executive branch and would have five members. President George W. Bush nominated members to the board in 2008, but the Senate never confirmed them. That left President Obama with the task of appointing the new board. Sharon Bradford Franklin, senior counsel at the Constitution Project, said Obama's efforts to establish and strengthen the board were "very discouraging to say the least ... He clearly did not make this the kind of priority we would have hoped." Obama announced two nominees in December 2010, but waited another year for the final three. Before then, he hadn't nominated enough people to constitute a quorum -- in other words, it couldn't have conducted business. The Senate Judiciary Committee approved the nominees in May, but as of this writing, the Senate has yet to vote on them. Kara Carscaden, a spokeswoman for the Obama campaign, blamed Senate Republicans for slowing down the nomination process by blocking the president's nominees. We find that's a stretch. Although it's true that all eight Republicans on the Senate Judiciary Committee voted against David Medine -- slated to be the board's chairman -- they weren't successful in blocking his nomination. And we've seen nothing from the White House that indicates Obama made a significant effort to get the board up and running before December 2011. Chris Calabrese, legislative counsel at the American Civil Liberties Union, said that with the Obama administration's late nominations, "you're not strengthening (the board), but weakening it and hollowing it out." "The most relevant thing is that this nomination took three years to happen," Calabrese said. "It only happened in an election year, essentially." During his campaign, Obama said he would give the board subpoena powers. Under current law, the board relies on the Attorney General to issue subpoenas for people's records. The board has to submit a written request -- which can be modified or denied by the Attorney General. If the board had direct subpoena power, it might improve the efficiency and ease of

investigations, Calabrese said. The board already has the power to request records from departments, agencies and other parts of the executive branch. In that case, if the board does not receive the desired documents, it would lodge a complaint with the head of the department or agency. As for reporting responsibilities, the 2007 law requires that the board testify before Congress on request and submit at least semi-annual reports to a variety of congressional committees. As with subpoena powers, we didn't find any sign that this had changed. To review, we found no evidence that the Obama administration pushed for new subpoena powers or reporting responsibilities. As Calabrese said, such efforts would be "nonsensical" since the board has no members or staff. We consider a nonexistent board with no additional subpoena powers or reporting responsibilities a Promise Broken.

PCLOB Won't Solve

Government overspill is inevitable, PCLOB is a corrupt agency, the government literally rewrites the recommendations before they get sent to congress.

Davis, Former Member of PCLOB 2005-2007, 7 (Lanny Davis was the only Democrat to serve on Bush's PCLOB committee, he Is a celebrated lawyer and a graduate of Yale Law School, where he won the Thurman Arnold Moot Court prize and served on the Yale Law Journal. "Why I Resigned From the President's Privacy and Civil Liberties Oversight Board — And Where We Go from Here" Pub. May 18, 2007 The Hill News Online http://thehill.com/blogs/pundits-blog/the-administration/34214-why-i-resigned-from-the-presidents-privacy-and-civil-liberties-oversight-board--and-where-we-go-from-here- Accessed 7/17/15 DH)

But regardless of my resignation, the most important issue remains and must now be addressed by Congress, which is considering changes in the present structure of the Board: Is there a role for a part-time civilian oversight board on executive-branch anti-terrorist programs that potentially might infringe on basic civil liberties and privacy rights in the Constitution and under U.S. laws — or not? I ask this question because it is not obvious to me that there is such a role or one that can be filled within the Office of the President or even within the executive branch. After all, this Board will, under any proposal I have seen, be filled, in whole or in part, by part-time civilians, not by career government professionals. First, one has to ask why the U.S. Congress should not be the one to provide such oversight rather than a part-time body. Second, can there be effective oversight if most of the Board is only part-time? And most important, can there be effective oversight if the body is placed within the Office of the President, where it was placed when Congress enacted the Intelligence Reform Act of 2004? It was the latter contradiction — providing independent oversight of the same people the Board is supposed to report to — that ultimately led to my resignation, as the letter explains. The White House in good faith genuinely believed that when the 2004 Congress chose to compromise and place the PCLOB in the Office of the President, it did so knowing that it would be under supervision and control, including substantive and editorial control of written work product. That is why they believed it was their right, even their duty, to extensively edit the final report to congress of the PCLOB, due on March 31, 2007, and ultimately delivered on April 20 — the most important reason why I chose to tender my resignation. But a supervised and controlled PCLOB was not what the 9/11 Commission had in mind when it recommended in its final report an independent PCLOB in the executive branch, with subpoena power — such as the FTC or even such as inspectors general within executive departments. But the White House opposed that concept at the time. The final compromise, as part of the Intelligence Reform Act, created in effect the "square peg in a round hole" concept — an "oversight" entity (that was, after all, the word Congress chose to put into the Board's name) placed inside the Office of the President, and thus part of the White House. I had thought that the hybrid or even contradictory nature of that compromise could be reconciled if senior levels of the White House — up to and including the highest level — insulated the Board and insisted on three words: "Leave them alone." But I had underestimated the culture of the vast array of alphabet soup agencies and bureaucracies in the national security apparatus that would resist that concept of independence, or at least be unable to resist the temptation to control and modify the Board's public utterances so long as they were able to — i.e., so long as the Board was seen as part of the White House staffing structure. This phenomenon of control and management by the White House of entities considered to be part of the White House is neither surprising nor that unique to this particular Republican administration. Those who view this as a partisan

issue to criticize a Republican administration and expect it would be completely different under a Democratic one are missing the larger point. I disagreed strongly with the view that just because the PCLOB was part of the White House it had to be part of White House management and control, although I do not question the motives of good faith of those who had that opinion.

PCLOB is overly optimistic, recommendations are ignored or not implemented.

Leithauser, Security Information Report Writer for UTC and Homeland Security 14 (Tom Leithauser, "Many Surveillance Recommendations Still Await Implementation, PCLOB Says" Pub. 2014 CPR Online Proquest Online Accessed 7/16/15 DH)

An Obama administration advisory board this week noted that many of the recommendations it released last year to reform U.S. intelligence programs have not been implemented by the White House or Congress. "Overall, the administration has been responsive to the board's input," the Privacy and Civil Liberties Oversight Board (PCLOB) said. "Most recommendations directed at the administration are still in the process of being implemented, however, or have only been accepted in principle, without substantial progress yet made toward their implementation." In particular, the administration has not halted the bulk collection of telephony metadata, a counterterrorism program that generated controversy after it was exposed in 20 I 3 by a former National Security Agency contract worker, the board said. The White House made several significant changes to rein in the metadata program but has been waiting on congressional action, even though such action is unnecessary, the board said. "The administration can end the bulk telephone records program at any time, without congressional involvement," it said. Legislation that would have ended the bulk records program, the USA FREEDOM Act, did not win congressional approval last year but is expected to be reintroduced. The report issued Jan. 29 by the PC LOB reviews 22 recommendations it made in two separate reports last year -- one that was released in January and another published in July. (CPR, Jan. 27, 2014, and July 7, 2014

Perm

ALONE, the PCLOB cannot solve for privacy

Setty 15 (Sudha Setty is a Professor of Law and the Associate Dean for Faculty Development and Intellectual Life. She specializes in the areas of comparative law and national security. Her scholarly publications address secrecy, separation of powers and rule of law issues in the comparative constitutional context. Winter, 2015, Stanford Journal of International Law, 51 Stan. J Int'l L. 69, SYMPOSIUM: Surveillance, Secrecy, and the Search for Meaningful Accountability, http://www.lexisnexis.com.proxy.lib.umich.edu/hottopics/lnacademic/, 2015, AJZ)

One promising move with regard to oversight and transparency has been the establishment and staffing of the Privacy and Civil Liberties Oversight Board (PCLOB). n186 This board, tasked with assessing many aspects of the government's national security apparatus both for efficacy and for potentially unnecessary incursions into civil liberties, has a broad mandate and, compared with many national security decision makers, significant independence from the executive branch. n187 Retrospectively, the PCLOB has, among other things, issued the highly critical report of the NSA Metadata Program in January 2014 that led to further public pressure on the Obama administration to curtail this program; it is promising that the PCLOB's prospective agenda includes further analysis of various surveillance programs. n188 **However**, the PCLOB's potential influence in protecting civil rights may be limited by its position: The PCLOB is an advisory body that analyzes existing and proposed programs and possibly recommends changes, but it cannot mandate that those changes be implemented. The ability to have a high level of access to information surrounding counterterrorism surveillance programs and to recommend changes in such programs is important and should be lauded, but **over-reliance on the PCLOB's non-binding advice to the intelligence community to somehow solve the accountability and transparency gap with regard to these programs would be a mistake.**

Perm is the best way to solve

Setty 15 (Sudha Setty is a Professor of Law and the Associate Dean for Faculty Development and Intellectual Life. She specializes in the areas of comparative law and national security. Her scholarly publications address secrecy, separation of powers and rule of law issues in the comparative constitutional context. Winter, 2015, Stanford Journal of International Law, 51 Stan. J Int'l L. 69, SYMPOSIUM: Surveillance, Secrecy, and the Search for Meaningful Accountability, http://www.lexisnexis.com.proxy.lib.umich.edu/hottopics/lnacademic/, 2015, AJZ)

Domestically, it could be argued that the types of reform recommended here to improve actual accountability and transparency over programs like the NSA Metadata Program are overkill: They involve multiple branches of government, the PCLOB, and the public. However, much of the accountability apparatus that has been in place was dormant until the Snowden disclosures, and would have remained passive without those disclosures. **A multi-faceted**, long-term, structural approach [*103] to improving transparency and accountability - one that involves at a minimum the courts and the PCLOB, but hopefully **Congress, the executive branch, and the public as well** - improves the likelihood of sustained and meaningful accountability as new surveillance capabilities are developed and implemented.

Perception

CP can't solve the perception of executive overreach

Ackerman, National Security editor for the Guardian 13 (Spencer Ackerman is an American national security reporter and blogger. He began his career at The New Republic and wrote for Wired magazine's national security blog, Danger Room.[1] He is now the national security editor for the Guardian US "Surveillance review will have little effect on NSA's bulk spying, reports suggest" Pub. December 14, 2013 The Guardian Online Lexis Nexis Accessed 7/14/15 DH)

A White House-sponsored review of surveillance activities will leave most of the National Security Agency's controversial bulk spying intact, according to reports in the US. Sascha Meinrath, director of the Open Technology Institute, said yesterday that the review panel that he advised was at risk of missing an opportunity to restore confidence in US surveillance practices. "The review group was searching for ways to make the most modest pivot necessary to continue business as usual," Meinrath said. Headed by the CIA's former deputy director, Michael Morrell, the review is expected to deliver its report to Obama tomorrow, the White House confirmed, although it is less clear when and how substantially its report will be available to the public. Should the review group's report resemble descriptions of it that leaked late on Thursday, it "does nothing to alter the lack of trust the global populace has for what the US is doing, and nothing to restore our reputation as an ethical internet steward", said Meinrath, who met the advisory panel and White House officials twice to discuss the bulk surveillance programmes that have prompted international outrage. Leaks to the New York Times and Wall Street Journal about the review group's expected recommendations strengthened Meinrath and other participants' long-standing suspicions that much of the NSA's sweeping spy powers would survive. The Times quoted an anonymous official familiar with the group saying its report "says we can't dismantle these programmes, but we need to change the way almost all of them operate".

USFG just ignores all the recommendations, does what it wants

Bradley, journalist for technology @ Forbes Magazine 14, (Tony Bradley is a regular contributor to Forbes, PCWorld, CSO, TechRepublic, DevOps, and Windows Secrets, As well as an experienced information security professional, speaker, author / co-author of 10 books, and thousands of web and print articles. "NSA Reform: What President Obama Said, And What He Didn't" Pub. January 17, 2014 Forbes Online http://www.forbes.com/sites/tonybradley/2014/01/17/nsa-reform-what-president-obama-said-and-what-he-didnt/ Accessed 7/14/15 DH)

The President is also asking advisers to explore how to move the phone records database out of government control. It's unclear how that will be accomplished, but they have 60 days to come up with a solution. Finally, Obama is asking Congress to put together a panel of public advocates to represent the general population before the FISA court. The panel would be made up of technology, privacy, and civil liberties advocates. This is arguably the most important of the reforms proposed by President Obama because it will give some voice to law abiding citizens with the secret court that meets behind closed doors. It is unclear at this point, though, just how much weight the panel will have, and under what circumstances the panel would be allowed to intercede. The President's Review Group on Intelligence and Communications Technologies produced a 300-plus page report, outlining 46 recommendations in all for how to reform the intelligence community to enable it to do its job without

blatantly ignoring the Constitution or trampling the rights of law abiding citizens. Most of those recommendations are either being ignored completely, or they're being delayed for further review. A post on the Electronic Frontier Foundation (EFF) Deeplinks Blog, praised President Obama, but cautions that there is still a long way to go. It quotes EFF legal director Cindy Cohn stressing, "Now it's up to the courts, Congress, and the public to ensure that real reform happens, including stopping all bulk surveillance—not just telephone records collection. Other necessary reforms include requiring prior judicial review of national security letters and ensuring the security and encryption of our digital tools, but the President's speech made no mention of these." Part of the problem in trying to rein in the activities of the NSA is that there was already a Constitution in place, and there was already some manner of congressional oversight. The NSA seems to have decided that its mission and the interests of national security trumped the rules, and operated with impunity despite those restrictions. There are no guarantees that these reforms will affect any real change, and it's virtually impossible to monitor the activities of an agency that exists in the shadows of national security.

AT: India CP

2AC

Squo Solves

US lacks capabilities for the deal and other countries solve now

Biswas 15 -- (Soutik Biswas, India Online Editor at BBC for 12 years, Dehli correspondent, 2015, "Will the India-US nuclear deal work?," BBC News, January 26th, Available Online at http://www.bbc.com/news/world-asia-india-30978152, Accessed 07-20-15) PMG

Now, a large insurance pool will be set up, without the need for any further legislation. The plan, according to reports, is to transfer the financial risk to insurers in the case of an accident.

Analysts say the two governments have done "all they can do" and it is now up to the suppliers - or American firms wanting to sell reactor technology to India - to do business.

Energy-hungry India plans to generate 63,000 MW of nuclear power by 2032 - an almost 14-fold increase on current levels. It has 22 nuclear reactors and plans to build some 40 more in the next two decades.

American suppliers are already facing competition. **Russia** is planning to build 20 reactors in India. **France** is building six reactors in the western state of Maharashtra, one of India's most industrialised states. **America** will build at least eight reactors.

The deal has been put down to personal chemistry between Mr Obama and Mr Modi

So what lies ahead for American companies?

"It is not going to be easy. Pricing will be a key issue," says science journalist Pallava Bagla. "New generation American reactors are three times more expensive than comparable India-made reactors. They are also untested as all of them are under construction, including in the US."

Both General Electric and Westinghouse Electric Company, two major US suppliers, have already been given land in Gujarat and Andhra Pradesh state to build reactors. Westinghouse has praised developments and said it looked forward to the "fine print" of the agreement and further meetings, including a planned "insurance seminar". GE said it would review the agreement soon.

Clearly, it won't be a walk in the park for American suppliers. It is too early to say that the deal will spur billions of dollars worth of nuclear contracts.

Other Policies Outweigh

India cares more about economic policies – nuclear coop isn't in the near future

Lakshman 13 -- (Narayan Lakshman, US correspondent at The Hindu, Ph.D in International Development at the London School of Economics and Political Science, 2013, "Manmohan, Obama to meet amid U.S. concerns over liability law," The Hindu, September 27th, Available Online at http://www.thehindu.com/news/national/manmohan-obama-to-meet-amid-us-concerns-over-liability-law/article5172229.ece, Accessed 07-20-15) PMG

Hours before Prime Minister Manmohan Singh landed in the U.S. to hold what is likely to be his final official meeting with President Barack Obama, a senior administration official said the White House continued to have "specific concerns" regarding India's nuclear liability law.

In a background call with the media, the official however firmly pushed back on any notion that the bilateral relationship had "plateaued," arguing that Friday's Oval Office meeting between the two heads of government would be a "short working visit" that would address a wide range of bilateral issues and set out a roadmap for the path ahead into the 21st century, that would also consider the post-2014-elections scenario in India.

While progress with the landmark civilian nuclear energy agreement slowed after India adopted the nuclear liability law, the signing of a "pre-early-works agreement" between nuclear supplier companies in the U.S. and India's nuclear operator, the Nuclear Power Corporation of India Limited (NPCIL), appeared imminent on the eve of Mr. Singh's visit.

However, there does **not** appear to be any official planned **timeframe** within which an actual deal could be inked between U.S. nuclear suppliers and the NPCIL, which could lead to the production of safe nuclear energy within the terms of Indian law.

The administration official this week said that in a complex relationship such as the one that existed between New Delhi and Washington, there would always be areas where "room for more progress," existed, and in this case those areas include **concerns** that the U.S. government and corporations have **regarding** certain **Indian economic policies.**

While the Obama administration has pointed out that "contentious issues" of the past, including nuclear energy, defence, and clean energy cooperation, were now "centre-pieces" of the relationship today, India is also likely to use the occasion of Mr. Singh's visit to flag its concerns.

Specifically, New Delhi has continued to worry about the potential adverse impact that the comprehensive immigration reform bill currently working its way through the U.S. Congress could have on businesses employing skilled Indian workers.

In this regard, the White House pushed back this week saying that Indian nationals were the largest recipients of H-1B and L1 visas by a wide margin and, contrarily, the legislation under consideration brings significant benefits to Indian nationals.

It would also appear likely that the Indian delegation will push back on the increasingly strident calls by the U.S. for India to fall in line with the Montreal Protocol and scale back Indian companies' use of refrigerant gases.

Earlier, The Hindu broke the news that if India yielded to the U.S. demand, which officials reportedly said Mr. Obama might personally bring up in his meeting with Mr. Singh, it would have to adopt alternative technologies that were 20 times more costly, mainly proprietary to a few U.S.-based companies, and in some cases “untested for safety.”

Won't Pass

Setbacks to passage – approval and opposition

Baru 7/21 -- (Sanjaya Baru, Director for Geo-economics and strategy at the International Institute of Strategic Studies, member of India's National Security Advisory Board in the Prime Minister's Office, Professor at the Indian Council for Research on International Economic Relations in New Delhi, Ph.D and Master's Degree in economics from Jawaharlal Nehru University in New Delhi, 2015, "An agreement that was called a deal," The Hindu, July 21st, Available Online at http://www.thehindu.com/opinion/lead/indiausa-stand-in-nuclear-deal/article7444348.ece, Accessed 07-26-15) PMG

Two developments have come in the way of this objective getting realised. First, in his second term Dr. Singh failed to get parliamentary approval for the original civil nuclear liability bill that his government had drafted in early 2010. Neither Prithviraj Chauhan, then the Minister dealing with atomic energy in the PMO, nor Shivshankar Menon, then National Security Advisor, was able to sell the original draft bill to the Opposition. Even though some senior members of the BJP had no problem endorsing the original draft, the L.K. Advani faction of the BJP, including Sushma Swaraj and Yashwant Sinha, teamed up with the Communist Parties, to demand redrafting of the Bill.

In the first such instance of taking the Opposition's help to draft a government bill (later repeated when Anna Hazare's supporters were drafted into writing the Lok Pal bill) the Singh government rewrote its own bill and introduced elements that have since made the liability law stillborn.

The second development was the Fukushima disaster in Japan that, on the one hand, increased the cost of building nuclear power plants and, on the other, revived the global anti-nuclear campaign.

For all these reasons, it may be argued that the expected take-off of the civil nuclear energy programme has not happened.

1AR/Extensions

Squo Solves

The deal's looking up – Obama's visit and cooperation with Modi check

BJP – Bharatiya Janata Party (India People's Party) – India's largest political party

Biswas 15 -- (Soutik Biswas, India Online Editor at BBC for 12 years, Dehli correspondent, 2015, "Will the India-US nuclear deal work?," BBC News, January 26th, Available Online at http://www.bbc.com/news/world-asia-india-30978152, Accessed 07-20-15) PMG

It was a rare moment of **bipartisan support** for a deal which came during a heady opening day of President Barack Obama's landmark three-day visit to India.

It was also ironical that the BJP which had steadfastly argued against the nuclear deal in its entirety when in opposition in 2007, had actually managed to pull this off now it is in power. Much of it has been put down to the personal chemistry between Mr Obama and Prime Minister Narendra Modi. It also helps that - unlike his predecessor Manmohan Singh, who was hobbled by difficult allies and reservations about the deal within his own Congress party - Mr Modi suffers from no such constraints.

So how significant is Monday's announcement?

The historic 2006 India-US nuclear deal had been held up for eight years amid US concerns over who would be liable for any nuclear accident. Mr Singh, the deal's architect, had told the parliament that it marked the "end of India's decades-long isolation from the nuclear mainstream"

2015 seals the deal

Baru 7/21 -- (Sanjaya Baru, Director for Geo-economics and strategy at the International Institute of Strategic Studies, member of India's National Security Advisory Board in the Prime Minister's Office, Professor at the Indian Council for Research on International Economic Relations in New Delhi, Ph.D and Master's Degree in economics from Jawaharlal Nehru University in New Delhi, 2015, "An agreement that was called a deal," The Hindu, July 21st, Available Online at http://www.thehindu.com/opinion/lead/indiausa-stand-in-nuclear-deal/article7444348.ece, Accessed 07-26-15) PMG

What of the U.S.-India strategic partnership? The 123 agreement was done at a time when the U.S., under the Bush presidency, and India, during the first Manmohan Singh government (UPA-I) had shared strategic concerns. The 2008-09 trans-Atlantic financial crisis and its aftermath altered the global context. The first Obama administration and the second Manmohan Singh government virtually abandoned the nuclear deal and strayed away from the nascent strategic partnership. It is only in the last one year that there has been some course correction in both capitals. If in 2005 it was the nuclear deal that opened the door to a strategic partnership, in **2015 it is the strategic partnership that has enabled a closure on the nuclear deal.**

Won't Pass

Massive political backlash from both countries

Mohan 7/21 -- (C. Raja Mohan, consulting editor on foreign affairs for The Indian Express, distinguished fellow at the Observor Research Foundation in New Delhi, , Dehli, nonresident Senior Associate in Carnegie's South Asia Program with a focus on international security, defense, and Asian strategic issues, Ph.D from Jawaharlal Nehru University in New Delhi, 2015, "Transformation of the bilateral relationship is the real big deal," The Indian Express, July 20th , Available Online at http://indianexpress.com/article/explained/10-yrs-of-indo-us-civil-nuclear-deal-transformation-of-the-bilateral-relationship-is-the-real-big-deal/1/, Accessed 07-26-15) PMG

This bold political deal inevitably produced a backlash in both countries. In America there was strong opposition to making an exception for India from the sacred rules of the non-proliferation regime. In Delhi, the opposition was even more intense. The deep suspicion of America, accumulated over many decades, meant that many in the national security establishment and the political class were wary of the deal. If the nuclear initiative was about removing the main problem in bilateral relations, it also became the lightning rod for a vigorous expression of India's skepticism about America's intentions. **No foreign policy issue had generated so much heat since the war with China in 1962**. The withdrawal of the left from the ruling coalition was followed by Dr Singh seeking a confidence vote in the Lok Sabha in 2008 that just about squeaked through.

Nuclear Deal DA

2AC

A US-India nuclear deal sparks Pakistani aggression and build up – that risks nuclear conflict

Etzioni 15 -- (Amitai Etzioni, University of Professor at the Georget Washington University and the author of many books, the most recent of which is *The New Normal*, 2015, "The Darker Side of the U.S-India Nuclear Deal," The Diplomat, February 13th, Available Online at http://thediplomat.com/2015/02/the-darker-side-of-the-u-s-india-nuclear-deal/, Accessed 07-16-15) PMG

The American media is gushing about improvements to the United States-India relationship in the wake of President Barack Obama's January visit to India. Among the achievements stemming from the visit is what the media had called a "breakthrough" that paved the way for implementing the two nations' civilian nuclear cooperation deal. However, examining the reasons why this deal was first struck, its components, and its side effects suggests that it is a cause more for concern than for celebration.

The U.S. long considered India to be the leader of the non-aligned camp and held that it was tilting toward the USSR and, later, toward Russia. India purchased most of its weapons from Russia, and it had a pseudo-socialist economic regime. The U.S. tilted toward Pakistan throughout the Cold War and in the years that followed. However, following the rise of China, the George W. Bush administration decided to lure India into the West's camp and draw on it to help contain China. Bush therefore offered India civil nuclear technology and access to uranium, the fuel it needed for nuclear power reactors. The Indian government agreed to sign a 123 Agreement (or the U.S.-India Civil Nuclear Agreement), but the deal ran into considerable opposition within India. Hence the resulting impasse, which Obama has now helped resolve.

A variety of considerations drove Indian opposition to the deal, including concerns about liability, threats to Indian sovereignty, and the prospect of Washington enjoying heightened leverage over New Delhi. Critics in the West correctly raised other concerns. First, the deal violated the spirit if not the letter of the Non-Proliferation Treaty (NPT). The NPT has successfully discouraged several nations that had considered developing nuclear weapons and has even led a few of them to cancel programs that were already underway. This success was achieved in part through a twofold promise: that those nations that possess nuclear weapons will gradually give them up, and that these same nations will refuse to share nuclear technology and fuel with countries that refuse to sign the NPT. Two nations, India and Pakistan (and, by implication, Israel), openly defied the NPT. Hence the Bush administration's deal with India was and is viewed as a major blow to the NPT regime.

Even more serious has been **the deal's impact on the nuclear arms race between India and Pakistan.** At first glance it may seem that the deal should have had no such impact, because the technology and fuel covered by the deal were meant to be used strictly for civilian purposes, specifically for producing electricity. However, as Charles D. Ferguson, president of the Federation of American Scientists, wrote in Arms Control Today, India was short on uranium. "If the nuclear deal were to fall through, India would be forced to **stop running** about **half** of its indigenously fueled reactors or only operate its [nuclear submarine] fleet at approximately **50 percent capacity**." It would also have to choose between shortchanging its civilian energy program and limiting its production of nuclear weapons. By granting India access to uranium, the deal allows India to divert its indigenously-mined uranium to military

applications without detracting fuel from the civilian program. To get uranium to India, the U.S. pressured members of the Nuclear Suppliers Group to "[ease] long-standing restrictions on nuclear trade with India." Since then, Australia has committed to providing India with uranium, and India has also received uranium from France, Russia, and Kazakhstan and struck supply agreements with Mongolia, Argentina and Namibia.

Following the deal, Pakistan ramped up its production of uranium and plutonium and, it seems, its nuclear weapons arsenal. Given that both nations have already come close to nuclear blows – the two countries nearly engaged in a war over Kashmir, which has been described as "**one of the tensest nuclear standoffs between India and Pakistan** since independence in 1947" – such a nuclear arms race is particularly troubling.

In an ironic development worthy of Broadway, the deal has not aligned India with the U.S. in its drive to contain China. Until the recent election of Prime Minister Narendra Modi, many Indian politicians treated the U.S. with considerable suspicion because they viewed it as Pakistan's ally and as an imperial power. Modi at first may have seemed to move much closer to the U.S. and to express more concern about Chinese "aggression." That the joint communiqué issued by the U.S. and India at the end of Obama's visit included a line about the "importance of safeguarding maritime security and ensuring freedom of navigation and overflight throughout the region, especially in the South China Sea" spurred such commentary, as did Indian participation in some military exercises in the area. However, Modi made it abundantly clear that his first, second and third priorities are advancing India's economic development. These priorities will benefit from working with both the U.S. and China.

It would be best for everyone involved to put the U.S.-India Civil Nuclear Agreement on ice. The international community would do best if it encouraged and helped India and Pakistan to settle their differences and accede to the NPT – and if no nation provided either of them with new nuclear technology or fuel until they scale back their military nuclear programs.

Even a limited nuclear war between India and Pakistan is globally devastating and risks extinction

Ghosh 13 -- (Palash Ghosh, business journalist for 21 years in New York, 2013, "India-Pakistan Nuclear War Would Kill 2 Billion People, End Civilization: Report," IB Times, December 10th, Available Online at http://www.ibtimes.com/india-pakistan-nuclear-war-would-kill-2-billion-people-end-civilization-report-1503604, Accessed 07-16-15) PMG

A nuclear war between South Asian rivals India and Pakistan would trigger a global famine that would immediately kill 2 billion people around the world and spell the "**end of human civilization**," according to a study by an anti-nuclear group. The International Physicians for the Prevention of Nuclear War and Physicians for Social Responsibility (PSR) also warned that even a limited nuclear conflict between India and Pakistan would destroy crop yields, damage the atmosphere and throw global food markets into chaos. China, the world's most populous country, would face a catastrophic food shortage that would lead to enormous social convulsions.

"A billion people dead in the developing world is obviously a catastrophe unparalleled in human history," said Ira Helfand, co-president of PSR and the study's lead author. "But then if you add to that the possibility of another 1.3 billion people in China being at risk, we are entering something that is

clearly the end of civilization." Helfand explained that China's destruction would be caused by longstanding tensions between its neighbors, India and Pakistan, two enemies that have **already fought three wars** since 1947. Moreover, given the **apocalyptic power of contemporary nuclear weapons** – which are far more powerful than the atomic bombs dropped on Japan in 1945 – the impact of an India-Pakistan war would be **felt across the globe.**

"With a large war between the United States and Russia, we are talking about the possible, not certain, but possible, extinction of the human race," Helfand said, according to Agence France Presse. "In this kind of war, biologically there are going to be people surviving somewhere on the planet, but the chaos that would result from this [South Asian nuclear war] will dwarf anything we've ever seen."

Specifically, the study noted, a nuclear war in South Asia would release black carbon aerosol particles that would cut U.S. corn and soybean production by 10 percent over a decade. Those particles would also reduce Chinese rice production by an average of 21 percent over a four-year period and by another 10 percent over the subsequent six years. Even more devastating, China's wheat crop would drop by 50 percent in just the first year after the hypothetical Indo-Pak nuclear war.

CNN reported that there are at least 17,000 nuclear warheads (other reports suggest that there are perhaps as many as 20,000) around the world, which present a far greater threat than the current obsession with Iran's nascent atomic program. Most of these warheads are currently owned by the United States and Russia, while India and Pakistan are believed to have "only" about 100 warheads each.

But given the state of endless enmity between India and Pakistan, they are **more likely** to launch a nuclear war than the superpowers who possess far more and far deadlier nuclear weapons. Helfand told CNN that in an India-Pakistan nuclear war scenario, more than 20 million people would be dead within one week from the explosions, firestorms and immediate effects of radiation. "But the global consequences would be far worse," he said.

Indeed, the firestorms produced by this imaginary South Asian war "would loft 5 million tons of soot high into the atmosphere, blocking out sunlight and dropping temperatures across the planet. This climate disruption would cause a sharp, worldwide decline in food production." The subsequent global famine would place the lives of 870 million people in the developing world at immediate risk of starvation.

1AR – General

Pakistan sees nuclear capability in zero-sum terms – thanks to the nuclear deal

Bano 6/22 -- (Saira Bano, Fellow a the Stimson Center in Washington D.C., 2015, "Pakistan: Lessons from the India-US Nuclear Deal," The Diplomat, June 22nd, Available Online at http://thediplomat.com/2015/06/pakistan-lessons-from-the-india-us-nuclear-deal/, Accessed 07-26-15) PMG

Following the India-U.S. nuclear deal, Pakistan accelerated efforts to take measures, both internally and externally, to catch up to India's nuclear capacity. Externally, apart from demanding a similar nuclear deal, Pakistan signed a nuclear agreement with China in which the latter committed to provide two nuclear reactors in apparent violation of NSG guidelines. After granting India a waiver, the NSG did not condemn the Chinese deal with Pakistan. The lack of generality in the India NSG waiver has encouraged China and Pakistan to seek a deal outside the NSG, but this approach has limitations and cannot be sought on a regular basis. Pakistan has also repeatedly blocked consensus to start negotiations on the FMCT (Fissile Material Control Treaty) due to its security concerns, despite pressure from major powers. It fears that India would be able to increase its fissile material stockpiles as a result of the NSG waiver. However, early conclusion of an FMCT is in fact in the interest of Pakistan, as it would freeze the increasing asymmetry at a point where Pakistan already has enough nuclear weapons for its deterrence against India.

Internally, Pakistan is stepping up production of enriched uranium and plutonium for weapons and is considered to have the fastest-growing nuclear weapons program in the world. Pakistan also opted for "Full Spectrum Deterrence," which provides strategic and tactical tools to confront emerging threats such as new offensive doctrines like India's Cold Start doctrine.

Even given India's access to the global nuclear market, Pakistan is still estimated to have more nuclear weapons (100-120) than India (90-110). Pakistan's over-reliance on nuclear weapons – increasing the production of fissile material, developing tactical nuclear weapons, and blockading FMCT negotiations – **to compete with India causes concerns in the international community**. Strategic stability is not achieved by developing a large number of nuclear weapons; it relies on normalizing relations and improving trade relations to minimize the incentive to initiate a conflict.

Indo-Pak Tensions High

Indo-Pak sentiments are inflamed

Chatterjee 13 -- (Siddharth Chatterjee, International Federation of the Red Cross and Red Crescent Societies, served at the United Nations since 1997 in countries affected by conflicts, former Special Forces officer decorated for gallantry in the Indian Army, graduate in Public Policy from Princeton University, 2013, "The Toxic India-Pakistan Relationship – When Will It All End?," Huffington Post, August 14th, Available Online at http://www.huffingtonpost.com/siddharth-chatterjee/post_5422_b_3755719.html, Accessed 07-26-15) PMG

Like many toxic relationships, India and Pakistan are stuck in a vicious cycle, having had numerous wars and conflicts since 1947. They have a set routine that occurs on a regular basis on their borders, ironically called the Line of Control(LoC). They exchange fire at the border, soldiers from one or both sides die, and the governments each issue cautious statements that blame the other side.

The media and many of the country's intellectuals are whipped into frenzy and are baying for blood on their twitter handles and blog sites.

Eager to placate an enraged fourth estate the government issues a strong condemnation of the other side and vows to stall any ongoing diplomatic or peace processes and the entire incident slowly fades from public consciousness as the media loses interest, that is, until the next firing exchange at the LoC.

For the average Indian citizen, it is almost impossible to count the number of times this exact scenario has been played out by India and Pakistan.

On 6th August 2013, a cross-border raid resulted in the death of 5 Indian soldiers due to what the Indian government has termed a violation of the 2003 ceasefire agreement between the two countries. Predictably, initial reactions from government officials were not up to the media's expectations, setting reporters and news anchors on the warpath. Within hours, upcoming India-Pakistan peace talks were placed on hold.

There are many things wrong with this entire situation. First and foremost, it is important to note that the ceasefire agreement is violated **hundreds of times a year** by both countries. In fact a few days before in an exclusive by the First Post, it was alleged that Indian soldiers had abducted some Pakistanis and killed them. Cross-border firing is a matter of daily reality for soldiers manning the borders. Yet, these incidents and losses of life amongst our soldiers are only brought up by the media when there is a lack of other, more 'sexy' news to report or when they feel they can raise their TRPs, i.e. their ratings and number of viewers, through the coverage.

More importantly, the knee-jerk response from the media and political parties is to demand the suspension of talks and insist on an eye for an eye. The result is that the public, already tired of decades of conflict with neighbouring Pakistan, has its sentiments inflamed. This is not a solution to anything. In fact, let us consider history. Every time talks are suspended and people demand retribution, nothing changes, The underlying issues are never resolved.

The need of the hour is not for politicians and the news media to retreat into shallow, short-sighted and hostile rhetoric, which may serve to increase their own support, but does nothing to resolve the

situation. The need is for pragmatism and a real political resolve to put this border issue to rest once and for all, so that more blood and the treasures of both nations are no longer wasted.

AT: Russia CP

2AC

Alt Causes/No Solvency

Kosovan, Iraqi, and Libyan interests are all alt causes to the impact

Chance 15 – [Matthew Chance, CNN Senior International Correspondent in Moscow, "What does Russia's President Putin really want?" February 11, 2015, CNN, http://www.cnn.com/2015/02/11/world/chance-putin-analysis/] N.H

Clearly, Putin is determined to get his way in Ukraine. We already know, essentially, what this means in terms of a peace deal -- a truce was signed last September, although it didn't hold. The Minsk Protocol agreed that, among other things, autonomy would be granted to Ukraine's southeastern regions. The Russian language would be given official status. A buffer zone would be established along the front lines and heavy weapons would be pulled back from civilian areas. But Putin may actually want much more. On an official visit to Egypt this week, the Russian president dropped a large hint -- and not for the first time. In an interview with the Al-Ahram newspaper he rejected Russian responsibility for the crisis in Ukraine. "It emerged in response to the attempts of the U.S.A. and its Western allies, who considered themselves winners of the Cold War, to impose their will everywhere," Putin told the newspaper. "Promises of non-expansion of the NATO to the east have turned out to be hollow statements," he said. A solution to the Ukraine crisis, then, may involve ruling the country out of any future NATO membership, however unpalatable that may be to some in the West. Russian diplomats call it guaranteeing Ukraine's "neutral status" -- which sounds much better than "capitulation." The bigger problem, though, is that this may not end with Ukraine. For Putin, this crisis is only the latest in a catalog of grievances, which includes the West trampling over Russia's interests from Kosovo to Iraq, to Libya and Syria. Putin's ultimate goal may be to tear up the post-Soviet assumptions about what Russia will tolerate, and permanently change Russia's relationship with the West.

Ukraine Irrelevant

Neither Obama nor Putin is looking for cooperation even if it's not in their best interest

Mufson 15 –[Steven Mufson, Chief economic policy journalist @ The Washington Post, covered economics and foreign policy and diplomatic correspondence, June 6 2015, "At G-7 meeting, Obama's primary task is confronting his Putin problem" Washington Post, http://www.washingtonpost.com/business/economy/at-g-7-meeting-obamas-primary-task-is-confronting-his-putin-problem/2015/06/06/894ac148-0aea-11e5-9e39-0db921c47b93_story.html] N.H

I talked to a Russian acquaintance who said if we could get back to peaceful coexistence, that would be an improvement," said Angela Stent, a Georgetown University professor and a former State Department and National Intelligence Council official. "Peaceful coexistence" is the phrase coined by Soviet leader Nikita Khrushchev in 1953 to reduce tensions among communist and capitalist blocs.

Russia has, even during the Ukraine crisis, continued to help identify and destroy Syria's stockpiles of chemical weapons. But many Russia experts say that the Obama administration underestimated Putin's determination to fuel the Ukraine conflict, even though it was not in Russia's interest.

"He's not a chess player — he plays checkers. That's why we're surprised. We thought he was playing chess," said Derek Chollet, a former assistant secretary of defense for international security affairs who is now at the German Marshall Fund.

As the conflict in Ukraine drags on, the administration has been more ready to openly point to Russia's direct participation.

"One other effective tool that we've seen quite recently is making clear that there are Russians operating in Ukraine and that some of those Russians are being killed," Charles Kupchan, senior National Security Council director for European affairs, said in a conference call Thursday. "The presence of Russian troops in eastern Ukraine is something that the Russian government has tried to deny, but the more evidence and the more public evidence there is of that presence, the more pressure there is on Vladimir Putin."

Taking the measure of Putin has been the real center of Russia policy. When Medvedev was president, the two countries agreed on a new START, U.N. resolutions on Iran and North Korea, membership in the World Trade Organization, new supply routes to U.S. troops in Afghanistan, and economic liberalization. "We were getting big stuff done," said McFaul, the former ambassador.

But then Putin declared his candidacy to run for president again. And he condemned the U.S. and NATO air attacks on Libya, railed against what he called U.S. interference in his reelection bid and took issue with the notion of U.S. exceptionalism. Putin was

particularly angered by McFaul's efforts to encourage "civil society," the people and groups independent of the government.

The last time that McFaul met Putin, during Kerry's previous visit to Moscow two years ago, Putin told Kerry that the United States was naive to think it could foster Russian opposition groups. "He was pretty blunt about it. He looked right at me," McFaul recalled. "He didn't use my name but said, 'We know what your embassy is doing here in its support for the opposition, and we don't appreciate it.' "

Yet many Russia experts say that if naivete was involved, it was the belief that Putin, who invaded Georgia when George W. Bush was president, would not seek to keep other neighboring states in Moscow's orbit.

At this point, experts say that Obama and his foreign policy team no longer hope for cooperation or democratic reform in Russia. "I think they're more concerned about Russians doing mischief, rather than a positive contribution to what we're trying to achieve," said Thomas Graham, a managing director at Kissinger Associates who was NSC director for Russia under Bush. He cited the need to keep Russia in agreement with other powers for an Iran accord.

Beyond that, though, Graham added: "There are no expectations for the relationship. They just don't want things to blow up between now and the end of the term."

Sanctions Check

Russia says no: Sanctions check any co-op, G7 summit proves

Drezner 15 –[Daniel W. Drezner, professor of international politics at the Fletcher School of Law and Diplomacy at Tufts University and a nonresident senior fellow at the Brookings Institution. Contributing editor for Foreign Policy and The National Interest, B.A. in political economy from Williams College and an M.A. in economics and Ph.D. in political science from Stanford University. June 8 2015, "The conflict equilibrium of Russian-American relations" The Washington Post, https://www.washingtonpost.com/posteverything/wp/2015/06/08/the-conflict-equilibrium-of-russian-american-relations/] N.H

As the G-7 summit continues in Germany, my Washington Post colleague Steven Munson does an excellent job examining the state of bilateral relations that has "bounced from cooperation to confrontation and eventually to compartmentalization."

My only quibble is the possible impression left that this is entirely about Obama's fluctuating policy towards a constant Russia. As the meat of Mufson's story suggests, Moscow has altered tactics as well:

With the escalation of attacks last week by Russian-backed separatists on Ukrainian forces and the continued forward positioning of heavy artillery in violation of cease-fire agreements, Russia is leaving the G-7 leaders little choice. White House officials said that Obama would not only support existing sanctions but would also consider imposing more….

"We're not back in the Cold War, but neither are we in the strategic partnership we have tried to establish," said Jens Stoltenberg, secretary general of NATO.

And, sure enough, supporting sanctions seems to have been the G-7 consensus that emerged yesterday:

Group of Seven (G7) leaders vowed at a summit in the Bavarian Alps on Sunday to keep sanctions against Russia in place until President Vladimir Putin and Moscow-backed separatists fully implement the terms of a peace deal for Ukraine….

EU leaders agreed in March that sanctions imposed over Russia's seizure and annexation of Crimea and detribalization of eastern Ukraine would stay until the Minsk ceasefire was fully applied, effectively extending them to the end of the year, but a formal decision has yet to be taken.

Merkel said any easing of the sanctions depended largely on Russia and its behavior in Ukraine.

European Council President Donald Tusk went further, saying: "If anyone wants to start a discussion about changing the sanctions regime, it could only be about strengthening it."

Ukraine Destabilization Turn

Two turns:

1. **Russia has a vested interest in maintaining Ukrainian conflict, resolve and weakened alliances**
2. **Maintaining destabilization in Ukraine is beneficial to American policies towards Russia**

Drezner 15 –[Daniel W. Drezner, professor of international politics at the Fletcher School of Law and Diplomacy at Tufts University and a nonresident senior fellow at the Brookings Institution. Contributing editor for Foreign Policy and The National Interest, B.A. in political economy from Williams College and an M.A. in economics and Ph.D. in political science from Stanford University. June 8 2015, "The conflict equilibrium of Russian-American relations" The Washington Post, https://www.washingtonpost.com/posteverything/wp/2015/06/08/the-conflict-equilibrium-of-russian-american-relations/] N.H

I believe it might be. From Russia's perspective, the revealed preferences of goosing the Ukrainian conflict just before the G-7 summit suggests that the geopolitical benefits of destabilizing Ukraine outweigh the economic costs of continued sanctions. This set of preferences might flummox President Obama, but Russia's actions make it clear. Putin seems content to test the resolve of the US-European partnership. As Mufson notes:

For the most part, though, what was an acute crisis last year has settled into a frozen conflict, at best, testing U.S. and European resolve to maintain — or toughen — economic sanctions. Russia has tried wooing the Czech president and the leaders of Hungary and Greece, but German Chancellor Angela Merkel has led the push for keeping costly sanctions in place as long as Russia fails to abide by the terms of the Minsk cease-fire agreement.

What about U.S. preferences? A few senior National Security Council officials explained the U.S. position during a conference call last Thursday. The key part from Ben Rhodes:

Look, clearly, President Putin's calculus has not fully shifted. We continue to see very concerning Russian aggression in eastern Ukraine. But the fact of the matter is, in the first case, sanctions are necessary as a deterrent against more aggressive Russian action, but secondly, sanctions take time to affect the calculus of other leaders….

We saw with Iran — it took years of pressure to get them to the negotiating table and to get them to begin to change their policy with respect to their nuclear program. That's why it is so important that this is maintained through G-7 sessions. And that is why it's so important that sanctions are kept in place, so that they're not just seen as one-time punishments that are then able to be waited out by countries that continue to violate international law and international norms, but rather, we need to maintain the pressure, show that there cannot be cracks in the transatlantic unity, and show that the costs are just going to continue to grow for Russia. And that is what ultimately we hope will affect Russian calculus and allow for a return to peace and stability in Ukraine and the broader region.

So, again, sanctions are a tool that can have an immediate impact in deterring actions by governments like Russia. But over the longer term, they need to be sustained to steadily inform the calculus of countries like Russia that are acting outside of international norms.

And the key part from senior director for Europe Charles Kupchan:

[O]ne other effective tool that we've seen quite recently is making clear that there are Russians operating in Ukraine and that some of those Russians are being killed. And the presence of Russian troops in eastern Ukraine is something that the Russian government has tried to deny, but the more evidence and the more public evidence there is of that presence, the more pressure there is on Vladimir Putin.

And now the American position becomes clear. For the U.S., the key isn't just to maintain the sanctions, but to maintain the state of geopolitical uncertainty in the region. That's the only way to deter private investors from inching back into the Russian market. If the current sanctions stay stable, then private investors are likely to do that very thing.

So it appears that both Russia and the United States have a vested interest in continued conflict. Russia wants to weaken Ukraine, not be seen as knuckling under to sanctions, and wait for fissures to appear in the Western alliance. But the United States sees the calculus of conflict a bit differently. U.S. officials think that continued conflict will help to perpetuate the sanctions and the number of dead Russian soldiers in Ukraine. This elevates geopolitical risk and makes it harder for Putin to suppress the domestic costs of his Ukraine adventure.

1AR

Sanctions Check

Sanctions eliminate possibility of cooperation on Ukraine

Ranasinghe and Simmons '15 -[Keir Simmons, Journalist for NBC and writer for Financial Times, Associate Producer with CNBC.com, covering a range of topics including the global economy, financial markets and corporate news, Bachelor's degree in History from the London School of Economics. Friday, 8 May 2015, "Why Russia-US relations remain in deep freeze" CNBC] N.H

Hit by sanctions and a fall in the price of oil, a key export for Russia, the Russian economy faces recession this year. The International Monetary Fund forecasts the Russian economy to shrink 3.8 percent in 2015 and 1.1 percent in 2016.

Peskov told NBC that Western sanctions were not having a marked impact on Russia's economy.

"It [sanctions] hurts producers and farmers in the European Union," Peskov said. "During last year, a year of sanctions against Russia and a complete break in dialogue in different fields with the European Union and U.S., our volume of trade decreased about 30 percent with the EU and rose up to 7, 10 percent with the U.S., so it's tricky."

"So while European farmers are crying out at the disaster, American companies are enjoying a surplus. That is a question that will come for Washington and Brussels, not for us," Peskov added.

In contrast to the Western boycott of Russia's Victory Day parade, Chinese president Xi Jinping arrived in Moscow Friday to attend the event.

"Russia's annexation of Crimea and its intervention in eastern Ukraine was a game-changer," Nicholas Spiro, managing director at Spiro Sovereign Strategy in London, told CNBC.

"Although the blood-letting may have diminished significantly over the past few months, the east-west stand-off over Ukraine endures - and could easily flare up again **given that there's still no political solution to the conflict**," he added. "**While many European countries would like to see a normalisation of relations with Russia, sanctions remain in plac**e and Germany is standing firm for the time being."

Ukraine Destabilization Turn

Russia doesn't want the Ukraine conflict resolved- helps escape western control

Weitz '15 –[Richard Weitz, Ph. D. in political science from Harvard. Weitz worked for the Institute for Foreign Policy Analysis, Center for Strategic and International Studies, Defense Science Board, DFI International, Inc., Center for Strategic Studies, Harvard University's Kennedy School of Government, and the U.S. Department of Defense, Senior Fellow and Director of the Center for Political-Military Analysis at Hudson Institute, March 2015, "Ukraine Deal Could Buy U.S. Time to Formulate Effective Russia Policy" Hudson Institute, http://perspectives.carnegie.org/us-russia/ukraine-deal-buy-u-s-time-formulate-effective-russia-policy/] N.H

The diverging strategic aims of the main actors in the Ukraine conflict means that an enduring settlement will prove elusive even if the current ceasefire endures. Russia wants to keep Ukraine weak and divided, while the Ukrainian government—backed by the United States—wants to rule a reunified country, to include Russian-occupied Crimea. For their part, many Europeans appear content with almost any settlement that ends the fighting and the sanctions that they have imposed on Russia.

There is not a primarily military solution to the challenges posed by Russia's interference in Ukraine, given Russia's reliance on a hybrid combination of non-military tools for exerting influence in other countries and the imperative of avoiding a war between Russia and the West. Russia could conquer Ukraine militarily, but instead has chosen to keep Ukraine unstable to prevent its consolidation under Western control.

AT: Brazil CP

2AC

Solvency Deficits

Solvency deficit – the counterplan causes exportation from both sides which causes economic inefficiencies

Crook 12 – Ed Crooks is U.S. industry and energy editor for the Financial Times, 2012, ("US rules boost imports of Brazilian ethanol", Financial Times, April 9, 2012 available at http://www.ft.com/cms/s/0/5564f822-8252-11e1-9242-00144feab49a.html // date accessed 7/26/15 K.K)

US imports of ethanol from Brazil have risen to their highest since 2008 as a result of environmental regulations that favour Brazilian fuels produced from sugar over US product made from corn. The US exports ethanol to Brazil as well as importing it, and US industry participants have raised concerns that an almost identical product, albeit made from different feedstocks, is travelling thousands of miles in both directions. Bob Dinneen, the president of the Renewable Fuels Association, the industry group, said: "We have the bizarre situation where we are exporting to them while they are exporting to us. It's inefficient." US ethanol imports from Brazil are still relatively small, but are expected to continue to grow this year, which analysts say will put pressure on the Obama administration to rethink biofuels regulation. The US started last year both to export ethanol to Brazil and to import significant volumes for the first time since 2008. In the second half of last year, the US was importing an average of 7,800 barrels a day from Brazil and exporting 34,900 barrels a day, according to the US government's Energy Information Administration. The rise in imports predates the end of a 54-cent-a-gallon tariff on ethanol imports that was allowed to lapse at the end of last year. Instead, analysts say the increase was due to the fact that Brazil's sugar cane ethanol, unlike US corn ethanol, meets the US Environmental Protection Agency's standard for an advanced biofuel. Under the 2007 Energy Independence and Security Act, the EPA sets targets each year for the volumes of corn-based and advanced biofuels that refiners must blend into the fuel that they sell. For 2012, it has mandated 2bn gallons of advanced biofuel, equivalent to about 11 per cent of all biofuels and 1.1 per cent of total US fuel sales. Pat Westhoff of the Food and Agricultural Policy Research Institute at the University of Missouri said the EPA would have to decide whether to increase the requirement for advanced biofuels for next year, adding to the demand for Brazilian imports. "The only reason for these imports is the mandate," he said. "And a lot of folks are trying to say it was never the intention of the Renewable Fuel Standard to drive demand for imported ethanol."

Squo Solves

U.S is the leading ethanol exporter and importer and other countries resolve biofuels

Harris 15 – Sean Harris is the principal ethanol research for the Energy Information Association, 2015, ("U.S. ethanol exports in 2014 reach highest level since 2011", EIA, March 26, 2015, available at http://www.eia.gov/todayinenergy/detail.cfm?id=20532 // date accessed 7/22/15 K.K)

According to EIA monthly supply data through December 2014, which EIA released in late February, U.S. exports of fuel ethanol in 2014 reached their second-highest level at a total of 826 million gallons. This level was second only to the 1.2 billion gallons exported during 2011 and 33% more than exports of fuel ethanol in 2013. Similarly, U.S. imports of ethanol, which totaled approximately 377 million gallons during 2013, fell by 81% to a total of 73 million gallons in 2014, their lowest annual level since 2010. As a result, the United States was a net exporter of fuel ethanol for the fifth consecutive year and exported the fuel to 37 different countries in 2014. In the United States, ethanol is primarily used as a blending component in the production of motor gasoline (mainly blended in volumes up to 10% ethanol, also known as E10). Corn is the primary feedstock of ethanol in the United States, and large corn harvests have contributed to increased ethanol production. The U.S. Department of Agriculture estimates that the United States produced a record 14.2 billion bushels of corn in 2014, 3% higher than the previous record set in 2013. Given the uncertainty surrounding future Renewable Fuel Standard (RFS) targets and the lack of significant demand for higher ethanol blends in 2014, the growth in ethanol output had two primary outlets: it can either be blended into domestic gasoline or it can be exported. U.S. gasoline blending grew for the second consecutive year in 2014, with gasoline consumption increasing slightly from 2013 levels. As gasoline consumption increases, more ethanol is able to be used as a blendstock (as E10). Additional volumes of ethanol beyond requirements for E10 blending and relatively small volumes used in higher ethanol blends such as E85 (85% ethanol and 15% gasoline) were exported in 2014. Canada remained the top destination for U.S. ethanol exports in 2014, receiving 336 million gallons, or about 41% of all U.S. ethanol exports. Brazil, the United Arab Emirates, and the Philippines all imported at least 50 million gallons of U.S. ethanol in 2014; 33 other countries received less than 50 million gallons each. U.S. ethanol has been a competitively priced octane booster for gasoline in foreign markets as well as an attractive option for meeting renewable fuel and greenhouse gas emissions programs standards. In addition, countries such as Canada and Brazil have ethanol blending mandates that continue to generate demand for U.S. ethanol. Export volumes to Brazil increased by 146% in 2014 in part because of the need to meet Brazilian ethanol demand. Brazilian ethanol producers have already lost significant market share internationally over the past few years as U.S. exports have grown, in large part because of abundant U.S. corn harvests. As a result, reports state that as many as 60 Brazilian ethanol plants were temporarily closed in 2014. Brazilian ethanol producers were also hurt by a lack of U.S. ethanol import demand in 2014, driven by uncertainty surrounding future RFS targets in the United States, which have been a strong driver of U.S. demand for sugarcane ethanol from Brazil in previous years. Sugarcane ethanol, unlike corn ethanol, generally counts as an advanced biofuel under the RFS program, which includes targets for several distinct categories of biofuels. The United States imported 73 million gallons of ethanol in 2014, a decrease of more than 81% from 2013. About 74% of U.S. imports came from Brazil, with the remaining gallons primarily from Guatemala, Canada, and the Netherlands. U.S. import demand for ethanol was driven lower primarily because of RFS targets that are not yet finalized along with strong domestic production and import quantities of biomass-based diesel, which, like sugarcane, also counts as an advanced biofuel under the RFS program. The California Low

Carbon Fuel Standard, which includes incentives for increased blending of sugarcane ethanol, did little to draw in Brazilian volumes of ethanol in 2014, with slightly more than 10 million gallons entering the United States on the West Coast, down from 126 million gallons in 2013. Given the existing ethanol production capacity coupled with the ongoing constraints for blending ethanol into domestic gasoline, the United States likely will continue to remain a strong exporter of ethanol in 2015. Ultimately, the key drivers for ethanol exports this year are the finalized levels of RFS targets for 2014 and 2015, future corn crop yields, and ethanol producer profitability. Increased exports of ethanol to Brazil in 2015 may be supported by an increase in the Brazilian ethanol blend level from 25% to 27%, which took effect in mid-March.

1AR/Extensions

Solvency Deficits

Other tariffs prevent the benefits and status quo solves – U.S doesn't need Brazil exports

Chang 8 - Jack Chang is a South America correspondent for McClatchy, based in Rio de Janeiro, Brazil, 2008, ("Brazil can't find world market for its ethanol", McClatchy, April 30, 2008, available at http://www.mcclatchydc.com/news/nation-world/world/article24482407.html // dae accessed 7/26/15 K.K)

ORINDIUVA, Brazil — The ethanol giants of southeastern Brazil have transformed how 185 million residents of this South American nation power their cars and trucks. Now, they say they're ready to start the same ethanol revolution in the rest of the world, if only the world will let them. That, however, is where Brazil's ethanol leaders are hitting problems. They already churn out what many consider to be the world's cheapest and most efficient mass-produced biofuel and say they can export billions of gallons more. Yet the rest of the world doesn't seem to want what the Brazilians have. In the United States, a 54 cent-per-gallon tax blocks most Brazilian ethanol from reaching U.S. consumers. Similar tariffs also block access to Europe, China and other major energy markets. Getting rid of such tariffs, Brazilian producers argue, would give the world what it needs — cheap, clean and environmentally friendly alternative fuel. Ending the trade barriers also would ignite Brazil's ethanol industry and turn the country into a major biofuel exporter, said Jose Goldemberg, one of the founders of Brazil's national ethanol program. Instead, the United States continues to block Brazilian ethanol while boosting production of ethanol made from corn, which produces much less ethanol per acre than sugar does, cuts into food supplies and does little to reduce greenhouse-gas emissions. Other countries also have avoided Brazilian ethanol, instead experimenting with wheat, rapeseed and other crops that also produce less biofuel per acre. "It doesn't make much sense to produce ethanol from corn," Goldemberg said. "What the United States needs to do if it wants to solve its energy problems is very simple. It needs to import ethanol from Brazil." The message doesn't seem to be getting through. As world alarm grows over rising food prices and shortages, many are blaming expanding biofuel production for hogging farmland that used to produce food, and Brazilian leaders have found themselves on the defensive about their celebrated biofuel. The Brazilians have hit back by pointing out that sugar cane-based ethanol and the U.S., corn-based variety are worlds apart, and the problem is corn, not sugar. Science is on their side. Because producers can use the entire stalk of the sugar plant to make biofuel, instead of just the kernels of the corn plant, an acre of sugar cane in Brazil produces about 800 gallons of ethanol, while an acre of corn produces 328 gallons. The starch from corn also must be converted into sugar before it can be turned into ethanol, an extra step that requires a bigger investment in energy. As a result, sugar-cane ethanol produces 8 units of energy for every 1 unit of fossil fuels invested in its production, while the ratio for corn ethanol is 1.3 to 1. Not only is producing sugar cane-based ethanol more efficient, Brazilian officials say, very little of the country's farmland is used to produce it. Sugar is grown only on 2 percent of Brazil's arable land, industry figures show. That means sugar isn't kicking out food crops in Brazil and hasn't contributed to rising food prices, said Ricardo Dornelles, a renewable fuels director for Brazil's mines and energy ministry. "We want to give the world confidence in our product," Dornelles said. "Whoever buys the product has the right to name the conditions of its production. But this can't mean imposing something that doesn't match reality." U.S. critics have made the most noise about the possible effects of ethanol production on Brazil's fragile rainforests and other ecosystems, criticisms that Brazilian producers call absurd. The reasoning goes that growing more sugar

cane would replace other crops such as soybeans, which would force farmers to cultivate those other crops in freshly cleared forest or savannah, said Timothy Searchinger, a U.S. scientist who headed an influential study on land-use changes sparked by ethanol production. Cutting down forest for biofuels would release tons of carbon into the atmosphere and erase any greenhouse-gas benefits of using the biofuel over fossil fuels, Searchinger said. "People have thought ethanol was a win-win-win situation," he said. "And Brazil has the potential to be really quite good, but today, producing more ethanol there would still push the expansion of farmlands." Brazilian officials scoff at such criticisms, saying sugar producers don't knock down forests but instead expand into degraded pastures. They say the country's beef industry, which on average grazes one head of cattle for every 2.5 acres, could double that rate and free up to about 260 million acres for other uses, including sugar production. "Sugar is not growing in the forest," said Marcos Jank, president of the country's biggest sugar industry group UNICA. "You don't destroy forest to grow sugar. You actually produce a carbon credit and not a carbon deficit." Despite the recent bumps in the road, Brazil has traveled a long way to become what it is today — the world leader in alternative energy. Already, pumps selling ethanol are common sights throughout this continent-sized country, and this year, Brazilian drivers will consume as much ethanol as gasoline. With the help of aggressive offshore oil exploration, Brazilians also enjoy something Americans can only dream about — energy independence, meaning the country produces all the fuel — fossil or alternative — it needs. The secret to the Brazilian miracle is endless rows of sugar cane, which has turned Brazil into the world's second biggest ethanol producer, only behind the United States. Brazil churned out nearly 6 billion gallons of sugar-cane ethanol last year, about 85 percent of it used domestically. What's more, Brazilian producers say they could easily double ethanol production within a decade, and given the right international conditions, eventually supply a tenth of the world's vehicle fuel needs. Even with the U.S. tariffs, Brazil will export about 500 million gallons of ethanol this year to the United States, with the majority entering through a special Caribbean basin trade initiative allowing a limited amount of duty-free imports. The Brazilian model, however, hasn't been easy to achieve, having sprouted from more than three decades of trial and error. Brazil's ethanol program began with the international energy crises of the 1970s, when the country's military government tried to protect Brazil from price shocks by subsidizing sugar-cane ethanol production and requiring that all gas stations offer the biofuel. Brazilians responded by snatching up millions of cars that ran only on ethanol. The boom ended in the 1980s when world gasoline prices dropped, and suddenly Brazilians were stuck with cars that ran only on the more expensive biofuel. Ethanol made its comeback only recently with the return of high gasoline prices and the development of "flex-fuel" cars that can run on any combination of ethanol and gasoline. Such cars now make up nearly all new models sold in Brazil. Ethanol, in fact, has become so popular in Brazil that it threatens government hopes of turning Brazil into a major biofuels exporter. The vast majority of Brazilian ethanol goes into Brazilian cars, and that'll remain the case even when the country produces some 17.3 billion gallons of ethanol a year in 2020, government and industry estimates show. Brazil will have about 4 billion gallons of ethanol left over to export then. Reducing trade barriers, however, would upend that estimate and stimulate ethanol production in Brazil as well as in some 100 countries that grow sugar cane, Jank said. Over the next decade, Brazilian producers are planning to add 150 ethanol mills to the 320 already in operation. Out amid the endless acres of cane in interior Sao Paulo state, the heart of Brazilian sugar country, it's easy to believe the boasts. The country's ethanol machine never stops, working day and night as thousands of people cut and crush tons of sugar cane to produce biofuel. "The only barrier we face to growth are the export tariffs of other countries," said Renato

Junqueira Santos Pereira, whose family owns a mill that covers more than 170,000 acres. "If you get rid of the tariff, production will jump."

Increased ethanol production kills the environment, status quo solve necessity of the counterplan and solvency deficit – moving away from ethanol now

Conka 14 – James Conka has been a scientist in the field of the earth and environmental sciences for 33 years, specializing in geologic disposal of nuclear waste, energy-related research, planetary surface processes, subsurface transport and environmental clean-up of heavy metals, he is a Trustee of the Herbert M. Parker Foundation and consult on strategic planning for the DOE, EPA/State environmental agencies, and industry including companies that own nuclear, hydro, wind farms, large solar arrays, coal and gas plants and a consultant for EPA/State environmental agencies and industry on clean-up of heavy metals from soil and water, 2014, ("It's Final -- Corn Ethanol Is Of No Use", Forbes, April 20th, 2014, available at http://www.forbes.com/sites/jamesconca/2014/04/20/its-final-corn-ethanol-is-of-no-use/ // date accessed 7/26/15 K.K)

OK, can we please stop pretending biofuel made from corn is helping the planet and the environment? The United Nations Intergovernmental Panel on Climate Change released two of its Working Group reports at the end of last month (WGI and WGIII), and their short discussion of biofuels has ignited a fierce debate as to whether they're of any environmental benefit at all. The IPCC was quite diplomatic in its discussion, saying "Biofuels have direct, fuel-cycle GHG emissions that are typically 30–90% lower than those for gasoline or diesel fuels. However, since for some biofuels indirect emissions—including from land use change—can lead to greater total emissions than when using petroleum products, policy support needs to be considered on a case by case basis" (IPCC 2014 Chapter 8). In 2013 the U.S. used 4.7 billion bushels of corn (40% of the harvest) to produce over 13 billion gallons of ethanol fuel. The grain required to fill a single 25-gal gas tank with ethanol can feed one person for a year, so the amount of corn used to make that 13 billion gallons of ethanol did not feed the almost 500 million people it was feeding fifteen years ago. This is the population of the entire Western Hemisphere outside of the United States. Some estimate that 30 million people are actually starving as a direct result of biofuel production (The Telegraph). Source: YES! Magazine In 2013 the U.S. used 4.7 billion bushels of corn (40% of the harvest) to produce over 13 billion gallons of ethanol fuel. Source: YES! Magazine The summary in the new report also states, "Increasing bioenergy crop cultivation poses risks to ecosystems and biodiversity" (WGIII). The report lists many potential negative risks of development, such as direct conflicts between land for fuels and land for food, other land-use changes, water scarcity, loss of biodiversity and nitrogen pollution through the excessive use of fertilizers (Scientific American). The International Institute for Sustainable Development was not so diplomatic, and estimates that the CO2 and climate benefits from replacing petroleum fuels with biofuels like ethanol are basically zero (IISD). They claim that it would be almost 100 times more effective, and much less costly, to significantly reduce vehicle emissions through more stringent standards, and to increase CAFE standards on all cars and light trucks to over 40 miles per gallon as was done in Japan just a few years ago. With more than 60 nations having biofuel mandates, the competition between ethanol and food has become a moral issue. Groups like Oxfam and the Environmental Working Group oppose biofuels because they push up food prices and disproportionately affect the poor. Most importantly, the new IPCC report is a complete about-face for the UN's Panel. Its 2007 report was broadly condemned by some environmentalists for giving the green light to large-scale biofuel production, resulting in environmental and food supply problems. The general discussion on biofuels has changed over the last few years. In December,

Senators Feinstein (D-CA) and Coburn (R-OK) introduced a bill that would eliminate the corn ethanol mandate within the Federal Renewable Fuel Standard (Oil&Gas Journal) that requires blending ethanol into gasoline at increasing levels over the next decade. It was met with stiff opposition from heavily agricultural states, but had strong support from the petroleum industry. However, now that the tax credit and import tariffs have expired and ethanol is holding its own economically, it remains to be seen if the industry can stand up to this pressure. So where is the U.S. today in corn ethanol space? In 2000, over 90% of the U.S. corn crop went to feed people and livestock, many in undeveloped countries, with less than 5% used to produce ethanol. In 2013, however, 40% went to produce ethanol, 45% was used to feed livestock, and only 15% was used for food and beverage (AgMRC). The United States will use over 130 billion gallons of gasoline this year, and over 50 billion gallons of diesel. On average, one bushel of corn can be used to produce just under three gallons of ethanol. If all of the present production of corn in the U.S. were converted into ethanol, it would only displace 25% of that 130 billion. But it would completely disrupt food supplies, livestock feed, and many poor economies in the Western Hemisphere because the U.S. produces 40% of the world's corn. Seventy percent of all corn imports worldwide come from the U.S. Simply implementing mandatory vehicle fuel efficiencies of 40 mpg would accomplish much more, much faster, with no collateral damage. In 2014, the U.S. will use almost 5 billion bushels of corn to produce over 13 billion gallons of ethanol fuel. The grain required to fill a 25-gallon gas tank with ethanol can feed one person for a year, so the amount of corn used to make that 13 billion gallons of ethanol will not feed the almost 500 million people it was feeding in 2000. This is the entire population of the Western Hemisphere outside of the United States.

Squo Solves

Homemade ethanol overcomes necessity of brazil exports

Lane 15 – Jim Lane is a biofuels scientist and researcher for Biofuels digest, 2015 ("US ethanol production dips, but remains at over 15 billion gallon annual pace", Biofuels Digest, July 19, 2015, available at http://www.biofuelsdigest.com/bdigest/2015/07/19/us-ethanol-production-dips-but-remains-at-over-15-billion-gallon-annual-pace/ // date accessed 7/25/15 K.K)

In Washington, according to EIA data as analyzed by the Renewable Fuels Association, ethanol production averaged 984,000 barrels per day (b/d)—or 41.33 million gallons daily. That is down 3,000 b/d from the week before. The four-week average for ethanol production stood at 983,000 b/d for an annualized rate of 15.07 billion gallons. Stocks of ethanol stood at 19.7 million barrels. That is a 0.5% decrease from last week. Imports of ethanol were zero b/d for the 27th time in 28 weeks. Gasoline demand for the week averaged 395.0 million gallons daily. Refiner/blender input of ethanol averaged 881,000 b/d. Expressed as a percentage of daily gasoline demand, daily ethanol production was 10.46%. On the co-products side, ethanol producers were using 14.920 million bushels of corn to produce ethanol and 109,817 metric tons of livestock feed, 97,903 metric tons of which were distillers grains. The rest is composed of corn gluten feed and corn gluten meal. Additionally, ethanol producers were providing 5.79 million pounds of corn distillers oil daily.

Cellulosics and Biodiesel from algae solve the necessity of the counterplan

Conka 14 – James Conka has been a scientist in the field of the earth and environmental sciences for 33 years, specializing in geologic disposal of nuclear waste, energy-related research, planetary surface processes, subsurface transport and environmental clean-up of heavy metals, he is a Trustee of the Herbert M. Parker Foundation and consult on strategic planning for the DOE, EPA/State environmental agencies, and industry including companies that own nuclear, hydro, wind farms, large solar arrays, coal and gas plants and a consultant for EPA/State environmental agencies and industry on clean-up of heavy metals from soil and water, 2014, ("It's Final -- Corn Ethanol Is Of No Use", Forbes, April 20th, 2014, available at http://www.forbes.com/sites/jamesconca/2014/04/20/its-final-corn-ethanol-is-of-no-use/ // date accessed 7/26/15 K.K)

What else can we use to produce biofuel? Two leading strategies involve ethanol production from the degradation of cellulosics, and biodiesel production from algae. The common alcohol, ethanol, has been harnessed by humans for millennia, made through the microbial conversion of biomass materials, typically sugars, through fermentation. The process starts with a solution of fermentable sugars, fermented to ethanol by microbes, and then the ethanol is separated and purified by distillation. Fermentation involves microorganisms, typically yeasts, that evolved billions of years ago before Earth's atmosphere contained oxygen, to use sugars for food and in the process produced ethanol, CO2 and other byproducts: (sugar) $C_6H_{12}O_6 \rightarrow 2\ CH_3CH_2OH + 2\ CO_2$ (ethanol + carbon dioxide) Microorganisms typically use 6-carbon sugars and their precursors, glucose and sucrose. But because sugars and starches are foods, a better alternative for ethanol production should be from non-food cellulosic materials, such as paper, cardboard, wood, and other fibrous plant material. Switchgrass and napier grass have been studied extensively as the best alternatives. Cellulosics are abundant and much of the supply is

considered waste. Cellulosics are comprised of lignin, hemicellulose, and cellulose. Lignin provides structural support for the plant and encloses the cellulose and hemicellulose molecules, making it more difficult to process for fuel. Thus, efficiently making ethanol out of cellulosics requires a different approach than for corn. They can either be reacted with acid (sulfuric is most common), degraded using enzymes produced from microbes, or heated to a gas and reacted with chemical catalysts (thermo-chemical). Each has its variations, some can be combined, and all are attempting to be commercialized. Still, these processes are stuck at about twice the price per gallon produced compared to corn. Recently, special microorganisms have been genetically engineered to ferment these materials into ethanol with relatively high efficiency. It's no wonder we just went with corn! Another less discussed biofuel strategy is biodiesel replacing petroleum diesel. Biodiesel is made by combining almost any oil or fat with an alcohol such as ethanol or methanol. Biodiesel can be run in any diesel engine without modification and produces less toxic emissions and particulates than petroleum diesel. It causes less wear and tear on engines, and increases lubricity and engine efficiency, and releases about 60% less CO2 emissions than petroleum diesel. Rudolf Diesel originally developed the diesel engine to run on diesel from food oils such as peanut and soybean, but animal fats and any other natural oil can be used. However, almost a hundred years ago, the need for fuel outstripped the supply of natural oils and petroleum become the only abundant source available.

Status quo importation means either the squo solves the counterplan or the counterplan is inevitable – condition isn't key

USTR No Date - The Office of the United States Trade Representative (USTR) is the United States government agency responsible for developing and recommending United States trade policy to the president of the United States, conducting trade negotiations at bilateral and multilateral levels, and coordinating trade policy, No Date, ("Brazil", No Date, available at https://ustr.gov/countries-regions/americas/brazil // date accessed 7/26/15 K.K)

Initiatives The United States engages with Brazil on trade and investment matters through a number of initiatives. On March 19, 2011, President Obama and President Rousseff signed the Agreement on Trade and Economic Cooperation, to enhance cooperation on trade and investment between the Western Hemisphere's two largest economies. The agreement expands our direct trade and investment relationship by providing a framework to deepen cooperation on a number of issues of mutual concern, including innovation, trade facilitation and technical barriers to trade. The agreement represents a shared commitment to broad-based economic growth, and is a foundation for cooperation in other trade fora. U.S.-Brazil Trade Facts U.S. goods and private services trade with Brazil totaled $107 billion in 2012 (latest data available). Exports totaled $68 billion; Imports totaled $39 billion. The U.S. goods and services trade surplus with Brazil was $29 billion in 2012. Brazil is currently our 9th largest goods trading partner with $72 billion in total (two ways) goods trade during 2013. Goods exports totaled $44 billion; goods imports totaled $28 billion. The U.S. surplus with Brazil was $17 billion in 2013. Trade in private services with Brazil (exports and imports) totaled $31 billion in 2012 (latest data available). Services exports were $24 billion; Services imports were $7 billion. The U.S. services trade surplus with Brazil was $17 billion in 2012. Exports Brazil was the United States' 7th largest goods export market in 2013. U.S. goods exports to Brazil in 2013 were $44.1 billion, up 0.7% ($310 million) from 2012, and up 294% from 2003. U.S. exports to Brazil accounted for 2.8% of overall U.S. exports in 2013. The top export categories (2-digit HS) in 2013 were: Machinery ($7.3 billion), Mineral Fuel ($6.5 billion), Aircraft ($5.3 billion), Electrical Machinery ($5.2 billion), and Organic Chemicals ($2.3 billion). U.S. exports of agricultural

products to Brazil totaled $1.9 billion in 2013, the 14th largest ag export market. Leading categories include: wheat ($1.2 billion), dairy products ($83 million), prepared food ($67 million), and feeds and fodders ($51 million). U.S. exports of private commercial services* (i.e., excluding military and government) to Brazil were $23.9 billion in 2012 (latest data available), 7.1% ($1.6 billion) more than 2011 and 365% greater than 2002 levels. Other private services (telecom, business, professional and technical services, and financial services), travel and royalties and license fees categories accounted for most of the U.S. services exports to Brazil. Imports Brazil was the United States' 16th largest supplier of goods imports in 2013. U.S. goods imports from Brazil totaled $27.6 billion in 2013, a 14.2% decrease ($4.6 billion) from 2012, but up 54% from 2003. U.S. imports from Brazil accounted for 1.2% of overall U.S. imports in 2013. The five largest import categories in 2013 were: Mineral Fuel and Oil (crude) ($5.8 billion), Iron and Steel ($3.0 billion), Special Other (returns and repairs) ($1.9 billion), Machinery ($1.9 billion), and Aircraft ($1.7 billion). U.S. imports of agricultural products from Brazil totaled $3.4 billion in 2013, the 6th largest supplier of ag imports. Leading categories include: coffee (unroasted) ($1.1 billion), tobacco ($391 million), fruit and vegetable juices ($304 million), and coarse grains ($296 million). U.S. imports of private commercial services* (i.e., excluding military and government) were $6.9 billion in 2012 (latest data available), 0.9% ($60 million) less than 2011 but up 305% from 2002 level. The other private services (business, professional, and technical services), royalties and license fees, and travel services categories led U.S. services imports from Brazil.

Status quo solves – EPA called for importation of Brazilian ethanol already

Podkul and Gomes 13 – Cezary Podkul and Fabiola Gomes are energy reporters for Reuters, 2013 (“Brazil ethanol exports to U.S. at risk if EPA eases blend rule”, Reuters, Oct 11, 2013 available at http://www.reuters.com/article/2013/10/11/us-epa-rfs-brazil-idUSBRE99A10M20131011 // date accessed 7/26/15 K.K)

U.S. imports of Brazilian sugar cane ethanol could be cut by more than half if a draft proposal to reduce next year's U.S. biofuel blending mandate is enacted. While the U.S. corn-based ethanol industry has issued the most fierce complaints over news this week that the Environmental Protection Agency may ease volumes, it may be Brazilian ethanol producers like Raizen and traders like Royal Dutch Shell PLC and Vitol S.A. who suffer a deeper blow. There import business has been booming thanks to the sugar-based fuel's treatment as an "advanced" biofuel under EPA regulations. The EPA document - which is not yet finalized - calls for 2.21 billion gallons of the "advanced" biofuels, such as Brazilian sugar cane ethanol and biodiesel made from soybean and recycled cooking oils. That is down from 2.75 billion gallons this year and compares to 3.75 billion set by the 2007 law mandating higher ethanol blending volumes. Some 1.28 billion of the 2.21 billion gallons is due to be derived from biodiesel, the same as this year, according to the proposal. But because biodiesel has a higher energy content, suppliers get 1.5 blending credits for each gallon, rather than just 1 credit for each gallon of ethanol. The credits are required as proof that the gallons have been blended, and can be used to fulfill the overall "advanced" requirement. As a result, some 1.92 billion of the credits could be generated from the biodiesel side of the "advanced" pool, leaving precious little room - just under 300 million gallons - for imports of Brazilian sugar cane ethanol. "The document indicates a red light for Brazilian ethanol exports in 2014," Intl FCStone analyst Renato Dias told Reuters. By contrast, the EPA has previously said that some 666 million gallons of Brazilian sugar cane ethanol would be needed to fulfill the advanced biofuel requirement in 2013. The United States typically takes up to 80 percent of Brazil's ethanol exports.

Other Latin American countries, which are seeking greater production of ethanol for domestic use and for export, could see the EPA's action as a "red light", said Plinio Nastari, president of sugar and ethanol consulting firm Datagro. "It will be a shame for all the countries that are developing ethanol markets, not just for Brazil," Nastari said. HOPE FOR RELIEF For now, at least, the ethanol volume requirement remains fluid. In a statement issued Friday, EPA administrator Gina McCarthy said the agency had not finalized its biofuel blending targets for 2014. However, she also did not dispute the authenticity of the draft proposal obtained by Reuters. The Brazilian Sugarcane Industry Association breathed a sigh of relief at McCarthy's statement. "Brazilian sugarcane ethanol producers are pleased to see Administrator McCarthy confirm there have been no final decisions on the renewable fuel standards for 2014," the association's North America Representative, Leticia Phillips, said in a statement. "We trust that EPA's final targets for advanced biofuels will both recognize and help foster the tremendous growth occurring in this industry," she said. Thanks in large part to the U.S. ethanol blending mandates, and a California law that incentivizes the use of the fuel, Brazilian sugar cane ethanol exports have been growing in recent years. Brazil's ethanol exports for 2013 through September totaled 605 million gallons, up 27 percent from 476 million gallons exported over the same period last year, Brazilian Trade Ministry data show. But exports have begun to slow in recent months, with September exports totaling 78 million gallons, down significantly from the 128 million exported in August and the 127 million shipped in September last year, the data show. The trading arm of European oil major Royal Dutch Shell Shell, investment bank Morgan Stanley Inc. and Swiss oil trader Vitol S.A. are the top three importers of ethanol into the U.S. so far this year, data from the U.S. Energy Information Administration show.

Deforestation Turn

2AC

The counterplan causes brazil deforestation of the savanna land to meet demand

Nagavarapu 10 - Sriniketh Nagavarapu is a professor in the Department of Economics, Brown University and Center for Environmental Studies, 2010, ("Implications of Unleashing Brazilian Ethanol: Trading Off Renewable Fuel for How Much Forest and Savanna Land?", Department of Economics: Brown University, May 18, 2010, available at http://www.econ.brown.edu/fac/Sriniketh_Nagavarapu/brazilian%20ethanol.pdf // date accessed K.K)

Lowering US import barriers for Brazil's sugarcane ethanol could boost the production of this low-carbon renewable fuel significantly, but also lead to deforestation in Brazil. I examine this trade-off by using annual household- and region-level data from 1995-2005 to estimate a general equilibrium model of Brazil's regional agricultural markets, accounting for competition over land, labor, and capital. Simulations using the estimates indicate Brazil could export more than 5 billion gallons of ethanol with little decline in non-agricultural land. However, higher world prices of oil and agricultural goods lead to dramatic land clearing while raising exports only 10 billion additional gallons. Amid growing economic, security, and environmental concerns related to oil usage, the United States and other countries have shown greater interest in ethanol. The 2007 energy bill passed by the US Congress requires that the total amount of transportation fuels used in the US contain at least a minimum level of renewable fuels, with the minimum growing over time. For instance, renewables must constitute 15.2 billion gallons of total transportation fuel by 2012 and 36 billion gallons by 2022.1 While bio-diesel may play a role in the coming years, this renewable fuel mandate will be fulfilled primarily through the use of ethanol. Fuel ethanol is of growing importance in a variety of countries, but the US is the world's largest market for ethanol, and the renewable fuels mandate will ensure this is likely to be the case for many years to come. No country is in a better position to take advantage of this surging interest in ethanol than Brazil. Brazil's sugarcane-based ethanol has three important advantages over US cornbased ethanol and other types of ethanol. First, beginning in the 1970s, Brazil spent a substantial amount of government resources to develop infrastructure for ethanol production and distribution. Second, Brazil's natural endowments are conducive to growing sugarcane at low cost. Third, sugarcane can be converted into ethanol with a smaller energy input than that needed for other conventional feedstocks. Brazil is the most cost- and energy-efficient producer of ethanol in the world, and the country has vast potential for expanding sugarcane cultivation further. These facts make the US-Brazil interaction a key facet of the ethanol industry going forward. Brazil would be a natural source for the United States' ethanol requirements, except for one fact: The US protects its own ethanol producers with a 2.5% ad valorem tariff and a 54 cent per gallon duty on imports. These recently extended measures have come under increasing criticism by the Brazilian government. In fact, the government has aggressively pitched freer markets for its ethanol as a potential "win-win," a simultaneous spur to rural economic growth and an environmentally friendly product.2 Nevertheless, more open markets for Brazilian ethanol generate uncertain implications for the environment in Brazil and elsewhere. There is a crucial tradeoff. On the one hand, Brazil's sugarcane ethanol is a renewable, lower-carbon alternative to petroleum and US corn ethanol. Replacing US consumers' use of petroleum and corn ethanol with Brazilian ethanol could therefore reduce carbon emissions sizeably. On the other hand, this additional sugarcane has to be produced somewhere in Brazil. Brazil's land mass features a wide array of forest and savanna land, with

both carbon sequestration and bio-diversity functions. The expansion in sugarcane production required to produce more ethanol could lead to greater deforestation and other environmentally harmful land clearing.

Savanna deforestation spills over and collapses carbon sequestration, biodiversity loss and ecosystem decline – our evidence takes into account all neg answers

Nagavarapu 10 - Sriniketh Nagavarapu is a professor in the Department of Economics, Brown University and Center for Environmental Studies, 2010, ("Implications of Unleashing Brazilian Ethanol: Trading Off Renewable Fuel for How Much Forest and Savanna Land?", Department of Economics: Brown University, May 18, 2010, available at http://www.econ.brown.edu/fac/Sriniketh_Nagavarapu/brazilian%20ethanol.pdf // date accessed K.K)

The possibility of lowering US import barriers for fuel ethanol presents a crucial tradeoff for the environment. Freeing the US ethanol market could encourage the replacement of petroleum and corn ethanol with low-cost and relatively low-carbon sugarcane ethanol. Yet the changes caused by increased demand for Brazilian ethanol could lead to increased conversion of Brazil's forest and savanna land into agriculture, affecting carbon sequestration, bio-diversity, and eco-system functioning. This paper addresses this tradeoff with an estimable general equilibrium model of regional agricultural markets, one accounting for the linkages between sugarcane and other agricultural production decisions through labor, land, and capital inputs. In three simulation exercises, I use the parameters of the model to predict the consequences of removing US import restrictions. The removal is predicted to lead to a large increase in Brazilian exports to the US at little or no cost to non-agricultural land in Brazil. The need to pull more factors of production into sugarcane and wage spillovers into other agriculture serve as natural brakes on the pace of agricultural land expansion. The situation is much more worrisome in the final simulation exercise, where the price of other agriculture and the price of petroleum are both increased by 20% relative to their 2005 values. In this scenario, I predict a massive, additional increase in Brazilian exports, one that leads to significant loss of non-agricultural land throughout Brazil. While the framework presented here provides a new perspective on the debate over Brazilian ethanol, it is limited in four ways. First, the model defines regions very broadly. Consequently, a predicted decline in non-agricultural land in the Mato Grosso region may or may not come from the Amazon, just as a predicted decline in Parana may or may not come from the Atlantic Rainforest. A more detailed and disaggregated model of land use is required to make more accurate predictions. Second, agricultural decision-making is dynamic, and this is particularly true with sugarcane. Sugarcane has a long growth cycle, and mature sugarcane can be harvested multiple 28 times before re-planting is necessary. In pursuit of tractability, the model uses short-term changes in prices to say something about production responses without adequately accounting for production response lags, fixed costs of converting land back and forth between sugarcane use, and uncertainty about future prices. For instance, OLS regressions of regional sugarcane land shares on prices, wages and lagged shares (not shown here) suggest a substantial amount of inertia in land allocations over time. Third, behavioral responses not modeled here could matter. For instance, the Brazilian government could use policy to ensure that any declines in non-agricultural land occurs in the least environmentally sensitive portions of each region. Moreover, the compliance decision among private landowners is a potentially significant contributor to the total

amount of forest and savanna land in Brazil. As noted in the introduction, I have essentially ignored private forest land and instead focused on land that is not used for any sort of agricultural production. It could be the case that the forest land set aside by private landowners and used for casual grazing, planted forests, etc., preserves many of the ecosystem services expected of virgin forest land. In this case, it would be important to consider whether changes in existing private land enhance or compensate for declines in public non-agricultural land. Fourth, data limitations may affect the results. On the labor supply side, information for the North Census region is not available for the entire period of analysis. Moreover, aggregate hours in sugarcane – and median wages in the sector – are estimated using household survey data. Given the relatively small number of people in the sector, sampling variation may lead to variation in these quantities that is not real variation, which would affect the estimation of the model's parameters. In terms of land use, measurement error may also affect the values for non-sugarcane agricultural land, which are currently imputed in between Agricultural Census years. The availability of repeated cross-sections of satellite data in the future may remedy this difficulty. In future work, it will be important to take these considerations into account, and the answers presented here should be viewed as preliminary. In considering these factors, though, future models could build on the results here and incorporate the linkages between land use decisions, input markets and product markets, in a setting that allows for estimation of key parameters in a coherent, unified framework.

1AR - General

Savanna deforestation spills over to the amazon and other agriculturally lush areas – independently raises the sugarcane costs which collapses the capital intake and removes the economic benefits

Nagavarapu 10 - Sriniketh Nagavarapu is a professor in the Department of Economics, Brown University and Center for Environmental Studies, 2010, ("Implications of Unleashing Brazilian Ethanol: Trading Off Renewable Fuel for How Much Forest and Savanna Land?", Department of Economics: Brown University, May 18, 2010, available at http://www.econ.brown.edu/fac/Sriniketh_Nagavarapu/brazilian%20ethanol.pdf // date accessed K.K)

What are the ultimate implications of the sugarcane expansions for the clearing of forest and savanna land? As shown in Table 12 and Figure 5 for "Sim 1," the initial burst of additional ethanol exports come at a cost of little or no non-agricultural land. Columns 5 and 6 of Table 11 show that land for other agriculture not only absorbs the sugarcane land increase, but falls quite steeply. The two areas with the greatest amount of Amazon Rainforest in the regions I consider, Mato Grosso and Maranhao, experience declines of 20 million acres and 55 million acres, respectively. Much of this land gets translated into greater non-agricultural land. The results in Figure 5 suggest that – while the direction and magnitudes show a substantial amount of uncertainty – Mato Grosso and Maranhao are unlikely to see large decreases in non-agricultural land. The reason for this is apparent in columns 5 and 6 of Table 15 (appendix): In several of the regions, wages in other agriculture increase as sugarcane wages go up. While other agricultural wages in Mato Grosso actually fall slightly, we should keep in mind that increased demand for capital stoked by the sugarcane expansion results in an increased price of capital. This is especially relevant to Mato Grosso, where the ratio of capital to labor is estimated to be relatively high. We should be wary about the size of the projected changes in Table 11 and Table 15, but these changes do suggest an important point to keep in mind: Changes in input prices spurred by sugarcane growth can limit the profitability of other agriculture in areas where it was originally profitable. 26 Of course, prices of key agricultural products in Brazil have been trending upwards, and one may be wary of relying too heavily on simulations using 2005 prices. Therefore, we turn to "Sim 2," which removes ethanol trade barriers and increases the price of other agriculture by 20%. This particular percentage is meant to be illustrative. It is also in line with the 25% increase in the price of maize assumed by Nelson & Robertson (2008). Turning first to the 2005 results, Table 9 shows that other agricultural production rebounds, settling at a level slightly above the 2005 baseline. This increase comes from an increase in other agricultural land in every region, as seen in Table 11, and a corresponding decrease in non-agricultural land from the 2005 baseline. The large decreases of 13 million acres and 8 million acres in Mato Grosso and Maranhao, respectively, should be cause for concern; in addition, there are decreases in regions containing remnants of the Atlantic Rainforest, with the steepest decrease occurring in Bahia. Figure 5 corroborates these results. In all cases, the 25th, 50th, and 75th percentiles of the non-agricultural land distribution move down when going from the baseline to "Sim 2." Finally, it is important to examine the effect of increased petroleum prices, which will lead to an outward shift of international ethanol demand. When the production and preference shocks are held constant at 2005 values, this change leads an increase of about 40 million acres of total land for other agriculture, relative to "Sim 2" values. Nearly 70 million acres are added in Mato Grosso, with this being offset by declines in

other regions. Table 12 shows non-agricultural land falls sharply, by 116 million acres from the baseline and 57 million acres from "Sim 2." By far, the largest declines from the 2005 baseline are in Mato Grosso and Maranhao. Parana and Sao Paulo see predicted declines of 7-9 million acres, and Bahia sees one of 16 million acres. Figure 5 shows the distribution of outcomes in Mato Grosso and Maranhao is quite wide. The "Sim 3" distributions exhibit the greatest uncertainty in the bottom panel, for the Bahia, Pernambuco, and Maranhao regions. These results suggest that the growth in sugarcane and other agricultural land in "Sim 3" is likely to come at the expense of significant non-agricultural land. It is crucial to understand the reasons for the great expansion in other agricultural land, particularly in Mato Grosso. Table 16 (appendix) shows the increase in Mato Grosso is driven in part by a large increase in labor supply, which pushes down wages in the region relative to "Sim 2." Where is this expansion in labor supply coming from? Using the table on annual hours, it appears that there are massive changes in hours predicted for non-agriculture in Minas Gerais and Maranhao. The size of these changes is very large. While the model is not designed to capture changes in hours and wages in non-agriculture, this warrants further investigation in the future. Overall, the evidence suggests there are important non-linearities in the trade-off between 27 ethanol exports and non-agricultural land. Brazil could increase exports in response to the policy change by over 5 billion gallons, with little or no cost in terms of non-agricultural land. The additional exports are supported by diversion of sugarcane into sugar and moderate growth in sugarcane land, with input price increases throughout agriculture helping to limit agricultural expansion. Much more non-agricultural land could be displaced by further increases in world ethanol demand in the free trade environment. At 2005 values, the next 10.5 billion gallons of exports comes at the cost of over 100 million acres of non-agricultural land, with some of the largest changes in those regions containing the Amazon Rainforest

The counterplan risks environmental degradation through edge tillage, deforestation, and growing carbon emissions

Conka 14 – James Conka has been a scientist in the field of the earth and environmental sciences for 33 years, specializing in geologic disposal of nuclear waste, energy-related research, planetary surface processes, subsurface transport and environmental clean-up of heavy metals, he is a Trustee of the Herbert M. Parker Foundation and consult on strategic planning for the DOE, EPA/State environmental agencies, and industry including companies that own nuclear, hydro, wind farms, large solar arrays, coal and gas plants and a consultant for EPA/State environmental agencies and industry on clean-up of heavy metals from soil and water, 2014, ("It's Final -- Corn Ethanol Is Of No Use", Forbes, April 20th, 2014, available at http://www.forbes.com/sites/jamesconca/2014/04/20/its-final-corn-ethanol-is-of-no-use/ // date accessed 7/26/15 K.K)

In 2007, the global price of corn doubled as a result of an explosion in ethanol production in the U.S. Because corn is the most common animal feed and has many other uses in the food industry, the price of milk, cheese, eggs, meat, corn-based sweeteners and cereals increased as well. World grain reserves dwindled to less than two months, the lowest level in over 30 years. Additional unintended effects from the increase in ethanol production include the dramatic rise in land rents, the increase in natural gas and chemicals used for fertilizers, over-pumping of aquifers like the Ogallala that serve many mid-western states, clear-cutting forests to plant fuel crops, and the revival of destructive practices such as edge tillage. Edge tillage is planting right up to the edge of the field thereby removing protective bordering

lands and increasing soil erosion, chemical runoff and other problems. It took us 40 years to end edge tillage in this country, and overnight ethanol brought it back with a vengeance. Most fuel crops, such as sugar cane, have problems similar to corn. Because Brazil relied heavily on imported oil for transportation, but can attain high yields from crops in their tropical climate, the government developed the largest fuel ethanol program in the world in the 1990s based on sugar cane and soybeans. Unfortunately, Brazil is clear-cutting almost a million acres of tropical forest per year to produce biofuel from these crops, and shipping much of the fuel all the way to Europe. The net effect is about 50% more carbon emitted by using these biofuels than using petroleum fuels (Eric Holt-Giménez, The Politics of Food). These unintended effects are why energy policy and development must proceed holistically, considering all effects on global environments and economies. So why have we pushed corn ethanol so heavily here in the U.S.? Primarily because it was the only crop that had the existing infrastructure to easily modify for this purpose, especially when initially incentivized with tax credits, subsidies and import tariffs. Production, transportation and fermentation could be adapted quickly by the corn industry, unlike any other crop. We should remember that humans originally switched from biomass to fossil fuels because biomass was so inefficient, and took so much energy and space to produce. So far technology has not reversed these problems sufficiently to make widespread use beneficial.

Deforestation Impact

Deforestation causes extinction

Welch and Nazemroaya 15 - Michael Welch is an established and reputable scholar from Rutgers University and Mahdi Darius Nazemroaya is a sociologist, award-winning author and geopolitical analyst, 2015, ("Doomsday Scenarios: Climate Change and World War III", Global Research, June 28, 2015, available at http://www.globalresearch.ca/doomsday-scenarios-climate-change-and-world-war-iii/5458764 // date accessed 7/26/15 K.K)

According to statistical documentation from scientists at Princeton and Stanford Universities and the the University of California Berkeley, the Earth is experiencing a mass extinction event un-rivalled since the end Cretacious mass extinction of 65 million years ago which eradicated not only the dinosaurs, but virtually all large land animals. [1] [2] Lead author of the study, Gerardo Ceballos, predicts that our species, homo sapiens, is likely to die off early on in this sixth great extinction. [3] Contributing to this extinction event are climate change, pollution and deforestation.[4] Based on the peer-reviewed scientfific literature Guy McPherson predicts that habitat loss due to climate change will claim the lives of the last remaining humans on Earth as soon as 2030! [5] McPherson appears in the first half hour of the program to discuss the most recent developments pointing to this doomsday scenario. The Bulletin of Atomic Scientists have as of January moved the hands of their doomsday clock to 3 minutes before midnight, in the wake of not only climate change but also the failure to reduce nuclear arsenal around the globe. [6] Over the past year, tensions have been flaring between the US and Russia, both nuclear armed states. Could there be a scenario in coming weeks which could escalate into a third and final world war?

Biod Impact

Biodiversity decline causes extinction

Mmom 8 (Dr. Prince Chinedu, University of Port Harcourt (Nigeria), 2008, ("Rapid Decline in Biodiversity: A Threat to Survival of Humankind", Earthwork Times, 12-8, available at http://www.environmental-expert.com/resultEachArticle.aspx?ci d=0&codi=51543 // AH)

From the foregoing, it becomes obvious that the survival of Humankind depends on the continuous existence and conservation of biodiversity. In other words, a threat to biodiversity is a serious threat to the survival of Human Race. To this end, biological diversity must be treated more seriously as a global resource, to be indexed, used, and above all, preserved. Three circumstances conspire to give this matter an unprecedented urgency. First, exploding human populations are degrading the environment at an accelerating rate, especially in tropical countries. Second, science is discovering new uses for biological diversity in ways that can relieve both human suffering and environmental destruction. Third, much of the diversity is being irreversibly lost through extinction caused by the destruction of natural habitats due to development pressure and oil spillage, especially in the Niger Delta. In fact, Loss of biodiversity is significant in several respects. First, breaking of critical links in the biological chain can disrupt the functioning of an entire ecosystem and its biogeochemical cycles. This disruption may have significant effects on larger scale processes. Second, loss of species can have impacts on the organism pool from which medicines and pharmaceuticals can be derived. Third, loss of species can result in loss of genetic material, which is needed to replenish the genetic diversity of domesticated plants that are the basis of world agriculture (Convention on Biological Diversity). Overall, we are locked into a race. We must hurry to acquire the knowledge on which a wise policy of conservation and development can be based for centuries to come.

Warming Impact

Warming causes extinction carbon sequestration solves

Jamail 13 - Dahr Jamail has written extensively about climate change as well as the BP oil disaster in the Gulf of Mexico. He is a recipient of numerous awards, including the Martha Gellhorn Award for Journalism and the James Aronson Award for Social Justice Journalism, 2013, ("Are We Falling Off the Climate Precipice?", Deceber 17th, 2013, available at http://www.huffingtonpost.com/dahr-jamail/climate-change-science_b_4459037.html // date accessed 7/26/15 K.K)

I grew up planning for my future, wondering which college I would attend, what to study, and later on, where to work, which articles to write, what my next book might be, how to pay a mortgage, and which mountaineering trip I might like to take next. Now, I wonder about the future of our planet. During a recent visit with my 8-year-old niece and 10- and 12-year-old nephews, I stopped myself from asking them what they wanted to do when they grew up, or any of the future-oriented questions I used to ask myself. I did so because the reality of their generation may be that questions like where they will work could be replaced by: Where will they get their fresh water? What food will be available? And what parts of their country and the rest of the world will still be habitable? The reason, of course, is climate change -- and just how bad it might be came home to me in the summer of 2010. I was climbing Mount Rainier in Washington State, taking the same route I had used in a 1994 ascent. Instead of experiencing the metal tips of the crampons attached to my boots crunching into the ice of a glacier, I was aware that, at high altitudes, they were still scraping against exposed volcanic rock. In the pre-dawn night, sparks shot from my steps. The route had changed dramatically enough to stun me. I paused at one point to glance down the steep cliffs at a glacier bathed in soft moonlight 100 meters below. It took my breath away when I realized that I was looking at what was left of the enormous glacier I'd climbed in 1994, the one that -- right at this spot -- had left those crampons crunching on ice. I stopped in my tracks, breathing the rarefied air of such altitudes, my mind working hard to grasp the climate-change-induced drama that had unfolded since I was last at that spot. I haven't returned to Mount Rainier to see just how much further that glacier has receded in the last few years, but recently I went on a search to find out just how bad it might turn out to be. I discovered a set of perfectly serious scientists -- not the majority of all climate scientists by any means, but thoughtful outliers -- who suggest that it isn't just really, really bad; it's catastrophic. Some of them even think that, if the record ongoing releases of carbon dioxide into the atmosphere, thanks to the burning of fossil fuels, are aided and abetted by massive releases of methane, an even more powerful greenhouse gas, life as we humans have known it might be at an end on this planet. They fear that we may be at -- and over -- a climate change precipice hair-raisingly quickly. Mind you, the more conservative climate science types, represented by the prestigious Intergovernmental Panel on Climate Change (IPCC), paint scenarios that are only modestly less hair-raising, but let's spend a little time, as I've done, with what might be called scientists at the edge and hear just what they have to say. "We've Never Been Here as a Species" "We as a species have never experienced 400 parts per million of carbon dioxide in the atmosphere," Guy McPherson, professor emeritus of evolutionary biology, natural resources, and ecology at the University of Arizona and a climate change expert of 25 years, told me. "We've never been on a planet with no Arctic ice, and we will hit the average of 400 ppm... within the next couple of years. At that time, we'll also see the loss of Arctic ice in the summers… This planet has not experienced an ice-free Arctic for at least the last three million years." For the uninitiated, in the simplest terms, here's what an ice-free Arctic would mean when it comes to heating the planet: minus the reflective ice cover on Arctic waters, solar

radiation would be absorbed, not reflected, by the Arctic Ocean. That would heat those waters, and hence the planet, further. This effect has the potential to change global weather patterns, vary the flow of winds, and even someday possibly alter the position of the jet stream. Polar jet streams are fast flowing rivers of wind positioned high in the Earth's atmosphere that push cold and warm air masses around, playing a critical role in determining the weather of our planet. McPherson, who maintains the blog Nature Bats Last, added, "We've never been here as a species and the implications are truly dire and profound for our species and the rest of the living planet." While his perspective is more extreme than that of the mainstream scientific community, which sees true disaster many decades into our future, he's far from the only scientist expressing such concerns. Professor Peter Wadhams, a leading Arctic expert at Cambridge University, has been measuring Arctic ice for 40 years, and his findings underscore McPherson's fears. "The fall-off in ice volume is so fast it is going to bring us to zero very quickly," Wadhams told a reporter. According to current data, he estimates "with 95 percent confidence" that the Arctic will have completely ice-free summers by 2018. (U.S. Navy researchers have predicted an ice-free Arctic even earlier -- by 2016.) British scientist John Nissen, chairman of the Arctic Methane Emergency Group (of which Wadhams is a member), suggests that if the summer sea ice loss passes "the point of no return," and "catastrophic Arctic methane feedbacks" kick in, we'll be in an "instant planetary emergency." McPherson, Wadham, and Nissen represent just the tip of a melting iceberg of scientists who are now warning us about looming disaster, especially involving Arctic methane releases. In the atmosphere, methane is a greenhouse gas that, on a relatively short-term time scale, is far more destructive than carbon dioxide (CO2). It is 23 times as powerful as CO2 per molecule on a 100-year timescale, 105 times more potent when it comes to heating the planet on a 20-year timescale -- and the Arctic permafrost, onshore and off, is packed with the stuff. "The seabed," says Wadham, "is offshore permafrost, but is now warming and melting. We are now seeing great plumes of methane bubbling up in the Siberian Sea… millions of square miles where methane cover is being released." According to a study just published in Nature Geoscience, twice as much methane as previously thought is being released from the East Siberian Arctic Shelf, a two million square kilometer area off the coast of Northern Siberia. Its researchers found that at least 17 teragrams (one million tons) of methane are being released into the atmosphere each year, whereas a 2010 study had found only seven teragrams heading into the atmosphere. The day after Nature Geoscience released its study, a group of scientists from Harvard and other leading academic institutions published a report in the Proceedings of the National Academy of Sciences showing that the amount of methane being emitted in the U.S. both from oil and agricultural operations could be 50 percent greater than previous estimates and 1.5 times higher than estimates of the Environmental Protection Agency. How serious is the potential global methane build-up? Not all scientists think it's an immediate threat or even the major threat we face, but Ira Leifer, an atmospheric and marine scientist at the University of California, Santa Barbara, and one of the authors of the recent Arctic Methane study pointed out to me that "the Permian mass extinction that occurred 250 million years ago is related to methane and thought to be the key to what caused the extinction of most species on the planet." In that extinction episode, it is estimated that 95 percent of all species were wiped out. Also known as "The Great Dying," it was triggered by a massive lava flow in an area of Siberia that led to an increase in global temperatures of six degrees Celsius. That, in turn, caused the melting of frozen methane deposits under the seas. Released into the atmosphere, it caused temperatures to skyrocket further. All of this occurred over a period of approximately 80,000 years. We are currently in the midst of what scientists consider the sixth mass extinction in planetary history, with between 150 and 200 species going extinct daily, a pace 1,000 times

greater than the “natural” or “background” extinction rate. This event may already be comparable to, or even exceed, both the speed and intensity of the Permian mass extinction. The difference being that ours is human caused, isn’t going to take 80,000 years, has so far lasted just a few centuries, and is now gaining speed in a non-linear fashion. It is possible that, on top of the vast quantities of carbon dioxide from fossil fuels that continue to enter the atmosphere in record amounts yearly, an increased release of methane could signal the beginning of the sort of process that led to the Great Dying. Some scientists fear that the situation is already so serious and so many self-reinforcing feedback loops are already in play that we are in the process of causing our own extinction. Worse yet, some are convinced that it could happen far more quickly than generally believed possible -- even in the course of just the next few decades.

Carbon sequestration is key to solve warming

Mack and Endemann 10 – Joel Mack is a partner in the Houston office and global Chair of the Environmental Transactional Support Practice, provides over 25 years of experience advising on the transactional, environmental and regulatory issues associated with all sectors of the oil and gas industry, power (including both fossil and renewable energy), mining and chemical industries in the United States and abroad, in addition to the development, financing and entitlements for telecommunications and other industrial and public infrastructure facilities in the United States and offshore, Buck Endemann has a JD, Faculty at USD Law and provides comprehensive environmental counseling on energy and infrastructure projects, and represents clients in related litigation, 2010, (“Making carbon dioxide sequestration feasible: Toward federal regulation of CO2 sequestration pipelines,” Energy Policy, 2010, available at http://lw.com/upload/pubContent/_pdf/pub3385_1.pdf // date access 7/26/15 K.K)

At present, approximately 50% of the United States’ base load electrical energy requirements are met by coal-fired resources (ASME, 2005). While substantial expansion of renewable energy resources will eventually diminish reliance on coal resources, 1 coal-fired power plants provide base load energy resources twenty-four hours per day, seven days a week, all year long. Base load power plants provide energy even when the wind is not blowing or the sun is not shining. While all power plants have the ability to generate a fixed amount of full output, or ‘‘capacity,’’ expressed in megawatts, technologies vary as to the amount of their capacity which can be delivered over time, such as over a calendar year; this is also known as their ‘‘capacity factor.’’ Base load plants, such as coal-fired, nuclear and many natural gas- fired power plants, achieve very high capacity factors (nearly all of their capacity can be delivered over time subject to normal maintenance, scheduled outages or equipment failures). Some plants, such as certain natural gas-fired power plants, can be ‘‘cycled’’ (i.e., turned on or off, or their output can be increased or decreased on short notice to match peaking loads), will have lower capacity factors but can be matched more precisely to the demands of energy consumers. Wind and solar plants, on the other hand, typically have much lower capacity factors (even if they have the same overall total ‘‘capacity’’), because their output cannot be load-matched and their energy output is dependent on environmental factors. As a result, a utility serving a load must blend base load, peaking and renewable resources to meet load requirements, and cannot meet its load requirements solely on the basis of current wind or solar technologies. 2 In many regional markets, both energy (a plant’s actual, delivered product) and capacity are tradeable commodities with an economic value, with the renewable energy facilities providing less value in the capacity markets. Indeed, electric utilities are generally required to maintain substantial capacity reserves to serve expected load, and renewable resources do not generally qualify to meet these capacity requirements As a result, and without regard to the relative merits of coal

fired power versus other sources of base load power (e.g., nuclear or natural gas-fired power plants), considering (1) the United States' large native coal resources, (2) the lower cost of coal fuel against other base load technologies, and (3) the substantial existing investment in coal-fired power plants, it is likely that coal- fired power plants will for many decades continue to comprise a substantial part of the United States' energy generation portfolio. Indeed, the United States will have to make policy choices regarding which base load resources to pursue, as oil, coal, nuclear and natural gas fuels each have their own economic and environmental benefits and drawbacks. 3 Against this backdrop, both the private and public sectors have begun to look closely at various technologies to address the high carbon footprint of traditional coal combustion technologies. In the United States, the average emission rate of CO2 from coal-fired power generation is 2.095 pounds per kilowatt hour, nearly double the 1.321 pounds per kilowatt hour for natural gas (DOE, 2000). 4 Among the technologies receiving the most such attention to reduce CO2's impacts is CO2 sequestration. CO2 sequestration involves removing the CO2 from the fuel, either before, during, or after combustion, and then doing something with it to avoid its release to the atmosphere. While other greenhouse gases (e.g., methane) are more potent in terms of global warming effects per unit of mass, the CO2 emissions of industrialized economies are so great as to dwarf the contributions from other gases in terms of overall impact on global warming. Hence the focus on CO2 sequestration technologies. The size and impact of this challenge is daunting—while coal resources provide approximately half of the energy generated annually in the United States, coal-fired power plants emit almost 80% (1.8 billion metric tons per year) of the total CO2 emissions from power plants in the United States (DOE, 2000). The magnitude of this challenge cannot be underestimated. Using the above production figures, coal-fired power plants in the United States emit approximately 900 billion cubic meters of CO2 annually. 5 The current CO2 pipeline system, though, handles only 45 million metric tons of CO2 per year over 3500 miles of pipe (Nordhaus and Pitlick, 2009). 6 Thus, to the extent that the United States has a policy goal of sequestering and transporting any appreciable fraction of CO2 emissions from coal-fired power plants, the required infrastructure investment will require at least a 40-fold increase. 7 While such an undertaking presents obvious practical and economic challenges, it demonstrates that a new vision is required if the United States is going to develop a sequestration infrastructure to meet this challenge on any time frame that is reasonably coincident with reducing near- to medium-term impacts from global climate change. 8

AT: ICJ Counterplan

2AC Solvency Deficit - General

War powers authority cannot be submitted for compulsory jurisdiction to the ICJ- that's unconstitutional and gets rolled back and tanks hegemony

Harvard Journal on Legislation, "Protecting National Sovereignty in an Era of International Meddling: An Increasingly Difficult Task" Representative Bob Barr, **2002**. 39 Harv. J. on Legis. 299. Lexis.

The U.N. Charter proscribes "non-pacific" conduct unless necessary to counter threats to peace, breaches of peace, acts of aggression, or to act in self-defense. [28] By potentially giving the ICJ the compulsory jurisdiction to adjudicate "all legal disputes concerning treaties," the United States has effectively tied its hands to resolve such disputes in a manner deemed to be in accord with the ICJ-- and within the general proscriptions of the Charter to forego the use of force in such disputes. The Senate never should have agreed to such a provision, as it presents a potential conflict with the United States Constitution, [29] which grants Congress alone the power to declare war [30] and gives the President the sole power as Commander-in-Chief to wage war on behalf of our sovereign nation. [31] The Constitution does not grant the federal governm, ent the power to **cede such authority.** So long as the United States had the power, the understanding, and the will to restrict the U.N. provisions to the supremacy of our Constitution, such a problem may have been tolerable. Now, however, the understanding and will are largely absent from national debates, and a serious problem presents itself.

The most dramatic and recurrent example of the United Nations exerting powers reserved by the United States Constitution is the de facto **transfer of war powers** from our government to the mechanism of the [*305] U.N. [32] Constitutional grant to Congress to declare war and to the President to wage that war [33] is thwarted when international organizations attempt to interject their views on when and where such combat is legitimate. For example, the U.N. Charter mandates that, "all Members . . . undertake to make available to the Security Council, *on its call* . . . armed forces, assistance, and facilities . . . ." [34] This provision of the charter usurps congressional power to declare war by allowing the Security Council to have direct influence and/or control over America's fighting forces and resources. [35] By allowing the U.N. to interpret when United States troops are to be made available on its own beckoning, the *unilateral* and *sovereign* power of the United States becomes diluted and weakened. It is into these muddy waters that the United States has been repeatedly pulled or led in the last years of the twentieth century, and into the beginning years of the twenty-first, with little or no long-term forethought to the consequences or bases for such action by the United States.

2AC ICJ Bad- Deterrence

Strong icj sets a terrible precedent against use of force – prevents the ability to deter global conflict

Sofaer 3

Abraham, Senior Fellow, The Hoover Institution, Stanford University. Legal Adviser, U.S. Department of State, The International Court of Justice and Armed Conflict, http://www.law.northwestern.edu/journals/jihr/v1/4/#note

The Court has in fact carved out a potentially significant role in the area of use of force in international security. I will go through informally a series of points that show where the ICJ has indicated through some ruling or some practice that it intends to keep itself in the game when it comes to use of force decisions. ¶ 4 First, the ICJ has insisted on the right to decide its own jurisdiction. That in itself gives the Court great power to become involved in these kinds of questions. Second, the Court has broadly construed treaties to assume power over use of force situations. The Oil Platforms case2 is an example: the Court took a Friendship, Commerce, and Navigation treaty and found that even though this treaty did not address the issue of use of force directly—because the parties used the treaty to engage in commerce and be friends—the preliminary words of the treaty were enough of a ground to take jurisdiction. And this decision was made even though a separate treaty between Iran and the United States—the Agreement of Cooperation of 19593—actually dealt with the use of force and reserved to each party the right to do whatever it needed to do in its national security interests. So, the Court has shown a willingness, and indeed maybe an eagerness, to construe treaties that are before it broadly to take jurisdiction over use of force issues. ¶ 5 Next, the Court in the Nicaragua case broadly construed the concept of customary international law to assume authority over use of force decisions—even where the states involved took reservations from a multi-lateral treaty covering the same area of the law that "customary law" covered.4 The Court also has broadly construed its advisory opinion jurisdiction, as it did in the Nuclear Weapons case,5 to take an active role in deciding the legality of possessing or using nuclear weapons. Furthermore, in the Lockerbie case the Court took jurisdiction to decide the legality of Security Council resolutions bearing upon international security as it did in 1998.6 ¶ 6 In taking jurisdiction over these cases, the Court has disregarded or treated lightly doctrines limiting the ICJ's power or discretion to avoid political questions.7 The Court has swept aside any indication in the earlier jurisprudence of the Permanent Court of International Justice, and in scholarly work, urging the Court to be reluctant to exercise jurisdiction in use of force cases.8 ¶ 7 In the area of provisional measures, the Court has shown its willingness to assert itself, even in a use of force or security context, or at least to retain the right to assert itself.9 This is very significant not only because now provisional measures must be treated as mandatory rules, but because the Court has no tradition of applying the provisional measures doctrine in a manner similar and analogous to the way the U.S. or Britain applies preliminary injunctive law with strong emphasis on likelihood of success. The ICJ in the Paraguay case10 declined even to address the issue of likelihood of success. The language the Court used, and the way the Court went about issuing preliminary relief, explicitly avoided an evaluation of the meaning of the treaty at issue, causing the United States to feel that it could disregard the preliminary order. ¶ 8 The combined effect of these positions (and others) gives the Court a substantial set of opportunities to speak out on use of force issues. Keeping in mind that the Court, while now over fifty-years-old, has only relatively recently become activist on use of force questions, we should expect that in the next twenty-years we will see opinions that will deal with use of force questions that could have a major impact either in terms of articulating principles that are followed by states (and therefore a major impact in shaping the law on conduct of states), or undermining the Court's credibility and status by articulating principles that fail to serve well the practical and conceptual needs of international security. ¶ 9 Therefore, the important jurisdiction that the Court has carved out for itself, based on all the principles that I have just described, is neither good nor bad. Much depends on how the jurisdiction is used. The law on the use of force is in transition and it is unclear whether the ICJ will develop a set of rules that has a positive impact on the world. I find evidence that the Court has started off on the wrong foot and much must be done to improve the chances that the ICJ will play a constructive and meaningful role going forward. ¶ 10 First, the Court's basic approach to the use of force **is flawed**. International lawyers tend to take a "push button" approach in applying U.N. Charter rules. They look at Article 2.4,11 and conclude that force may not be used without Security Council approval even to advance Charter purposes. They look at Article 5112 and international lawyers in general and most international decisions that bear on this issue conclude that self-defense may be exercised only in response to an "attack", even though that provision states that nothing in the Charter should be read to limit that "inherent" right.13 The push-button approach then leads to the conclusion that, if a particular use of force does not satisfy one of those bases for using force, it's illegal.14 If it does, then it's legal. ¶ 11 This approach conflicts with the process we know rational human beings really go through when they decide whether to act in a certain manner. People do not appraise the wisdom of conduct by looking at each of the factors and doctrines relevant to that question in isolation. Rather, we consider what evidence there is that bears on whatever the criteria are that we believe should be looked at to determine propriety (including legality). And if on balance we conclude that a strong case exists for using force, we say it should be lawful. If on balance we conclude that it's a weak case on using force, we conclude that force should be prohibited. In this regard, if you look at Article 2.4 of the Charter,15 it isn't at all something that would justify anyone saying, "This is a clear prohibition on the use of force for any purpose whatsoever." The article is quite complex and parts of it are substantively significant. By that I mean parts of it signify a preference with a regard to values, and this of course has been anathema in most international law scholarship. The idea that you could use force more justifiably for purpose "A" as opposed to purpose "B" has been something, especially during the Cold War, that has been treated as inappropriate and wrong. ¶ 12 But Article 2.4 at one point refers to the purposes of the Charter as a relevant factor in evaluating the use of force.16 And we know what the Charter stands for, it's not a mystery, it's written there. The Charter stands for human rights. The Charter stands for equal treatment of women and men. The Charter stands for religious freedom. The Charter stands for states not being able to acquire other territory through the use of force. The Charter suggests specific moral and ethical principles, and those principles have in fact been developed in subsequent treaties. ¶ 13 I have argued that the Charter's language supports the use of force approach of the United States, which is based in part on an early Abe Chayes' article, in which he called for a "common lawyer" approach to the use of force, and which he wrote while he was Legal Adviser.17 I have been a big advocate of the early Abe Chayes, though Chayes changed his position after leaving office. I investigated whether other Legal Advisers advocated the "common lawyer" approach while in office, and found a few articles written while they were Legal Advisers advocating the same approach.18 But most Legal Advisers who served before me never speak up in favor of this approach once they leave office. ¶ 14 Kosovo created a major problem for international lawyers who supported the push-button approach. Those who favored intervening could not secure Security Council approval of a resolution saying that force could be used. Some Security Council resolutions demanded a cessation of the grotesque treatment of 800,000 Muslim Kosovars. But they did not authorize force. Nor could the U.S. justify the use of force on the basis of self-defense, collective or individual. We couldn't call the flood of three-quarters of a million people coming into the territories of NATO allies an "attack". They were just people trying to find safety. Finally, the U.S. could not contend on the basis of any respectable doctrine that a decision by NATO was the equivalent of a decision by the Security Council. Clearly it is not. ¶ 15 NATO nonetheless went ahead and stopped the monstrous treatment of the Kosovars. NATO did so, moreover, without giving any legal rationale for its conduct. NATO couldn't simply create a new category for using force legitimately based on what NATO claimed was lawful. Furthermore, the doctrine of humanitarian intervention had not been accepted broadly as an independent basis for using force in Kosovo. What we were left with was a series of factors that taken together made an overwhelming case for intervening in Kosovo, though no single factor taken alone could have justified the action. I went through those factors in an article in the Stanford International Law Journal.19 ¶ 16 First, the Security Council had acted under Chapter 7 of the Charter, and had found that the situation in Kosovo posed a threat to international peace and security. Under the push-button approach, the fact that the Council had found a threat to international peace and security is not merely an insufficient ground in itself for using force, it is worth nothing. Under the push button approach one couldn't consider that action even as a factor to weigh with all the other factors to determine whether to use force. ¶ 17 The same thing was true of other factors that clearly motivated NATO's action. While the doctrine of humanitarian intervention could not be relied upon as an independently acceptable basis for action, the fact is that the humanitarian crisis was triggered by conduct that violated several widely accepted norms incorporated into treaties. These include probably the Genocide Convention,20 certainly the Laws of War,21 the Geneva Convention,22 and some other provisions that established that the Yugoslav government was violating international law. ¶ 18 Another factor was that the NATO states unanimously considered the situation a threat to the stability of Europe. Several U.N. Security Council resolutions relating to Yugoslavia had found that Yugoslavia had already violated international law and was violating international law within its territory in its treatment of Muslims. An International Criminal Court had been created, which had jurisdiction over international crimes committed by officials of the Yugoslav government. Thus, even though the Security Council had not authorized the use of force,23 very strong moral and legal case existed for its use. ¶ 19 Now, what happened? International lawyers in general concluded that what NATO did in Kosovo was illegal by accepted principles, but that it was necessary and morally justifiable. It was necessary and moral, but nonetheless illegal! Most international lawyers concluded that Kosovo should be treated as a particular situation, limited to its special facts. I would be satisfied with that rationale, as long as I could cite what was done in Kosovo in future cases if the same factors once again appeared in another situation. This would represent the common lawyer technique in determining the propriety of using force. This is a process where you're not going to blind yourself to a factor just because it alone does not establish authority to act. ¶ 20 The same limited approach is applied under Article 51.24 The greatest evil of all evils, Professor Louis Henkin wrote in an article based on a debate at the New York City Bar Association,25 is using force, even in self-defense. In the Nicaragua case,26 the ICJ interpreted an attack in a way that **significantly narrowed** the inherent right of self-defense. Anything short of a full-fledged attack, such as providing arms, strategic advice or tactical assistance to a country that was trying to overthrow a government of another country, cannot be considered an attack under Article 51 for purposes of collective self-defense. That served the Soviet Union's purposes very well. They were assisting communist groups and governments around the world in trying to undermine elected governments. So long as they did not engage in an all-out attack, the U.S. and other allies could not use force to counter their efforts. ¶ 21 Under long-accepted traditional principles, what rule should be applied when you have a lesser attack? Well, it would seem that if you have a lesser attack you can only respond in a lesser way; you can only respond with lesser, proportionate measures, individually or collectively. But in Nicaragua, the Court created a new category of attacks that denied the collective use of force. It also purported to establish formalistic requirements of notice of requests for cooperative defense that no one had ever heard of,27 and limited collective self-defense to military action on the territory of the state that had been attacked.28 ¶ 22 In retrospect, several writers and the former President of the Court, Stephen Schwebel, have concluded that the authority of the Nicaragua decision is questionable.29 I agree. That decision certainly has not facilitated the defense of sovereign states or the respectability of international law. ¶ 23 The threat of terrorism has led the U.N. Security Council, at least, to interpret self-defense in a manner that is far more robust than the ICJ's

approach. Security Council resolutions adopted after 9/11 did not explicitly authorize the use of force in Afghanistan. But they do say that the U.S. is justified in exercising self-defense, and call on all states to act to assure that the Taliban regime will perform its obligations under international law.30 Resolution 1373 details, like a statute, the obligations of states vis-a-vis terrorists that operate within their borders.31 ¶ 24 Many, if not most international lawyers, have reacted to the need to use force in self-defense and in the defense of humanitarian rights by seeking to preserve what they consider the purity of international law. Tom Franck, whom I admire greatly, wrote a little piece in Foreign Affairs entitled "Break It, Don't Fake It."32 In other words, break international law if you have to, go ahead, but don't fake it, don't make up international law to justify your conduct. It would be like people in the 1930's dealing with Constitutional issues in the U.S. saying "Don't make up new constitutional law, it's going to mess up our Constitution. Just break the Constitution, violate the Constitution, with no explanation, and that way we will keep the purity of this rigid Constitution that the pre-New Deal Supreme Court was insisting on applying. Everything will be fine someday when we all return to the purity of the intended words." ¶ 25 Well, the international legal system should not be immune to the development of moral, workable rules dealing with humanity's problems going forward. The international lawyers who contend that the military actions in Kosovo and Afghanistan were illegal based their position on their understanding of the purpose of the Charter. How they got that understanding is difficult to understand. Why did the League of Nations collapse? Why did we have that horrendous Second World War? Because we did not use force against the Nazis when we still had an opportunity to stop them. To think that Harry Truman and Franklin Roosevelt and all the other great statesmen that participated in drafting the Charter would have favored narrow interpretations of use of force doctrine in the Charter is baseless. Read what they have written, look at what they did, and you know what kind of people they were.33 They were determined to bring about freedom, to advance the protection of human rights, to seek to establish justice in the world. ¶ 26 Lawyers, as Dean Acheson said, are not noted for their capacity to make strategic judgments.34 While the use of the criminal law is a proper part of any effort to end international crimes, states have to use force to stop people determined to engage in terrorism or major violations of human rights. The same is true of monsters like Milosevic.35 Criminal prosecution is fine, but to be effective one must sometimes bomb and destroy military factions, in order to save the non-combatants at risk—such as the 800,000 human beings who were being pushed out of Kosovo and treated as cattle as they were driven away from their homes. ¶ 27 The bias against the use of force explains many of the most damaging practices and policies of the United Nations over the last decade. The threats, the rhetoric, not followed up by force, have led people, led states, led evil leaders to feel that they can do horrible things to human beings with impunity. Measured uses of force applied early can have a tremendously positive effect on the world and may well be far more morally justifiable than measures like the economic sanctions in Iraq, where hundreds of thousands of people suffered because of Saddam Hussein. ¶ 28 The use of force in Rwanda would have prevented the single most monstrous act of disregard of human suffering that has happened since the Cambodian mass murders. President Clinton went to Africa and apologized to the African people for what he had failed to do. Allowing those people to die without using force to protect them was disgraceful, even though it was clear that acting without Security Council approval to stop that genocide would have violated the Charter. ¶ 29 I will end with this comment. Humanitarian law and the defense of human rights are bound up with the rules governing the use of force. The ICJ's reluctance to embrace human rights stems ultimately from the same moral neutrality in interpreting international law that underlies its use of force attitudes. The use of force is necessary sometimes to preserve life and human rights. So long as some states' area is controlled by thugs, force must be given its proper position in law if human rights are to be taken seriously and made a universal reality.

2AC CIL Turn

The decision of the CP would have to be based on customary international law.

Hugh **Thirlay '5, Principle Legal Secretary-ICJ, 2005**, Interrogating the Treaty: Essays in the Contemporary law of Treaties, ed. M. Craven & M. Fitzmaurice, p. 12-3

In its advisory opinion on *Legality of the Threat or Use of Nuclear Weapons*, the Court examined "whether there is any prohibition of recourse to nuclear weapons as such" in international law, and indicated that it would "first ascertain whether there is a conventional prescription in treaty law, "to this effect." It examined the provisions of a number of multilateral and plurilateral conventions; none of them were universally binding, and many contained provisions reserving the possibility of recourse to nuclear weapons in certain circumstances. There was thus no universal "conventional" rule, rule of treaty law, prohibiting recourse to nuclear weapons. The Court then turned "to an examination of customary international law" to determine whether such a prohibition flowed from that source of law, in this context it examined in particular the argument that General Assembly resolutions embodied or represented customary law on the question. However, before expressly turning to its examination of custom, the Court dealt with the argument of a number of States that the multilateral treaties cited "bear witness, in their own way, to the emergence of a rule of complete legal prohibition of all uses of nuclear weapons." Its conclusion on the point was that: "these treaties could…be seen as foreshadowing a future general prohibition of the use of such weapons, but they do not constitute such a prohibition by themselves." The Court thus dealt with this contention in the context of treaty law (conventional law); but given the express terms of the treaties cited, the argument was surely not that the parties to the treaties had already committed themselves to a total prohibition, but rather that the treaties constituted, or evidenced, a trend of State practice justifying the conclusion that a rule of *customary law* had emerged. This indeed was the sense of the Court's finding just quoted that, to apply the wording of the *North Sea* judgment: "this process is a perfectly possible one and does from time to time occur; it constitutes indeed one of the recognized methods by which new rules of *customary* international law may be formed. At the same time this result is not lightly to be regarded as having been attained," and had not, *in casu*, been attained. The structure of the Court's judgment is thus confused: having clearly distinguished treaty law (*droit conventionnel*), the obligations imposed by treaties, from general international law of customary nature, it proceeded to discuss under the former heading a question of possible custom-formation. While not of any profound significance, this anomaly does indicate the ways in which treaty law and custom may become intellectually intertwined.

Internal link turn – cil kills international institution cred and turns the net benefit

J. Patrick **Kelly, Law Professor Widener University Law, 2000,** Virginia Journal of International Law, Winter, 40 Va. J. Int'l L. 449, p. 540-2

In addition to these specific concerns, there are several overarching systemic reasons why CIL should be eliminated as a source of international law in the modern era. First, the continued use and abuse of CIL has promoted cynicism and disenfranchisement of many nations and peoples. The nations excluded from this process are well aware of CIL's historic failure. n361 CIL undermines the integrity of the international legal system which in turn encourages disrespect for the entire system of international law.

Second, the CIL process does not encourage compliance. With few effective means of enforcing norms, the international system relies on commitment and reciprocal self-interest for compliance. Nations that played no role in the formation of norms nor had their interests considered are unlikely to honor such norms. Third, CIL creates inconsistency and exceptionalism. CIL theory is used by powerful nations to conjure up exceptions to fundamental norms such as the prohibition on the use of force in the Charter of the United

Nations. n362 Similarly, less powerful nations and advocacy scholars use non-binding resolutions to promote their own vision of a just order removed from actual agreement or effective action. Neither form of manipulation of legal material will contribute to a viable international order. Fourth, there are a variety of other means of developing international norms that are more effective and more likely to promote a vital legal order. The ozone and trade regimes demonstrate that the world possesses a wealth of possible trade-offs, incentives, and other means of encouraging participation and compliance. Nations that perceive that it is in their interest to sign an environmental treaty or human rights convention will participate. Even nations that do not consider a treaty in their interest can be motivated to participate: China and India have reversed their positions and signed the treaty to protect the ozone layer. China, contrary to its earlier expressed will, is slowly entering into consensual human rights relationships in order to fully participate in and exercise a leadership role on the world stage. n363 Indeed, China cannot afford to not participate. Over time the powerful levers of World Bank and International Monetary Fund resources, as well as the inducement of foreign aid, have enticed nations to hold democratic elections, release political prisoners, and consider environmental protection measures. The pressure of world opinion and the changing attitudes of a country's citizens, impacted by satellite television and the Internet, will make participation in important treaties irresistible for most nations. Patience, as well as vision, is a virtue. Finally, the fundamental question for international society is: Through what processes will international law be made? The CIL process cannot generate norms perceived as legitimate when there is conflict about these norms or their formulation. Domestic legislatures find it difficult to resolve normative conflicts even in relatively homogenous societies. The CIL process encourages posturing and the hardening of positions, not the development of general law with majority support. In fact, this process, as it now stands, may engender bitterness and noncompliance. Wide participation, trade-offs, and negotiations are necessary to resolve differences in values and interests in a manner that engenders legitimacy, promotes commitment to agreed norms, and ultimately encourages compliance. CIL provides only "paper", and not viable, norms, which vary from culture to culture.

2AC FDI DA

Alien torts claims don't cover the environment now because CIL isn't binding

Emeka Duruigbo, Stanford Law School and Research Fellow, 2004, Minnesota Journal of Global Trade, Winter, 14 Minn. J. Global Trade 1, p. 35-6

Further, subject matter jurisdiction under the statute is limited to a small number of norms of customary international law and jus cogens, and does not cover all human rights and environmental abuses. n212 In particular, courts have been reluctant to extend the ATS to environmental harms. n213 Foreign claimants must explore other bases for subject matter jurisdiction, even when human rights and environmental abuses are involved. n214 The importance of environmental claims is highlighted by the fact that many of the allegations of corporate misdeeds center on environmental abuses. Some scholars believe that the ATS should cover environment-related cases on the grounds that a right to a clean environment exists in international law. n215 Even cases that fit the ATS rarely make their way to U.S. courts because of financial costs and other constraints. Thus, many victims are left without an effective remedy.

COURTS WILL DETERMINE CIL RIGHT TO HEALTHY ENVIRONMENT

John Lee, 2000, Columbia Journal of Environmental Law, 25 Colum. J. Envtl. L. 283, p. 305-6

A right to a healthy environment will probably find its acceptance as a principle of customary international law. This right has not been explicitly recognized in a multilateral treaty or convention that legally binds the nations of the world to that recognition, nor is there any indication that anytime soon it will be. n101

That could destroy international FDI

Donald J. Kochan, Law Professor Chapman, 2006, Fordham International Law Journal, February, 29 Fordham Int'l L.J. 507, p. 550-1

Finally, economic development and its concomitant contribution to the advancement of human rights and democracy can be threatened when the judiciary meddles in foreign and international law. n180 If corporate investment is chilled because of potential international "law" liability, then economic development, democracy, and the enhancement of human rights are chilled as well. If courts have **free reign** to adopt foreign and international laws, the certainty and **predictability** of law are unsettled and thus may cause detrimental concerns. After all, people need to know the rules they are playing by in order to be fully willing and able to play the game. That effort is much easier if there is a corpus of law that is identifiable. It is identifiable when companies or individuals know the source of lawmaking authority - at home and abroad. Recognizing that judges might invoke precedents from extraterritorial sources makes this process difficult and indeterminate, necessarily creating investment risks that will affect market and development activities. For example, when private companies become subject to ATS suits, such suits threaten to discourage the very overseas investment and development that help expand individual liberty, human rights, and democracy abroad. New liabilities will discourage foreign investment, handicapping the advancement of human rights in developing countries. The uncertainties of applicable law that arise when judges intonate that they can look outside our borders when deciding cases have the same effect on investment predictability both within and outside the walls of the United States.

The result would be no more global growth

E. Borensztein, IMF Research Department J. De Gregoriob, Center for Applied Economics at Universidad de Chile, and J-W. Leec, Economics Department, Korea University, 1998 "How Does Foreign Direct Investment Affect Economic Growth?" Journal of International Economics 45

Technology diffusion plays a **central role in the process of economic development**. In contrast to the traditional growth framework, where technological change was left as an unexplained residual, the recent growth literature has highlighted the dependence of growth rates on the state of domestic technology relative to that of the rest of the world. Thus, growth rates in developing countries are, in part, explained by a 'catch-up' process in the level of technology. In a typical model of technology diffusion, the rate of economic growth of a backward country depends on the extent of adoption and implementation of new technologies that are already in use in leading countries. Technology diffusion can take place through a variety of channels that involve the transmission of ideas and new technologies. Imports of high-technology products, adoption of foreign technology and acquisition of human capital through various means are certainly important conduits for the international diffusion of 3 technology. Besides these channels, foreign direct investment by multinational corporations (MNCs) is considered to be a **major channel** for the access to advanced technologies by developing countries. MNCs are among the most technologically advanced firms, accounting for a substantial part of the world's research and development (R and D) investment. Some recent work on economic growth has highlighted the role of foreign direct investment in the technological progress of developing countries. Findlay (1978) postulates that foreign direct investment increases the rate of technical progress in the host country through a 'contagion' effect from the more advanced technology, management practices, etc. used by the foreign firms. Wang (1990) incorporates this idea into a model more in line with the neoclassical growth framework, by assuming that the increase in 'knowledge' applied to production is determined as a function of foreign direct investment (FDI). The purpose of this paper is to examine empirically the role of FDI in the process of technology diffusion and economic growth in developing countries. We motivate the empirical work by a model of endogenous growth, in which the rate of technological progress is the main determinant of the long-term growth rate of income. Technological progress takes place through a process of 'capital deepening' in the form of the introduction of new varieties of capital goods. MNCs possess more advanced 'knowledge', which allows them to introduce new capital goods at lower cost. However, the application of this more advanced technologies also requires the presence of a sufficient level of human capital in the host economy. The stock of human capital in the host country, therefore, limits the absorptive capability of a developing country, as in Nelson and Phelps (1966), and Benhabib and Spiegel (1994). Hence, the model highlights the roles of both the introduction of more advanced technology and the requirement of absorptive capability in the host country as determinants of economic growth, and suggests the empirical investigation of the complementarity between FDI and human capital in the process of productivity growth. We test the effect of FDI on economic growth in a framework of cross-country regressions utilizing data on FDI flows from industrial countries to 69 developing 5 countries over the last two decades. Our results suggest that FDI is in fact an important vehicle for the transfer of technology, contributing to growth in larger measure than domestic investment. Moreover, we find that there is a strong complementary effect between FDI and human capital, that is, the contribution of FDI to economic growth is enhanced by its interaction with the level of human capital in the host country. However, our empirical results imply that FDI is more productive than domestic investment only when the host country has a minimum threshold stock of human capital. The results are robust to a number of alternative specifications, which control for the variables usually identified as the main determinants of economic growth in cross-country regressions. This sensitivity analysis along the lines of Levine and Renelt (1992) shows a **robust relationship** between economic growth, FDI and human capital.

The impact is extinction

Michael G. Zey, executive director of the Expansionary Institute, Professor at Montclair State,1998, Seizing the Future, p. 34, pp. 39-40

> However, no outside force guarantees the continued progress of the human species, nor does anything mandate that the human species must even continue to exist. In fact, history is littered with races and civilizations that have disappeared without a trace. So, too, could the human species. There is no guarantee that the human species will survive even if we posit, as many have, a special purpose to the species'

existence. Therefore, the species innately comprehends that it must engage in purposive actions in order to maintain its level of growth and progress. Humanity's future is conditioned by what I call the Imperative of Growth, a principle I will herewith describe along with its several corollaries. The Imperative of Growth states that in order to survive, any nation, indeed, the human race, must grow, both materially and intellectually. The Macroindustrial Era represents growth in the areas of both technology and human development, a natural stage in the evolution of the species' continued extension of its control over itself and its environment. Although 5 billion strong, our continued existence depends on our ability to continue the progress we have been making at higher and higher levels. Systems, whether organizations, societies, or cells, have three basic directions in which to move. They can grow, decline, or temporarily reside in a state of equilibrium. These are the choices. Choosing any alternative to growth, for instance, stabilization of production/consumption through zero-growth policies, could have alarmingly pernicious side effects, including **extinction**.

2AC A2: Cred NB- Defense

One issue isn't key – the us will backslide in the future

Ereli 9

Anthony, Deputy Chief of Mission at the U.S. Embassy in Doha, Qatar, THE UNITED STATES' WITHDRAWAL FROM INTERNATIONAL COURT OF JUSTICE JURISDICTION IN CONSULAR CASES: REASONS AND CONSEQUENCES, Duke Journal of Int'l Law, Lexis

Because, precisely because, we respect the international system, because we respect the authorities and the jurisdictions of international institutions when we sign up to those international—when we sign up and submit ourselves to those jurisdictions. So it shows that, look, even though we don't like something, even though we think it's wrong, if we submitted ourselves to that jurisdiction freely and according to international obligations, then we will honor those international obligations. I mean, that's why we are complying with the case. But we're also saying in the future we're going to find other ways to resolve disputes that come under the Vienna Convention **other than submitting them to the ICJ**. We'll do something else. So we're still committed to the Vienna Convention. We're still committed to upholding its principles and fulfilling our obligations under that convention. What we are saying is when there are questions about that, we'll seek to resolve them in a venue other than the ICJ. Given that the ICJ in this case, as well as the Lagrand case, established a precedent of using this mechanism to affect our domestic legal system

Overemphasis on victims' rights tanks cred

Walton 8

Patrick, John Tait Memorial Lecture in Law and Public Policy, http://www.justice.gc.ca/eng/dept-min/pub/jtml-cmjt/kir2.html

And then there are the victims. The Court gives victims a special, privileged role for some very good reasons. In ad hoc tribunals, victims have been used as tools of the prosecution or the defence rather than being given due consideration in light of their own circumstances. The International Criminal Court has therefore set up an extensive guidance and counselling system for victims of physical violence, with specialized services for cases involving sexual crimes and those involving children, for example. Victims can participate in every stage in the proceedings, from the Pre-Trial Chamber on. There are systems providing financial compensation for victims, based on assets used by the War Crimes Commission, and a trust fund as well. So the victims will play a major role, but the Court must make sure that it is not paralyzed by large numbers of victims and the generous treatment they receive. In cases involving crimes against humanity, war crimes, and genocide, we can expect thousands of victims to appear before the Court, so the proceedings will be difficult to manage. To establish its credibility, the Court will not only have to act fairly and effectively but also appear to be doing so.

2AC US Doesn't Enforce

US may consent but not enforce an icj decision

Coleman 3

Andrew, The International Court of Justice and highly political matters., Melbourne Journal of International Law, Lexis

It could be argued that the disadvantages caused by non-appearance where the ease proceeds to judgment are a concern only for the non-appearing party and are entirely self-inflicted. What non-appearance does, however, is raise a perception in the broader international community of the irrelevance of the ICJ in resolving international disputes. If it is perceived that a party is the victor simply by virtue of its appearance in the absence of the other party, rather than due to the strength of its claim, then this raises serious concerns about the validity of the Court's findings, undermining the Court's credibility in the eyes of the international community. Credibility is important to all courts, but particularly to the ICJ **given the problems of enforceability** that it faces. **Even if states do consent to the ICJ's jurisdiction,** who or **what enforces the Court's decision**? Whilst provision is made in both the Statute of the ICJ and the UN Charter for the Court's judgments and advisory opinions to be enforced through resolutions of the Security Council, (58) there is no international police force that will actually ensure compliance with the resolution itself. As Couvreur notes, in municipal orders, the court, whose jurisdiction is compulsory, acts on behalf of and in the capacity of ... the fully integrated sovereign state; the latter is responsible for the continuity and efficacy of the peacemaking process initiated by the court ... The case is patently quite different in the international order: ... this community, which is not integrated, or scarcely so, and which itself is entirely based on a juxtaposition of sovereignties, is in no wise [sic] comparable to a sovereign state. (59)

Historically likely- we already did that once

Ereli 9

Anthony, Deputy Chief of Mission at the U.S. Embassy in Doha, Qatar, THE UNITED STATES' WITHDRAWAL FROM INTERNATIONAL COURT OF JUSTICE JURISDICTION IN CONSULAR CASES: REASONS AND CONSEQUENCES, Duke Journal of Int'l Law, Lexis

On 7 March 2005, the Secretary-General received from the Government of the United States of America, a communication notifying its withdrawal from the Optional Protocol. The communication reads as follows: ". . . the Government of the United States of America [refers] to the Optional Protocol to the Vienna Convention on Consular Relations Concerning the Compulsory Settlement of Disputes, done at Vienna April 24, 1963. This letter constitutes notification by the United States of America that it hereby withdraws from the aforesaid Protocol. As a consequence of this withdrawal, the United States will no longer recognize the jurisdiction of the International Court of Justice reflected in that Protocol."

Can't just rely on int'l pressure

Coleman 3

Andrew, The International Court of Justice and highly political matters., Melbourne Journal of International Law, Lexis

The lack of an overall sovereign means there is no real means of enforcement other than 'peer group pressure' from other nation states. (60) Indeed, Ojo writes that '[t]here is no independent international legal system, capable of enforcing agreements and international law. The system is defective because it depend [sic] so much on the behavior and attitude of those it is suppose [sic] to regulate.' (61)

Large history of non-comliance

Coleman 3

Andrew, The International Court of Justice and highly political matters., Melbourne Journal of International Law, Lexis

This dependency provides states with the ability, unheard of in domestic legal systems, to avoid the ICJ's authority (62) to a degree that leads some to argue that the expectations placed upon international adjudication as an instrument of international dispute resolution have been unable to be realised. (63) The history of noncompliance with the Court's rulings strengthens this already substantial argument.

AT: Executive Self Restraint CP-NW

Solvency

Courts Key

Court surveillance actions are key to ensure freedom and prevent executive overreach

Jack **Balkin 8,** Knight Professor of Constitutional Law and the First Amendment at Yale Law School, 1/1/2008, "The Constitution in the National Surveillance State", Minnesota Law Review, http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1224&context=fss_papers

Oversight of executive branch officials may be the single most important goal in securing freedom in the National Surveillance State. Without appropriate checks and oversight mechanisms, executive officials will too easily slide into the bad tendencies that characterize authoritarian information states. They will increase secrecy, avoid accountability, cover up mistakes, and confuse their interest with the public interest.

Recent events in the Bush administration suggest that legislative oversight increasingly plays only a limited role in checking the executive. Meaningful oversight is most likely to occur only when there is divided government. Even then the executive will resist sharing any information about its internal processes or about the legal justifications for its decisions. A vast number of different programs affect personal privacy and it is unrealistic to expect that Congress can supervise them all. National security often demands that only a small number of legislators know about particularly sensitive programs and how they operate, which makes it easy for the administration to coopt them. 79 The Bush administration's history demonstrates the many ways that Presidents can feign consultation with Congress without really doing so. 8 0

Judicial oversight need not require a traditional system of warrants. It could be a system of prior disclosure and explanation and subsequent regular reporting and minimization. This is especially important as surveillance practices shift from operations targeted at individual suspected persons to surveillance programs that do not begin with identified individuals and focus on matching and discovering patterns based on the analysis of large amounts of data and contact information.81 We need a set of procedures that translate the values of the Fourth Amendment (with its warrant requirement) and the Fifth Amendment's Due Process Clause8 2 into a new technological context. Currently, however, we exclude more and more executive action from judicial review on the twin grounds of secrecy and efficiency. The Bush administration's secret NSA program is one example; the explosion in the use of administrative warrants that require no judicial oversight is another.8 3 Yet an independent judiciary plays an important role in making sure that zealous officials do not overreach. If the executive seeks greater efficiency, this requires a corresponding duty of greater disclosure before the fact and reporting after the fact to determine whether its surveillance programs are targeting the right people or are being abused. Judges must also counter the executive's increasing use of secrecy and the state secrets privilege to avoid accountability for its actions. Executive officials have institutional incentives to label their operations as secret and beyond the reach of judicial scrutiny. Unless legislatures and courts can devise effective procedures for inspecting and evaluating secret programs, the Presidency will become a law unto itself.

Congress Key

Congress K2 legal certainty—Perm solves best

Nathan Alexander **Sales, 14**, Associate Professor of Law, Syracuse University College of Law, Summer 2014, "NSA SURVEILLANCE: ISSUES OF SECURITY, PRIVACY AND CIVIL LIBERTY: ARTICLE: Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy", LexisNexis, 10 ISJLP 523

As for the structural considerations, one of the most important is what might be called an anti-unilateralism principle. A system of programmatic surveillance should not be put into effect on the say-so of the executive branch, but rather should be a collaborative effort that involves Congress (in the form of authorizing legislation) or the judiciary (in the form of FISA court review of the initiatives). n42 An example of the former is FISA itself, which Congress enacted in 1978. At the time, the NSA was engaged in bulk collection, without judicial approval, of certain international communications into and out of the United States--namely, by tapping into offshore telecommunications cables and by eavesdropping on satellite based radio signals. FISA's [*533] famously convoluted definition of "electronic surveillance" n43 preserved these preexisting practices even as Congress was imposing a new requirement of judicial approval for other kinds of monitoring. n44 An example of the latter concerns the warrantless Terrorist Surveillance Program, under which the NSA was intercepting, outside the FISA framework, certain communications between suspected al-Qaeda figures overseas and people located in the United States. After that program's existence was revealed in late 2005, the executive branch persuaded the FISA court to issue orders allowing it to proceed subject to various limits. n45 (That accommodation eventually proved unworkable, and the executive then worked with Congress to put the program on a more solid legislative footing through the temporary Protect America Act of 2007 n46 and the permanent FISA Amendments Act of 2008.) n47 Anti-unilateralism is important for several reasons. To take the most obvious, Congress and the courts can help prevent executive overreach. n48 The risk of abuse is lessened if the executive branch must enlist its partners before commencing a new surveillance initiative. Congress might decline to permit bulk collection in circumstances where it concludes that ordinary, individualized monitoring would suffice, or it might authorize programmatic surveillance subject to various privacy protections. In addition, inviting many voices to the decision-making table increases the probability of sound outcomes. More participants with diverse perspectives can also help mitigate the groupthink tendencies to which the executive branch is sometimes [*534] subject. n49 If we're going to engage in programmatic surveillance, it should be the result of give and take among all three branches of the federal government, or at least between its two political branches, not the result of executive edict. A second principle follows from the first: Programmatic surveillance should, wherever possible, have explicit statutory authorization. Congress does not "hide elephants in mouseholes,"n50 the saying goes, and we should not presume that Congress meant to conceal its approval of a potentially controversial programmatic surveillance system in the penumbrae and interstices of obscure federal statutes. Instead, Congress normally should use express and specific legislation when it wants to okay bulk data collection. Clear laws will help remove any doubt about the authorized scope of the approved surveillance, thereby promoting legal certainty. Express congressional backing also helps give the monitoring an air of legitimacy. And, a requirement that programmatic surveillance usually should be approved by clear legislation helps promote accountability by minimizing the risk of congressional shirking. n51 If the political winds shift, and a legislatively approved program becomes unpopular, Congress will not be able to hide behind an ambiguous statutory grant of power and deflect responsibility to the President.

Exec Can't Restrain Itself

The Executive won't effectively restrain itself-It consistently abuses the FBI to avoid current bans on surveillance to gather data

Joshua **Pike 7,** Member of Pryor Cashman's Family Law and Litigation Groups, Fall 2007, "THE IMPACT OF A KNEE-JERK REACTION: THE PATRIOT ACT AMENDMENTS TO THE FOREIGN INTELLIGENCE SURVEILLANCE ACT AND THE ABILITY OF ONE WORD TO ERASE ESTABLISHED CONSTITUTIONAL REQUIREMENTS", Hofstra Legal Review, 36 Hofstra L. Rev. 185, Lexis

Despite the minimal standard of proof required to secure a FISA order for surveillance, the executive branch has consistently abused the FISA application process by misrepresenting factual assertions in FISA applications to the FISA court and disregarding the FISA process entirely. n209 In 2005, Attorney General Alberto Gonzales conducted a press briefing in which he admitted to a program authorized by the President whereby electronic communications were intercepted without a warrant or a FISA order where one party to the communication was outside the United States. n210 The Attorney General asserted the program was legal, as Congress's Authorization of Use of Military Force ("AUMF"), constituted "authorization ... to engage in this kind of signals intelligence." n211 Without judging the legality of the executive branch's assertion regarding the legality of the surveillances under the AUMF, such action demonstrates the executive branch's willingness to bypass congressionally imposed limitations on warrantless surveillance.

In June 2006, the Office of the Inspector General ("OIG") of the DOJ released a report reviewing the FBI's intelligence procedures related to the attacks on September 11, 2001. n212 In this report, the OIG disclosed the fact that between 2000 and 2001, the FISA court became [*233] aware of approximately one hundred factual errors contained in FISA applications submitted by the FBI. n213 The report highlighted the fact that nearly seventy-five of these errors related to the targets of FISA surveillance and their asserted connections with foreign powers or terrorist organizations. n214 In addition to these factual inaccuracies, the report also noted that "contrary to what had been represented to the FISA Court, agents working on criminal investigation had not been restricted from the information obtained in the intelligence investigation." n215

In March 2007, another report was filed by the OIG concerning factual misrepresentations by the FBI regarding the foreign intelligence surveillance technique known as National Security Letters ("NSL"). n216 This report cited numerous abuses by the FBI in its NSL program, including obtaining information concerning the wrong person, retaining information not sought in the application for a NSL, and continuing to retrieve information beyond the time period referenced in the NSL, in addition to a number of other violations. n217 Though this report did not concern FISA applications, it established a patterned history of misrepresentation and abuse of power by the FBI concerning foreign intelligence surveillance.

Only a few weeks after the March 2007 OIG report was released, the Washington Post broke a story regarding the continued abuse by the FBI of the FISA system. n218 The article claimed the FBI submitted factual inaccuracies to the FISA court in their applications for FISA surveillances ranging from misrepresentations about a target's familial relationships to "citing information from informants who were no longer active." n219 The same day this story was published, the Senate Committee on the

Judiciary conduced a hearing on FBI oversight. Chairman Patrick Leahy, in addition to noting the Washington Post article, the NSL issue, and FISA application misrepresentations, proclaimed:

This pattern of abuse and mismanagement causes me, and many others on both sides of the aisle, to wonder whether the FBI and Department of Justice have been faithful trustees of the great trust that the [*234] Congress and American people have placed in them to keep our Nation safe, while respecting the privacy rights and civil liberties of all Americans. n220

To remedy these noted abuses, Senator Leahy recommended more effective congressional oversight, in addition to the increased FBI resources and tools to effectively conduct its domestic counterterrorism measures. n221 Though the Senator's suggested remedies would help to resolve the problem, due to the recurrence of the FBI's abuse of power, congressional oversight alone is not a sufficient remedy. To permanently resolve the issues noted, further procedural safeguards, such as those suggested in Part VI.A, are required to ensure that the FISA court operates as an intrusive and thorough check of the FBI's FISA applications rather than a rubber stamp for the abuse of American's civil liberties. n222

Exec Can't Control Enforcement

The executive has no power to control enforcement at lower levels of the government-Political Costs

Richard **Pierce 9,** Lyle T. Alverson Professor of Law at the George Washington University, "Saving the Unitary Executive Theory from Those Who Would Distort and Abuse it: A Review of the Unitary Executive, by Steven G. Calabresi and Christopher Yoo", George Washington Law Review, http://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1951&context=faculty_publications

The difference between the power to veto and the power to remove is not subtle. If a President could veto a decision of an executive branch officer, he undoubtedly would do so with some frequency and often at little political cost. By contrast, removing an officer is always costly. Frequently, the cost of removal is so high that a President reluctantly acquiesces in a decision with which he strongly disagrees in order to avoid incurring the high cost of removing the executive branch officer who made the decision. I will discuss the political cost of removing an executive branch officer systematically in a subsequent section of this essay, but one example provides a good illustration of the potentially high cost of removal. I believe that President Nixon's unquestionably lawful decisions to remove Attorney General Elliot Richardson, Acting Attorney General William Ruckelshaus, and indirectly, Special Counsel Archibald Cox cost him the Presidency. By contrast President Clinton was able to survive a similar scandal because he was smart enough to know that removing Attorney General Reno and replacing her with someone who would remove Ken Starr would cost him far more than allowing Starr to continue the Whitewater investigation.

Won't Change Surveillance

The CP is just rhetoric-Any small problem causes executive power to resurge and reinstate practices it moves away from

Robin **O'Neil 11,** Law Clerk to the Hon. Royal Furgeson, U.S. District Court for the Northern District of Texas, "THE PRICE OF PURITY: WEAKENING THE EXECUTIVE MODEL OF THE UNITED STATES' COUNTER-TERROR LEGAL SYSTEM", Houston Law Review, http://www.houstonlawreview.org/wp-content/uploads/2012/04/ONeil.pdf

The language the Obama Administration uses in reference to its efforts to combat terrorism symbolizes yet another departure from the Bush Administration's counter-terror policies. While the former President described his actions from the beginning as necessary components of the "War on Terror," language that creates a seemingly unending sense of urgency, President Obama has rhetorically recharacterized the "War" as one against Al Qaeda.213 His promulgation of the concept that the nation is at war not with a tactic, but with an identifiable enemy, gives rise to an idea that was absent from the public mind during the Bush Administration: the notion that the "War on Terror" could end.214

However, even if President Obama's strategic use of rhetoric imposes a philosophical limit on the duration of the war and the vastly expanded scope of presidential power that continues to accompany it, the Administration's counter-terror policies to date have imposed no similar limitations.215 Even the symbolic value of those policy changes that have been put in place is undermined by the manner in which they were made. Just as easily as Bush implemented detention policies in the early days of the War on Terror through executive order, President Obama withdrew them.216 Since "what is done by the stroke of a pen can be undone the same way," 217 there is nothing to prevent President Obama or the next President from doing away with any changes that have been made and expanding executive power even further as soon as the next emergency strikes.

Worse for Security

The CP is net worse for security-leads to unchecked executive powers and leads to mismanagement

Robin **O'Neil 11,** Law Clerk to the Hon. Royal Furgeson, U.S. District Court for the Northern District of Texas, "THE PRICE OF PURITY: WEAKENING THE EXECUTIVE MODEL OF THE UNITED STATES' COUNTER-TERROR LEGAL SYSTEM", Houston Law Review, http://www.houstonlawreview.org/wp-content/uploads/2012/04/ONeil.pdf

The founding fathers designed the Constitution to permit the power of the executive branch to swell in times of crisis and [*1455] shrink in times of peace. Through this process, the executive has gradually gained institutional strength over the years. In accord with this historical trend, the development of detention policy during the Bush Administration evidences the tremendous growth of executive power in the wake of the 2001 terrorist attacks. n218 However, with Congress retroactively legislating overly broad authorizations of unilateral executive action in the context of a war with no clear enemy or duration, the scope of that power is less likely to recede than ever before. In order to substantively improve the United States' counter-terror policy and render it consistent with the country's constitutional design, President Obama should reject the inclination to retain the expanded powers of his office and institute procedural and substantive changes that reverse the course of the American anti-terror legal system toward the pure form of the executive model.

Topicality/Perm do the CP

Perm do the CP

Permutation do the counterplan---it's an example of how the plan could be done because the executive is still an agent of the federal government, and it takes the same action as the plan---reject counterplans that do the entire plan because they make aff offense impossible

Curtail = Reduce

Curtail means to reduce the extent or quantity of

Oxford Dictionaries, 15 ("curtail", http://www.oxforddictionaries.com/us/definition/american_english/curtail)

Definition of curtail in English:

verb

[WITH OBJECT]

1Reduce in extent or quantity; impose a restriction on: civil liberties were further curtailed

Curtail means to reduce

American Heritage, 15 ('curtail', https://www.ahdictionary.com/word/search.html?q=curtail

cur·tail (kər-tāl ˙)

tr.v. cur·tailed, cur·tail·ing, cur·tails

To cut short or reduce: We curtailed our conversation when other people entered the room. See Synonyms at shorten.

Means to reduce or limit

MacMillan Dictionary, 15 ('curtail', http://www.macmillandictionary.com/dictionary/american/curtail

curtail

VERB [TRANSITIVE] FORMAL

to reduce or limit something, especially something good

a government attempt to curtail debate

Reduce = Diminish in Size

Reduce means diminish in size

State v. Knutsen, 3 - 71 P. 3d 1065 - Idaho: Court of Appeals, http://caselaw.findlaw.com/id-court-of-appeals/1320950.html

By its plain language, Rule 35 grants a district court the authority within a limited period of time to reduce or modify a defendant's sentence after relinquishing jurisdiction. To "reduce" means to diminish in size, amount, extent or number, or to make smaller, lessen or shrink. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1905 (1993). To "modify" means to make more temperate and less extreme, or to lessen the severity of something. Id. at 1452. Thus, under the plain meaning of its language, Rule 35 authorizes a district court to diminish, lessen the severity of, or make more temperate a defendant's sentence. An order placing a defendant on probation lessens the severity of a defendant's sentence and thus falls within the district court's authority granted by Rule 35. Other state jurisdictions have held likewise in interpreting similar rules for reduction of sentence. See State v. Knapp, 739 P.2d 1229, 1231-32 (Wy.1987) (similar rule of criminal procedure authorizes reduction of a sentence of incarceration to probation); People v. Santana, 961 P.2d 498, 499 (Co.Ct.App.1997) (grant of probation is a "reduction" under Colorado Cr. R. 35(b)).

Net Benefit/Competition

Perm Do Both

Perm do both-Congressional surveillance oversight combined with executive action solves best and avoids politics-Takes advantage of private sector trust and balances security and liberty

Jon **Michaels 8,** Professor of Law at the UCLA School of Law, August 2008, "All the President's Spies: Private-Public Intelligence Partnerships in the War on Terror", California Law Review, http://www.jstor.org/stable/20441037

Whatever policy and legal decisions are made in the coming years vis-a vis striking the proper balance between security and privacy interests, it is essential that they are informed ones. This Article has endeavored to take important steps to ensure greater understanding of the underlying mechanics of intelligence gathering, of the incentives that shape vital private-public partnership arrangements, and of the current misallocation of compliance and oversight responsibilities.

Of course, having private actors serve as government watchdogs in the face of Executive non-compliance is not the most normatively attractive model of separation of powers, and it may even be seen as excusing (or creating a basis for normalizing) bad behavior by the Executive. I acknowledge these shortcomings, with the qualifiers, however, that true reform of the sort that is necessary in terms of better allocating war-making and intelligence powers is not likely to occur until after the terrorism crisis abates (and there are opportunities for self-reflection).279 In addition, because private actors are often asked or required to serve similar enforcement roles across a wide range of policy domains,280 the use of corporate intermediaries is not necessarily a bad, or wholly untested, solution.

Moreover, notwithstanding the instrumental focus of my project, neither the enterprise of increasing formality (gatekeeping-reporting-reviewing) nor the consideration of private actors as the conduits of compliance is divorced from normative aspirations. As noted earlier, engendering dynamic interactions among a variety of responsible government actors-at varying degrees of distance from the immediacy of combating terrorism-is an important foundational step in ensuring the prospects of effective legislative, oversight, and appropriations decisions (and for unambiguously undercutting the prospects of future corporate acceptance of informality). Indeed, it also may serve as a model for creating additional opportunities for legislative oversight even in more formalized government contracting settings, particularly where monitoring is difficult and there is dissensus between the legislature and the Executive on the direction of a given outsourced initiative.

Looking forward, it should be recognized that the reforms mentioned herein do not just service the instant accountability deficit. Rather, they also provide a platform for addressing some of the most pressing and novel questions of our times, including privatization in intelligence and national security operations, separation of powers in policy domains dominated by the discourse of secrecy and unitary-executive governance, and the prospects and pitfalls of a more involved national-security court, with jurisdiction and responsibilities beyond vetting applications for surveillance missions. Thus, this Article has sought not only to provide practical insights into the current problems with unchecked intelligence operations, but also to spark thinking about how we manage a counterterrorism policy that is outgrowing the traditional, binary boundaries of foreign versus domestic investigations, private versus

public governance, transparent versus secretive policymaking, and "ordinary criminal" versus "national security" prosecutions.

Circumvented/Links to Politics

CP is circumvented and links to politics

Dino P. **Christenson and** Douglas L. **Kriner, 15**, Assistant Professors of Political Science, Boston University, Spring 2015, "SYMPOSIUM: EXECUTIVE DISCRETION AND THE ADMINISTRATIVE STATE: POLITICAL CONSTRAINTS ON UNILATERAL EXECUTIVE ACTION", LexisNexis, 65 Case W. Res. 897

A small but growing number of studies has pushed back against the dominant theoretical paradigm emphasizing the president's great latitutde to act unilaterally. The most prominent critique concerns difficulties in bureaucratic implementation. Presidents may well have the power to issue orders; however, that does not necessarily ensure that other actors in the executive branch will automatically comply and implement orders in strict accordance with presidential preferences. Emphasizing the principal-agent problems that hinder presidential efforts to control the bureaucracy, Matthew Dickinson argues that rather than replacing bargaining, unilateral action represents "a change in where, and with whom bargaining takes place." Moreover, Dickinson contends that "the transaction costs of unilateral action--haggling over the details of presidential directives, estimating bureaucrats' preferences, attracting interest-group and public support, and ensuring bureaucratic compliance--often rival the costs of acting through Congress." Here, we take a different tack and emphasize the informal political costs of unilateral action. Specifically, we argue that presidents consider more than just whether Congress or the courts will act affirmatively to overturn a unilateral presidential order. Rather, presidents consider the longer-term political costs that unilateral action may entail. These political costs can take many forms, two of which are particularly important. First, when presidents act unilaterally, they may burn bridges with members of Congress opposed to the action on political, ideological, or even constitutional grounds. To be sure, in almost all circumstances, presidents will be able to carry the day and beat back any legislative effort to undo what they have done unilaterally. However, the ill will so generated on Capitol Hill may prove politically costly the next time the president's policy wishes require action that only Congress can take. For example, despite being a rather blunt instrument, Congress retains the power of the purse and therefore, ultimately, the power to support or de-fund most policies that presidents begin unilaterally. n40 This echoes Neustadt's moral from the [*909] "three cases of command"--Truman's firing of General Douglas MacArthur and seizure of the steel mills during the Korean War, and Eisenhower federalizing the Arkansas National Guard to integrate Central High School. In each case, the president succeeded in achieving his immediate policy objective. Yet, in each case, Neustadt argues the victory was a pyrrhic one, coming at a high political cost. Truman's actions, in particular, only intensified ongoing battles with Congress on both the foreign and domestic fronts and likely hindered Truman's efforts to extract concessions from Congress on other key elements of his legislative agenda.

Rollback/Links to Politics

Links to politics and gets rolled back

Clay **Risen, 4,** editor at The New York Times op-ed section, "The Power of the Pen", http://prospect.org/article/power-pen

The most effective check on executive orders has proven to be political. When it comes to executive orders, "The president is much more clearly responsible," says Dellinger, who was heavily involved in crafting orders under Clinton. "Not only is there no involvement from Congress, but the president has to personally sign the order." Clinton's Grand Staircase-Escalante National Monument executive order may have helped him win votes, but it also set off a massive congressional and public backlash. Right-wing Internet sites bristled with comments about "dictatorial powers," and Republicans warned of an end to civil liberties as we know them. "President Clinton is running roughshod over our Constitution," said then–House Majority Leader Dick Armey. Indeed, an unpopular executive order can have immediate--and lasting--political consequences. In 2001, for example, Bush proposed raising the acceptable number of parts per billion of arsenic in drinking water. It was a bone he was trying to toss to the mining industry, and it would have overturned Clinton's order lowering the levels. But the overwhelmingly negative public reaction forced Bush to quickly withdraw his proposal--and it painted him indelibly as an anti-environmental president.

Links to Politics

Executive CP links super-hard to politics

Michael J. **Glennon 14**, Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University, 2014, "National Security and Double Government," Harvard National Security Journal, 5 Harv. Nat'l Sec. J. 1

One might suppose, at this point, that what is at issue is not the emergence of double government so much as something else that has been widely discussed in recent decades: the emergence of an imperial presidency. n367 After all, the Trumanites work for the President. Can't he simply "stand tall" and order them to do what he directs, even though they disagree?

The answer is complex. It is not that the Trumanites would not obey; n368 it is that such orders would rarely be given. Could not shades into would not, and improbability into near impossibility: President Obama could give an order wholly reversing U.S. national security policy, but he would not, because the likely adverse consequences would be prohibitive.

Put differently, the question whether the President could institute a complete about-face supposes a top-down policy-making model. The illusion that presidents issue orders and that subordinates simply carry them [*66] out is nurtured in the public imagination by media reports of "Obama's" policies or decisions or initiatives, by the President's own frequent references to "my" directives or personnel, and by the Trumanites own reports that the President himself has "ordered" them to do something. But true top-down decisions that order fundamental policy shifts are rare. n369 The reality is that when the President issues an "order" to the Trumanites, the Trumanites themselves normally formulate the order. n370 The Trumanites "cannot be thought of as men who are merely doing their duty. They are the ones who determine their duty, as well as the duties of those beneath them. They are not merely following orders: they give the orders." n371 They do that by "entangling" n372 the President. This dynamic is an aspect of what one scholar has called the "deep structure" of the presidency. n373 As Theodore Sorensen put it, "Presidents rarely, if ever, make decisions--particularly in foreign affairs--in the sense of writing their conclusions on a clean slate . . . . [T]he basic decisions, which confine their choices, have all too often been previously made." n374

Justice Douglas, a family friend of the Kennedys, saw the Trumanites' influence first-hand: "In reflecting on Jack's relation to the generals, I slowly realized that the military were so strong in our society that probably no President could stand against them." n375 As the roles of the generals and CIA have converged, the CIA's influence has expanded--aided in part by a willingness to shade the facts, even with sympathetic Madisonian sponsors. A classified, 6,000-word report by the Senate [*67] Intelligence Committee reportedly concluded that the CIA was "so intent on justifying extreme interrogation techniques that it blatantly misled President George W. Bush, the White House, the Justice Department and the Congressional intelligence committees about the efficacy of its methods." n376 "The CIA gets what it wants," President Obama told his advisers when the CIA asked for authority to expand its drone program and launch new paramilitary operations. n377

Sometimes, however, the Trumanites proceed without presidential approval. In 1975, a White House aide testified that the White House "didn't know half the things" intelligence agencies did that might be legally questionable. n378 "If you have got a program going and you are perfectly happy with its results,

why take the risk that it might be turned off if the president of the United States decides he does not want to do it," he asked. n379 Other occasions arise when Trumanites in the CIA and elsewhere originate presidential "directives"--directed to themselves. n380 Presidents then ratify such Trumanite policy initiatives after the fact. n381 To avoid looking like a bystander or mere commentator, the President embraces these Trumanite policies, as does Congress, with the pretense that they are their [*68] own. n382 To maintain legitimacy, the President must appear to be in charge. In a narrow sense, of course, Trumanite policies are the President's own; after all, he did formally approve them. n383 But the policies ordinarily are formulated by Trumanites--who prudently, in Bagehot's words, prevent "the party in power" from going "all the lengths their orators propose[]." n384 The place for presidential oratory, to the Trumanites, is in the heat of a campaign, not in the councils of government where cooler heads prevail. n385

The idea that presidential backbone is all that is needed further presupposes a model in which the Trumanites share few of the legitimacy-conferring features of the constitutional branches and will easily submit to the President. But that supposition is erroneous. Mass entertainment glorifies the military, intelligence, and law enforcement operatives that the Trumanites direct. The public is emotionally taken with the aura of mystery surrounding the drone war, Seal Team Six, and cyber-weapons. Trumanites, aided by Madisonian leaks, embellish their operatives' very real achievements with fictitious details, such as the killing of Osama bin Laden n386 or the daring rescue of a female soldier from Iraqi troops. n387 They cooperate with the making of movies that praise their projects, like Zero [*69] Dark Thirty and Top Gun, but not movies that lampoon them, such as Dr. Strangelove (an authentic F-14 beats a plastic B-52 every time). n388 Friendly fire incidents are downplayed or covered up. n389 The public is further impressed with operatives' valor as they are lauded with presidential and congressional commendations, in the hope of establishing Madisonian affiliation. n390 Their simple mission--find bad guys and get them before they get us--is powerfully intelligible. Soldiers, commandos, spies, and FBI agents occupy an honored pedestal in the pantheon of America's heroes. Their secret rituals of rigorous training and preparation mesmerize the public and fortify its respect. To the extent that they are discernible, the Trumanites, linked as they are to the dazzling operatives they direct, command a measure of admiration and legitimacy that the Madisonian [*70] institutions can only envy. n391 Public opinion is, accordingly, a flimsy check on the Trumanites; it is a manipulable tool of power enhancement. It is therefore rarely possible for any occupant of the Oval Office to prevail against strong, unified Trumanite opposition, for the same reasons that members of Congress and the judiciary cannot; a non-expert president, like a non-expert senator and a non-expert judge, is intimidated by expert Trumanites and does not want to place himself (or a colleague or a potential political successor) at risk by looking weak and gambling that the Trumanites are mistaken. So presidents wisely "choose" to go along.

The drone policy has been a case in point. Nasr has described how the Trumanite network not only prevailed upon President Obama to continue its drone policy but succeeded in curtailing discussion of the policy's broader ramifications:

When it came to drones there were four formidable unanimous voices in the Situaton Room: the CIA, the Office of the Director of National Intelligence, the Pentagon, and the White House's counterterrorism adviser, John Brennan. Defense Secretary Robert Gates . . . was fully supportive of more drone attacks. Together, Brennan, Gates, and the others convinced Obama of both the urgency of counterterrorism and the imperative of viewing America's engagement with the Middle East and South

Asia through that prism. Their bloc by and large discouraged debate over the full implications of this strategy in national security meetings. n392

What Nasr does not mention is that, for significant periods, all four voices were hold-overs from the Bush Administration; two Bush Administration officials, Michael J. Morell and David Petraeus, headed the CIA from July [*71] 1, 2011 to March 8, 2013. n393 The Director of National Intelligence, Dennis C. Blair, had served in the Bush Administration as Commander-in-Chief of the U.S. Pacific Command and earlier as Director of the Joint Staff in the Office of the Chairman of Joint Chiefs of Staff; n394 Brennan had been Bush's Director of the National Counterterrorism Center; n395 and Gates had served as Bush's Secretary of Defense. n396

Gates's own staying power illuminates the enduring grip of the Trumanite network. n397 Gates was recruited by the CIA at Indiana University in 1965 after spending two years in the Air Force, briefing ICBM missile crews. n398 He went on to become an adviser on arms control during the SALT talks in Vienna. n399 He then served on the National Security Council staff under President Nixon, and then under President Ford, and again under the first President Bush. n400 During the 1980s, Gates held positions of increasing importance under Director of Central Intelligence William Casey; a colleague described Casey's reaction to Gates as "love at first sight." n401 Casey made Gates his chief of staff in 1981. n402 When Casey died of a brain tumor, President Reagan floated Gates's name for Director, but questions about his role in the Iran-Contra scandal blocked his nomination. n403 Gates continued to brief Reagan regularly, however, often using movies and slides (though Nancy Reagan was annoyed because he "ate all the popcorn"). Fellow CIA officers almost succeeded in blocking his [*72] nomination when it was revived by President Bush, recalling again his role in the Iran-Contra affair. n404 Gates nonetheless got the job and escaped indictment, though Independent Counsel Lawrence E. Walsh reported that his statements during the investigation "often seemed scripted and less than candid." n405 He took office as President Bush's Secretary of Defense in 2006, overseeing the aftermath of the Iraq War, and continued in that position in the Obama Administration until July 2011. n406

It is, of course, possible to reject the advice of a Gates, a Brennan, or other prominent Trumanites. n407 But battle-proven survivors normally get their way, and their way is not different from one administration to the next, for they were the ones who formulated the national security policies that are up for renewal. A simple thought experiment reveals why presidents tend to acquiesce in the face of strong Trumanite pressure to keep their policies intact. Imagine that President Obama announced within days of taking office that he would immediately reverse the policies detailed at the outset of this essay. The outcry would have been deafening--not simply from the expected pundits, bloggers, cable networks, and congressional critics but from the Trumanites themselves. When Obama considered lowering the military's proposed force levels for Afghanistan, a member of his National Security Council staff who was an Iraq combat veteran suggested that, if the President did so, the Commander of U.S. and International Security Assistance Forces ("ISAF") in Afghanistan (General Stanley McChrystal), the Commander of U.S. Central Command (General David Petraeus), the Chairman of the Joint Chiefs of Staff (Admiral Michael Mullen), and even Secretary of Defense Gates all might resign. n408 Tom Donilon, Obama's National Security Advisor and hardly a political ingénue, was "stunned by the political power" of the military, according to Bob Woodward. n409 Recall [*73] the uproar in the military and Congress when President Bill Clinton moved to end only one Trumanite policy shortly after taking office--the ban on gays in the military. n410 Clinton was quickly forced to retreat, ultimately accepting the

policy of "Don't Ask, Don't Tell." n411 A president must choose his battles carefully, Clinton discovered; he has limited political capital and must spend it judiciously. Staff morale is an enduring issue. n412 No president has reserves deep enough to support a frontal assault on the Trumanite network. Under the best of circumstances, he can only attack its policies one by one, in flanking actions, and even then with no certainty of victory. Like other presidents in similar situations, Obama thus "had little choice but to accede to the Pentagon's longstanding requests for more troops" in Afghanistan. n413

Links to politics

Kenneth R. **Mayer, 14,** Professor, Department of Political Science and Affiliate Faculty at La Follette School of Public Affairs, University of Madison-Wisconsin, 2014, "SYMPOSIUM: GOVERNING THE UNITED STATES IN 2020: Executive Power in the Obama Administration and the Decision to Seek Congressional Authorization for a Military Attack Against Syria: Implications for Theories of Unilateral Action", Utah Law Review, LexisNexis, 2014 Utah L. Rev. 821

The actual empirical practice, however, is much murkier. While we can easily enough point to specific examples that fit the presumptive pattern, the full range of data suggests a far more nuanced picture. Presidents rely less on unilateral action when they face divided government, no matter what their staffs say they will do, in part because of fear of a congressional backlash. Investigations, hearings, and the prospect, however small, of Congress overturning a unilateral act can raise the political cost of presidential adventurism. William Howell and Jon Pevehouse have found strong evidence that presidents are less likely to use military force when they face divided government, concluding that Congress retains a substantial role in limiting presidential discretion. n74 Their findings are based on a database of possible opportunities for presidents to take this step. n75 They have analyzed patterns of how presidents use force (or do not) to identify the causal factors that shape those decisions. n76 They found that presidents are more likely to be cautious in ordering the use of force when they face substantial and organized congressional opposition, as measured by the number of seats controlled by the opposition party and measures of unity. n77 [*836] Presidents have frequently declined opportunities to use force, they found, with outcomes shaped by the possibility of politically costly opposition. n78 Anticipating the reaction to a potential unilateral move is thus consistent with underlying theory, as is deciding not to pursue a unilateral strategy when the political costs are too high. This anticipation is, in Howell's view, central to any useful model of unilateral action: Whenever presidents contemplate a unilateral action, they anticipate how Congress and the judiciary will respond. The limits to unilateral powers are critically defined by the capacity, and willingness, of Congress and the judiciary to overturn the president. Rarely will presidents issue a unilateral directive when they know that other branches of government will subsequently reverse it. n79 This serves as a useful general explanation. However, applying it to any specific case requires caution, as the argument very easily becomes tautological: any presidential choice to not to push the boundaries of executive power can then, by definition, be attributed to a fear of a backlash or unacceptable political costs. It is reasonable to think that Obama's decision to defer to Congress was a function of what the congressional response might have been on other issues if he opted to go alone - the budget, Iran, appointments, relations with allies - or what the political consequences would be of a poor outcome. Even so, the sequence of the President's decision-making remains difficult to explain as something other than a series of miscalculations. If the political costs were unacceptably high, it was still a mistake to declare that he wanted to attack and then cede that discretion to Congress. In doing so, President Obama, quite literally, invited Congress to repudiate him. A President who acknowledges in his own acts the utility of

unilateral power in the face of congressional resistance ought not to have put himself in such a position, particularly when by his own admission it was unnecessary.

Rulemaking XOs use political capital and don’t get enforced

Jennifer **Nou 14**, Neubauer Family Assistant Professor, University of Chicago Law School, 2014, “ARTICLE: AGENCY COORDINATORS OUTSIDE OF THE EXECUTIVE BRANCH”, Harvard Law Review, LexisNexis, 128 Harv. L. Rev. F. 64

Beyond these norms, the President's self-interest in coordinating agency adjudication is curbed for other reasons as well. First, coordination is costly. It requires the EOP to spend its limited resources and political capital, which could be deployed to other competing priorities. n18 As it stands, OIRA-coordinated review of agency rulemaking [*67] already requires substantial high-level attention given the various interests implicated by particular regulations. By contrast, individual adjudications draw less political interest given the nature of case-by-case resolutions; even in the aggregate, they often concern less well-represented groups. n19 As a result, the EOP is unlikely to spend much time and energy attending to interagency adjudication relative to rulemaking. Moreover, as a practical matter, efforts to draft an executive order or other high-level guidance documents require time-consuming meetings and negotiations between otherwise busy officials. Such efforts also demand various EOP clearance procedures necessitating the review of and sign-off from multiple political and legal entities within the executive branch. Such "institutional inertia" may help to explain, for instance, why disparities in agencies' use of discount rates and other inconsistencies among agency rulemaking activities continue to persist. n20 The President also gains limited benefits from some coordination efforts. Consider an illustrative analogy between Shah's proposed interventions and the President's current oversight of independent agencies. By executive order, such agencies are required to submit and publish annual regulatory plans and agendas, but are otherwise exempt from the review of individual regulations. n21 Shah suggests a similar approach to interagency adjudication, perhaps in the form of required submissions from agencies regarding their anticipated adjudicatory practices. n22 Alternatively, executive oversight might also take the form of an executive order for agencies to disclose their general and specific interagency arrangements, either on the agency's [*68] website or in the Federal Register. n23 Such innovations would, at the very least, allow for greater public scrutiny by interest groups, Congress, and perhaps even the courts. By many accounts, however, the regulatory agenda and planning process governing rulemaking by independent agencies has not yielded meaningful oversight. In fact, according to some observers, it has "become more of a paper exercise than an analytical tool." n24 Similarly, there is evidence that despite current executive orders requiring agencies to reveal the changes made as a result of OIRA-coordinated rulemaking review, n25 such disclosures are not regularly made. n26 Accounts even suggest that OIRA itself sometimes prevents such attempts at transparency. n27 In this manner, formal requirements imposed by the executive branch to promote interagency coordination and disclosure are often unenforced and disregarded in practice -- at times, even with the encouragement of executive branch overseers themselves. In many ways, these observations are perhaps unsurprising. The executive branch gains many benefits from declining to exercise control as well as from limiting the amount of agency transparency. n28 These benefits include the President's ability to preserve his flexibility, engage in unfettered deliberation, hide poor management practices [*69] from public scrutiny, and selectively shift blame to different entities within the executive branch. Indeed, centralized oversight is only meaningful when the agency and President's interests in transparency and interagency consistency are not aligned, that is, when the principal's preferences

depart from those of its agents. Otherwise, the costs of exercising such control are likely to outweigh their benefits. Under many circumstances, however, both agencies and the President are likely to be allies in resisting sustained coordination. Thus, there are many reasons to be skeptical that executive branch self-policing will be successful on its own.

XOs cost political capital in the context of surveillance

Marty **Lederman, 7,** Deputy Assistant Attorney General in the Department of Justice's Office of Legal Counsel, May 16, 2007, "Can You Even Imagine How Bad it Must Have Been?", http://balkin.blogspot.com/search?q=%22executive+action%22+NSA#7873245211171852017

This is actually the most interesting and disturbing of the three quotes, but it's not because of any constitutional problem. OLC is correct here that the President has the power to decline to follow a presidential E.O. (assuming there is no statute requiring that he adhere). Nevertheless, there does appear to be an outrage here. Apparently -- and this is real news of the Whitehouse statement -- the President decided to secretly ignore Executive Order 12333, which, among other things, has long been the only real source (other than Fourth Amendment) of legal protection of the privacy rights of U.S. persons overseas vis-a-vis surveillance by the federal government. This is a gap in FISA that the 1978 Congress said it would get around to closing -- but it never did. And so the only thing standing between U.S. persons overseas and their own government snooping on them has been E.O. 12333. If the President publicly rescinded 12333, there would be a huge outcry. It would prompt Congress to act immediately. Which is presumably why he didn't do so in public. Whitehouse suggests that the President secretly transgressed 12333. If so -- if in fact the President chose to ignore 12333 without notifying the public or Congress, it's quite outrageous -- constitutional bad faith, really, to announce to the world that you are acting one way (in large part to deter the legislature from acting), while in fact doing exactly the opposite. It might even mean that the Administration allowed executive branch officials to mislead Congress by assuring them in testimony that 12333 remained a serious limitation on government surveillance. (Now that's something worth investigating.) So Senator Whitehouse is basically correct when he characterizes the President as saying "I don't have to follow my own rules, and I don't have to tell you when I'm breaking them." This might not be unconstitutional -- it might not even be illegal -- but it is a serious breach of faith, and a severe threat to the operation of checks and balances, if, indeed, the President has been secrecy authorizing violations of E.O. 12333. Therefore Senator Whitehouse is absolutely right, not about the constitutional issue, but about one other, very important matter: Unless Congress acts, here is what legally prevents this President from wiretapping Americans traveling abroad at will: Nothing. Nothing. We simply cannot put the authority to wiretap Americans, whenever they step outside America's boundaries, under the exclusive control and supervision of the executive branch. We do not allow it when Americans are here at home; we should not allow it when they travel abroad. The principles of congressional legislation and oversight, and of judicial approval and review, are simple and longstanding. Americans deserve this protection wherever on God's green earth they may travel.

Enforcement drains political capital

Kenneth R. **Mayer, 1**, Professor of Political Science at Wisconsin University, "With the stroke of a Pen", 2001 Pg. 55

In stressing the formal weakness of the president, Neustadt argued that presidential orders, by themselves, lack the necessary practical authority to alter the behavior of others in government. Presidents cannot succeed by issuing commands; they succeed or (more commonly) fail because they are competent political brokers, not because of their formal powers. In fact, Neustadt argued that when a president gets his way by force, it is normally a "painful last resort, a forced response to the exhaustion of other remedies, suggestive less of mastery than of failure-the failure of attempts to gain an end by softer means.“83 An executive order or other legal device, as an instrument of formal authority, does not by itself cause action.

Links to Elections

CP links to elections more than the aff

Dino P. **Christenson and** Douglas L. **Kriner, 15**, Assistant Professors of Political Science, Boston University, Spring 2015, "SYMPOSIUM: EXECUTIVE DISCRETION AND THE ADMINISTRATIVE STATE: POLITICAL CONSTRAINTS ON UNILATERAL EXECUTIVE ACTION", LexisNexis, 65 Case W. Res. 89

A second constraining force is public opinion. In addition to anticipating the reaction of Congress, presidents also anticipate the reaction of the American people to a bold assertion of presidential unilateral power. n42 Unilateral action may provide a potent mechanism for the president to carry the day and move policy closer to his ideal preferences on a specific issue. However, if it erodes his overall support among the general public, it could come at a significant long-term cost in terms of future policy priorities that overwhelm any short-term policy gain. Decades of scholarship have shown that presidential approval is a vitally important resource for presidents as they pursue their policy agendas in Congress. n43 Stripped of public support and the political pressure it generates, presidents with low approval ratings face long odds in advancing their programmatic agendas in Washington. [*910] How does the public respond to bold assertions of unilateral power? Relevant polling data are rather scarce; however, the extant evidence, despite its limitations, suggests that the public holds deep reservations about broad assertions of unilateral presidential power. n44 For example, in January 2014 an ABC News/Washington Post poll revealed an evenly divided public on the idea of unilateral action in the abstract. The question began, "Presidents have the power in some cases to bypass Congress and take action by executive order to accomplish their administration's goals." Respondents were then asked whether they supported or opposed this approach. Just more than 40 percent strongly or somewhat supported presidents pursuing their policy goals via executive order; 46 percent opposed a unilateral leadership approach, with 25 percent strongly opposing it. n45 Polling data on more concrete issues often reveal even greater public concern with a unilateral approach. For example, a July 2014 poll referencing President Obama's unilateral changes to the ACA, which prompted the House lawsuit with which this Article began, asked Americans, "Do you think President (Barack) Obama exceeded his authority under the Constitution when he changed the health care law on his own by executive order?" A substantial majority, 58 percent, said yes, the president had exceeded his constitutional authority. Only 37 percent replied that no, he had not done so. n46 Finally, polls that explicitly measure public support for policy action through presidential unilateral initiatives versus through the legislative process show a strong preference for the latter. For example, a December 2001 poll reveals a widespread public preference for joint presidential-congressional action--even in the immediate aftermath of 9/11 when President George W. Bush enjoyed the highest approval ratings ever recorded. After a series of questions measuring popular support for a number of potential changes to criminal procedures after [*911] 9/11, a CBS/New York Times poll asked, "Do you think changes to the way in which government agencies seek, investigate and prosecute suspected criminals should be decided by thePresident alone through an executive order, or through legislation enacted by the Congress and approved by the President?" A full 82 percent said that such changes should be made by both branches through the legislative process. Only 12 percent supported the president acting alone through executive order. n47 Thus, presidents have good reason to worry that actingunilaterally on a high-profile issue or too frequently may trigger a public backlash that will undermine their efforts to achieve other policy priorities. Presidents face strong incentives to be strategic in their use of unilateral powers.

XOs link to elections

Kenneth R. **Mayer, 1**, Professor of Political Science at Wisconsin University, "With the stroke of a Pen", 2001 Pg. 31

Executive orders often become part of public discourse as both a symbol of energy in the executive and a sign that government is running amok. Contenders for the l996 Republican presidential nomination promised to issue executive orders as their first presidential acts: Phil Gramm to end the policy of affirmative action in government contracting, Pat Buchanan to reinstate previous bans on fetal tissue research and abortions at overseas medical facilities.30 In the early phase of the 2000 Democratic presidential primary, former senator Bill Bradley (D-NJ.) and Vice President Al Gore sparred over whether the Clinton White House had been sufficiently aggressive in using executive power to end racial profiling. In a February 2000 debate, Bradley promised to issue an executive order barring racial profiling by the federal government. When Gore promised that he, too, would use the president's power to end profiling, Bradley countered in what would become one of the campaign's testier-and more memorable-exchanges of the primary season:

AT: Executive Self Restraint CP- Mich7

2ac – Congress Key

CP will be circumvented—structural, CONGRESSIONAL change is key

Bendix and Quirk 15 (William Bendix and Paul J. Quirk , assistant professor of political science at Keene State College; Phil Lind Chair in U.S. Politics and Representation at the University of British Columbia, "Secrecy and negligence: How Congress lost control of domestic surveillance", Issues in Governance Studies, March 2015, http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf)//DBI

In enacting the USA PATRIOT Act just weeks after the 9/11 terrorist attacks, Congress sought to enhance investigations against specific, named persons suspected of terrorism. As voluminous documents leaked by whistleblower Edward Snowden have revealed, however, the president and the National Security Agency (NSA) have relied on that law to authorize the daily, ongoing capture of all U.S. communication records. These documents make clear that the Bush and Obama administrations ignored statutory constraints to authorize exceptionally broad intelligence-gathering programs. But from our review of legislative hearings and debates on the PATRIOT Act over the last five years, along with numerous declassified documents on surveillance, we find that unilateral action by the executive branch was **only partly to blame** for unrestrained domestic spying.

After the relatively balanced and cautious provisions of the 2001 PATRIOT Act, Congress virtually absented itself from substantive decision making on surveillance. It **failed to conduct serious oversight of intelligence agencies, ignored government violations of law, and worked harder to preserve the secrecy of surveillance practices than to control them**. Even after the Obama administration made the essential facts about phone and email surveillance available in classified briefings to all members, Congress mostly ignored the information and debated the reauthorizations on the basis of demonstrably false factual premises. Until the Snowden revelations, only a handful of well-briefed and conscientious legislators—too few to be effective in the legislative process—understood the full extent of domestic intelligence gathering.

We describe and explain Congress's deliberative failure on phone and Internet surveillance policy. We show that along with a lack of consistent public concern for privacy, and the increasing tendency toward partisan gridlock, Congress's institutional methods for dealing with secret surveillance programs have undermined its capacity to deliberate and act effectively with respect to those programs. Although the current political environment is hardly conducive to addressing such problems, we discuss long-term goals for institutional reform to enhance this capacity. We see no easy or decisive institutional fix. But without some **structural change**, the prospects look dim for maintaining significant limitations on investigatory intrusion in an era of overwhelming concern for security.

Executive self-regulation fails—legislation is key

Bendix and Quirk 15 (William Bendix and Paul J. Quirk , assistant professor of political science at Keene State College; Phil Lind Chair in U.S. Politics and Representation at the University of British Columbia, "Secrecy and negligence: How Congress lost control of domestic surveillance", Issues in Governance Studies, March 2015,

http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf)//DBI

For the immediate future, however, Congress appears to have gone out of the business of determining policy for antiterrorism surveillance. In the near term, the best hope for privacy interests is for President Obama to make good on his post-Snowden pledge, repeated in his 2015 State of the Union Address, to reform surveillance programs in order to instill "public confidence...that the privacy of ordinary people is not being violated." He promised to work with Congress on the issue. If Congress is not capable of acting, the executive branch can impose its own constraints on surveillance practices.57 But the maintenance of self-imposed executive-branch constraints would depend entirely on the strength of the administration's commitment—and, in two years' time, on the disposition of the next president. Because of the president's central responsibility for national security, the presidency is **hardly a reliable institutional champion** for privacy interests.

If over the long run surveillance practices are to afford significant protection to privacy interests, Congress will need to overcome its partisan gridlock and strengthen the institutional framework for surveillance policymaking. We suggest two long-term goals. First, Congress should seek some means of enhancing its capacity for oversight and policymaking on secret surveillance practices. Some reformers have called for abolishing or prohibiting any secret laws or interpretations that control investigations. In his 2011 speech mentioned above, Senator Wyden acknowledged that surveillance activities are necessarily secret.58 He insisted, however, that the policies governing those activities should be debated and decided openly, through normal democratic processes. He argued that secret laws, or secretly sanctioned interpretations of laws, are incompatible with democracy.

Executive oversight fails—mandates and empirics

Bendix and Quirk 15 (William Bendix and Paul J. Quirk , assistant professor of political science at Keene State College; Phil Lind Chair in U.S. Politics and Representation at the University of British Columbia, "Secrecy and negligence: How Congress lost control of domestic surveillance", Issues in Governance Studies, March 2015, http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf)//DBI

The executive branch has a several watchdogs that monitor surveillance practices, including the Inspectors General of the NSA and Justice Department, the President's Intelligence Advisory Board, and the Privacy and Civil Liberties Oversight Board (PCLOB). **Although all serve important oversight functions, they have mandates that minimize privacy concerns or they are vulnerable to White House interference.** The inspectors general are concerned about waste and fraud, among many other types of violations, while the Intelligence Advisory Board serves exclusively the president, making sure that executive orders and other directives are followed. Currently, only the PCLOB has a mission that considers and advocates for civil-liberties protections. Over the last year, it has produced several important reviews that weigh the surveillance benefits of eavesdropping programs against the privacy costs to Americans. However, prior to the Snowden leaks, both Presidents Bush and Obama **let the Board sit empty for long periods**, ensuring that it produced no oversight reports for most of its ten-year

history.61 A president hostile to oversight and accountability could take similar steps to undermine the Board's activities, especially once the Snowden scandals have faded.

2ac – Courts key

The courts force executive compliance best

Wu 6 - Associate Dean and Professor, Thurgood Marshall School of Law (Edieth, "Domestic Spying and Why America Should Avoid the Slippery Slope", Review of Law and Social Justice, 2006, http://weblaw.usc.edu/why/students/orgs/rlsj/assets/docs/Wu_Final.pdf)//DBI

The judiciary branch, specifically the Supreme Court, is emphatically the arm of government with the province and duty to "say what the law is."60 And in the context of executive power, the Court has "long since made clear that a state of war is not a blank check for the President."61 For example, the Supreme Court was recently "asked to use [the Padilla] case to define the extent of presidential power over U.S. citizens who are detained on American soil on suspicion of terrorism."62 The Court exercised its authority to "end [the] unusual stalemate between the executive and judiciary branches" by ordering Padilla's transfer from military to civilian custody.63

FISA, of course, specifically permits an "undeniably larger role" for the judiciary when U.S. persons, such as Padilla, are or may be concerned.64 In such a case, courts limit executive discretion by "approv[ing] surveillance of U.S. persons [only if] the Government can show that [the target] 'knowingly engaged in clandestine intelligence activities which involve or may involve a [criminal] violation'... or knowingly commits, prepares to commit, or aids in the preparation or commission of, acts of sabotage or terrorism."65 In addition to directly limiting executive discretion, **the judiciary is in a unique position to indirectly elicit executive compliance with the established rule of law by raising public consciousness of an issue**. Throughout history, the judiciary has raised public consciousness by vociferously adhering to the rule of law, thereby **forcing the executive into "de facto compliance.**"66

Judiciary participation makes executive circumvention less likely

Bellia '11 (Patricia L, Notre Dame Law School, Arizona State Law Journal, Vol. 43, No. 293, 2011, Notre Dame Legal Studies Paper No. 12-58, 2011, "Designing Surveillance Law," http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2033217) KW

The institutional patterns of Part I illustrated that scholars often understate the judicial role in the surveillance law landscape. Because Congress reacts to judicial decisions, whether to implement the decision or to supplement weak procedural rules the court prescribes, the judicial decision fades into to the background. As I argued in Part I, however, even where a statute immediately follows a judicial decision, the initial decision likely determines whether there will be strong or weak checks on the executive's use of a particular surveillance tactic. n191

It follows that judicial responses to instances of executive rule-selection represent the most important point of judicial decision, for they likely set the path of future legislative action. This fact counsels in favor of courts seeking the fullest possible participation when a new question about executive rule-selection arises. The magistrate judges who invited amicus participation at the ex parte application stage had precisely this instinct. Amicus participation not only reduces the information costs and lowers participation barriers for potential targets (represented by privacy groups), it also raises the government's participation costs, and may thereby cause law enforcement officials to gauge more precisely the need for the tactic [*345] involved. In late 2006, for example, the government filed an

application in the Southern District of New York seeking disclosure of the contents of text messages logged with a service provider. When the court notified the government that it intended to invite amicus participation and request briefing, the government immediately withdrew the application. n192

Harshness of court rulings good – more durable and enduring than the CP

Bellia ’11 (Patricia L, Notre Dame Law School, Arizona State Law Journal, Vol. 43, No. 293, 2011, Notre Dame Legal Studies Paper No. 12-58, 2011, “Designing Surveillance Law,” http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2033217) KW

Similarly, the covert video surveillance cases reflect courts' determination that the technique invades a reasonable expectation of privacy and that agents must meet **stringent procedural requirements to use it**. n109 Congress placed video surveillance outside of the ambit of the Wiretap Act, but courts imposed the Wiretap Act's requirements anyway. To be sure, courts adopted the Wiretap Act's requirements rather than developing new judicial standards. n110 Adoption of those requirements, however, was premised upon the threshold determination that the technique invades a reasonable expectation of privacy. That determination is one that Professor Kerr implicitly expects, if not explicitly urges, courts to leave to the legislature. As a descriptive matter, then, the example is not one of deference to legislative choices.

2ac – Inspector General Fails

IGs fail – appointees have connections to the White House

HOUSE OF REPRESENTATIVES COMMITTEE ON GOVERNMENT REFORM, 5 (Minority Staff, 1/7/5, "THE POLITICIZATION OF INSPECTORS GENERAL", http://www.yuricareport.com/Corruption/PoliticizationOfInspectorsGeneral.pdf) KW

Over one-third of the IGs appointed by President Bush (36%) worked in a Republican White House prior to their IG appointments. These included senior positions in both the White House of President George W. Bush and the White House of his father, President George H.W. Bush. In contrast, none of the IGs appointed by President Clinton worked in a Democratic White House before his or her appointment. Figure 2.

One example of an IG appointed by President Bush with White House experience is Janet Rehnquist, who was appointed Inspector General of the Department of Health and Human Services. Ms. Rehnquist, who is also the daughter of Supreme Court Chief Justice William Rehnquist, served in the first Bush Administration for three years as Associate Counsel to the President. Other examples include Robert W. Cobb, who served as Associate Counsel in the second Bush Administration before his appointment as Inspector General of NASA, and Clark Ervin, who served as Associate Director of Policy in the Office of National Service in the first Bush Administration prior to his appointment as Inspector General of the State Department and later the Department of Homeland Security.

Another example of an IG with White House experience is Stuart Bowen, who was appointed as Inspector General of the Coalition Provisional Authority by President Bush. Prior to his appointment as Inspector General, Mr. Bowen had held numerous positions in President George W. Bush's White House, including Deputy Assistant to the Secretary and Deputy Staff Secretary, and Special Assistant to the President and Associate Counsel. He also served as Deputy Counsel to the Bush-Cheney transition team and was a "**key player**" in the Florida recount.7 Although Mr. Bowen is an IG with previous White House experience, he is not included in the tally of Bush Administration IGs because the CPA IG does not technically fall under the Inspector General Act.

IG reports don't do anything – too number heavy

Project On Government Oversight, 9 (Project On Government Oversight (POGO) is a nonpartisan independent watchdog that champions good government reforms. POGO's investigations into corruption, misconduct, and conflicts of interest achieve a more effective, accountable, open, and ethical federal government. 3/20/9. "Inspectors General: Accountability is a Balancing Act". http://www.pogoarchives.org/m/go/ig/accountability/ig-accountability-20090320.pdf) KW

The current system of monitoring IG work heavily **favors numbers**. For instance, IGs are required to file Semi-Annual Reports (SARs) at the end of each April and October, recording their activities for the preceding six months. The specific items that must be included in each SAR are many and some are frankly **mind-deadening**. In fact, it is these requirements that probably account for the fact that so many SARs go unread by their supposed readers on Capitol Hill. Although some of the required reporting is of course quite useful in keeping tabs on an OIG, many of the required lists and tables are not particularly meaningful for any but the most avid number-cruncher. Very briefly, the reports must include:¶ • any significant problems, abuses, and deficiencies¶ • recommendations for corrective actions¶ • identification of each significant recommendation from previous SARs on which¶ corrective action has

not been completed ¶ • matters referred to prosecutors and resulting actions¶ • a list of every audit, inspection, and investigation report issued¶ • a summary of each particularly significant report¶ • statistical tables showing the total number of reports and total dollar value of questioned¶ costs, the dollar value of recommendations that funds be put to better use, and a¶ breakdown of management decisions taken or pending32¶ These requirements have for decades resulted in SARs that frequently open with a long list of facts and figures that **do little to illuminate the work that has actually occurred**–or not—in the OIG.

Reports fail – take too long

Project On Government Oversight, 9 (Project On Government Oversight (POGO) is a nonpartisan independent watchdog that champions good government reforms. POGO's investigations into corruption, misconduct, and conflicts of interest achieve a more effective, accountable, open, and ethical federal government. 3/20/9. "Inspectors General: Accountability is a Balancing Act". http://www.pogoarchives.org/m/go/ig/accountability/ig-accountability-20090320.pdf) KW

An almost universal complaint is that, as one IG himself admitted, "IG work always takes **too long**," and even the agencies frequently complain that audits drag on for too long and that IG reports aren't timely. For instance, in its Strategic Plan Results Report for FY 2007, the NASA OIG bravely conducted a "customer feedback survey" for its Office of Audits. One of the results was that only 55 percent of its agency customers found the particular OIG project to have been performed in time to be useful.61 Further self-analysis by the NASA OIG found that "Supervisors did not always review and approve working papers and supporting documentation in a timely manner."62 However, a chart of the average number of days to complete an audit showed that the number had dropped from 358 days in FY 2003 to 280 days in FY 2007, and the target beginning in FY 2008 would be to complete audits in 260 days on average.63 Of course, getting things done in a timely manner should never come at the expense of quality.

Inspector General recommendations are too imprecise to achieve change

Project On Government Oversight, 9 (Project On Government Oversight (POGO) is a nonpartisan independent watchdog that champions good government reforms. POGO's investigations into corruption, misconduct, and conflicts of interest achieve a more effective, accountable, open, and ethical federal government. 3/20/9. "Inspectors General: Accountability is a Balancing Act". http://www.pogoarchives.org/m/go/ig/accountability/ig-accountability-20090320.pdf) KW

The IC cannot be a serious mechanism for holding IGs accountable if it can get away with essentially **punting** rather than making specific recommendations when it concludes an IG has not met its standards of behavior and performance. Furthermore, POGO believes the public has a right and an interest in being informed of the recommendations and results, especially when a matter such as the case of the NASA IG has achieved such notoriety that it is addressed in a joint hearing by two congressional committees.27

Another weakness of the IC is that an FBI official instead of an IG chairs it. A former DoD OIG official put it bluntly: criminal investigators should not be in charge of administrative inquiries. The FBI Assistant Director could perhaps serve as an investigative advisor to the IC, in the same way that the head of the Justice Department's Public Integrity Section provides legal advice, and the FBI could still assist the IC with staff and other resources in the conduct of investigations. Not all allegations received by the IC amount to violations of law, with which the FBI is primarily concerned. Rather, the allegations are generally about inappropriate behavior or other misconduct that, while not rising to the level of a crime,

are nevertheless significant when alleged against an IG. The risk is that if the head of the Committee is trained to be looking for criminality, he or she may **overlook** misconduct or inappropriate behavior that does not actually violate any laws. For instance, DoD IG Joseph Schmitz was accused of protecting senior officials in investigations. In addition, Senator Charles Grassley (R-IA) decried Schmitz's decision to submit "IG reports to the White House Counsel for review" because it resulted in the White House redacting "large chunks of critical evidence" from Schmitz's final report on the Boeing tanker leasing deal.28 However, the IC exonerated Schmitz, finding that he had not violated "any law, rule, or regulation," or engaged in "gross mismanagement, gross waste of funds, or abuse of authority in connection with any of the matters under review." (Appendix G) The question remains, however, did he act inappropriately for an IG?

2ac – Leaks

The counterplan causes leaks that risk terrorism

Crawford 10 [Crawford, Robert. Global Dialogue (Online)12.1 (Winter 2010): 1-15. Proquest] BJS

Hayden and Mukasey draw upon a justification for torture that has been employed by its advocates for years: "terrorists" are able to resist conventional (i.e., lawful) interrogation. Interrogation techniques must remain secret (in contrast to the Army Field Manual, "which is available online [and] already used by al Qaeda for training purposes") because only ambiguity about how far interrogators are willing to go will assure co-operation: "[P]ublic disclosure of the OLC opinions, and thus of the techniques themselves, assures that terrorists are now aware of the absolute limit of what the U.S. government could do to extract information from them, and can supplement their training accordingly and thus diminish the effectiveness of these techniques." In other words, the success of interrogation depends on terrorising the captive (assumed to be a terrorist); that is, making the trained-to-resist terrorist believe that anything is possible in the black sites of cruelty.¶ Not mentioned is that in order to be credible, interrogators must demonstrate their willingness to go to the extreme; terrorising a prisoner cannot work on threat alone. Nor does such a formula mention the law, except in the implied negative: the existence of a legal bright line that cannot be crossed will only enable the terrorist enemy to employ his resistance training successfully. Recall that President Bush, explaining his veto of the 2008 defence authorisation bill because it contained a provision to rein in CIA interrogations, used the same logic to justify his approval of "alternative procedures". In a radio address to the nation on 8 March, Bush said: "Shortly after 9/11, we learned that key al-Qaeda operatives had been trained to resist the methods outlined in the [Army Field] manual. And this is why we created alternative procedures.">>

2ac – Permutation "Do Both"

The perm solves best—oversight must involve all three branches

Balkin 8 (Jack, Professor of Constitutional Law and the First Amendment at Yale Law School, "The Constitution in the National Surveillance State", Minnesota Law Review, November 2008, http://heinonline.org/HOL/Page?handle=hein.journals/mnlr93&div=4&g_sent=1&collection=journals)// DBI

Oversight of executive branch officials may be the single most important goal in securing freedom in the National Surveillance State. Without appropriate checks and oversight mechanisms, executive officials will too easily slide into the bad tendencies that characterize authoritarian information states. They will increase secrecy, avoid accountability, cover up mistakes, and confuse their interest with the public interest.

Recent events in the Bush administration suggest that legislative oversight increasingly plays only a limited role in checking the executive. Meaningful oversight is most likely to occur only when there is divided government. Even then the executive will resist sharing any information about its internal processes or about the legal justifications for its decisions. A vast number of different programs affect personal privacy and it is unrealistic to expect that Congress can supervise them all. National security often demands that only a small number of legislators know about particularly sensitive programs and how they operate, which makes it easy for the administration to co- opt them.79 The Bush administration's history demonstrates the many ways that Presidents can feign consultation with Congress without really doing so. 8 0

Judicial oversight need not require a traditional system of warrants. It could be a system of prior disclosure and explanation and subsequent regular reporting and minimization. This is especially important as surveillance practices shift from operations targeted at individual suspected persons to surveillance programs that do not begin with identified individuals and focus on matching and discovering patterns based on the analysis of large amounts of data and contact information.81 We need a set of procedures that translate the values of the Fourth Amendment (with its warrant requirement) and the Fifth Amendment's Due Process Clause8 2 into a new technological context. Currently, however, we exclude more and more executive action from judicial review on the twin grounds of secrecy and efficiency. The Bush administration's secret NSA program is one example; the explosion in the use of administrative warrants that require no judicial oversight is another.8 3 Yet an independent judiciary plays an important role in making sure that zealous officials do not overreach. If the executive seeks greater efficiency, this requires a corresponding duty of greater disclosure before the fact and reporting after the fact to determine whether its surveillance programs are targeting the right people or are being abused. Judges must also counter the executive's increasing use of secrecy and the state secrets privilege to avoid accountability for its actions. Executive officials have institutional incentives to label their operations as secret and beyond the reach of judicial scrutiny. Unless legislatures and courts can devise effective procedures for inspecting and evaluating secret programs, the Presidency will become a law unto itself.

Given the limits of legislative and judicial oversight, oversight within the executive branch will prove especially crucial. Congress can design institutional structures that require the executive to police itself and make regular reports about its conduct. For example, if Congress wants to bolster legal protections

against warrantless surveillance, it might create a cadre of informational ombudsmen within the executive branch- with the highest security clearances-whose job is to ensure that the government deploys information collection techniques legally and nonarbitrarily.8 4 Unfortunately, the Bush administration has made extreme claims of inherent presidential power that it says allow it to disregard oversight and reporting mechanisms.85 Rejecting those claims about presidential power will be crucial to securing the rule of law in the National Surveillance State.

2ac – Permutation "Do the Counterplan"

Curtail is a temporary change in authority
DAS '15

(Department of Administrative Services, Chief Human Resources Office, 02/24/15, "Temporary Interruption of Employment", http://www.oregon.gov/das/chro/docs/advice/p6001501.pdf, SS)

"Curtailment" means a **temporary** change in agency operations due to extreme conditions. Curtailment may involve continuing **some but not all** of an agency's services.

"Curtail" means to diminish and includes actions less than termination

Zuccaro 6 – Edward R. Zuccaro, Chairperson of the Vermont Labor Relations Board, "GRIEVANCE OF VERMONT STATE COLLEGES FACULTY FEDERATION,", 4-14, http://vlrb.vermont.gov/sites/vlrb/files/AlchemyDecisions/Volume%2028/28%20VLRB%20220.pdf

We first address whether the President was obligated by the Contract to bring his decision to not enroll new students to the attention of the Faculty Assembly. Article 19 of the Contract provides: "Recognizing the final determining authority of the President, matters of academic concern shall be initiated by the Faculty Assembly or by the President through the Faculty Assembly which shall consider the matter and respond within a reasonable time". Included among "matters of academic concern" is the "curtailment . . . of academic programs". **The Employer contends that the decision to stop** the **enrollment of new students** in a program **is not a "curtailment"** of a program **because curtailment means** that **the program is actually being closed, and** the **non-enrollment of new students is not the same as** final **termination** of a program.

We disagree with the Employer's **interpretation of the word "curtailment". A contract will be interpreted by the common meaning of its words where the language is clear**. In re Stacey, 138 Vt. 68, 71 (1980). **Black's Law Dictionary** (6th Ed., West Pub. Co., 1990) **defines "curtail" as "to shorten, abridge, diminish, lessen, or reduce". Thus, curtailment of a program may constitute something less than closure of a program. The non-enrollment** of new students **squarely fits within the dictionary definition of "curtail"**. Accordingly, we conclude that the VTC President had a contractual obligation to consult with the Faculty Assembly with respect to the matter of academic concern of the non-enrollment of students in the Bioscience program for the Fall 2005 semester.

"Curtailment" reduces a part of a program---it's not the same as closure

Tatro 15 – Wendy K. Tatro, Director and Asst. General Counsel, Union Electric Company d/b/a Ameren Missouri, "REPLY BRIEF OF AMERENMISSOURI", 4-10, https://www.efis.psc.mo.gov/mpsc/commoncomponents/viewdocument.asp?DocId=935923768

Noranda does describe some options if it should encounter problems. In its brief, Noranda quotes from its SEC filings on this issue.345 **Notably, these filings never say "close,"** let alone "will close." **They do, however, use the term "curtailment."**346 **Webster's defines "curtail" as "to make less by or as if by cutting off or away some part," as in "curtail the power of the executive branch."**347 **Thus, Noranda discusses reducing its operations, but not closure**. In these same filings, Noranda also uses the terms "restructuring," "bankruptcy," and "divest."348 Thus, while Noranda argues to this Commission that closure "will" occur, the fine print in Noranda's SEC filings list every option but closure. Outside of

illogical and factually unsupported threats, Noranda presents nothing that suggests the smelter's mandatory closure.

"Curtail" does not mean to terminate

Chase 49 – Chase, Circuit Judge on the United States Court of Appeals for the Second Circuit, "UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT", 12-13, Lexis

When these provisions are read in the light of the background stated and particularly the rejection of express provisions for the power now claimed by the New Haven, **it is obviously difficult to accept the** New Haven's **present view that a complete abandonment of passenger service was not intended**. Even the words used point to the decisive and- under the circumstances- clean-cut step. **The word 'discontinue' is defined** by Webster's New International [**29] Dictionary, 2d Ed. 1939, **as meaning ' * * * to put an end to**; to cause to cease; to cease using; to give up'- **meanings quite other than** the connotations implicit in **the word 'curtail,' which it defines ' * * * to shorten; abridge; diminish; lessen; reduce.' It goes on to give the meaning of 'discontinue' at law as being 'to abandon or terminate by a discontinuance'-** an even more direct interpretation of the critical term. An interesting bit of support from the court itself for this view is found in Art. XI, §. 2(m), of the final Consummation Order and Decree, which reserved jurisdiction in the District Court: 'To consider and act on any question respecting the 'Critical Figures' established by the Plan with respect to the termination by the Reorganized Company of passenger service on the Old Colony Lines.' **A 'termination' is quite different from a 'reduction.'**

"Curtail" does not mean "abolish"

O'Niell 45 – O'Niell, Chief Justice, Supreme Court of Louisiana, "STATE v. EDWARDS", 207 La. 506; 21 So. 2d 624; 1945 La. LEXIS 783, 2-19, Lexis

The argument for the prosecution **is that the ordinance abolished the** three **open seasons**, namely, the open season from October 1, 1943, to January 15, [*511] 1944, and the open season from October 1, 1944, to January 15, 1945, and the open season from October 1, 1945, to January 15, 1946; and that, in that way, the ordinance suspended altogether the right to hunt wild deer, bear or squirrels for the [***6] period of three years. **The ordinance does not read that way, or convey any such meaning. According to Webster's** New International **Dictionary**, 2 Ed., unabridged, **the word "curtail" means "to cut off the** end, or **any part, of; hence to shorten;** abridge; **diminish**; lessen; **reduce." The word "abolish"** or the word "suspend" **is not given** in the dictionaries **as one of the definitions of the word "curtail". In fact, in common parlance, or in law composition, the word "curtail" has no such meaning as "abolish".** The ordinance declares that the three open seasons which are thereby declared curtailed are the open season of 1943-1944, -- meaning from October 1, 1943, to January 15, 1944; and the open season 1944-1945, -- meaning from October 1, 1944, to January 15, 1945; and the open season 1945-1946, -- meaning from October 1, 1945, to January 15, 1946. To declare that these three open seasons, 1943-1944, 1944-1945, and 1945-1946, "are hereby curtailed", without indicating how, or the extent to which, they are "curtailed", means nothing.

Conceding, for the sake of argument, that the authority given by the statute, to each parish, "to curtail the open season, but for not more than three consecutive [***7] years", includes the authority to "abolish" the open season for a continuous period not exceeding three years, the [*512] ordinance in this instance does not purport to "abolish" the open season for the three [**626] consecutive years, or

to suspend the right to hunt wild deer, bear or squirrels for the continuous period of three years. If the author of the ordinance intended to abolish the open seasons for hunting wild deer, bear and squirrels for a period of three years, he need not have specified the three annual open seasons, 1943-1944, 1944-1945, and 1945-1946; nor should he have used the word "curtail", with reference to the three annual open seasons, and without indicating the extent of the curtailment. It would have been an easy matter to word the ordinance so as to have no open season for hunting wild deer, bear and squirrels in the parish for a period of three years, if the police jury intended -- and if the statute gave the authority to the police jury -- to suspend the right to hunt wild deer, bear and squirrels in the parish for a period of three years.

"Curtail" does not mean "eliminate"

Simons 94 – J. Simons, Judge of the Municipal Court for the Mt. Diablo Judicial District, "NOTIDES v. WESTINGHOUSE CREDIT CORPORATION", 40 Cal. App. 4th 148; 37 Cal. Rptr. 2d 585; 1994 Cal. App. LEXIS 1321, 12-12, Lexis

4 Appellant suggests that Jenkins knew that the problem would be handled by curtailing new deals, not simply being selective. In his deposition he stated that "the step of curtailing new business is a logical one to take." **Appellant seems to misunderstand the word "curtail" to mean "eliminate."** Even if Jenkins made the same error, he said that this decision to curtail was not made until the Fall of 1990, several months after the hiring and shortly before Notides was informed of the decision.

"Curtail" means to reduce but not totally eliminate surveillance

Williams 00 – Cary J. Williams, Arbitrator, American Federation of Government Employees, Local 1145 and Department of Justice, Federal Bureau of Prisons, United States Penitentiary, Atlanta, GA, cyberFEDS® Case Report, 10-4, http://www.cpl33.info/files/USP_Atlanta_-_Annual_Leave_during_ART.pdf

The Agency relies on the language of Article 19, Section 1.2. **for its right to "curtail"** scheduled annual **leave** during training. The record is clear that the Agency has limited or curtailed leave during ART in the past, and has the right to do so in the future. **But there is a difference in curtailing leave** during ART **and totally eliminating it**. There was no testimony regarding the intent of the parties in including the term "curtail" in Section 1.2., but **Websters** New Twentieth Century Dictionary (2nd Ed) **defines the term as, "to** cut short, **reduce**, shorten, lessen, diminish, decrease or abbreviate". **The import of the term "curtail"** in the Agreement based on these definitions **is to cut back the number of** leave **slots, but there is no proof the parties intended to give the Agency the right to totally eliminate** leave slots in the absence of clear proof of an emergency or other unusual situation. **The same dictionary on the other hand defines "eliminate" as, "to** take out, **get rid of**, reject or ornit". **From a comparison of the two terms there is clearly a difference in curtailing and eliminating annual leave. I disagree with the Agency's contention that curtailing leave can also mean allowing zero leave slots. If the parties had intended such a result they would have simply stated the Agency could terminate or eliminate annual leave during training and/or other causes**. This language would leave no doubt the Agency had the right to implement the policy it put in place for January I through March 25, 2000. That language, however, is not in the Agreement, and **the term "curtail" does not allow the Agency to totally eliminate all** scheduled annual **leave** during the year.

2ac – Rollback

Future presidents roll back

Friedersdorfa 13 [Conor, staff writer at The Atlantic where he focuses on politics and national affairs, Does Obama Really Believe He Can Limit the Next President's Power?, The Atlantic, May 28 2013, http://www.theatlantic.com/politics/archive/2013/05/does-obama-really-believe-he-can-limit-the-next-presidents-power/276279/] AW

So unlike Hume, I don't think it's "stop me before I kill again," so much as, "I trust myself with this power more than anyone. You won't always be so lucky as to have me, but don't worry, I'm leaving instructions."¶ Will anyone follow them? That's what I don't understand. Why does Obama seem to think his successors will constrain themselves within whatever limits he sets? Won't they just set their own limits? Won't those limits be very different? What would Chris Christie do in the White House? I have no idea, but I'm guessing that preserving the decisionmaking framework Obama established isn't what he'd do.¶ Does anyone think Hilary Clinton would preserve it?¶ Obama doesn't seem to realize that his legacy won't be shaped by any perspicacious limits he places on the executive branch, if he ever gets around to placing any on it. **The next president can just undo those "self-imposed" limits** with the same wave of a hand that Obama uses to create them. His influence in the realm of executive power will be to expand it. By 2016 we'll be four terms deep in major policy decisions being driven by secret memos from the Office of Legal Counsel. The White House will have a kill list, and if the next president wants to add names to it using standards twice as lax as Obama's, he or she can do it, in secret, per his precedent.¶ Some new John Brennan-like figure, with different values and a different personality, will serve as Moral Rectitude Czar.¶ Even ending torture was done by executive order. The folks guilty of perpetrating it weren't punished. Congress wasn't asked to act. (There was an ambitious domestic agenda to focus on!) So who knows what we'll get next, save for a new president who witnessed all the previously unthinkable things post-9/11 presidents got away with so long as they invoked fighting "terror."¶ The fact that every new president is likely to be a power-seeking egomaniac seems like too obvious a flaw in Obama's plan for a smart guy like him not to see it. So what gives? Is all the talk of limiting the executive branch just talk? But why even talk at this point, if so? He isn't running again. Yet if he really does think his office wields too much power, why is he putting in place safeguards the next president can and probably will undo instead of zealously trying to get Congress to act? Yet he does seem to be concerned. Here's Peter Baker reporting in The New York Times:¶ For nearly four years, the president had waged a relentless war from the skies against Al Qaeda and its allies, and he trusted that he had found what he considered a reasonable balance even if his critics did not see it that way. But now, he told his aides, he wanted to institutionalize what in effect had been an ad hoc war, effectively shaping the parameters for years to come "whether he was re-elected or somebody else became president," as one aide said.¶ Ultimately, he would decide to write a new playbook that would scale back the use of drones, target only those who really threatened the United States, eventually get the C.I.A. out of the targeted killing business and, more generally, begin moving the United States past the "perpetual war" it had waged since Sept. 11, 2001. Whether the policy shifts will actually accomplish that remains to be seen, given vague language and compromises forced by internal debate, but they represent an effort to set the rules even after he leaves office. ¶ "We've got this technology, and we're not going to be the only ones to use it," said a senior White House official who, like others involved, declined to be identified talking about internal deliberations. "We have to set standards so it doesn't get abused in the future."¶ **There's that same obvious flaw, but everyone seems oblivious to it. The standards you're setting? The next president can**

just change them. In secret, even! That's the problem with extreme executive power: It is capricious, prone to abuse, and difficult to meaningfully check. Does Obama think the next man or woman will just behold the wisdom of his approach and embrace it? That error, unthinkable as it seems, would not be without precedent for this president.

2ac – Self-Restraint Fails

Self-restraint collapses during times of crisis – if they're correct about the net benefit, the counterplan cannot achieve a meaningful reduction in surveillance

No solvency—self-restraint fails during emergencies

Sales 2012 – Assistant Professor of Law, George Mason University School of Law (7/3, Nathan Alexander, Journal of National Security Law & Policy, 6.227, "Self-Restraint and National Security")

The framework developed above is largely static. **This article considers ¶ the behavior of national security officials during** periods of **relative ¶ stability, and does not explore whether the** hypothesized **explanations for ¶ self-restraint hold true across a range of** timeframes and **scenarios**.39 In ¶ other words, it largely overlooks the "cycles of timidity and aggression" ¶ that Jack Goldsmith has diagnosed in military and intelligence agencies.40¶ Still, the framework may be rich enough to explain why **self-restraints are ¶ more likely** to emerge **during** periods of **stasis than** during **emergencies**. It ¶ is a commonplace observation that officials are especially prone to ¶ overreach in times of crisis, such as the aftermath of a terrorist attack.41¶ Public choice principles can help explain why. During a crisis, officials' ¶ expected costs of inaction can be quite significant. Policymakers justifiably ¶ may worry that, if the nation's security suffers on their watch, voters will ¶ hold them accountable at the ballot box. **These concerns can influence the ¶ behavior of the lawyers who review** proposed **operations**. To the extent ¶ lawyers approve or reject operations based on whether they would promote ¶ policymakers' welfare,42 policymaker concerns about being perceived as ¶ "weak on security" will tend to yield fewer restraints than in times of stasis. ¶ Alternatively, to the extent lawyers issue vetoes to promote their own ¶ welfare,43 policymakers' preferences for aggressive operations likewise will ¶ tend to yield fewer restraints. A lawyer who vetoes a course of action ¶ favored by policymakers risks alienating them.44 Absent such a crisis ¶ environment, policymakers' expected costs of inaction may seem lower. In ¶ these ordinary circumstances, we should expect to see more self-restraint.

The executive cannot check itself – empirics

Lee 13

Timothy B. Lee, reporter for the Washington Post, "Obama says the NSA has had plenty of oversight. Here's why he's wrong." June 7, 2013, The Washington Post, http://www.washingtonpost.com/blogs/wonkblog/wp/2013/06/07/obama-says-the-nsa-has-had-plenty-of-oversight-heres-why-hes-wrong/NV

President Obama was in San Jose on Friday to talk about the Affordable Care Act. But he took the opportunity to try to calm the furor over new revelations that his administration is presiding over unprecedented surveillance of telephone and digital communications. "These programs were originally authorized by Congress," President Obama said. "They have been repeatedly authorized by Congress. Bipartisan majorities have approved them. Congress is continually briefed on how these are conducted. There are a whole range of safeguards involved. And federal judges are overseeing the entire program throughout." Obama's comments make it sound like the programs are subject to rigorous and

continuous oversight. But the simple fact that Congress is briefed and federal judges are involved doesn't mean either branch is actually able to serve as an effective check. The excessive secrecy surrounding these programs makes that unlikely. Take Congress. When the government has briefed members of Congress on its surveillance activities, it has often been in meetings where "aides were barred and note-taking was prohibited." It's impossible for Congress to provide effective oversight under those conditions. Members of Congress rely on staff to help them keep track of legislative details. They need independent experts to advise them on complex technical issues. And they need feedback from the constituents they ultimately represent. But the senators briefed on these programs couldn't speak about them. Sens. Ron Wyden (D-Ore.) and Mark Udall (D-Colo.) were reduced to spending years trying to hint at the existence of programs they weren't able to actually tell anyone about. Only now can anyone see what it is they were trying to tell us. Meanwhile, the 2008 FISA Amendments Act cut judges out of their traditional role of reviewing individual surveillance requests. Instead, it asks judges to approve broad categories of surveillance. The law gives judges little leeway to reject proposed surveillance programs, and in any event judges lack the expertise and resources to perform this quasi-legislative oversight role effectively. With both Congress and the courts effectively neutered, their traditional functions — defining the rules and making sure they're enforced — are now largely being performed inside the executive branch. In place of legal standards defined by Congress and enforced by an independent judge, we now have "minimization procedures" defined by some executive branch officials and applied by others. There's no opportunity for public debate about these rules and no independent oversight into whether the rules are being followed in individual cases. And there's ample evidence that letting the executive branch police itself is a recipe for abuse.

The executive cannot restrain itself – national security and rollback
Bendix and Quirk 15

Will Bendix and Paul J. Quirk, assistant professor of political science at Keene State College; Phil Lind Chair in U.S. Politics and Representation at the University of British Columbia, “Secrecy and negligence: How Congress lost control of domestic surveillance, Issues in Governance Studies,” March of 2015, Issues in Governance Number 68, http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf/NV

Ideally, in the aftermath of the Snowden scandals, Congress would undertake to restore order and legal regularity to surveillance policy by passing new legislation on the metadata program. Conceivably, it could choose to end bulk collection of phone records and reaffirm the original requirement of individual orders for the seizure of a target’s business records. Given the prevailing sense of urgency about antiterrorism security, however, we think a constructive measure would more likely sanction metadata collection, subject to conditions and requirements designed to avoid unnecessary harm to privacy interests. For the immediate future, however, Congress appears to have gone out of the business of determining policy for antiterrorism surveillance. In the near term, the best hope for privacy interests is for President Obama to make good on his post-Snowden pledge, repeated in his 2015 State of the Union Address, to reform surveillance programs in order to instill “public confidence…that the privacy of ordinary people is not being violated.” He promised to work with Congress on the issue. If Congress is not capable of acting, the executive branch can impose its own constraints on surveillance practices.57

But the maintenance of self-imposed executive-branch constraints would depend entirely on the strength of the administration's commitment—and, in two years' time, on the disposition of the next president. Because of the president's central responsibility for national security, the presidency is hardly a reliable institutional champion for privacy interests.

2ac – Termination Key

Terminating the *authority* and the *entirety of the program* are key – merely reducing the scope isn't sufficient

Sudha **Setty 15**, Professor at Western New England University School of Law, 2015, "Surveillance, Secrecy, and the Search for Meaningful Accountability", 51 STAN. J. INT'L L 16, http://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1305&context=facschol

In late March 2014, the Obama administration announced that it would¶ propose legislation to dismantle the bulk collection program, leaving metadata in¶ the exclusive possession of telecommunications companies and requiring FISC¶ authorization prior to the NSA accessing the metadata. 48 The type and scope of¶ legislative restrictions were debated extensively in 2014, but no bill was passed,¶ leaving open the question of whether any additional legislative control will be¶ exerted by Congress-if not, the status quo of executive control over the scope and¶ intrusiveness of the program will continue. 49 Section 215 of the Patr·iot Act,¶ arguably providing statutory authorization of the NSA Metadata Program, is set to¶ expire in July 2015, a deadline that is sure to prompt legislative debate on whether¶ to renew the program, curtail the authority granted to the administration, or¶ eliminate the program altogether. **The effect of any legislation in curtailing¶ intrusive surveillance practices is yet to be seen**, but the fact that the administration¶ has already shifted its public willingness to improving protections of privacy and¶ civil liberties and increase transparency when compatible with intelligence¶ gathering interests, is noteworthy as well. 50 Assessment of whether those changes¶ will be meaningful must wait for further developments, particularly as **it may be¶ institutionally and politically difficult for the president and Congress to shift course¶ dramatically in the face of still-existing terrorist threats and the political pressure¶ created by the public perception of those threats**. 51¶ The primary message from the Obama administration since the Snowden¶ disclosures has been that the administration itself is best suited to address whether¶ and to what extent any recommended changes to NSA surveillance were¶ appropriate, 52 and that the Snowden disclosures themselves have been unnecessary, illegal, and counterproductive to both the intelligence gathering programs¶ themselves and the public discourse. 53 However, there is no indication that any of¶ the accountability measures now being promoted by the administration would have¶ existed or gained significant purchase but for the Snowden public disclosures. 54¶ The various institutional accountability mechanisms that currently exist within the¶ executive branch do not appear to be equipped to consider concerns stemming from¶ intelligence community insiders who have a fuller understanding than the public of¶ the scope and nature of surveillance programs and who question the basic premise¶ or constitutionality of programs such as the NSA metadata collection. To the¶ contrary, there are indications that some within the NSA have actively attempted to¶ avoid oversight by the Department of Justice. 55 The Office of the Inspector General¶ for the NSA, appointed by and reporting to the director of the NSA, 56 is suited to¶ deal with allegations of statutory and policy compliance violations, but not with a¶ large scale systemic complaint about privacy and accountability such as that of¶ Snowden. 57 Other potential avenues for accountability, such as the Office of the¶ Inspector General for the Defense Department, are rendered irrelevant by the lack¶ of information access. 58 In fact, the extreme secrecy that surrounded these¶ surveillance programs, even within the administration, suggests that many existing¶ executive branch mechanisms were, in the time before the Snowden disclosures, not¶ engaged in effective oversight.

2ac – Transparency Key

Transparency's key – the *secretive nature of their mechanism* ruins solvency Finkelstein '13

[Prof Law Penn. "Secrecy, Targeted Killing and the Rule of Law" 2013 https://www.law.upenn.edu/live/files/1796-finkelstein-sovereignty-abstract.]

The upshot of the foregoing trends is the collective endorsement of three significant principles: 1. **The executive branch has largely virtually unlimited discretion** to make life or death decisions with regard to suspected enemies of the state in time of heightened national security threat, 2. The executive branch has unlimited discretion to declare sensitive documents secret, **with virtually no review or oversight,** and 3. Article III courts are committed to a judicial philosophy that declares both 1) and 2) **unreviewable**. While each individual proposition may seem reasonable on its face, the trio of principles, taken together, poses **a significant threat to the rule of law**. The seeds of this triumvirate were arguably sown many years ago – most notably with the Bush Administration's decision to label al-Qu'aida affiliates "unlawful combatants" and its asymmetric conception of the rights of such persons relative to traditional combatants – the internal logic of this policy is only now being clearly felt. What the public is beginning to observe is that in our haste to secure our nation from terrorist threat, the logic of unlawful combatancy may have worked a permanent transformation in the traditional safeguards for the protection of personal liberty of which Americans have historically been so proud. In his confirmation hearing on February 28, John Brennan noted the public interest in the "thresholds, criteria, processes, procedures, approvals and reviews" for drone strikes and he claimed that "our system of government and our commitment to transparency demand nothing less" than a public discussion of those criteria. This is a lofty ideal, but **we cannot meaningfully debate what we don't know**. Of course Brennan understands this, as shown by his call for codifying his own procedures for targeting decisions. This would be crucial to ensure that our practices conform to the rule of law and would impose self-restraint on the Executive's decisionmaking capacity over the awesome power of life and death. But there is a catch: just as the Bush Administration went through the exercise of articulating rules for the use of enhanced interrogation techniques, but kept such rules secret, so the Obama Administration has engaged in an elaborate exercise of private law-making. Articulating limits on discretion will do little to protect the rule of law if the rules and standards that establish those limits remain clandestine. **The necessary protection can only come from the articulation of publicly available rules and standards** which are then subject to public scrutiny and debate.

2ac – AT: Executive Flexibility N/B

EXTERNAL CONSTRAINTS – not self-restraint – is key to effective warfighting

Bodansky, 12 (Daniel, Lincoln Professor of Law, Ethics and Sustainability Arizona State University Sandra Day O'Connor College of Law; "Book Review of Jack Goldsmith, Power and Constraint: The Accountable Presidency after 9/11"; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2296192)//JPM

Ultimately, the President's counter-terrorism policies are on a stronger¶ footing now than at the beginning of the Bush administration, Goldsmith¶ argues, because of the legal limits on presidential authority. The new normal¶ reflects "a general consensus … about what tools the President [can] use in¶ fighting the threat [of terrorism], including military detention, refined¶ military commissions, aggressive surveillance with accountability strings¶ attached, habeas corpus for GTMO but not beyond, narrowed interrogation¶ policies, aggressive targeted killing, and the like" (210). "[A]mong politicians, judges, and most of the American people, there is agreement on the¶ legitimacy of and basic constraints on these powers" (210).¶ In the final chapter of Power and Constraint, Goldsmith provides a brief¶ but very interesting assessment of the new normal. On the whole, his¶ assessment is positive, emphasizing the system's "ability to self-correct" (xv).¶ Although increased transparency, legalization and accountability can have a¶ detrimental effect on national security, he concludes that "press coverage of¶ secret executive branch action serves a vital function in American democracy"¶ (222), that human rights lawsuits are "healthy for the presidency and for¶ national security" (241), and that "the strategic use of law during wartime¶ resulted in better planning, better policies, [and] self-corrections" (232).¶ Indeed, if the father of the Constitution, James Madison, were to survey this¶ "harmonious system of mutual frustration," he "would smile" (243). I found myself in agreement with much of Goldsmith's assessment,¶ subject to two significant caveats. First, Goldsmith's conclusion about the¶ "accountable Presidency" is not fully convincing, because he evaluates¶ accountability almost exclusively in prospective rather than retrospective¶ terms. For him, "**the continuing debates about the past are less important¶ than … correcting systemic shortfalls**" for the future so that "abuses don't¶ recur" (149). Thus, when Goldsmith speaks of the "accountable Presidency,"¶ what he means is not an executive branch that can be held responsible for ¶ 7¶ past misconduct, but rather an executive branch that is subject to¶ "democratic (and judicial) control" and to "strong legal and constitutional¶ constraints" (xvi).

Executive power expansion is inevitable—eleven warrants

Marshall 8 (William, William Rand Kenan, Jr. Distinguished Professor of Law at UNC, J.D., University of Chicago (1977), B.A., University of Pennsylvania (1972), Deputy White House Counsel and Deputy Assistant to the President of the United States during the Clinton Administration, "Eleven Reasons Why Presidential Power Inevitably Expands and Why It Matters," Boston University Law Review, https://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf)//DBI

Notably, the reasons Justice Jackson offered as to why power has concentrated in the executive go far beyond the ambitions and personalities of those who have held the office.17 Rather, **they are the inevitable results of technological, social, and legal changes encompassing a variety of factors**.18

These factors include: 1) the constitutional indeterminacy of presidential power, 2) the precedential effects of executive branch action, 3) the role of executive-branch lawyering 4) the expansion of the federal executive branch, 5) presidential control of the administrative state, 6) presidential access to and control of information, 7) the inter-relationship between the media and the Presidency, 8) the role of the Presidency in popular culture, 9) military and intelligence capabilities, 10) the need for the government to act quickly, and 11) the rise of a strong two-party system in which party loyalty trumps institutional prerogative. I shall discuss each of these factors in turn.

High presidential power is inevitable—the executive lacks the necessary restraint to check itself

Marshall 8 (William, William Rand Kenan, Jr. Distinguished Professor of Law at UNC, J.D., University of Chicago (1977), B.A., University of Pennsylvania (1972), Deputy White House Counsel and Deputy Assistant to the President of the United States during the Clinton Administration, "Eleven Reasons Why Presidential Power Inevitably Expands and Why It Matters," Boston University Law Review, https://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf)//DBI

Meanwhile, many of the other factors discussed in the previous Section serve to benefit only the presidency and do so largely **at Congress's expense**. The President's ability to respond quickly to emergencies, for example, leaves Congress out of the decision-making process and makes any subsequent actions by Congress seem **untimely and ineffectual**.95 The military and covert agencies' increased capabilities benefit only the President who directs them. The fact that the President can demand media attention and use the public culture to his advantage diminishes the visibility, and therefore the effectiveness, of a Congress that does not have similar tools.

The result of all this, I would suggest, is that the system of checks and balances that the Framers envisioned **now lacks effective checks and is no longer in balance**. The implications of this are serious. The Framers designed a system of separation of powers to combat government excess and abuse and to curb incompetence.96 They also believed that, in the absence of an effective separation-of-powers structure, such ills would inevitably follow.

Unfortunately, however, **power once taken is not easily surrendered**. Regardless of which party nominee wins the 2008 presidential election, therefore, it is unlikely that the imbalance of power that has developed in recent years will be easily remedied. Not using all available power **requires a principled restraint that likely extends beyond the capabilities of most politicians**.

1ar – AT: Executive Flexibility N/B

Laundry list of reasons why executive power expansion is inevitable:

a) Constitutional indeterminacy

Marshall 8 (William, William Rand Kenan, Jr. Distinguished Professor of Law at UNC, J.D., University of Chicago (1977), B.A., University of Pennsylvania (1972), Deputy White House Counsel and Deputy Assistant to the President of the United States during the Clinton Administration, "Eleven Reasons Why Presidential Power Inevitably Expands and Why It Matters," Boston University Law Review, https://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf)//DBI

1. The Constitutional Indeterminacy of the Presidency

The first and perhaps overarching reason underlying the growth of presidential power is that the constitutional text on the subject is **notoriously unspecific**, allowing as one writer maintains, for the office "to grow with the developing nation."19 Unlike Article I, which sets forth the specific powers granted to Congress,20 the key provisions of Article II that grant authority to the President are written in indeterminate terms such as "executive power,"21 or the duty "to take care that the laws be faithfully executed."22 Moreover, unlike the other branches, the Presidency has consistently been deemed to possess significant inherent powers.23 Thus, many of the President's recognized powers, such as the authority to act in times of national emergency24 or the right to keep advice from subordinates confidential,25 **are nowhere mentioned in the Constitution itself**.

In addition, case law on presidential power is **underdeveloped**. Unlike the many precedents addressing Congressional26 or federal judicial27 power, there are remarkably few Supreme Court cases analyzing presidential power. And the leading case on the subject, Youngstown Sheet & Tube Co. v. Sawyer,28 is known less for its majority opinion than for its concurrence by Justice Jackson, an opinion primarily celebrated for its rather less-than-definitive announcement that much of presidential power exists in a **"zone of twilight."**29

Accordingly, the question whether a President has exceeded her authority is seldom immediately obvious because the powers of the office are **so open- ended**.30 This fluidity in definition, in turn, allows presidential power to readily expand when factors such as national crisis, military action, or other matters of expedience call for its exercise.31 Additionally, such fluidity allows political expectations to affect public perceptions of the presidential office in a manner that can lead to expanded notions of the office's power.32 This perception of expanded powers, in turn, can then lead to the perceived legitimacy of the President actually exercising those powers. **Without direct prohibitions to the contrary, expectations easily translate into political reality**.33

b) Precedent

Marshall 8 (William, William Rand Kenan, Jr. Distinguished Professor of Law at UNC, J.D., University of Chicago (1977), B.A., University of Pennsylvania (1972), Deputy White House Counsel and Deputy Assistant to the President of the United States during the Clinton Administration, "Eleven Reasons Why

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2. The Precedential Effects of Executive Branch Action

Presidential power also inevitably expands because of the way executive branch precedent is used to support later exercises of power.34 Many of the defenders of broad presidential power cite historical examples, such as President Lincoln's suspension of habeas corpus, as authority for the position that Presidents have considerable powers in times of war and national emergency.35 Their position is straight-forward. The use of such powers by previous Presidents stands as authority for a current or future President to engage in similar actions.36 Such arguments have considerable force, but they also create **a one-way ratchet in favor of expanding the power of the presidency**. The fact is that every President but Lincoln did not suspend habeas corpus. But **it is a President's action in using power, rather than forsaking its use, that has the precedential significance**.37 In this manner, every extraordinary use of power by one President expands the availability of executive branch power for use by future Presidents.

c) Lawyering

Marshall 8 (William, William Rand Kenan, Jr. Distinguished Professor of Law at UNC, J.D., University of Chicago (1977), B.A., University of Pennsylvania (1972), Deputy White House Counsel and Deputy Assistant to the President of the United States during the Clinton Administration, "Eleven Reasons Why Presidential Power Inevitably Expands and Why It Matters," Boston University Law Review, https://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf)//DBI

3. The Role of Executive Branch Lawyering

The expansion of presidential power is also a product of executive branch lawyering. Because of justiciability limitations, many of the questions surrounding the scope of presidential power, **such as war powers**,38 never reach the courts.39 In these circumstances, the Department of Justice (DOJ) and its Office of Legal Counsel (OLC), the division that is charged with advising the President as to the scope of his or her powers, are the final legal authorities opining on these issues.40

This means, in effect, that the executive branch is the final judge of its own authority. Not surprisingly, this dynamic leads to broad interpretations of executive power for a variety of reasons.41 To begin with, the President, simply by his power of appointment, can assure that his Attorney General views the primary duty of the office is to empower the administration and not to some abstract, dispassionate view of the law.42 President Kennedy selected his brother to be Attorney General, President Nixon his campaign manager. Neither appointment, I suspect, was based on the desire to have a recalcitrant DOJ. Moreover, even when the President chooses a person renowned for her independence, **the pressures to bend to the President's will are considerable.** Not only does the Attorney General act under the threat of removal, but she is likely to feel beholden to the President and bound, at least in part, by personal loyalty.43

Some might argue that even if the Attorney General may be overly susceptible to the influence of the President who appointed her, the same should not be true of the career legal staff of the DOJ, many of whom see their role as upholding the Constitution rather than implementing any President's specific

agenda. But the ability of the line lawyers at DOJ to effectively check executive branch power may be **more illusory than real**. First, the lawyers in the DOJ are likely to have some disposition in favor of the government if only because their clients are the President and the executive branch.44 Second, those DOJ lawyers who are hired for their ideological and political support of the President will likely have little inclination to oppose the President's position in any case. Third, as a recent instance at DOJ demonstrates, the President's political appointees can always remove or redeploy staff attorneys if they find them too independent.45 Fourth, even if some staff lawyers have initial resistance to the President's position, the internal pressures created by so-called "group-think" may eventually take over.46 The ability of a staff attorney to withstand the pressures of her peers in adhering to legal principle in the face of arguments based on public safety or national security can often be tenuous, particularly when the result of nay-saying may lead the lawyer to exile in a less attractive assignment.

d) Executive growth

Marshall 8 (William, William Rand Kenan, Jr. Distinguished Professor of Law at UNC, J.D., University of Chicago (1977), B.A., University of Pennsylvania (1972), Deputy White House Counsel and Deputy Assistant to the President of the United States during the Clinton Administration, "Eleven Reasons Why Presidential Power Inevitably Expands and Why It Matters," Boston University Law Review, https://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf)//DBI

4. The Growth of the Executive Branch

A further reason for the growth of presidential power relates to the expansion of the federal executive branch. The massive federal bureaucracy existing today extends far beyond what the framers likely imagined.50 And significantly, for our purposes, the head of that bureaucracy is the President who thereby has all the capabilities and powers of the administrative state at his disposal.51 The substantive scope of his authority, moreover, is **breathtaking**.52 The President leads a federal bureaucracy that, among other powers, sets pollution standards for private industry, regulates labor relations, creates food and product safety standards, manages the nation's lands and natural resources, enforces the federal criminal law, oversees the banking industry, and governs a host of other activities too numerous to mention.53 This may not have been the way it was intended. As Gary Lawson has written, it is questionable whether the delegation of powers to the executive, upon which the administrative state is based, is consistent with the original understanding.54 Yet whether consistent with the Framers' design or not, the expansion of the federal bureaucracy **necessarily invests the Presidency with enormous powers**.55 And as the federal bureaucracy continues to expand, so does the power of the Presidency.56 Indeed, even if Congress were able to limit the President's direct control over the administrative state (a matter that will be discussed in the next Subsection), the President's powers stemming from an expanded federal bureaucracy **would still increase**, if only through his powers of appointment.

e) Presidential control

Marshall 8 (William, William Rand Kenan, Jr. Distinguished Professor of Law at UNC, J.D., University of Chicago (1977), B.A., University of Pennsylvania (1972), Deputy White House Counsel and Deputy Assistant to the President of the United States during the Clinton Administration, "Eleven Reasons Why

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5. Presidential Control of the Administrative State

Related to the expansion of the federal administrative bureaucracy is the increased ability of the president to control that bureaucracy. For many years, the federal bureaucracy stood literally as a "fourth branch of government," enjoying considerable independence from both Congress and the Presidency.57 Recently, however, as Deans Harold Krent58 and Elena Kagan have stated,59 **Presidents are beginning to control the federal bureaucracy for their own political agendas** in a manner that has not occurred previously. Krent demonstrates how President George W. Bush has been able to circumvent congressional efforts to delegate decision making to office holders and to retain such authority for himself,60 while Kagan shows how President Clinton was able to use directives and other measures to more effectively control and claim ownership of agency action.61 The Clinton and Bush Presidencies will likely serve as lessons to future administrations, suggesting that increased control of the federal bureaucracy is yet another way that presidential power will continue to expand.

f) Information

Marshall 8 (William, William Rand Kenan, Jr. Distinguished Professor of Law at UNC, J.D., University of Chicago (1977), B.A., University of Pennsylvania (1972), Deputy White House Counsel and Deputy Assistant to the President of the United States during the Clinton Administration, "Eleven Reasons Why Presidential Power Inevitably Expands and Why It Matters," Boston University Law Review, https://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf)//DBI

6. Presidential Access to and Control of Information

If, **"[i]n the information age, information is power**"62 then **most of that power rests with the executive**. Because of its vast resources, the executive branch has far greater access to information than do the co-branches of government.63 In addition, the executive branch has far greater ability and expertise to gather, examine, and cull that information than do the transitory legislative staffs in the Congress. Congress, for example, does not have at its disposal the information gathering capabilities of the intelligence agencies or the technical expertise of the military in determining when there is a threat to national security.64 Instead, it must rely on the executive for that appraisal and therefore must continually negotiate with the executive **from a position of weakness and dependence**.65 Moreover, this disparity in access and control of information is **only likely to worsen** as the world becomes more complex, because complexity necessarily requires increasingly sophisticated methods of information collection, analysis, distillation, and dissemination. And because only the executive branch is likely to have the expertise and the resources to perform these functions, its relative powers will again increase.

g) Media

Marshall 8 (William, William Rand Kenan, Jr. Distinguished Professor of Law at UNC, J.D., University of Chicago (1977), B.A., University of Pennsylvania (1972), Deputy White House Counsel and Deputy Assistant to the President of the United States during the Clinton Administration, "Eleven Reasons Why

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7. The Media and the Presidency

As Justice Jackson recognized in Youngstown, the power of the Presidency has also been magnified by the nature of media coverage. This coverage, which focuses on the President as the **center of national power**,66 has only increased since Jackson's day as the dominance of television has increasingly identified the image of the nation with the image of the particular President holding office.67 The effects of this image are substantial. Because the President is seen as speaking for the nation, the Presidency is imbued with **a unique credibility**. The President thereby holds an immediate and substantial advantage in any political confrontation.68 Additionally, unlike the Congress or the Court, the President is uniquely able to demand the attention of the media and, in that way, can influence the Nation's political agenda to an extent that no other individual, or institution, can even approximate.

h) Popular culture

Marshall 8 (William, William Rand Kenan, Jr. Distinguished Professor of Law at UNC, J.D., University of Chicago (1977), B.A., University of Pennsylvania (1972), Deputy White House Counsel and Deputy Assistant to the President of the United States during the Clinton Administration, "Eleven Reasons Why Presidential Power Inevitably Expands and Why It Matters," Boston University Law Review, https://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf)//DBI

8. The Presidency in Popular Culture

Relatedly, the role of the institution of the President in popular culture also enhances presidential power. As numerous commentators have noted, the public often perceives national power as directly related to the power of the incumbent President.69 For that reason, **the citizenry tends to rally behind the President** because he is seen as standing for the country.70 This is why the citizenry tends to become invested in a President as soon as he is elected, and is why his popularity always rises immediately after an election.71 Of course, it may be true that the perception of the President as all-powerful can work to his detriment in that he can be held responsible, sometimes unfairly, for matters that are beyond his control.72 But the fact that the President is held responsible in these circumstances is a testament to his perceived power and authority.

To be sure, the role of public culture in enhancing the power of the presidency is not exclusively a modern phenomenon. Efforts were made to create a popular mythology surrounding the President as far back as President Washington.73 But as the political and popular culture surrounding the Presidency continue to coalesce, a sitting President's ability to use popular culture for political benefit is seemingly enhanced as well.74

i) Military and intelligence capabilities

Marshall 8 (William, William Rand Kenan, Jr. Distinguished Professor of Law at UNC, J.D., University of Chicago (1977), B.A., University of Pennsylvania (1972), Deputy White House Counsel and Deputy Assistant to the President of the United States during the Clinton Administration, "Eleven Reasons Why

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9. Military and Intelligence Capabilities

The President's power is also enhanced by the vast military and intelligence capabilities under his command. In his roles as Commander-in-Chief and head of the Executive Branch, the President directly controls the most powerful military in the world and directs clandestine agencies such as the Central Intelligence Agency and National Security Agency.75 That control provides the President with immensely effective, non-transparent capabilities to further his political agenda and/or diminish the political abilities of his opponents. 76 Whether a President would cynically use such power solely for his political advantage has, of course, been the subject of political thrillers and the occasional political attack. President Clinton, for one, was accused of ordering the bombing of terrorist bases in Afghanistan to distract the nation from the Lewinsky scandal,77 and President Nixon purportedly used the Federal Bureau of Investigation to investigate his political enemies.78 But regardless whether such abuses actually occurred, **there is no doubt that control of covert agencies provides ample opportunity for political mischief**, particularly since the inherently secretive nature of these agencies means their actions often are **hidden from public view**. And as the capabilities of these agencies increase through technological advances in surveillance and other methods of investigation, so does the power of the President.

j) Exigent circumstances

Marshall 8 (William, William Rand Kenan, Jr. Distinguished Professor of Law at UNC, J.D., University of Chicago (1977), B.A., University of Pennsylvania (1972), Deputy White House Counsel and Deputy Assistant to the President of the United States during the Clinton Administration, "Eleven Reasons Why Presidential Power Inevitably Expands and Why It Matters," Boston University Law Review, https://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf)//DBI

10. The Need for Government To Act Quickly

Presidential power also has increased because of the exigencies of decision making in the modern world. At the time of the founding, it would take weeks, if not months, for a foreign government to attack American soil. In the twenty- first century, the weapons of war take only seconds to arrive. **The increased speed of warfare necessarily vests power in the institution that is able to respond the fastest – the presidency**, not the Congress.79 Consequently, the President has unparalleled ability to direct the nation's political agenda.80 The power that comes with being the first to act, moreover, does not end when the immediate emergency is over. **Decisions made in times of emergency are not easily reversed**; this is particularly true in the context of armed conflict. The President's commitment of troops inevitably creates a "rally round the flag" reaction that reinforces the initial decision.81 As Vietnam and now Iraq have shown, Congress is likely to be very slow in second guessing a President's decision that places soldiers' lives in harm's way. That Congress would use its powers (as opposed to its rhetoric) to directly confront the President by cutting off military appropriations **seems fanciful**.

k) Polarization

Marshall 8 (William, William Rand Kenan, Jr. Distinguished Professor of Law at UNC, J.D., University of Chicago (1977), B.A., University of Pennsylvania (1972), Deputy White House Counsel and Deputy Assistant to the President of the United States during the Clinton Administration, "Eleven Reasons Why Presidential Power Inevitably Expands and Why It Matters," Boston University Law Review, https://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf)//DBI

11. The Inceasingly Polarized Two-Party System

The final reason why presidential power has increased relates to the rise of a highly polarized two-party system in which party loyalty trumps institutional concerns. The beginnings of this polarization can be traced to the enactment of the Civil Rights Act of 1964.82 The passage of that Act ended an era that had effectively been a three-party system in the United States: the northern Democrats, the southern Democrats, and the Republicans. During this "three- party" era, members of Congress needed to work across party lines to develop working majorities on particular issues.83 Their political fortunes and reputations, therefore, were closely tied to the success of Congress as an institution.

In contrast, in the highly polarized two-party system currently dominating national politics, a member's political success depends more on the fortunes of her particular party than on the stature of Congress. This means members of Congress have a greater personal interest in the President's success as leader of their party than they have in Congress as an institution. Correspondingly, because the President is the leader of his or her political party, the President can expect greater loyalty and discipline from party members than occurred in previous eras. The result of this is that when the President's party controls the Congress, he or she can proceed virtually uncontested.84 Consequently, in an era of highly polarized parties, **there no longer exists the constitutional balance purportedly fostered by separation of powers**. Rather, **the constitutional balance becomes** what Daryl Levinson and Richard Pildes term **a "separation of parties**."85 The problem, of course, is that separation of parties serves as no balance at all when both the Presidency and the Congress are controlled by the same party. In those circumstances, the power of the Presidency is effectively unchecked.

2ac – AT: Politics Net Benefit

The counterplan links to politics – the curtailing of domestic surveillance angers congress *regardless of process*

Bouie '10

(Jamelle, "Targeted killings, Barack Obama, and the natural expansion of executive power", http://trueslant.com/jamellebouie/2010/05/17/targeted-killings-barack-obama-and-the-natural-expansion-of-executive-power/)

Granted, these things aren't always linear. Inevitably, one claim of executive power gives rise to another. Following the Civil War, executive power was severely curtailed by Congress, and presidents remained fairly weak until Woodrow Wilson, who took the powers bequeathed to him by Lincoln and expanded them to meet the challenges — real and imagined — of the First World War. Likewise, executive power waned during the Coolidge and Hoover presidencies, only to explode with FDR and the New Deal. If there's anything unique about the current era, it's that we've seen a sustained expansion of executive power, beginning with 9/11 and continuing into the non-crisis present with Barack **Obama's broad claims of executive authority**. Now, I'm not arguing that every expansion in executive authority is bad, nor am I arguing that civil liberties are inviolate. Balancing liberty and security is incredibly difficult, and I can appreciate the challenge of maintaining the latter without relinquishing the former. As far as I'm concerned, the larger problem lies with the other constitutional actors. Absent a few cases, neither **Congress nor the courts seem to have much interest in restraining the president**. Moreover, **there doesn't seem to be a large political constituency for executive restraint**. The public tends to favor draconian security measures, Democrats have never been invested in protecting civil liberties, and **the GOP has all but morphed into the party of torture and unlimited executive authority**. Indeed, the Republican Party's pro-police state consensus is one of the most frightening things in American politics today, given the virtual certainty of a Republican president in the next decade.

AT: Executive Order CP- MSDI

Presidential actions threaten major player's interests

Mayer 9 (Kenneth R. Mayer, x-x-2009, "Going Alone: The Presidential Power of Unilateral Action."**http://users.polisci.wisc.edu/kmayer/408/Going%20Alone%20-Unilateral%20Action.pdf, Mayer's** work has appeared in the American Journal of Political Science, the Journal of Politics, Legislative Studies Quarterly, Public Administration Review, Election Law Journal, PS: Political Science and Politics, and Regulation. **)//RH**

The political structure motivates presidents to seek control of policy; the institutional structure motivates presidents to seek control of the process, "just as rational choice theories of Congress typically assume that legislators seek reelection" (Mayer 2001, 24). Moe and Wilson, in one of the early statements about unilateral powers, put it this way: Presidents pursue interests that are often incompatible with, and indeed threatening to, the interests of most of the other major players. Their heterogeneous national constituency leads them to think in grander terms about social problems and the public interest, and to resist specialized appeals. Reelection, moreover, does not loom as large in their calculations and in the second term, of course, it is not a factor at all. Unlike legislators, presidents are held responsible by the public for virtually every aspect of national performance. When the economy declines, an agency falters, or a social problem goes unaddressed, it is the president who gets the blame, and whose popularity and historical legacy are on the line. All presidents are aware of this, and they respond by trying to build an institutional capacity for effective governance. (Moe and Wilson 1994, 11) Presidents thus have an especially powerful reason to align government policy with their own preferences. Skowronek (1993, 6) comes to the same conclusion (though via a very different route), arguing that "in the most precise signification, presidents disrupt systems, reshape political landscapes, and pass to successors leadership challenges far different from the ones just faced."

XOs still link to politics – recent action proves

Levine, 11-20-2014, ("Republicans Slam Obama Over Immigration Executive Order," http://www.huffingtonpost.com/2014/11/20/immigration-executive-order_n_6195488.html**, Sam Levine is an associate politics editor at The Huffington Post. He graduated from the University of Chicago.) //RH**

Republican lawmakers slammed President Barack Obama for announcing Thursday that he would act unilaterally to provide deportation relief for approximately 4.4 million undocumented immigrants. Obama has said that he was forced to act alone because Congress failed to pass comprehensive immigration reform. He has also said that immigration reform passed by Congress could supersede his executive order. House Speaker John Boehner (R-Ohio) said the president was more interested in playing politics on immigration than working with lawmakers. "By ignoring the will of the American people, President Obama has cemented his legacy of lawlessness and squandered what little credibility he had left," Boehner said in a statement on Thursday. In a video on her Facebook page, former Alaska Gov. Sarah Palin (R) said Obama was "giving the middle finger" to voters. Texas governor-elect Greg Abbott (R) said in a statement that he would "immediately challenge" Obama's plan in court. Maricopa County, Arizona, Sheriff Joe Arpaio also said he would file a lawsuit against the president over the executive action. Rep. Lamar Smith (R-Texas) said Obama's announcement amounted to a declaration of war on the United States. "President Obama has put the interests of an extreme wing of his party above the interests of American workers. Some have said that the actions he is taking this week equal a declaration of war on

Republicans," Smith said in a statement. "I believe he is actually declaring war on the American people and our democracy." Appearing on CNN, former Republican House Speaker and 2012 presidential candidate Newt Gingrich said Obama's remarks were "a Gruber speech," referring to Jonathan Gruber, the MIT professor who has recently come under scrutiny for suggesting that the "stupidity of the American voter" helped pass the Affordable Care Act. Sen. John McCain (R-Ariz.), Obama's opponent in the 2008 presidential election, said the actions outlined by the president would do little to fix the country's immigration system. "The President's unilateral action announced today fails to address the root causes of the dysfunction in our immigration system, including an insecure border, the absence of a rational, efficient guest worker program to meet America's urgent labor needs, and a broken system for legal immigration, which fails those around the world who seek the American dream by actually following our laws," McCain said in a statement on Thursday. Under Obama's plan, approximately 4.1 million undocumented immigrants will be eligible for a new policy that will permit undocumented parents of U.S. citizens and permanent residents to remain in the country. Obama also announced that he will expand a program which gives deportation relief to undocumented children who came to the United States legally. While Republicans have said that Obama is acting outside of his constitutional authority, legal experts, including some conservatives, have said that Obama has the authority to act on his own.

An XO from Obama, especially on the topic of surveillance will seem wishy washy.

Barack Obama on surveillance, then and now By Caroline **Houck** on Thursday, June 13th**, 2013**
http://www.politifact.com/truth-o-meter/article/2013/jun/13/barack-obama-surveillance-then-and-now/
Obama also targeted the Bush administration's use of executive orders to conduct surveillance programs, saying "most of the problems that we have had in civil liberties were not done through the Patriot Act, they were done through executive order by George W. Bush. And that's why the first thing I will do when I am president is to call in my attorney general and have he or she review every executive order to determine which of those have undermined civil liberties, which are unconstitutional, and I will reverse them with the stroke of a pen." "I take the Constitution very seriously," he said. "The biggest problems that we're facing right now have to do with George Bush trying to bring more and more power into the executive branch and not go through Congress at all. And that's what I intend to reverse when I'm president of the United States of America."

AT: Executive CP-SDI

AT: Executive CP – No Solvency – Signal

No one trusts the president – doesn't solve signal.
Quirk, University of British Columbia U.S. politics and representation professor with the Phil Lind Chair, and Bendix, Keene State College political science assistant professor, 2015

[Paul and William, No. 68, March 2015, "Secrecy and negligence: How Congress lost control of domestic surveillance" http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf, p.16, accessed 7-15-15, TAP]

Ideally, in the aftermath of the Snowden scandals, Congress would undertake to restore order and legal regularity to surveillance policy by passing new legislation on the metadata program. Conceivably, it could choose to end bulk collection of phone records and reaffirm the original requirement of individual orders for the seizure of a target's business records. Given the prevailing sense of urgency about antiterrorism security, however, we think a constructive measure would more likely sanction metadata collection, subject to conditions and requirements designed to avoid unnecessary harm to privacy interests. For the immediate future, however, Congress appears to have gone out of the business of determining policy for antiterrorism surveillance. In the near term, the best hope for privacy interests is for President Obama to make good on his post-Snowden pledge, repeated in his 2015 State of the Union Address, to reform surveillance programs in order to instill "public confidence…that the privacy of ordinary people is not being violated." He promised to work with Congress on the issue. If Congress is not capable of acting, the executive branch can impose its own constraints on surveillance practices.57 But the maintenance of self-imposed executive-branch constraints would depend entirely on the strength of the administration's commitment—and, in two years' time, on the disposition of the next president. Because of the president's central responsibility for national security, the presidency is hardly a reliable institutional champion for privacy interests.

AT: Executive CP – No Solvency – Accountability

President circumvents executive accountability measures.
Quirk, University of British Columbia U.S. politics and representation professor with the Phil Lind Chair, and Bendix, Keene State College political science assistant professor, 2015

[Paul and William, No. 68, March 2015, "Secrecy and negligence: How Congress lost control of domestic surveillance" http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf, p.18, accessed 7-15-15, TAP]

The executive branch has a several watchdogs that monitor surveillance practices, including the Inspectors General of the NSA and Justice Department, the President's Intelligence Advisory Board, and the Privacy and Civil Liberties Oversight Board (PCLOB). Although all serve important oversight functions, they have mandates that minimize privacy concerns or they are vulnerable to White House interference. The inspectors general are concerned about waste and fraud, among many other types of violations, while the Intelligence Advisory Board serves exclusively the president, making sure that executive orders and other directives are followed. Currently, only the PCLOB has a mission that considers and advocates for civil-liberties protections. Over the last year, it has produced several important reviews that weigh the surveillance benefits of eavesdropping programs against the privacy costs to Americans. However, prior to the Snowden leaks, both Presidents Bush and Obama let the Board sit empty for long periods, ensuring that it produced no oversight reports for most of its ten-year history.61 A president hostile to oversight and accountability could take similar steps to undermine the Board's activities, especially once the Snowden scandals have faded.

AT: Follow-On

No follow-on.

Quirk, University of British Columbia U.S. politics and representation professor with the Phil Lind Chair, and Bendix, Keene State College political science assistant professor, 2015

[Paul and William, No. 68, March 2015, "Secrecy and negligence: How Congress lost control of domestic surveillance" http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf, p.8, accessed 7-15-15, TAP]

By the time the PATRIOT Act came up for its second renewal in 2009, the executive branch had abandoned the strategy of secrecy and unilateralism on the metadata programs. Starting in 2007, after the dragnets had received court approval, the Bush administration provided full and regular disclosures to the Intelligence and Judiciary committees.27 Going further, the Obama administration made repeated efforts to provide all members of Congress, through secret briefings, with the essential information on the metadata programs.28 The reauthorization thus gave Congress the opportunity to respond to the vast executivebranch expansion of phone and email surveillance. But Congress neither sought to reassert the privacy protections of the existing business-records provisions— forcing an end to the dragnet programs—nor attempted to establish legislative standards to regulate the collection and use of metadata. In effect, Congress surrendered control to the executive branch.

AT: Executive CP – Perm Solves – Politics

Perm shields the link – Congress will use the Executive as political cover.
Quirk, University of British Columbia U.S. politics and representation professor with the Phil Lind Chair, and Bendix, Keene State College political science assistant professor, 2015

[Paul and William, No. 68, March 2015, "Secrecy and negligence: How Congress lost control of domestic surveillance" http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf, p.4, accessed 7-15-15, TAP]

Lacking any settled disposition on surveillance issues, Congress will respond to the leadership, and sometimes merely the political cover, provided by other institutions—especially the president, the intelligence agencies, and the FISA Court. It may take cues from the Justice Department or other executive agencies, and it will defer to rulings by the regular federal courts. In the end, Congress's performance in protecting privacy may depend on the design of the legislative arrangements for dealing with secret programs and on the structures and missions of relevant administrative and judicial institutions.

AT: Executive CP- Emory

Solvency Answers

Sole Executive Action Fails

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(__) Executive acting alone fails – future administrations will just act however they want – needs to be more broadly curtailed

Friedersdorf, Politics and National Affairs Writer for the Atlantic, 13

[Conor Friedersdorf, 5/28/2013 "Does Obama Really Believe He Can Limit the Next President's Power?" The Atlantic, http://www.theatlantic.com/politics/archive/2013/05/does-obama-really-believe-he-can-limit-the-next-presidents-power/276279/]

Will anyone follow them? That's what I don't understand. Why does Obama seem to think his successors will constrain themselves within whatever limits he sets? Won't they just set their own limits? Won't those limits be very different? What would Chris Christie do in the White House? I have no idea, but I'm guessing that preserving the decisionmaking framework Obama established isn't what he'd do.

Does anyone think Hilary Clinton would preserve it?

Obama doesn't seem to realize that his legacy won't be shaped by any perspicacious limits he places on the executive branch, if he ever gets around to placing any on it. The next president can just undo those "self-imposed" limits with the same wave of a hand that Obama uses to create them. His influence in the realm of executive power will be to expand it. By 2016 we'll be four terms deep in major policy decisions being driven by secret memos from the Office of Legal Counsel. The White House will have a kill list, and if the next president wants to add names to it using standards twice as lax as Obama's, he or she can do it, in secret, per his precedent.

Some new John Brennan-like figure, with different values and a different personality, will serve as Moral Rectitude Czar.

Even ending torture was done by executive order. The folks guilty of perpetrating it weren't punished. Congress wasn't asked to act. (There was an ambitious domestic agenda to focus on!) So who knows what we'll get next, save for a new president who witnessed all the previously unthinkable things post-9/11 presidents got away with so long as they invoked fighting "terror."

The fact that every new president is likely to be a power-seeking egomaniac seems like too obvious a flaw in Obama's plan for a smart guy like him not to see it. So what gives? Is all the talk of limiting the executive branch just talk? But why even talk at this point, if so? He isn't running again. Yet if he really does think his office wields too much power, why is he putting in place safeguards the next president can and probably will undo instead of zealously trying to get Congress to act? Yet he does seem to be concerned. Here's Peter Baker reporting in The New York Times:

For nearly four years, the president had waged a relentless war from the skies against Al Qaeda and its allies, and he trusted that he had found what he considered a reasonable balance even if his critics did not see it that way. But now, he told his aides, he wanted to institutionalize what in effect had been an ad hoc war, effectively shaping the parameters for years to come "whether he was re-elected or somebody else became president," as one aide said.

Ultimately, he would decide to write a new playbook that would scale back the use of drones, target only those who really threatened the United States, eventually get the C.I.A. out of the targeted killing business and, more generally, begin moving the United States past the "perpetual war" it had waged

since Sept. 11, 2001. Whether the policy shifts will actually accomplish that remains to be seen, given vague language and compromises forced by internal debate, but they represent an effort to set the rules even after he leaves office.

"We've got this technology, and we're not going to be the only ones to use it," said a senior White House official who, like others involved, declined to be identified talking about internal deliberations. "We have to set standards so it doesn't get abused in the future."

There's that same obvious flaw, but everyone seems oblivious to it. The standards you're setting? The next president can just change them. In secret, even! That's the problem with extreme executive power: It is capricious, prone to abuse, and difficult to meaningfully check. Does Obama think the next man or woman will just behold the wisdom of his approach and embrace it? That error, unthinkable as it seems, would not be without precedent for this president.

Need More Oversight

(__) Problem is lack of transparency & oversight – need more external checks

BUTLER , Appellate Advocate Counsel, Electronic Privacy Information Center; J.D., UCLA School of Law, 13

[Alan Butler, Standing Up to Clapper: How to Increase Transparency and Oversight of FISA Surveillance, New England Law Review, Fall, 2013, 48 New Eng. L. Rev. 55]

As new details have emerged about the FBI and NSA's domestic intelligence-gathering practices, it has become clear that the current system does not provide enough transparency to ensure public oversight and trust. n42 There are three main problems with the current system: the development of a secret body of constitutional and statutory law by the FISC, structural limitations on judicial review of FISA surveillance, and rules inhibiting Congress' ability to facilitate public oversight. As a result, important questions about the scope and nature of surveillance remain unanswered, and **in many cases, there is not even enough information to know which questions to ask.**

Over the last decade, the FISC began developing a secret body of law governing FISA surveillance and addressing important constitutional and statutory issues that should be made public. n43 This shift occurred after the Government began to expand foreign intelligence surveillance beyond the [*64] scope of individualized FISA warrants. n44 With the enactment of the FAA, Congress introduced a new role for the FISC: approval of government surveillance programs based on general targeting and minimization procedures. n45 Under Section 702 of the FAA, the FISC judge reviewing the government application and procedures must determine whether the targeting and minimization procedures are "consistent with the requirements of [the statute] and with the Fourth Amendment." n46 As a result, the FISC now regularly assesses "broad constitutional questions" and establishes "important judicial precedents, with almost no public scrutiny." n47 The secrecy of these important opinions is a flaw in the system and prevents public oversight of developing national security law.

Congress plays an important role in the intelligence oversight process as well, but its oversight of FISA activity authorized under Section 702 and Section 215 is severely limited by procedural rules imposed by the Department of Justice ("DOJ") and inadequate public reporting. The law requires that the Attorney General keep the Senate Select Committee on Intelligence, n48 the House Permanent Select Committee on Intelligence, n49 and the Senate Judiciary Committee "fully informed" concerning the Government's use of FISA. n50 However, reports sent from the DOJ to the [*65] House and Senate Intelligence Committees impose strict rules on the dissemination of the government's legal interpretation of these programs. n51 For example, the detailed reports on the use of Section 215 were only available in Intelligence Committee offices for a "limited time period," no photocopies or notes could be taken out of the room, and only certain congressional staff members were allowed to attend. n52 Similar rules likely apply to the Attorney General's reports on significant FISA legal interpretations n53 and the use of Section 702 authorities. n54 Public reports regarding the extent of FISA surveillance activity give a bare minimum of information, including only the number of applications for electronic surveillance, the number granted, modified, or denied, n55 and the same information regarding requests for orders compelling production of business records. n56 Unlike the Wiretap Reports issued by the Administrative Office of the U.S. Courts, which provide a comprehensive overview of the cost, duration, and effectiveness of surveillance in criminal investigations, n57 the FISA reports do not provide sufficient

detail. n58 As a result, Members of Congress and the public do not have the information [*66] they need to evaluate the efficacy and legality of these programs. n59

The problem of secret law is exacerbated by the limited judicial review of important constitutional and statutory issues related to modern FISA surveillance. As one former FISA judge recently noted, the role of judges is not to make policy, it is to "review policy determinations for compliance with statutory law" - but such review must be done in the context "of [the] adversarial process." n60 The FISA does not currently provide for adversarial hearings in the FISC, even when presented with complex and novel issues. n61 And unlike warrants and other ex parte orders issued in criminal cases, judicial review of FISA activity is not guaranteed in criminal prosecutions or other subsequent proceedings. n62 Even when the government provides notice of the use of FISA-derived evidence in criminal cases, it has not specified whether such surveillance was accomplished pursuant to Section 702 authorized directives. n63 As a result, the traditional means of obtaining judicial review of the ultimate [*67] constitutional question regarding modern FISA surveillance is unavailable. The Supreme Court has also made it more difficult to assert a constitutional challenge in a civil case based on Section 702 activities. n64

Need More Oversight

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(__) Accountability is key – need multiple agencies involved

SETTY, Professor of Law and Associate Dean for Faculty Development & Intellectual Life, Western New England University School of Law, 15

[Sudha Setty, Surveillance, Secrecy, and the Search for Meaningful Accountability, Winter, 2015, Stanford Journal of International Law, 51 Stan. J Int'l L. 69]

Conclusion

Genuine accountability should not depend on the chance that an unauthorized and illegal leak will occur. In the comparative example of the United Kingdom, engagement with a European Union energized with a commitment to increase privacy protections, along with domestic parliamentary oversight, provide two potential avenues for increased constraint on surveillance. In India, the parliament and the courts historically enabled, not constrained, the intelligence community. Whether that stance will continue as the government's technological capabilities increase is yet to be seen.

Domestically, it could be argued that the types of reform recommended here to improve actual accountability and transparency over programs like the NSA Metadata Program are overkill: They involve multiple branches of government, the PCLOB, and the public. However, much of the accountability apparatus that has been in place was dormant until the Snowden disclosures, and would have remained passive without those disclosures. A multi-faceted, long-term, structural approach [*103] to improving transparency and accountability - one that involves at a minimum the courts and the PCLOB, but hopefully Congress, the executive branch, and the public as well - improves the likelihood of sustained and meaningful accountability as new surveillance capabilities are developed and implemented.

Risk Mission Creep

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(__) Executive will engage in mission creep – national security fears & nature of bureaucracy insure it – proves the need for checks

DALAL, J.D., Yale Law School; B.A., B.S., University of Pennsylvania, 14

[Anjali S. Dalal, Shadow Administrative Constitutionalism and the creation of surveillance culture, Michigan State Law Review, 2014 Mich. St. L. Rev. 59]

The mission of national security is at once so powerful and so vague that mission creep towards complete surveillance is only [*100] natural. After all, it is a Hobbesian reminder of the primary purpose of the state. The state exists to keep us safe from each other and from outsiders. If the citizenry cannot rest assured that their possessions, livelihoods, and lives are stable and secure, then the state has failed in its most fundamental duty. At the highest level, this mandate contains no limiting principles, and the determination of when our national security is threatened is solely in the hands of the executive charged with delivering on the mandate. Thus, while we may negotiate peacetime limitations on the authorities of law enforcement and intelligence gathering, when the security of the nation is called into question, those limitations are easily shrugged off and the mission expanded.

As existential threats to our national security increasingly become a way of life, the FBI is instinctively responding by expanding its mission and pursuing its mission more comprehensively. As Professor Peter Swire explains:

[A] more general reason why surveillance powers expand over time [is that] intelligence agencies get part of a picture but are unable to understand the entire picture and thus seek and receive additional powers, with the hopes that the additional surveillance capabilities will be more effective at meeting the goal of preventing harm before it occurs. n183

Thus it is in part the noble pursuit of a powerful but amorphous mandate that motivates mission creep.

The powerful and loosely defined mission also encourages mission creep in an attempt to avoid the public inquiry and blame game that often occur in the wake of an attack. Consider the response to the Boston Marathon bombing in 2013. The FBI was widely blamed for not keeping better tabs on one of the accused bombers, Tamerlan Tsarnaev, a legal, permanent resident of the United States. In early 2011, the FBI received a tip from the Russian government that Tsarnaev was growing increasingly radicalized in his practice of Islam. n184 In response, the FBI "checked U.S. government databases and other information to look for such things as derogatory telephone communications, possible use of online sites associated with the promotion of radical activity, associations with other persons of [*101] interest, travel history and plans, and education history," in addition to interviewing Tsarnaev's family members. n185 The investigation produced little actionable evidence. The FBI shared the information with Russian authorities and asked for additional information on Tsarnaev that might justify further investigation, but did not receive any information. n186

Despite the fact that the FBI followed protocol, the public and the press fixated on the fact that the FBI was aware of Tsarnaev's radicalization and yet did not prevent the attack in Boston. n187 The public's fear that the attacks represented a failure of the FBI was not allayed by the President's assurances that the FBI managed the situation with the utmost competence, both pre- and post-attack. n188 In a moment of fear, the public demanded 100% prevention, ignoring the fact that perfect prevention is difficult in a society that also protects civil liberties. n189

This post-attack blame game forces the Justice Department and the FBI to make a difficult decision: Do they aggressively and potentially unconstitutionally expand their vague mandate to include the prevention of all instances of terrorism-related violence, or do they maintain a conservative interpretation of their authority and risk exposing the agency to intense public scrutiny and potentially having the agency brass raked over the coals, regardless of whether or not the FBI or any other element of DOJ was at fault? A reasonable agency head would choose to expand the mandate. After all, as I discuss more fully in Parts IV and V, given the secrecy in which national security policy is made and the sparse oversight to which it is subject, the minimal chance of any exposure of inappropriate or illegal practices is outweighed by the benefits of expanding the mandate.

[*102] Given the powerful and loosely defined national security mandate, it is only natural that the FBI's mission creeps from investigating crimes to preventing crime. This expansive interpretation of the mandate encourages aggressive surveillance norms. In this way, the FBI's instinctive promotion of surveillance norms is inevitable.

B. Medieval Structure of Bureaucracy

The proclivity toward mission creep is compounded by a general bureaucratic inclination towards mission creep. Bureaucracies tend to operate as fiefdoms--collecting and holding onto as much power as possible, limiting external oversight of their work, and allowing it only ex post. n190 Some scholars, including Daryl Levinson, have questioned this theory, arguing that the "bureaucrats' commitment to a particular mission, or to a particular vision of how that mission ought to be accomplished, might cause them to resist any expansion of agency activity outside of these boundaries." n191 Levinson further argues that agency heads are "high-level political appointees who will be much less invested in the agency's mission and much more interested in pleasing their political overseers"--individuals who likely have no reason to prioritize the expansion of bureaucracy. n192 Such arguments underestimate the natural instincts of individuals to believe that what they are doing is good and useful and therefore that doing more of it is likely better. Furthermore, such arguments assume that agency officials are so politically tied to their "overseers" that they will abandon any desire to create a separate professional legacy of their own.

Risk Mission Creep

(__) Need external checks to prevent mission creep
DALAL, J.D., Yale Law School; B.A., B.S., University of Pennsylvania, 14

[Anjali S. Dalal, Shadow Administrative Constitutionalism and the creation of surveillance culture, Michigan State Law Review, 2014 Mich. St. L. Rev. 59]

CONCLUSION

This Article begins to tackle an under-theorized area in legal scholarship: the role of administrative agencies, often in isolation, in articulating the contours of constitutional protections in the area of national security. Our national security law is determined largely by administrative agencies--be it the DOJ, the DOD, the CIA, the NSA, or the various fiefdoms within each of these agencies.

While the War on Terror has led to significant interest in the growth of Executive Power, this interest has largely focused on the roles of the President and his closest advisors in determining the contours of the President's constitutional authority. However, given the high profile nature of presidential power grabs, many of these interpretations of executive authority ultimately are reviewed by the Supreme Court or at least reviewed by the public. As we saw with the series of Supreme Court decisions on the legal rights of Guantanamo detainees n341 and the President's renewed promises, in the face of serious public pressure, to close Guantanamo and rein in [*137] drone warfare, n342 serious expansion of presidential power is often subject to checks and balances.

Comparatively, administrative agencies operate under the radar--not necessarily making the big decisions on detention authority or warrantless wiretapping programs, but making the smaller decisions on how much the FBI can do without obtaining a warrant. These seemingly smaller things remain outside of public purview and escape public deliberation.

Administrative constitutionalism presents a democratic process by which to arrive at constitutional meaning. However, agency norm entrepreneurship that is not followed by robust deliberation threatens to allow agencies, the least accountable members of our tripartite government, the power to create and entrench constitutional norms that ultimately inform the development of constitutional law. Building structural solutions to force deliberation can ensure the legitimacy of administrative constitutionalism.

Presidential Power Answers

Power doesn't Trade-Off

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(__) Legislative-Executive power isn't zero-sum – it's a rubber band – it can be exercised without changing the structure

Rottinghaus, Assistant Prof of Poli Sci at the University of Houston, 11 [Brandon tottinghaus, "The Presidency and Congress", from New Directions in the American Presidency, ed. Lori Cox Han] page 96-97

Conclusion: "Rubber Band" Relations

Alexander Hamilton's edict for "energy" in the executive can creatively contradict the constitutional authority given to the legislative branch. A visible and powerful president necessarily detracts from a legislature whose job it is (at least on paper) to be the engine of legislative ingenuity. The Constitution sought to buttress 'parchment barriers' by pitting ambition against ambition; and the principle means of doing that was the election of public officials at different times, by different people and for somewhat different reasons." 107 Although the powers of the president have grown immeasurably beyond what the framers envisioned and have surpassed Congress in terms of the ability to lead in the American system, the function of shared powers continues to shape the political process in America.

To consider this relationship a pendulum (an analogy some have used108 to suggest the power balance swings from one branch to another) may overstate the zero-sum game of Washington politics-the truth is that legislative powers are shared, even if certain powers are exercised at certain times by specific institutions that perhaps encroach on the power of another branch. A pendulum analogy implies that the power shifts between the branches (potentially at regular, predictable intervals). This arrangement is false since, even during times when one branch appears to have more power than another, the truth is that the branches still rely on one another for shared policy-making power. In reality, the executive-legislative relationship is more like a rubber band, where it retains a fundamental shape but can be stretched to change as legislative and executive tools change and political events occur. So, for instance, in utilizing unilateral powers, presidents can stretch that part of the rubber band, even while members of Congress assert themselves on matters of foreign policy or the appointments process.

Indeed, perpetuating the rubber band analogy, jointly understanding presidency- centered and Congress-centered variables is also shown to better account for variations in policy making.109 For instance, recent evidence suggests a resurgent Congress in the creation of foreign policy, a fact that seems at odds with the "two presidencies" thesis 110 or other literature that claims that Congress always defers to the president in foreign policy matters. 111 This supports the literature that Congress may not be involved in the formal aspects of foreign policy making but does play a role in the informal aspects.112 The evidence presented here also reveals that Congress has more say on when and how the president uses his unilateral powers and whom the president recommends for nomination and confirmation than was previously assumed.

Strong Executive Unnecessary

(__) Less powerful executive won't hurt US foreign policy
Paul, Professor at University of Connecticut School of Law, 98

[Joel Paul, July 1998. "The Geopolitical Constitution: Executive Expediency and Executive Agreements," California Law Review, 86 Calif. L. Rev. 671, Lexis.]

A less powerful executive would not weaken U.S. foreign policy. Public scrutiny of the deliberative process and an independent judiciary have been a source of political stability and vitality in our system of government. The advantages of the President acting with the support of a strong consensus are evident. A congressional authorization to use force overseas sends a serious message to a foreign adversary that the nation is united. Congressional debate can educate the public about the nature of a foreign situation and consolidate public support for foreign assistance. Compelling members of Congress to take a public position in favor of a policy makes it less likely that they will abandon the policy when the going gets tough. For a generation the executive has told us how to imagine the world beyond our borders. Our collective fear displaced reason as we deferred to the President's greater wisdom. As a consequence, the people no longer hold Congress accountable for the failures and excesses of U.S. [*773] foreign policy. We cannot afford to ignore global forces that are reshaping our economy and our politics. Foreign and domestic issues have converged. Accordingly, we must reassert some measure of democracy in the formulation of foreign policy. Holding our government accountable for foreign policy requires the vigilance of the courts no less than Congress.

AT: Domestic Word PIC

Aff Ans

Schram

CP collapses politics, precludes alternative discourses, only the perm solves – star this card.

Schram 95 (Sanford F. Schram, professor of social theory and policy at Bryn Mawr College, words of welfare: The Poverty of Social Science and the Social Science of Poverty, pg. 20-26 "The sounds of silence…what isolated instances of renaming can accomplish")

The sounds of silence are several in poverty research. Whereas many welfare **policy analysts** are constrained by economistic- herapeutic-manage- na1 discourse, others **find themselves silenced by a politics of euphemisms**. The latter suggests that if only the right words can be found, then political change will quickly follow. This is what happens when a good idea goes bad, when **the interrogation of discourse collapses into the valorization of terminological distinctions**.' Recently, I attended a conference of social workers who were part of a network of agencies seeking to assist homeless youths. A state legislator addressed the group and at one point in the question-and-answer pe- riod commiserated with one professional about how the by then well- accepted phrase children at risk ought to be dropped, for it is pejorative. The legislator preferred children under stress as a more "politically correct" euphemism. Much discussion ensued regarding how to categorize clients so as to neither patronize nor marginalize them. No one, however, mentioned **the reifying effects of** all **categorization**, or **how antiseptic language only exacerbates the problem** by projecting young people in need onto one or another dehumanizing dimension of therapeutic discourse.' No one sug- gested that **although isolated name changes may be a necessary part of political action, they are insufficient by themselves**. No one emphasized the need for renamings that destabilize prevailing institutional practices.' In- stead, **a science of renaming seemed to displace a politics of interrogation**. **A fascination with correcting the terms** of interpersonal communication had **replaced an interest in the critique of structure**. A comfort in **dealing with discourse in the most narrow and literal sense** had **replaced** an **interest in the broader discursive structures** that set the terms for reproducing organized daily life. I was left to question how discourse and structure need to be seen as connected before reflection about poverty can inform political action.' The deconstruction of prevailing discursive structures helps politi- cize the institutionalized practices that inhibit alternative ways of con- structing social relations.5 **Isolated acts of renaming**, however, **are unlikely to** help **promote** political **change** if they are not tied to interrogations of the structures that serve as the interpretive context for making sense of new terms.' This is **especially** the case **when renamings take the form of euphemisms designed to make what is described appear to be consonant with the existing order**. In other words, the problems of a politics of renaming are not confined to the left, but are endemic to what amounts to a classic American practice utilized across the political spectrum.' Homeless, wel- fare, and family planning provide three examples of how isolated in- stances of renaming fail in their efforts to make a politics out of sanitizing language. Reconsidering the Politics of Renaming Renaming can do much to indicate respect and sympathy. It may strategi- cally recast concerns so that they can be articulated in ways that are more appealing and less dismissive. Renaming the objects of political contesta- tion may help promote the basis for articulating latent affinities among disparate political constituencies. The relentless march of renamings can help denaturalize and delegitimate ascendant categories and the constraints they place on political possibility. At the moment of fissure, destabilizing renamings have the potential to encourage reconsideration of how biases embedded in names are tied to power relations." Yet **isolated acts of renam- ing do not guarantee that audiences will be any more predisposed to treat things differently than they were before**. The problem is not limited to the political reality that dominant groups possess greater resources for influenc- ing discourse. **Ascendant political economies**, such as liberal postindustrial capitalism, whether understood structurally or discursively, **operate as institutionalized systems of interpretation that can subvert the most earnest of renamings**." It is just as dangerous to suggest that paid employment exhausts possi- bilities for achieving self-sufficiency as to suggest that political action can be meaningfully confined to isolated renamings.'° Neither the workplace nor a name is the definitive venue for effectuating self-worth or political intervention." Strategies that accept the prevailing work ethos will con- tinue to marginalize those who cannot work, and increasingly so in a post- industrial economy that does not require nearly as large a workforce as its industrial predecessor. Exclusive preoccupation with sanitizing names over- looks the fact that names often do not matter to those who live out their lives according to the institutionalized narratives of the broader political economy, whether it is understood structurally or discursively, whether it is monolithically hegemonic or reproduced through allied, if disparate, prac- tices. What is named is always encoded in some publicly accessible and as- cendent discourse." **Getting the names right will not matter if the names are interpreted according to the institutionalized insistences of organized society**." Only when those insistences are relaxed does there emerge the possibil- ity for new names to restructure daily practices. Texts, as it now has become notoriously apparent, can be read in many ways, and they are most often read according to how prevailing discursive structures provide an interpretive context for reading diem. 14 The meanings implied by new names of necessity overflow their categorizations, often to be reinterpreted in terms of available systems of intelligibility (most often tied to existing institutions). Whereas re- naming can maneuver change within the interstices of pervasive discursive structures, renaming is limited in reciprocal fashion. **Strategies of containment that** seek to **confine practice to sanitized categories appreciate** the **discursive** character of social **life, but insufficiently and wrongheadedly**. I do not mean to suggest that discourse is dependent on structure as much as that structures are hegemonic discourses. The operative structures reproduced through a multitude of daily practices and reinforced by the efforts of aligned groups may be nothing more than stabilized ascendent discourses." Structure is the alibi for discourse. **We need to destabilize** this **prevailing interpretive context and the power plays that reinforce it, rather than hope that isolated acts of linguistic sanitization will lead to political change.** Interrogating structures as discourses can politicize the terms used to fix meaning, produce value, and establish identity. Denaturalizing value as the product of nothing more than fixed interpretations can create new possibilities for creating value in other less insistent and injurious ways. The discursively/structurally reproduced reality of liberal capitalism as deployed by power blocs of aligned groups serves to inform the existentially lived experiences of citizens in the contemporary postindustrial order." The powerful get to reproduce a broader context that works to reduce the dissonance between new names and established practices. As long as the prevailing discursive structures of liberal capitalism create value from some

practices, experiences, and identities over others, no matter how often new names are insisted upon, some people will continue to be seen as inferior simply because they do not engage in the same practices as those who are currently dominant in positions of influence and prestige. Therefore, **as much as there is a need to reconsider the terms of debate**, to interrogate the embedded biases of discursive practices, and to resist living out the invid- ious distinctions that hegemonic categories impose, **there are real limits to what isolated instances of renaming can accomplish**. Renaming points to the profoundly political character of labels. Labels oper- ate as sources of power that serve to frame identities and interests. They predispose actors to treat the subjects in question in certain ways, whether they are street people or social policies. This increasingly common strategy, however, overlooks at least three major pitfalls to the politics of renaming." Each reflects a failure to appreciate language's inability to say all that is meant by any act of signification. First, many **renamings are part of a politics of euphemisms that conspires to legitimate things in ways consonant with hegemonic discourse**. This is done **by stressing what is consistent and de-emphasizing what is inconsis- tent with prevailing discourse**. When welfare advocates urge the nation to invest in its most important economic resource, its children, they are seek- ing to recharacterize efforts on behalf of poor families as critical for the country's international economic success in a way that is entirely consonant with the economistic biases of the dominant order. They are also distracting the economic-minded from the social democratic politics that such policy changes represent." **This is a slippery politics** best pursued with attention to how **such renamings may reinforce entrenched institutional practices**." Yet Walter Truett Anderson's characterization of what happened to the "cultural revolution" of the 1960s has relevance here: One reason it is so hard to tell when true cultural revolutions have occurred is that societies are terribly good at co-opting their opponents; something that starts out to destroy the prevailing social construction of reality ends up being a part of it. Culture and counterculture overlap and merge in countless ways. And the hostility, toward established social constructions of reality that produced strikingly new movements and behaviors in the early decades of this century, and peaked in the 1960s, is now a familiar part of the cultural scene. Destruction itself becomes institutionalized." According to Jeffrey Goldfarb, cynicism has lost its critical edge and has become the common denominator of the very society that cynical criticism sought to debunk .21 If this is the case, politically crafted characterizations can easily get co-opted by a cynical society that already anticipates the politi- cal character of such selective renamings. The politics of renaming itself gets interpreted as a form of cynicism that uses renamings in a disingenuous ashion in order to achieve political ends. **Renaming not only loses credibility but also corrupts the terms used**. This danger is ever present, given the limits of language. Because all terms are partial and incomplete characterizations, **every new term can be invalidated as not capturing all that needs to be said about any topic**? With time, the odds increase that **a new term will lose its potency as it fails to emphasize ne-glected dimensions of a problem**. **As newer concerns replace the ones that helped inspire the terminological shift, newer terms will be introduced to address what has been neglected**. **Where disabled was once an improvement over handicapped, other terms are now deployed to make society inclusive of all people, however differentially situated. The "disabled" are now "physi- cally challenged" or "mentally challenged?' The politics of renaming promotes higher and higher levels of neutralizing language."** Yet a neutralized language is itself already a partial reading even if it is only implicitly biased in favor of some attributes over others. Neutrality is always relative to the prevailing context As the context changes, what was once neutral becomes seen as biased. Implicit moves of emphasis and de-emphasis become more visible in a new light. "Physically" and "mentally challenged" already begin to look insufficiently affirmative as efforts intensify to include people with such attributes in all avenues of contemporary life.24 Not just terms risk being corrupted by a politics of renaming. Proponents of a politics of renaming risk their personal credibility as well. Proponents of a politics of renaming often pose a double bind for their audiences. The politics of renaming often seeks to highlight sameness and difference si- multaneously.25 It calls for stressing the special needs of the group while at the same time denying that the group has needs different from those of anyone else. Whether it is women, people of color, gays and lesbians, the disabled, or even "the homeless:' renaming seeks to both affirm and deny difference. This can be legitimate, but it is surely almost always bound to be difficult. Women can have special needs, such as during pregnancy, that make it unfair to hold them to male standards; however, once those differ- ent circumstances are taken into account, it becomes inappropriate to assume that men and women are fundamentally different in socially signifi- cant ways .21 Yet emphasizing special work arrangements for women, such as paid maternity leave, may reinforce sexist stereotyping that dooms women to inferior positions in the labor force. Under these circumstances, advocates of particular **renamings can easily be** accused of **paralyzing** their audience **and immobilizing** potential sup- porters. Insisting that people use terms that imply sameness and difference simultaneously is a good way to ensure such terms do not get used. This encourages the complaint that **proponents of new terms are less interested in meeting people's needs than in demonstrating who is more sophisticated** and sensitive. Others turn away, asking why they cannot still be involved in trying to right wrongs even if they cannot correct their use of terminology," Right-minded, if **wrong-worded, people fear being labeled as the enemy**, **important allies are lost on** the high ground of **linguistic purity**. Euphemisms also encourage self-censorship. The politics of renaming discourages its proponents from being able to respond to inconvenient infor- mation inconsistent with the operative euphemism. Yet those who oppose it are free to dominate interpretations of the inconvenient facts. This is bad politics. **Rather than suppressing stories** about the poor, for instance, **it would be much better to promote actively as many intelligent interpretations as possible**. **The politics of renaming overlooks that life may be more complicated than attempts to regulate the categories of analysis**. Take, for instance, the curious negative example of "culture?' Somescholars have been quite insis- tent that it is almost always incorrect to speak about culture as a factor in explaining poverty, especially among African Americans .211 Whereas some might suggest that attempts to discourage examining cultural differences, say in family structure, are a form of self-censorship, others might want to argue that it is just clearheaded, informed analysis that de- mphasizes cul- ture's relationship to poverty.29 Still others suggest that the question of what should or should not be discussed cannot be divorced from the fact that when blacks talk publicly in this country it is always in a racist society that uses their words to reinforcetheir subordination. Open disagreement among African Americans will be exploited by whites to delegitimate any challengesto racism and to affirm the idea that black marginalization is self-generated.3° Emphasizing cultural differences between blacks and whites and exposing internal "problems" in the black community minimize how "problems" across races and structural political-economic factors, including especially the racist and sexist practices of institutionalized society, are the primary causes of poverty. Yet it is distinctly possible that although theories proclaiming a "culture of poverty" are incorrect, cultural variation itself may be an important issue in need of examination." For instance, there is much to be gained from contrasting the extended-family tradition among African Americans with the welfare system of white society, which is dedicated to reinforcing the nuclear two-parent family.32 A result of self-censorship, however, is that animportant subject is left to be studied by the wrong people. Although ana- lyzing cultural differences may not tell us much about poverty and may be dangerous in a racist society, **leaving it to others** to study culture and poverty can be a real mistake as well. Culture in their hands almost always becomes "culture of poverty."" A politics of renaming **risks reducing the discussants to only those who** help **reinforce existing prejudices**.

Churchill

The counterplan divides coalitions and trades off with content focus more important to the goal of activism

Churchill 1996—Ward, former professor of ethnic studies at Colorado University at Boulder, From A Native Son, Semantic Masturbation on the Left, p. 460

There can be little doubt that **matters of linguistic appropriateness and precision** are of serious and legitimate concern. By the same token, however, it must be conceded that such preoccupations **arrive at a point of diminishing return**. After that, **they degenerate rapidly into liabilities rather than benefits to comprehension**. By now, it should be evident that much of what is mentioned in this article falls under the latter category; **it is, by and large, inept, esoteric, and semantically silly, bearing no** more **relevance in the real world** than the question of how many angels can dance on the head of a pin. **Ultimately, it is a means to stultify and divide people rather than stimulate, and unite them. Nonetheless, such "issues" of word choice have come to dominate dialogue in a significant and apparently growing segment of the Left. Speakers, writers, and organizers** of all persuasions **are drawn**, with increasing vociferousness and persistence, **into heated confrontations, not about what they've said, but about how they've said it. Decisions on whether to enter into alliances,** or even to work with other parties, **seem more and more contingent not upon the prospect of a common agenda, but upon mutual adherence to certain elements of a prescribed vernacular**. Mounting quantities of progressive time, energy, and attention are squandered in perversions of Mao's principle of criticism/self-criticism--**now variously called "process," "line sharpening," or even "struggle"-in which there occurs a virtually endless stream of talk about how to talk about "the issues." All of this happens at the direct expense of actually understanding the issues themselves, much less doing something about them.** It is impossible to escape the conclusion that **the dynamic at hand adds up to a pronounced avoidance syndrome, a masturbatory ritual through which an opposition nearly paralyzed by its own deeply felt sense of impotence pretends to be engaged in something "meaningful."** In the end, **it reduces to tragic delusion at best, cynical game playing or intentional disruption at worst.** With this said, **it is only fair to observe that it's high time to get of this nonsense, and on with the real work of effecting positive social change.**

Technocratic Language Good

Only by using the criticized language can we undermine it – necessary for recognition and effectiveness.

Shirley Wilson **Logan**, Professor of English at the University of Maryland, **2001**, JAC: A Journal of Rhetoric, Culture and Politics, http://www.jaconlinejournal.com/archives/vol21.1/logan-amid.pdf

When Audre Lorde observed that the master's tools will never dismantle the master's house, she was arguing that to work against various forms of oppression, we must not employ the tactics of the oppressors; we must develop new ones. Advancing a theory of emancipatory composition, Bradford Stull suggests in Amid the Fall that **those who wish to write a discourse of emancipation must use the oppressor's linguistic tools** ("America's cultural vocabulary") but that they must use them radically. Stull chooses the term composition over the term literacy to highlight intentionality and process. Composition resonates, as well, with a sense of agency not heard in discourse, the term I find myself using synonymously throughout this review. He borrows the term emancipatory from the literacy theories of Henry Giroux and others but expands its meaning to incorporate an explicit, theorized approach to the teaching of emancipatory composition, one that takes into account a range of subjectivities. Acknowledging that racism is one of many forms of oppression in need of compositional liberation, Stull focuses on the "problem" of race, he says, because it emerged out of American slavery, a foundational American institution. His examples suggest that this "race problem" is experienced primarily by African Americans, who are "unique because no other oppressed group has been enslaved in America," implying that it is not a problem for those who are invisibly raced as white. Thus, to demonstrate this "problem," he includes the oft-cited story of Cornel West trying to catch a taxicab in New York City and another in which a white policeman called him "nigger." The remaining examples concern the reluctance of a midwestern university to hire an African American as chancellor; differences in the topics of conversation between residents of the University of Chicago's Hyde Park community and the residents of Chicago's south side; and racist jokes told in Malcolm X's history class. Granted, these examples are meant to be representative of a larger problem, but I could not help wishing that Stull had provided salient examples of racism's systemic and ongoing damage to ordinary black people rather than focusing on the plights of two middle-class black men, Cornel West and a college chancellor. Or maybe the difficulty is that examples need to be provided in the first place. The author studies the emancipatory compositions of W.E.B. Du Bois, Martin Luther King, Jr. and Malcolm X because he believes them to be "among the most important rhetoricians of the twentieth century" and because all three influenced the civil rights, anti-war, and separatist social movements through their contributions to the discourse on these subjects. It would be difficult to argue with these choices, given the "twentieth century" qualifier; still, it is hard to think of emancipatory compositions with respect to race in America without at least a footnote reference to such nineteenth-century intellectuals as Frederick Douglass on abolition and human rights or Ida B. Wells on anti-lynching and suffrage. Stull identifies fourtheo-political tropes in theserhetors' emancipatory compositions: the Fall, the Orient, Africa, and Eden. Alluding on one level to the biblical fall of Adam and Eve, the trope of the Fall also suggests various manifestations of societal evils. To demonstrate the prevalence of this trope in the American context, Stull draws examples from theologian Reinhold Niebuhr, John Milton's Paradise Lost, poet Mary Fell, popular culture, and finally Kenneth Burke. From Burke, he derives three subcategories-"Babel," "division of property," and "violence"upon which to develop his analysis. Exploring the theme of Babel in Malcolm X's autobiography and speeches, Stull points to the writer's struggle to increase his own linguistic storehouse and his recognition that difference resides in world views as well as language. Stull suggests that Malcolm X appropriated Standard American English (SAE) in order to overcome the limitations of Babel and speak to dominant culture. For support, he cites Malcolm X's oft-quoted statement, "You have to be able to speak a man's language in order to make him get the point." Limiting his analysis ofDu Bois to his writings in the Crisis, the organ of the NAACP, Stull finds allusion to Babel in Du Bois' discussion of meanings of the word negro, stating that he "appeals to the American rhetorical heritage." Perhaps Stull might have complicated the assumptions inherent in a phrase that reifies such a heritage. Who can claim this heritage and who established it? Stull does later observe that Du Bois steps outside of this heritage in order to question it, but the solution seems to be to choose another language: French. King, according to Stull, finds a solution to Babel in the Judeo-Christian tradition and in the belief that this tradition contains within it elements of a universal language reaching a broad audience. Stull observes that all three writers cite economic deprivation and violence as further evidence offallen America. Given that most African peoples were brought to America as property, it is not surprising that "division of property " emerges as a trope of emancipatory composition. Stull reiterates some of the economic inequities these writers' works address, adding examples from Spike Lee's movie Do the Right Thing perhaps to convince contemporary readers that such inequities still exist. The second emancipatory trope, the Orient, manifests itself in the ways in which Du Bois, King, and Malcolm X remind their audiences of the parallel and frequently intersecting incidents of oppression of African and Asian peoples; all three writers acknowledge a close kinship of oppression among peoples of color worldwide. Stull defends his use of the term Orient-with its concurrent images of alien other, wise person, and backward people-as being particularly comprehensive. He asserts that Orient can include Egypt as well as Japan and can serve to remind us of how the West reductively composed this vast territory. Having myself been trained out of using the descriptor Oriental, it was disconcerting to find it here. Using a phrase such as "Eastern culture(s)" may have been a more effective way to remind readers of this tendency, especially since, at least in the examples provided, the three writers never use Orient and seem always to refer to specific geographical locations-Japan, China, India (Calcutta and Bombay), and Vietnam-even ifstereotypically. As in his earlier demonstration of a racist America, Stull provides more than enough examples of stereotypical perceptions of the Orient, including examples from the movies The Next Karate Kid and City of Hope, Isabel Allende's novel The Infinite Plan, and E.D. Hirsch's Cultural Literacy. One wonders whether, by offering so much wide-ranging evidence that Eastern culture is misunderstood, the author imagines a fairly naive audience. Stull seems particularly eager to account for his inclusion of Africa as a trope of emancipatory rhetoric: "They [extremists] might wonder why I, who profess parochially American inclinations, who is a conservative, would include this term, would demand that Americans who would be literate know Africa and its web of associations. Africa, after all, necessarily leads to a condemnation of the American republic." Unless the point of emancipatory composition is to make those to whom it appeals feel comfortable, eliciting such a reaction would seem to be all the more reason why Africa should be included. Later in this chapter, Stull makes the strong point that this national vocabulary isa site of contention, in opposition to E.D. Hirsch's assertion that it is rather "an instrument of communication among diverse cultures." This is a point well worth remembering especially at places in the text where such terms as "American culture" are used unproblematically. In order to illustrate that Africa has dual images in America (monstrous/noble and suffering), the author gives the example of a student enrolled in a writing class who, in spite of poor performance, received the admiration of his peers because he was studying to become a Muslim and wore an African icon around his neck ("publicly composing Africa on his own body"). The author sees this dress and behavior as a way of demonizing America and sanctifying Africa. Itmay in fact represent the student's attempt to construct a positive self-image, or, as Stull states, it could merely be an "aestheticized piece ofjewelry"-or a bit of both. At any rate, Stull observes that given the student's gesture, this classroom might have served as a site of discussion of emancipatory composition. Fully elaborated examples from the film Legends of the Fall are offered as evidence of the various ways in which America composes a savage Africa. Stull sees Spike Lee's film School Daze as another example of this opposition, with the fraternity men on one side and the "young radicals" who protest South African apartheid on the other. My sense is that the film ismore complicated in that the frat brothers probably also oppose apartheid and that the young radicals in African clothing also desire financial success. The movie has less to do with Africa than with ways of surviving in America. Stull also notes that in their compositions of Africa, the three writers seem to appropriate the cause of a suffering Africa only as a means of pleading for suffering African America, rather than out of concern for African liberation. He suggests that Malcolm X tries to offset in his later speeches a prior belief in the "myth" that blacks were the first humans from whom all other peoples were derived. In view of the fact that for many, then and now, this is not considered myth, perhaps the author could have qualified this characterization. Even Du Bois, later quoted as claiming Ethiopia the "All-mother of men," would himself seem to subscribe to this belief, one the author characterizes as a "radical vision." Malcolm X's speech "After the Bombing" provides ample evidence of this emancipatory trope. In it, he highlights the ways in which negative images of Africa have affected African Americans, and in another speech he composes an Africa that Americans can model emancipation after. Stull observes that King viewed blacks in America as having greater economic potential and that he concentrated, along with Du Bois, on only portraying Africa's positive images. Du Bois' pan-Africanist writings are invoked to remind the reader that Du Bois' Africa would serve as a center for worldwide negotiations. Stull's chapter on Eden is his most astute. Eden, the last of the carefully ordered tropes, marks desire. All three writers describe Eden as a nonexistent ideal. Stull suggests that the socioeconomic privilege ofDu Bois and King resulted in a more positive perspective from which to envision Eden than did Malcolm X' s disruptive life experiences. Malcolm X's Eden took shape as a separatist black Africa of economic and political empowerment. In the pages of the Crisis, Du Bois draws on his experience of parts of America to compose his Eden-Oberlin, Ohio, Seattle, and the American Northwest-but he ultimately argues for the "Edenic potential" of Africa. King, however, never viewed Africa as an Edenic alternative. In his "I Have a Dream" speech, for example, he envisions an Eden firmly rooted in American principles but growing beyond its walls and

out into an unknown paradise resonating with images of the second coming. In short, Stull outlines these three writers' differing responses to an oppressive America and in the process captures some of the essential differences in their worldviews, linking those differences to biography. Stull's final chapter reiterates the point made in the first-that **emancipatory composition must be crafted in the "familiar language of the community only to transform it."** Thus, he positions his argument between the political right of William Bennett and E.D. Hirsch and the political left of Ray Browne, Henry Giroux, Arthur Neal, Barbara Hemstein Smith, and others. According to Stull, the Right would frown upon this discourse because it is a discourse that condemns America as racist and looks to Africa for solutions; the Left would reject the notion of a common set of theo-political tropes as an attempt to standardize a nonexistent common cultural knowledge. Stull counters that we both receive and shape literacy and culture and that even those who reject the notion of cultural literacy allude to common knowledge in their writing. So here at the end, Stull pulls us back into the cultural literacy debate-or maybe we were in the midst of it all the time. The issue here, it seems, is not that we allude to things "out there" in the construct called "culture" but that we recognize those referents, along with their freighted meanings, and know them for the ways in which they have promoted the goals of oppression. If the Fall, the Orient, Africa, and Eden are the theo-political tropes of emancipatory composition, we all helped to make them so. Now, as Audre Lorde understood, this is a tricky rhetorical move: to appropriate the oppressor's tools-which are also our tools-ever mindful of the work they have done in the past, and apply them to the task of emancipation. For Stull, to accomplish this is to "Be conservative. Be extreme. Be radical," all at the same time.

Reps Focus Bad

Their discursive focus evicerates human agency—their cp can never translate into oppositional politics because it falls prey to understanding of discursive criticism as an interpretative panacea.

A.J. **Randall**, University of Birmingham, **1991** "Review: Descent into Discourse," The Society for the Social History of Medicine

In the last decade critical theory, 'a.k.a' structuralism, post-structuralism and discourse, has swept through a number of academic disciplines. In America in particular, the ideas and theories of Foucault and Derrida, Saussure and Levi-Strauss have been gleefully and, in some cases, messianically snatched up by many social historians as providing a new and fruitful framework for revolutionizing their discipline. The claims of discourse are seductive. While no historian would deny the importance of careful scrutiny of literary texts, critical theory proffers, it asserts, a means of retrieving a new depth of quality and meaning from these sources, thereby providing new insights into the structuring of both language and hence of consciousness. Claiming to displace all other theoretical approaches, discourse, with its focus upon language as a determinative force, has become 'a fashionable interpretative panacea' (p. xv), intruding into all areas of social history writing. Bryan D. Palmer is not alone in fearing this plague of idealism which is discourse. But his *Descent into Discourse* represents by far the most powerful and most scholarly counterblast to date against the insidious march of critical theory. Drawing upon an impressive array of texts, both theoretical and historical, Palmer conducts his reader upon a searching, systematic, illuminating and entertaining study of critical theory in social history in a volume which constitutes a formidable intellectual tour de force. Unlike many of its social history components, Palmer commences his case from a critical reading of the theoretical texts which underpin the concept of discourse. Palmer is no iconoclast. He shows that much may be gained by application of some of the approaches followed by the discourse model. But he firmly rejects the 'privileging of language' (p. xiv) to the point where, as in critical theory, it subverts the need to address historical context or historical experience. Discourse, Palmer believes, concedes to language a tyrannizing stature, obliterating 'the relations of power, exploitation and inequality that order ... human history' (p. 17), indeed obliterating the human agency itself.

Doing Plan Bad

Discursive focus undermines supposedly progressive political projects—"doing the plan" is not enough because their competition arguments conceal the covertly anti-political nature of the counterplan, recreating the violence of modernity.

Vera **Chouinard**, Geography—McMaster University, **1994** "Reinventing Radical Geography: Is All That's Left Right? ," Environment and Planning D: Society and Space 12, 2-6

Clearly, then, one of the dangers of reinventing ourselves in postmodern ways is that we will be "seduced" by representations of radical research which distort past work and are relatively empty of substantive proposals for building progressive and transformative geographies (see also Harvey, 1992). In the process we are likely to jettison prematurely the many valuable legacies of the New Left, including a clear political understanding that our projects must be deliberately and self-reflexively constructed to "connect" with struggles against oppression and exploitation. McDowell (1992) makes the related and important point that the adoption of new textual and interpretive strategies, without greater engagement with radical traditions like feminism, risks creating academic approaches which are elitist, closed, and divorced from efforts to confront and change the politics of science. Ironically enough, there is often a marked „disjuncture" between representations of interpretive and poststructuralist approaches as „progressive," and their actual political substance. Indeed there is sobering evidence that the "interpretive turn" is in many instances a detour around and retreat from political engagement in struggles outside the academy. Palmer (1990), reviewing developments in social theory and in social history, observes that the adoption of poststructuralist and postmodern approaches by eminent scholars on the Left has been closely tied to a retreat from politics. Fraser (1989), examining the work of the French Derrideans, demonstrates that the "interpretive" or postmodern turn has been associated with an extremely confused treatment of political questions and decreased emphasis on the politics of academic work. Closer to home, in geography, I have been struck by how seldom we discuss, in print or at conferences, the implications of our "reinvented" approaches for the politics of academic work. And yet surely it is precisely during a period of major revision and reconstruction of our approaches that we most need to discuss political matters. That is unless, of course, part of the hidden or perhaps not fully recognized agenda of at least some postmodern shifts is the jettisoning of radical political projects. There is, of course, no doubt at all that the "turn" has stimulated a flurry of intellectual activity and a sense of excitement about critical work in the humanities and social sciences. Representation, discourse, and metaphor have become new "watchwords" or, if I can be permitted religious metaphor, "mantras" of the postmodern age (Barnes and Duncan, 1992; Jackson, 1991; Ross, 1988). We are learning, too, about the complex ways in which texts, images, and discourse shape our understanding of and responses to power (for example, hooks, 1992; Smart, 1989; Weedon, 1987). Following in paths carved by poststructuralist thinkers like Foucault, we are beginning to see how power and oppression are imbricated in multiple sites of experience and practice, in virtually every aspect of our lives, and how in a very real sense challenging our oppressions requires reinventing ourselves (compare Harding, 1991) and our relations to others. Somehow, and I'm sure we will find a way, we need to figure out how to balance our celebration of these intellectual accomplishments, with thoughtful and inclusive discussions about what may be missing from the new radical geographies, whether or not it matters, and what we can do about it. It is interesting, for example, to observe how the working class and other disadvantaged groups, like the disabled, are often curiously absent from the landscapes represented in postmodern cultural geographies of the city (for example, Knox, 1991; Ley and Mills, 1993). It is not that these analyses are in themselves technically deficient (in fact both of those cited are very good), but that the interpretive "lenses" of postmodern theory and culture seem to shift attention to relatively affluent professionals (like us!) and landscapes of "consumption" and "spectacle." For the disadvantaged, on the margins of our economies and cultures, these landscapes have a radically different meaning: one of exclusion and negation. If the divergent meanings and experiences associated with different oppressions and landscapes in our societies are not being brought into focus by the new critical perspectives, perhaps we need to consider adjusting our conceptual and methodological "lenses." In rethinking radical geographies, it is important to remind ourselves that research is in itself a political process quite irrespective of whether or not we choose to discuss those politics explicitly (Harding, 1991). The use of theories that focus on the lives of middle-class professionals (us again!) is a way of aligning ourselves with that group in the creation and dissemination of knowledge. That is to say, of treating our/their knowledges as especially interesting and important. Similarly, the use of theories and methods incorporating the vantage points of oppressed groups, like women or the disabled, is a political act and, potentially at least, a political alliance. So, a very important question for us, as we respond to and incorporate postmodern views of science and social theories in our research, is where is this leading us in terms of a politics of science and research? And if it is leading us in liberal or conservative oreven just "plain old confused" directions, maybe this isn't exactly where we want to be. A related challenge for us, as we try to negotiate the "interpretive turn" or, as Slater (1992) puts it the "postmodern interruption," is to discuss openly and inclusively what we want to accomplish, in a substantive sense, through our research. Is playful, or for that matter sober, description of the "pastiche" and "whirl" of postmodern existences and destabilization or deconstruction of the metaphors and assumptions used to interpret that existence really enough? Yes, in principle this opens up our narratives to multiple voices and perspectives. But in practice this alone merely creates representations of inclusion in our discourses and texts without necessarily challenging lived relations of exclusion and marginalization in the creation of texts, discourses, and knowledge. Do we face a real danger, then, as Eco in *Foucault's Pendulum* (1988) suggests, of becoming so enamoured of and driven by our own accounts and understandings of life's meaning, in our shared but partial interpretive acts and accounts, that our work and our lives become increasingly "unreal" and insular: detached from and uninformed by the existences, struggles, and knowledges of those outside our texts and discourses? Do we, in other words, risk recreating some of the worst flaws of modernism in the guise of postmodern social research?

Impact Inevitable

Relanguaging cannot solve their critique—the mere changing of words does not generate any social change whatsoever, which is a reason why the CP doesn't link anyless if they take the same action as the plan.

Robert J. **Bridle**, sociology and environmental at Drexel University, **and** J. Craig **Jenkins**, sociology and political science at Ohio State University, **2006** "Spinning Our Way to Sustainability?" Organization & Environment, 19(1): pp. 82-87

Lakoff's work indicates that he anticipated our critique. In his book, Lakoff (2004) argues that his approach is not spinning, because spinning is the deceptive use of language to make something "sound good and normal?' The difference between framing and spinning is that framers represent "what their moral views really are?' In other words, the right wing does not believe its own rhetoric, and so it generates spin. We believe in ours, and so it is not spin. But this argument is not convincing. Both S&N and many right-wing rhetoricians are elitist in their approach, trying to mobilize supporters as if they were isolated consumers of ideas rather than citizens. If there is a lesson to be learned from the contemporary right, it is that engaging people around values that they hold dear is more effective than try- ing to mobilize around abstract concerns that lack relevance to everyday life. S&N are correct that environmental activists need to be principled as well as scientific, but they also need to address tangible concerns that real people experience. Most important of all, S&N fail to provide an effective model of social change, which unfortunately is echoed throughout most of the contemporary environmen- tal movement. Most environmental organizations are professional-advocacy efforts, treating supporters as donors rather than citizens. Most environmental leaders have little engagement with or interest in grassroots organizing. This situa- tion creates social distance between the leadership and supporters of the organiza- tion. Supporters of environmental organizations display little understanding of environmental issues or intensity of commitment to finding solutions (Shaiko, 1999). The environmental movement also confronts an intense problem with free- riders who are unwilling to contribute to the public good of environmental protec- tion (Hardin, 1982). At the same time, much of the free-rider problem is self- inflicted by an environmental movement unwilling to engage citizens in a serious dialogue or to engage in grassroots organizing. They much prefer to rely on profes- sional advocacy. Following S&N's advice will worsen this problem, leaving a politically weak environmental movement. This point is clearly made by Luke (2005) in his critique of S&N. He argues that the core problem is a narrowing of the public sphere and an understanding of public interest. Hence, in place of S&N's endorsement of private initiatives, Luke calls for a "public ecology" that would engage citizens in a collective effort to rebalance the sociotechnical order with human and natural needs. One of the first targets of this renewal of public action would be a democratization of the environmental move- ment, making it capable of engaging citizens and developing a healthy dialogue about long-term solutions. There is ample evidence that this strategy would have a greater likelihood of success. Shaiko (1999) shows that grassroots mobilization is more effective. The credibility of environmental lobbying in Congress depends on being seen as engaged with a broad cross-section of the public. Moreover, the greater the partici- pation, the greater the understanding of environmental problems and the awareness of the need to contribute. So boosting participation should improve public willing- ness to pay for environmental change. Cable, Mix, and Hasting (2005) show that coalitions between local environmental justice groups and the Sierra Club have been one of the few successful local/national partnerships, due primarily to the par- ticipatory nature of the Sierra Club. Other oligarchic national groups have been unable to form these types of political coalitions and this has severely limited their political effectiveness. Although better framing would be useful, alone it can do little. We need to move beyond simplistic analyses and clever spin tactics. What is needed is a new organi- zational strategy that engages citizens and fosters the development of enlightened self-interest and an awareness of long-term community interests.

Dichotomy Good

The distinction between foreign and domestic spheres has led to ethical policy making

Chandler 3 (**David Chandler** is Professor of International Relations and Director of the Centre for the Study of Democracy, http://www.davidchandler.org/wp-content/uploads/2014/10/BJPIR-5.3-Rhetoric-Responsibility.pdf, Rhetoric without responsibility: the attraction of 'ethical' foreign policy, Vol. 5, No. 3, pp. 295–316) DJ

The definition of an 'ethical' foreign policy, and the means of its realisation, remain the subject of disagreement among academic analysts of international relations. However, there is a general consensus that western government policy-makers have, in the last decade, explicitly taken on board normative and ethical concerns, shifting away from a 'realist' approach in which a more narrowly conceived national interest was the basis of policymaking. This policy shift has meant that the declarations of 'ethical foreign policy' emanating from the governments of leading world powers are often uncritically taken at face value and assumed to be 'simply the right thing to do' (The Guardian, 27 March 1999). The drive to act in the interests of others, rather than in purely national interests, can be seen in the justifications for a host of new policy initiatives including major international involvement in Afghanistan, Iraq, Somalia, former Yugoslavia, East Timor and Sierra Leone in recent years.2 For many commentators, the new, ethical nature of international foreign policy was given clearest expression in the international community's support for military intervention in the 1999 Kosovo war.3 The historic transformation marked by this conflict was emphasised by Czech president Vaclav Havel, speaking in April of that year: But there is one thing no reasonable person can deny: this is probably the first war that has not been waged in the name of 'national interests', but rather in the name of principles and values. If one can say of any war that it is ethical, or that it is being waged for ethical reasons, then it is true of this war. Kosovo has no oil fields to be coveted; no member nation in the alliance has any territorial demands on Kosovo; Milosevic does not threaten the territorial integrity of any member of the alliance. And yet the alliance is at war. It is fighting out of a concern for the fate of others. It is fighting because no decent person can stand by and watch the systematic, state-directed murder of other people. It cannot tolerate such a thing. It cannot fail to provide assistance if it is within its power to do so (Falk 1999, 848). The US-led military intervention against Afghanistan in October 2001 was also couched in the ethical language of caring for others rather than merely the narrow pursuit of the interests of state. In addition to stressing US national interests in responding to an attack on its major symbols of economic and military dominance, the US establishment and the coalition of supporting states stressed the humanitarian nature of the military response, which included the dropping of food and medical provisions. President George W. Bush described the bombing of Afghanistan as an action of 'generosity of America and our allies' in the aid of the 'oppressed people David Chandler of Afghanistan' (Bush 2001). The US defence secretary, Donald Rumsfeld, argued that the military action was in line with previous US-led interventions in Kuwait, Northern Iraq, Somalia, Bosnia and Kosovo 'for the purpose of denying hostile regimes the opportunity to oppress their own people and other people', adding that: 'We stand with those Afghans who are being repressed by a regime that abuses the very people it purports to lead' (Rumsfeld 2001).

AT: Language Shapes Reality

The assumption that language shapes reality and that intentions behind words matter is empirically flawed

Roskoski & Peabody, Florida State, **91** (Matthew and Joe, 1991, A Linguistic and Philosophical Critique of Language "Arguments," http://debate.uvm.edu/Library/DebateTheoryLibrary/Roskoski&Peabody-LangCritiques) DJ

Initially, it is important to note that the Sapir-Whorf hypothesis does not intrinsically deserve presumption, although many authors assume its validity without empirical support. The reason it does not deserve presumption is that "on a priori grounds one can contest it by asking how, if we are unable to organize our thinking beyond the limits set by our native language, we could ever become aware of those limits" (Robins 101). Au explains that "because it has received so little convincing support, the Sapir-Whorf hypothesis has stimulated little research" (Au 1984 156). However, many critical scholars take the hypothesis for granted because it is a necessary but uninteresting precondition for the claims they really want to defend. Khosroshahi explains: However, the empirical tests of the hypothesis of linguistic relativity have yielded more equivocal results. But independently of its empirical status, Whorf's view is quite widely held. In fact, many social movements have attempted reforms of language and have thus taken Whorf's thesis for granted. (Khosroshahi 505). ¶ One reason for the hypothesis being taken for granted is that on first glance it seems intuitively valid to some. However**, after research is conducted it becomes clear that this intuition is no longer true**. Rosch notes that the hypothesis "not only does not appear to be empirically true in any major respect, but it no longer even seems profoundly and ineffably true" (Rosch 276). The implication for language "arguments" is clear: a debater must do more than simply read cards from feminist or critical scholars that say language creates reality. Instead**, the debater must support this claim with empirical studies or other forms of scientifically valid research.** Mere intuition is not enough, and it is our belief that valid empirical studies do not support the hypothesis. After assessing the studies up to and including 1989, **Takano claimed that the hypothesis "has no empirical support**" (Takano 142). Further, Miller & McNeill claim that "nearly all" of the studies performed on the Whorfian hypothesis "are best regarded as efforts to substantiate the weak version of the hypothesis" (Miller & McNeill 734). We additionally will offer four reasons the hypothesis is not valid. ¶ The first reason is that it is impossible to generate empirical validation for the hypothesis. Because the hypothesis is so metaphysical and because it relies so heavily on intuition it is difficult if not impossible to operationalize. Rosch asserts that "profound and ineffable truths are not, in that form, subject to scientific investigation" (Rosch 259). We concur for two reasons. The first is that the hypothesis is phrased as a philosophical first principle and hence would not have an objective referent. The second is there would be intrinsic problems in any such test. The independent variable would be the language used by the subject. The dependent variable would be the subject's subjective reality. The problem is that the dependent variable can only be measured through selfreporting, which - naturally - entails the use of language. Hence, it is impossible to separate the dependent and independent variables. In other words, we have no way of knowing if the effects on "reality" are actual or merely artifacts of the language being used as a measuring tool.

Their argument is non-falsifiable

Roskoski & Peabody, Florida State, 91 (Matthew and Joe, 1991, A Linguistic and Philosophical Critique of Language "Arguments," http://debate.uvm.edu/Library/DebateTheoryLibrary/Roskoski&Peabody-LangCritiques) DJ

The second reason that the hypothesis is flawed is that there are problems with the causal relationship it describes. Simply put, it is just as plausible (in fact infinitely more so) that reality shapes language. Again we echo the words of Dr. Rosch, who says: {C}ovariation does not determine the direction of causality. On the simplest level, cultures are very likely to have names for physical objects which exist in their culture and not to have names for objects outside of their experience. Where television sets exists, there are words to refer to them. However, **it would be difficult to argue that the objects are caused by the words.** The same reasoning probably holds in the case of institutions and other, more abstract, entities and their names. (Rosch 264). ¶ The color studies reported by Cole & Means tend to support this claim (Cole & Means 75). Even in the best case scenario for the Whorfians, one could only claim that there are causal operations working both ways - i.e. reality shapes language and language shapes reality. If that was found to be true, which at this point it still has not, the hypothesis would still be scientifically problematic because "we would have difficulty calculating the extent to which the language we use determines our thought" (Schultz 134).

Language doesn't shape reality

Roskoski & Peabody, Florida State, 91 (Matthew and Joe, 1991, A Linguistic and Philosophical Critique of Language "Arguments," http://debate.uvm.edu/Library/DebateTheoryLibrary/Roskoski&Peabody-LangCritiques) DJ

The third objection is that the hypothesis selfimplodes. If language creates reality, then different cultures with different languages would have different realities. Were that the case, then meaningful crosscultural communication would be difficult if not impossible. In Au's words: "it is never the case that something expressed in Zuni or Hopi or Latin cannot be expressed at all in English. Were it the case, Whorf could not have written his articles as he did entirely in English" (Au 156). ¶ The fourth and final objection is that the hypothesis cannot account for single words with multiple meanings. For example, as Takano notes, the word "bank" has multiple meanings (Takano 149). **If language truly created reality then this would not be possible**. Further, most if not all language "arguments" in debate are accompanied by the claim that intent is irrelevant because the actual rhetoric exists apart from the rhetor's intent. If this is so, then the Whorfian advocate cannot claim that the intent of the speaker distinguishes what reality the rhetoric creates. The prevalence of such multiple meanings in a debate context is demonstrated with every new topicality debate, where debaters spend entire rounds quibbling over multiple interpretations of a few words.1

Makes real change impossible—lures us into thinking we have solved anything, damning the emancipatory potential of their arguments

Roskoski & Peabody, Florida State, 91 (Matthew and Joe, 1991, A Linguistic and Philosophical Critique of Language "Arguments," http://debate.uvm.edu/Library/DebateTheoryLibrary/Roskoski&Peabody-LangCritiques) DJ

There are several levels upon which language "arguments" are actually counterproductive. We will discuss the quiescence effect, deacademization, and publicization. The quiescence effect is explained by Strossen when she writes "the censorship approach is diversionary. It makes it easier for communities to avoid coming to grips with less convenient and more expensive**, but ultimately more meaningful approaches**" (Strossen 561). Essentially, **the argument is that allowing the restriction of language we find offensive substitutes for taking actions to check the real problems that generated the language**. Previously, we have argued that the language advocates have erroneously reversed the causal relationship between language and reality. We have defended the thesis that reality shapes language, rather than the obverse. Now **we will also contend that to attempt to solve a problem by editing the language**

which is symptomatic of that problem will generally trade off with solving the reality which is the source of the problem. There are several reasons why this is true. The first, and most obvious, is that we may often be fooled into thinking that language "arguments" have generated real change. As Graddol and Swan observe, "when compared with larger social and ideological struggles, linguistic reform may seem quite a trivial concern," further noting "there is also the danger that effective change at this level is mistaken for real social change" (Graddol & Swan 195). The second reason is that the language we find objectionable can serve as a signal or an indicator of the corresponding objectionable reality. The third reason is that restricting language only limits the overt expressions of any objectionable reality, while leaving subtle and hence more dangerous expressions unregulated. Once we drive the objectionable idea underground it will be more difficult to identify, more difficult to root out, more difficult to counteract, and more likely to have its undesirable effect. The fourth reason is that objectionable speech can create a "backlash" effect that raises the consciousness of people exposed to the speech. Strossen observes that "ugly and abominable as these expressions are, they undoubtably have had the beneficial result of raising social consciousness about the underlying societal problem..." (560). ¶ The second major reason why language "arguments" are counterproductive is that they contribute to deacademization. In the context of critiquing the Hazelwood decision, Hopkins explains the phenomenon: To escape censorship, therefore, student journalists may eschew school sponsorship in favor of producing their own product. In such a case, the result would almost certainly be lower quality of high school journalism... The purpose of high school journalism, however, is more than learning newsgathering, writing, and editing skills. It is also to learn the role of the press in society; it is to teach responsibility as well as freedom. (Hopkins 536). ¶ Hyde & Fishman further explain that to protect students from offensive views, is to deprive them of the experiences through which they "attain intellectual and moral maturity and become self-reliant" (Hyde & Fishman 1485). The application of these notions to the debate round is clear and relevant**. If language "arguments" become a dominant trend, debaters will not change their attitudes.** Rather they will manifest their attitudes in non-debate contexts. Under these conditions, the debaters will not have the moderating effects of the critic or the other debaters. Simply put, sexism at home or at lunch is worse than sexism in a debate round because in the round there is a critic to provide negative though not punitive feedback. ¶ The publicization effects of censorship are well known. "Psychological studies reveal that whenever the government attempts to censor speech, the censored speech - for that very reason - becomes more appealing to many people" (Strossen 559). These studies would suggest that language which is critiqued by language "arguments" becomes more attractive simply because of the critique. Hence language "arguments" are counterproductive.

AT: "Domestic" Education

Domestic policy still exists and affects the international sphere – the NEG's education arguments make no sense

Dugis 7— Vinsensio Dugis is a lecturer in the International Relations Department at Airlangga University (Journal of Airlangga University, "Domestic Political Structure and Public Influence on Foreign Policy, A Basic Model", http://journal.unair.ac.id/filerPDF/Domestic%20Political%20Structure%20and%20Public%20Influence%20on%20Foreign%20Policy,%20A%20Basic%20Model.pdf, HSA)

Liberalism, in contrast, values the importance of domestic politics in foreign policy. Instead of seeing state as rational unitary actor, it views it as a coalition of interests representing individuals, a variety group of individuals, and the public. Therefore national interests are determined by which of such many interests between individual, groups of individuals, and the public captures government authority. In short, **domestic values, variables, and institutions have international significance on foreign policy**. Although liberalism generally agrees that domestic politics plays a role in foreign policy, however, there have been differences among its proponents concerning how much and in what ways actually it may affect foreign policy. Norman Angel (as quoted in Griffiths 1999, 53 & 55) considered as being one of key pioneers for interdependence theory, for instance, is dubious about the 'public mind' of democracies in international relations. He emphasises that 'wars often occurred because of jingoism, excessive or distorted nationalism, and the ability of military elites to manipulate and misrepresent their citizens' views of other states'. In contrast, though acknowledging that domestic politics and public participation are beneficial in foreign policy, some refuse to accept the traditional dichotomy between domestic and international politics.¶ Hobson (as quoted in Griffiths 1999, 82), whose major contribution was on the study of international political economy, argued that 'it makes **no sense** to study the international economy by treating domestic and international relations separately from one another'. Equally, Held (as quoted in Griffiths 1999, 77), views that as the result of increasing global interconnectedness, states are coming to the stage where it is difficult to control activities within and beyond states borders. The scope of states policy instruments is shrinking and unless cooperating with others, they are unable to solve a growing number of inter-states problems. Therefore he argues that 'states are increasingly enmeshed in a multitude of collaborative arrangements to manage trans-state boundary issues, the result being a growing disjuncture that makes it difficult for state to separate the domain spheres of domestic and foreign policy'. Rosecrance (as quoted in Griffiths 1999, 91), who places the most emphasis on the correlation between domestic and international politics, contends that it is unworkable to isolate domestic politics from foreign policy especially in order to assess systemic stability. He argues that international action 'is brought into play only in response to policy initiatives of member states'. Furthermore, he suggests that the main causes of **foreign policy behaviour arise from the domestic political systems** and criticises the inability of the international system to address serious international instabilities and their consequences caused by **domestic disturbances.**

AT: Delegations CPs

Democracy Bad: war

Democracies are more likely to become involved in prolonged wars: They need to win to be re elected

Bausch Senior Fellow at New York University 15

"Democracy and War Effort An Experiment." Journal of Conflict Resolution
http://jcr.sagepub.com/content/early/2015/07/03/0022002715590876.full

This article has presented a laboratory experiment to test how internal rules for selection of a leader affect how leaders select into and fight conflicts. By randomly assigning subjects into groups with different rules, the experiment allows causal inference on how these rules affect conflict. Surprisingly, democratic leaders in the experiment selected into wars more often than autocratic leaders. Once wars were underway, democratic leaders were more reluctant than autocratic leaders to accept a negotiated settlement to end the war and used more resources in the final stage of the war. These results support a key prediction of Selectorate Theory: democratic leaders are more dependent on successful policies to retain office than autocratic leaders, and this affects how wars play out over time. Leaders of autocratic groups were willing to settle for any positive payoff from the conflict and, if a negotiated settlement was not reached relatively quickly, saved resources by giving up on the war. In contrast, democratic leaders were more likely than autocratic leaders to continue fighting and used more resources than autocrats as the war continued in order to secure a victory. Once they spend any resources on a conflict, democratic leaders need to win the conflict to gather enough support for reselection. Democratic leaders correctly anticipated their citizens' reaction to war losses. The experimental results found that democratic leaders that lost wars were removed from office at a higher rate than leaders who avoided war or won a war. Meanwhile, autocrats increased their probability of reselection by winning a war, but losing a war did not hurt them relative to avoiding a war. This experimental finding gives causal support to Croco (2011)'s argument and empirical results that democratic leaders found culpable for wars are punished by their domestic audience if they lose the war. Although individual voters in the experiment punished democratic leaders for incompetence in war, the key mechanism affecting a democratic leader's reselection was how many points they invested in public goods. Losing wars squandered resources and lowered possible public good expenditures. Overall, this article contributes to the already substantial literature on regime type and warfare by approaching the topic from an experimental perspective. By randomly assigning subjects to groups, the experiment focuses exclusively on the connection between reselection rules and the outcomes of interest. As demonstrated in the aforementioned results, domestic rules and how they incentivize leaders alone can account for many differences in the manner in which democracies and autocracies fight wars. This article expands our understanding of reselection rules and how leaders fight wars by showing that democratic leaders are more likely to be removed from office after losing a conflict than autocratic leaders. Because democratic leaders' hold on office is more contingent than autocrats', democratic leaders extend wars and mobilize more resources as wars continue because, having used resources on war, they now need to secure a victory to retain office.

Economic development is a larger internal link to peace: Countries have more to lose from a war

Gartzke and Weisiger Profs of political science 11

Erik and Alex Under construction: Development, democracy, and difference as determinants of systemic liberal peace." International Studies Quarterly 58.1 (2014): 130-145.

This paper contends, and finds, that the determinants of peace may change as we shift from one level of analysis to another. The special peace among democracies does not appear to translate into a universal peace for all nations: across a range of specifications, we find no evidence that a more democratic world is a less conflictual one. Instead, peace at the system level is linked to development, despite the limited evidence that richer countries are less likely to fight either monadically or with each other. We have argued that development is bound to affect the interest in peace among developed countries, but that it is most likely to be manifest in terms of efforts to make other nations pacific. Developed systems encourage stability, which may be achieved by any reduction in conflict, not just that among developed states. Further, development creates power relations that facilitate a hypocritical stance in which developed countries prevail on poorer nations not to upset global commerce, while developed nations themselves continue to use force.

Federalism Bad

Federalism causes Gov. collapse

Murphy, Principal at Law Offices of David M. Murphy 11 (David: *David Murphy's occasional blog:* "Federalism: good, bad or indifferent? International perspectives." Posted February 9th, 2011. Accessed July 12th, 2015. https://opob.edublogs.org/2011/02/09/federalism-good-bad-or-indifferent-international-perspectives/) KalM

Specifically, in the first month or so of this year there's been an interesting series of blog posts from a variety of authors, dealing with federalism and its consequences for a number of countries. The nations covered so far include India, Nigeria, Canada, Australia, USA, Yugoslavia, Malaysia, Brazil, UK and the United Arab Emirates. It was kicked off by a post about Pakistan, wherein CoL's President, John Daniel, made some insightful points about 'Federalism and Education'. As he states, "In principle federalism is a good system of government because it devolves decision-making towards the people. The devil, as always, lies in the detail – particularly in areas of shared jurisdiction." The devilish detail is revealed in the country posts: the authors reveal the complex reality that bedevils efforts to improve national education systems via a number of routes towards (or away from!) federalism. The Malaysian case reveals a strongly federalist system that appears to be working well. Others are more complex. For example, as Michael B. Goldstein explains concerning the USA: "This regulatory patch-work has always been a matter of some concern, particularly as institutions expanded through the establishment of branch campuses located in different States. But it has been the advent of the Internet, and the explosive growth of online learning in the US, that has dramatically brought to the fore the importance – and arguably the perverse impact – of fifty-plus different regulatory schemes for the supervision of higher education." Using Brazil as his case study, Fredric M. Litto argues against federalism, concluding that: "When a mistake occurs at the centre of control, it is distributed, broadcast, to all remote points with its consequences. A more distributed system offering the benefits of diversity and permitting errors to be reversed would lessen the risks of total collapse. Brazil's education system has grown to a point of complexity that is beyond its capacity to handle. To decentralise and return local responsibility for education to the States would be a step in the right direction."

Federalism Bad-Econ

Federalism empirically bad for econ

Qian, professor of Economics and Weingast, senior fellow at University of California, 97 (Yingyi, and Bariy: "Federalism as a Commitment to Preserving Market Incentives" published Autumn 1997. http://econpapers.repec.org/paper/wopstanec/97042.htm) KalM

(T)raditional economic theories of federalism emphasize two well-known sources of benefits from decentralization. First, Hayek (1945) suggested that, because local governments and consumers have better information than the national government about local conditions and preferences, they will make better decisions. Second, Tiebout (1956) argued that competition among jurisdictions allows citizens to sort themselves and match their preferences with a particular menu of local public goods. In this spirit, Musgrave (1959; see also Oates, 1972) showed how the appropriate assignment of jurisdictions over public goods and taxes can increase welfare. Although **these theories** study central features of federalism, they **do not completely characterize the function and benefits of federalism.** First generation economic theories ignore the problem of why government officials have an incentive to behave in the manner prescribed by the theory. They take for granted that political officials provide public goods and preserve markets. Notice the parallels between the first generation approach to federalism and the neoclassical theory of the firm. Both treat the organizations they study-firms and governments-as black boxes run by people who act benevolently-whether for shareholders or for citizens. Both theories provide only a modest explanation for why managers or government officials would behave in the prescribed manner. The question we address is: How do governments commit to providing efficient public goods and preserving market incentives? The answer lies in the governance structure of the state (Williamson, 1996). **Preserving markets requires that the state be effective yet limited**. Several mechanisms are known to further this objective, such as the rule of law, horizontal separation of powers (for example, into the executive,judiciary and legislative branches), and democracy, **but all such mechanisms are imperfect**. In this paper, we suggest that federalism-the appropriate decentralization from the central to local governments-provides another solution.

Federalism is economically unstable

Inman Professor of Finance and Economics 08 (Robert*:* "Federalism's Values and the Value of Federalism" published January 11th, 2008.. http://www.nber.org/papers/w13735)KalM

2.1 Economic efficiency Federal governance is argued to promote efficiency in both the public and private sectors of the economy. First, multiple, lower-tier governments allow mobile residents the opportunity to choose a preferred public goods bundle at the lowest cost. Choice through mobility ensures a better matching of citizen preferences to government allocations (Tiebout 1956) and serves as a disciplinary device to limit government inefficiency and corruption (Brennan and Buchanan 1980; Shleifer and Vishny 1993). Even if citizens are not mobile, politically independent provinces may engage in efficiency-enhancing ''yardstick competition'' as citizens observe what their neighbors are doing and demand comparable service or tax performances from their own elected leaders (Besley and Case 1995).4 Decentralized governance does not come without its risks, however. Public ''goods'' with significant interjurisdictional spillovers may be underprovided while public ''bads'' may be overused; see, for example, Oates (1972). Such local spillovers can be corrected, but efficiently so only if local representatives to the central government do not fall prey to the mis-incentives of ''common pool'' budgeting of their mutual tax base; see Inman and Fitts (1990) and Besley and Coate (2003).

Federalism can contribute to the valued outcome of government efficiency, but it is **by no means guaranteed**.

Oversight Fails-Generic

Prefer our studies – Congress has an incentive to do nothing until something goes wrong

Zegart and Quinn 10 (Amy, serves as the co-director of the Center for International Security and Cooperation (CISAC) at Stanford University; a Senior Fellow at the Hoover Institution; and Professor of Political Economy (by courtesy) at the Stanford Graduate School of Business, Julie, attorney; former member of the Louisiana State Senate, representing District 6, 2010, "Congressional Intelligence Oversight: The Electoral Disconnection," Intelligence and National Security, Volume 25, Issue 6, http://www.tandfonline.com/doi/full/10.1080/02684527.2010.537871#abstract)

The intelligence literature suffers from the opposite problem, focusing on nuance at the expense of generalizability. A kind of intelligence exceptionalism permeates this work. Scholars emphasize that intelligence is a unique policy area unlike any other, and therefore not suitable for social science theorizing.32 In addition, this literature is interested in explaining fluctuations in intelligence oversight over time, not why oversight has remained so problematic for so long.33 Finally, the literature focuses largely on individual personalities and specific events – comparing and contrasting the tenures of various congressional intelligence committee chairmen, dissecting the personalities of CIA directors, and assessing the impact of various intelligence scandals – rather than the forces that transcend them. Where the political science literature makes sweeping generalizations that apply poorly to intelligence, the intelligence literature has produced in-depth and vivid histories that do not illuminate broader oversight dynamics.

Intelligence research on oversight generally falls into two camps. The first focuses so much on what makes intelligence unique that it fails to focus on oversight commonalities between intelligence and other policy domains or build on the contributions made by political scientists. Smist, for example, questions how Congress can effectively execute its oversight duty in a policy area 'characterized by legitimate needs for secrecy and security that exist in few other policy areas'.34 He concludes that the intelligence committees are 'unique creatures of Congress'35 and creates two oversight 'models'– which he calls institutional (supportive) and investigative (challenging) – to characterize the committees' relationships with the Intelligence Community. Smist's approach is helpful when examining how the House and Senate committees have functioned since their creation in the 1970s. But in Smist's own words, his models do 'not have the very formal sense found in some social science literature … "model" as I have employed it throughout this study signifies more of an outlook, perspective or attitude'.36 Similarly, Snider seeks to, in his words, 'write something that would help CIA employees better understand the Agency's relationship with Congress'.37 The result is a detailed description of oversight successes and failures, an historical narrative that offers a play-by-play of oversight through the ages. It is not an explanation of why intelligence oversight looks the way it does. Nor does it offer an understanding of why weak oversight persists despite a changing cast of characters and events over time – both questions that have animated the political science literature for years. The second camp incorporates aspects of the political science oversight literature but focuses on historical narrative and the role of the individual rather than the systemic forces that lead to poor oversight. Barrett goes to great lengths to challenge the assumption that congressional oversight was nearly non-existent between 1947 and 1974, the era between the birth of the CIA and the creation of the select intelligence oversight committees. After careful archival research, Barrett concludes that congressional oversight may not have been comprehensive, but it also was not 'simply passive or static across the CIA's first fifteen years'.38 In his afterward, Barrett explicitly asserts that Congress's oversight patterns generally align with the fire alarm model, noting, 'McCubbins and Schwartz never mention the CIA, but the events described herein mostly fit the pattern they describe'.39 But in Barrett's conception, fire alarm is shorthand for saying, 'when really bad things happen, Congress reacts in some way'. This is not what McCubbins and Schwartz say. Their main point is not that Congress reacts to scandals or mishaps; congressional observers have known that for decades. Their point is that all decisions about congressional oversight – whether to select police patrols or fire alarms – are driven by electoral incentives. Their central proposition is that fire alarm oversight is more attractive because it is electorally efficient. Legislators outsource alarm-ringing to interest groups and constituents who bear the costs of monitoring and who reward legislators for rectifying problems they care about the most. Congress, in short, designs a system where others do the monitoring and legislators reap the rewards. But this analytic framework makes no appearance in Barrett's work. Loch Johnson makes the greatest effort to incorporate oversight models into his analyses, specifically referencing police patrols and fire alarms in several of his articles. In 'The Contemporary Presidency' he asks, 'What are the ingredients for better oversight? Of foremost importance is greater devotion to "police patrolling" by executive and legislative overseers – routine day-to-day checking on programs, instead of waiting for "fire alarms" to sound in the night. In the closed world of intelligence, fire alarms are unlikely to erupt in the media until a major scandal or failure occurs'.40 In 'Congressional Supervision of America's Secret Agencies:

The Experience and Legacy of the Church Committee', Johnson takes his critique of Congressional oversight even further. 'Police patrolling by Congress itself has been minimal, resulting from the lack of motivation by lawmakers'.41Johnson finds this situation particularly disheartening and dangerous because 'fire alarms set off by lobbyists or by media reporters are unreliable'.42 As he notes, few interest groups exist in the intelligence domain and those that do are likely unable to partake in any public discussion because of the classified nature of the issues. Likewise, Johnson argues that the media is hamstrung in its attempts to report on intelligence activities because of the layers of secrecy that 'have the effect of isolating the intelligence agencies from the normal processes of legislative accountability envisioned in the Constitution (Article I), the Federalist Papers (No. 51, for instance), and various Supreme Court opinions ... .'43 Johnson's proposed remedy for ineffective oversight is a repeated call for increased police patrols by Congressional members who need to do their jobs with more dedication and gusto and with a greater appreciation for the importance of the task at hand.44 In 'The US Congress and the CIA: Monitoring the Dark Side of Government', Johnson demonstrates that a few well-placed officials who are committed to oversight can have an enormous impact on their committees' effectiveness and he details the combination of personality and political environment that will most likely yield members up to the task of robust oversight.45 But this approach misses a crucial piece of the puzzle: the institutional mechanisms and underlying incentives that lead Congress to tie its own oversight hands, no matter how talented and dedicated an individual intelligence committee chairman may be. Individual members, as Johnson suggests, certainly matter. But institutional constraints often matter more.

Congressional oversight is ineffective – 9/11 proves

Bloomquist 05 (Robert, Valparaiso University School of Law, Fall 2005, "Congressional Oversight of Counterterrorism and Its Reform," Roger Williams University Law Review, Vollume 11, Issue 1, http://docs.rwu.edu/cgi/viewcontent.cgi?article=1343&context=rwu_LR)

Just when the Nation needed adroit and resolute oversight of the causes and meaning of 9/11, the United States Congress botched the job. Although Congress went through the motions of overseeing how and why the executive branch-through such agencies as the CIA and FBI-neglected to anticipate and prevent the Attack on America on September 11, 2001, for reasons which I seek to explain in this Article, the congressional exercise was a charade, and the publication of its two-and-one-half inch thick, royal blue-covered report, entitled Joint Inquiry Into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001 (hereinafter Joint Inquiry Report or JIR),7 was a dismal failure. As I will demonstrate, the 9/11 oversight failure of Congress was due to a deficiency of institutional competence in matching and reining in the executive branch's effort to stonewall and obfuscate. While Congress tried to save face for its oversight failure by acquiescing to the creation of the National Commission on Terrorist Attacks Upon the United States (the "9/11 Commission"),8 this maneuver was not constitutionally contemplated congressional oversight but congressional abdication to executive branch manipulation. The central thesis of my Article, then, is that Congress must resuscitate its institutional competence for overseeing American counterterrorism policy and its implementation. As I will explain, Congress can accomplish renewed competence for oversight of national counterterrorism through three specific actions: (1) consolidating intelligence functions, (2) fostering intelligence expertise among its members, and (3) experimenting with more decentralized and indirect forms of intervention with executive branch counterterrorism agencies. Yet, since what is past is prologue to purposeful reform, a substantial part of my Article is devoted to unpacking and analyzing what Congress did and did not do leading up to its issuance of the Joint Inquiry Report. Indeed, the meaning of the Joint Inquiry Report can best be understood as a multi-flawed legal process. Indeed, one of the purposes of this Article is to analyze the Joint Inquiry Report from three process perspectives: (1) the process of congressional oversight of executive intelligence gathering activities in order to interpret the meaning of the terrorist attacks of 9/11; (2) the attempt to interpret the process failures of America's intelligence agencies leading up to 9/11; and (3) the attempt to recommend new government processes of national intelligence and security.

Congress provides no effective oversight over intelligence agencies

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former member of the Louisiana State Senate, representing District 6, 2010, "Congressional Intelligence Oversight: The Electoral Disconnection," Intelligence and National Security, Volume 25, Issue 6,)

For nearly 30 years, scholars have argued that Congress oversees the bureaucracy in surprisingly efficient ways.1 Whether by building ex ante statutory controls into agency design,2 using ex post oversight mechanisms such as hearings, investigations, and budgetary carrots and sticks,3 or some combination of the two,4 the dominant view is that oversight generally works.5 Members of Congress do not have to be do-gooders to hold government agencies accountable. They only need to be self-interested re-election seekers who want to maximize their political benefits and minimize political costs. Carefully guarding their time and capital, these crafty politicians try to hardwire control mechanisms when designing new agencies at the outset, outsource ongoing oversight to third parties whenever they can, and conduct their own oversight activities when voters are paying attention and interest groups care the most. The 'electoral connection', in David Mayhew's famous words, makes everything tick.6 Strangely, however, this picture of strong oversight bears little resemblance to the realities of US intelligence policy. Between 1947 and 1975, Congress introduced more than 200 bills to improve intelligence oversight. Only one ever passed.7 Even after investigations of intelligence scandals during the 1970s led to the establishment of permanent House and Senate oversight committees, actual oversight has struggled. For years, in fact, House and Senate intelligence committee chairmen have complained that intelligence agencies withhold information and flout their committees' intent. It has almost become a ritual for new chairmen to demand greater cooperation from the intelligence agencies they oversee and vow to rectify the oversight inadequacies of their predecessors.8 They are not alone. Since the end of the cold war, seven major initiatives, including blue-ribbon commissions,9 task forces,10 and even the intelligence committees themselves have recommended major oversight reforms.11 Few have ever been implemented. This article seeks to reconcile oversight models in theory with oversight realities in intelligence. We build on Huber and Shipan's call to push the congressional control literature to its logical conclusions and subject it to more precise empirical tests and evidence.12 At the same time, we aim to pinpoint systemic oversight weaknesses in a crucial national security policy area. As we argue below, political science oversight models have paid surprisingly little attention to intelligence, while most of the public debate about intelligence oversight has paid surprisingly little attention to Congress. Particularly since 9/11, popular accounts have tended to blame poor oversight on the Bush Administration's claims of expansive constitutional authority and its penchant for secrecy. While executive branch secrecy and power are an important part of the story, they are by no means the only part. Revisiting the theoretical literature offers a useful corrective to this popular discourse: We find that Congress's most serious oversight problems lie with Congress. The same electoral incentives that generate effective oversight in some policy areas have created weak oversight in US intelligence policy for a very long time. The section 'Police, Fire Fighters, and Spooks' provides an overview of the oversight literature in both political science and intelligence studies. We argue that the political science literature is conceptually strong but empirically weak when it comes to explaining the intelligence world. Conversely, intelligence studies offer nuanced histories of intelligence oversight but little analytic traction to understand broader oversight dynamics over time or the underlying forces that cause them. While each literature makes an essential contribution to understanding why intelligence oversight has struggled for so long, neither captures the full picture. The section 'Hearings, Laws, and Interest Groups' turns from logic to data, exploring in greater detail the empirical requirements for police patrol and fire alarm oversight models. We ask two questions: 'How would we know robust oversight when we see it?' and 'How have these metrics of oversight varied across policy domains, including intelligence, over time?' These questions are important. Most past empirical work on oversight has focused either on case studies of a single committee13 or on oversight activities of Congress as a whole.14 Assessing how oversight varies across policy areas and congressional committees has garnered relatively little attention.15 We seek to begin filling this gap, paying special attention to intelligence. Using three original data sets that track congressional committee hearings, legislative productivity, and interest groups from the past 20 years, we find that House and Senate intelligence committees have been dramatically less active in their oversight duties compared to other committees. Our evidence supports Johnson's claim that, 'Most observers agree that members of Congress are performing far below their potential when it comes to supervision of secret agencies'.16 More importantly, our evidence shows how electoral incentives explain why. In short, existing oversight models identify the right root cause, but draw the wrong conclusions: legislators do labor to satisfy the preferences and demands of

organized interests and concerned citizens. But that very responsiveness leads Congress to oversee some policy areas more than others. The result is that intelligence has gotten short shrift, even though the national security stakes are high.

Oversight Fails-Partisanship

Growing partisanship inhibits the committee's effectiveness – rise in disagreements and decrease in trust between Congress and the intelligence agencies

Kibbe 10 (Jennifer, Associate Professor of Government; Chair of Government at Franklin and Marshall College, 2010, "Congressional Oversight of Intelligence: Is the Solution Part of the Problem?" Intelligence and National Security, Volume 25, Issue 1, http://www.tandfonline.com/doi/full/10.1080/02684521003588104#abstract)

The rise in partisanship has impeded the committees' effectiveness in several ways. First, they have not been able to accomplish as much when they can't agree on what to investigate or what to include in legislation. The most serious manifestation of this, of course, has been Congress' failure to pass an intelligence authorization bill since December 2004. But it has also affected much of the other oversight work the committees should have been doing. Moreover, other committees have been more than happy to fill the void created by their inaction, which further erodes the intelligence committees' authority over the long term. Overall: The purpose of oversight also became skewed. Rather than a constructive collaboration to tackle genuine, long-term problems, oversight became a means of shifting political blame, as the circumstances required, either to the incumbent administration or away from it.62 Another cost of the rising politicization has been its effect on the committees' delicate relationship with the intelligence community. One of the greatest hurdles legislators faced when they first created the oversight committees was the intelligence community's fear that politicians' most important priority is political advantage rather than the national interest and, therefore, that they inherently could not be trusted with sensitive information. That was gradually overcome through the careful, nonpartisan approach taken by the early chairmen and members on the committees and their excellent track record in keeping secrets.63 But the partisanship that has recently stymied the committees reinforces the worst stereotypes about members of Congress, undermining the intelligence community's respect for the oversight enterprise. Once intelligence officials start to have doubts about the motives of congressional overseers who are asking for information, they are that much less likely to provide it. As Marvin Ott, a former SSCI staffer, characterizes the problem, once Congress loses that trust, [t]he reaction in the community is predictable: Oversight is no longer an asset, it's now a problem; it's something to be stonewalled, to be slow-rolled, to be manipulated if you can, and the sort of collaborative, mutual efforts to solve practical problems facing intelligence in the country, that goes away.64

No Public Attention

Non-delegation doctrine fails: No Public Attention

Lovell, Assistant Professor of Government, College of William and Mary, 2k (George, That Sick Chicken Won't Hunt: The Limits of a Judicially Enforced Non- Delegation Doctrine, Constitutional Commentary, 17 Constitutional, Commentary 79)

Critics of delegation often use claims of this sort to add a strong normative component to their arguments. Schoenbrod, for example, contrasts the "unsophisticated interests" most often the victims of delegation with the "sophisticated interests" that pressure Congress to delegate. "Sophisticated interests" like Sunkist benefit from delegation because they possess the resources to monitor and influence agency decision-making processes. Meanwhile the "unsophisticated" interests, a much larger group, pay the dispersed costs of rent-seeking regulations that they are often too duped to notice. [n26] The problem, however, is that critics of delegation wield a double-edged sword when they complain about the mass public's limited capacity to pay attention to regulatory decisions. By emphasizing how difficult it is for the public to pay sufficient attention to the details of government processes, and arguing that it is easy for "sophisticated" interests to dupe the masses, critics of delegation make it more difficult to believe that judges can create significant improvements in accountability by enforcing a strict non-delegation doctrine. It is hard to see how ending delegation will make the masses more sophisticated or lengthen their attention span. [n27] [*94] More importantly, if the courts were to end delegation, the capacity of the public to monitor decisions in Congress would be severely tested. Congress would presumably be forced to make more decisions - and more complicated decisions - about the details of regulatory policies. Presumably, much of the boredom that the public now associates with the administrative processes would simply be transferred to Congress, along with the responsibility for making many of the boring decisions that used to be made in the agencies.

Non delegation fails

Lovell, Assistant Professor of Government, College of William and Mary, 2k (George, That Sick Chicken Won't Hunt: The Limits of a Judicially Enforced Non- Delegation Doctrine, Constitutional Commentary, 17 Constitutional, Commentary 79)

While these considerations provide a coherent story of one source of improved accountability in a world without delegation, they do not prove that judicial enforcement of a non-delegation doctrine will, on balance, improve accountability or improve the position of "unsophisticated" interests. The added congressional workload and added need for congressional attention to detail that the non-delegation doctrine would create could still exhaust the public's newly stimulated appetite for monitoring Congress. And because Congress would retain numerous avenues for complicating and obscuring its choices, there might still be opportunities for members of Congress to do favors for their most sophisticated friends and to hide their most cynical compromises.

Non delegation doctrine unnecessary and diverts attention from more important issues

Posner and Vermeule, Professors of Law University of Chicago. 02 (Eric and Adrian Vermeule: *University of Chicago Law Review:* "Interring the Nondelegation Doctrine" published Fall, 2002)KalM

But it is true that the naive view of delegation commits us to defending the constitutionality of, for example, a statute granting the president statutory authority to make rules on any subject within the constitutional powers of Congress. If this is too fanciful, consider the example beloved of nondelegation proponents: the Reichstag's 1933 decision to enact a statute authorizing Adolf Hitler to rule by decree. n82 How do we know it couldn't happen

here? (And maybe it already did, depending on how broad we take the National Industrial Recovery [*1742] Act, invalidated on nondelegation grounds in 1935, n83 to have been.) Shouldn't constitutional law hold some sort of nondelegation rule in reserve against that eventuality? All this strikes us as a flawed form of argument on at least four grounds. (1) It won't happen. Despite the breadth in the modern era of congressional grants of statutory authority to the executive, a dominant fact of modern government is that Congress and the president are institutional rivals along many dimensions. Distrust of executive agents frequently causes Congress to attempt to control the smallest details of executive action, as it did in the hyper-detailed environmental legislation of the 1960s and 1970s. n84 No serious person compares Roosevelt to Hitler. (2) If it did happen, it might not be bad. The legislatures of many liberal democracies around the world have granted the executive broad rulemaking powers, of varying scope, duration, and legal effect. n85 Sometimes, of course, these practices or episodes represent executive usurpation of legislative authority. Sometimes they represent a sensible social response to some crisis--war, economic chaos, or social unrest--best resolved by executive processes. Sometimes, less dramatically, they represent a reasonable judgment by the legislature that the opportunity costs of controlling policy formulation are too high, in light of other things legislatures want to do. Even if Congress granted the president broader rulemaking powers than it already has--thereby sliding the rest of the way to the bottom of the slope--there is little reason to suppose, ex ante, that the grant would represent legislative abdication to an engorged presidency, rather than a desirable response to contemporary social needs. Much more could be said about this essentially empirical and predictive question; Part II amplifies the good reasons supporting delegation to executive agents. Suffice it to say here that the current literature in comparative politics finds that executive usurpation or legislative abdication is rarely the best explanation for broad legislative grants of authority to the executive. n86 (3) If it did happen, and it were bad, the nondelegation doctrine couldn't prevent it anyway. If an Adolf Hitler came within striking distance of attaining power in the modern United States, it would presumably be unwise to rely on the nondelegation doctrine, or any other [*1743] esoteric legal principle, as the final barrier. Far better to rely on a countervailing power with real muscle, like an opposing political party or the army. Note that the Schechter Poultry decision is not a plausible example of the Supreme Court invoking the nondelegation doctrine to save the nation from a slide into executive tyranny. The National Industrial Recovery Act had already lost political support by the time the Court heard the nondelegation challenge; the Court's decision to invalidate the statute amounted to little more than piling on. There's little reason to think that the Court would ever enforce the doctrine against a nationwide majority convinced that a broad grant of statutory authority to the executive was necessary to national survival. (4) In general, developing rules with a view to improbable political scenarios is poor constitutional design. No engineer builds a house capable of resisting a meteor strike; the house would be a bunker unusable for its primary purpose. Tailoring constitutional rules to the improbable case, rather than the usual case, has the same defects. Constitutional law should instead be tailored to the run of cases that might occur under plausible political circumstances; n87 to tailor it to the most lurid and feverish of hypotheticals is to distort its function. On both methodological and political grounds, there's no reason to fear a slide down the slippery slope, and no reason to twist the constitutional structure out of shape merely to provide against an unlikely political disaster.

Circumvention-Generic

Non-delegation rules get circumvented

Williams, Associate Professor of Law, Saint Louis University School of Law 2K (DOUGLAS: SYMPOSIUM CONGRESS: DOES IT ABDICATE ITS POWER?: CONGRESSIONAL ABDICATION, LEGAL THEORY, AND DELIBERATIVE DEMOCRACY. published in 2000.)KalM

Critics of delegation are also strangely unattentive to other ways in which administrative discretion can have significant impacts on policy. We enjoy a common law system in which nice adjustments to legal obligations are made by distinguishing factual predicates. In light of that practice, it is unlikely that a reinvigorated nondelegation doctrine would squeeze discretion out of the system. It is much more likely that the discretion would be shifted from the (usually) highly visible and indirectly accountable (via presidential accountability) agency proceedings to less visible prosecutorial processes and largely unaccountable judicial processes. It is hardly clear that, given the enormous discretion enjoyed by prosecutors n84 and the courts - particularly on matters of remedy n85 - that a vigorous nondelegation doctrine would accomplish any of its recognized purposes. Once the expansive powers of Congress were released from the shackles of limiting judicial interpretation, it is not surprising that the delegation doctrine fell into desuetude. If the only effective limits on the matters to which congressional authority extends were those imposed by electoral constraints, a "substantial effects" linkage to interstate commerce, and a flimsy "rational basis" standard of review, n86 why should the courts, on the basis of nothing more than a debatable constitutional inference, attempt to contain this power by invoking delegation principles? How were courts to distinguish the question of whether Congress had made sufficiently specific policy choices in [*93] delegating power to agencies from the question of whether the subject matter of the legislation was appropriate for federal intervention? Benzene shows that the questions may be quite difficult to keep analytically separate. But even if the delegation doctrine were capable of being confined to an inquiry concerning whether Congress had made sufficiently clear policy choices, how are courts to discern the range of possible policy options, much less whether the legislative choice was "specific"? n87 Rather than viewing delegation as an evasion of congressional responsibility, broad delegations of authority to administrative institutions might be explained, at least in part, as a responsible congressional choice to extend the reach of federal power to deal with pressing social and economic problems. A charge of "abdication" on the part of Congress for such responses would seem misplaced.

Circumvention-States

Reducing delegation causes states to fill in

Lovell, Assistant Professor of Government, College of William and Mary, 2k (George, That Sick Chicken Won't Hunt: The Limits of a Judicially Enforced Non- Delegation Doctrine, Constitutional Commentary, 17 Constitutional, Commentary 79)

The more important and more general lesson that emerges from accounts like Novak's is that state governments retain broad and undefined police powers under our Constitution, powers that the states would be free to exercise should federal power go into remission. These expansive and largely undefined police powers of the states should be especially disturbing to someone like Schoenbrod, who insists that the people are not smart enough to use electoral controls on government officials to protect liberty, and that judges need to step in to supplement those electoral controls by enforcing constitutional limits on the power of those elected officials. [n39]Schoenbrod's lack of faith in electoral controls can be seen in his insistence that the Supreme Court intervene to enforce the non-delegation doctrine. Schoenbrod argues that such judicial interference is necessary because the people are not clever or attentive enough to use the ballot to protect liberty or [*100] end excessive regulation. [n40] Ironically, however, state legislators are not subject to many of the constitutional limits that Schoenbrod sees as essential for producing accountability in the federal system. [n41] State laws don't even need to be made by legislatures! [n42] Given that Schoenbrod concedes that state governments are likely to assume expanded regulatory functions in the aftermath of a judicially enforced non-delegation doctrine, the absence of many of those constitutional controls on the powers of state governments seems to provide the "good reason to distrust state government more than we distrust national government" that Schoenbrod was searching for. Ironically, one limit on federal power that does not seem to apply to the states is the non-delegation doctrine itself. While Schoenbrod and other critics of delegation can imaginatively derive a constitutional prohibition on delegation by placing a particular gloss on a particular piece of constitutional text (the first sentence in Article I), [n43] there is almost nothing in the Constitution that suggests that a similar prohibition applies to state governments. [n44] As state governments assume important regulatory functions now performed by the federal government, it is unlikely that the private interests that are now so successful at pressuring Congress will simply wither away. Their more likely response will be to expand operations in the state capitals. Once there, there is nothing that prevents them from recreating at the state level the incentives to shift many important regulatory decisions to state regulatory agencies. And there is nothing in the case law of the nineteenth or twentieth centuries that could support a Supreme Court effort to stop the state governments should they decide to delegate more.

Circumvention-Congress

Congress will circumvent the CP

Lovell, Assistant Professor of Government, College of William and Mary, 2k (George, That Sick Chicken Won't Hunt: The Limits of a Judicially Enforced Non- Delegation Doctrine, Constitutional Commentary, 17 Constitutional, Commentary 79)

Once again, however, it is not certain that the only consequences of enforcing a non-delegation doctrine are going to be the ones applauded by the doctrine's proponents. The claim that a non-delegation doctrine will force Congress to deliberate more carefully and inhibit excessive legislation is only believable if members of Congress cannot find alternative means of reaching compromises in the absence of delegation. As things now stand, delegation is not the only means used by members of Congress to find compromises that break stalemates or to avoid responsibility. If the courts made it impossible for Congress to delegate, Congress would be likely to substitute one or more of those other means. For example, legislators deprived of their power to delegate might instead try to reach compromises by increasing pork barrel spending or by logrolling regulatory programs into huge omnibus bills. Such practices are already notorious in those policy areas in which Congress now passes detailed legislation (e.g., taxes and appropriations). Recognizing that the consequences of pork barreling might be even worse than the consequences of delegation, critics of delegation deny that these alternative methods of reaching compromise are a significant concern. Aranson, Gellhorn, and Robinson, for example, reject the suggestion that Congress would increase pork barrel spending, [*97] claiming: "This argument assumes that the legislature is not already maximizing its return from pork-barrel (private-goods) production. We assume the contrary, however, and conclude that an increase in the cost of delegation will reduce the total output of inappropriate legislation." [n32] Aranson, Gellhorn, and Robinson's contrary assumption is itself implausible, as can be seen by using a market metaphor. Enforcing a non-delegation doctrine would presumably change legislators' calculations about the costs of pork barreling. Raising the cost of delegation (or removing delegation from that market altogether) will presumably make legislators eager to purchase more of a substitute good, in this case, pork-barrel legislation. Thus, the level at which a legislature maximizes its return from pork-barrel production in a world of rampant delegation may be much lower than the level at which returns will be maximized in a world with a judicially enforced non-delegation doctrine. Presumably, Congress would also adjust to the world without delegation by making its internal structure more conducive to alternative means of reaching compromises. [n33] Even beyond the problems posed by alternative means of forming compromises, there are compelling reasons to think that the critics have offered a flawed analysis of Congress's incentives with regard to constitutional limitations inhibiting excessive legislation. The critics' arguments suggest that delegation is a sign of a legislation-mad Congress trying to subvert structural controls that inhibit legislative compromises. This assumption seems quite odd when tested against the internal procedural rules that Congress has created for itself. Many of those rules [*98] make it much harder for legislation to pass, not easier. Members of Congress have created the filibuster in the Senate, rules limiting amending activity in the House, and the decentralization institutionalized through the committee system and weak institutional sources of party cohesion. [n34] These rules and practices often inhibit the passage of legislation by increasing the veto points for opponents, and often make it more difficult to form compromises. A Congress bent on finding easy compromises and subverting the Constitution's structures for inhibiting legislation would presumably have adopted a different way of proceeding.

Circumvention-Executive

Congressional involvement is undesirable – cannot protect privacy interests and will inevitably defer to the executive

Bendix and Quirk 15 (William, assistant professor of political science at Keene State College, Paul, Phil Lind Chair in U.S. Politics and Representation at the University of British Columbia and a former research associate at the Brookings Institution, March 2015, "Secrecy and negligence: How Congress lost control of domestic surveillance, Issues in Governance Surveillance, No. 68, Brookings Institute, http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf)

In enacting the USA PATRIOT Act just weeks after the 9/11 terrorist attacks, Con- gress sought to enhance investigations against specific, named persons suspected of terrorism. As voluminous documents leaked by whistleblower Edward Snowden have revealed, however, the president and the National Security Agency (NSA) have re- lied on that law to authorize the daily, ongoing capture of all U.S. communication records. These documents make clear that the Bush and Obama administrations ignored statutory constraints to authorize exceptionally broad intelligence-gathering programs. But from our review of legislative hearings and debates on the PATRIOT Act over the last five years, along with numerous declassified documents on surveillance, we find that unilateral action by the executive branch was only partly to blame for unrestrained domestic spying. After the relatively balanced and cautious provisions of the 2001 PATRIOT Act, Congress virtually absented itself from substantive decision making on surveillance. It failed to conduct serious oversight of intelligence agencies, ignored government violations of law, and worked harder to preserve the secrecy of surveillance practices than to control them. Even after the Obama administration made the essential facts about phone and email surveillance available in classified briefings to all members, Congress mostly ignored the information and debated the reauthorizations on the basis of demonstrably false factual premises. Until the Snowden revelations, only a handful of well-briefed and conscientious legislators—too few to be effective in the legislative process—understood the full extent of domestic intelligence gathering. We describe and explain Congress's deliberative failure on phone and Internet surveillance policy. We show that along with a lack of consistent public concern for privacy, and the increasing tendency toward partisan gridlock, Congress's institutional methods for dealing with secret surveillance programs have undermined its capacity to deliberate and act effectively with respect to those programs. Although the current political environment is hardly conducive to addressing such problems, we discuss long-term goals for institutional reform to enhance this capacity. We see no easy or decisive institutional fix. But without some structural change, the prospects look dim for maintaining significant limitations on investigatory intrusion in an era of overwhelming concern for security. In drafting the original PATRIOT Act mere weeks after the traumatic security failure of the September 11 attacks, Congress sought to expand and improve protections against terrorism. But, contrary to much of the political lore, it also showed serious concern for privacy safeguards. The House Judiciary Committee, controlled by Republicans, pushed for only a limited expansion of investigative powers and insisted that most surveillance provisions in the PATRIOT Act expire after four years unless reauthorized. The sunset provisions were intended to ensure a serious review of the new surveillance practices to determine whether sufficient privacy protections were in place. Yet, 12 years later, as documents made public by Edward Snowden revealed, the NSA was sweeping up and analyzing vast amounts of U.S. communication records, or "metadata," without observing significant constraints. The Snowden documents also showed that the Foreign Intelligence Surveillance Court (FISA) had radically reinterpreted the PATRIOT Act, in secret, to permit bulk collection of phone records. Paradoxically, while the incidence of terrorism has been much lower in the years after 9/11 than anyone expected, government surveillance has been much more intrusive than legislators authorized. What happened? Why did Congress so thoroughly fail to exercise control and ensure effective protection of privacy? What are the lessons for future policymaking? During the last five years of legislative debates over the PATRIOT Act, Congress has failed to define or control surveillance policy. Prior to the Snowden leaks, most members had little awareness of NSA activities and Congress had little capacity to impose constraints. Now, more than 18 months after Snowden exposed the mass seizure of phone records, not much has changed. To a great extent, the source of difficulty has been the **inadequacy** of the institutional arrangements for legislative deliberation on secret programs. Some members have declined opportunity to learn about domestic-spying practices, while others have opposed placing restrictions on the NSA for fear of giving terrorists any tactical advantage. cONgress aND surveillaNce POlicy: geNeral cONsiDeratiONs Our account of the development of the metadata surveillance programs centers on Congress and its interactions with several institutions—the president, the FISA Court, and the Justice Department, among others—and proceeds through several phases. We begin with brief theoretical remarks on the central institutional properties that drive the account. We argue that Congress as an institution has **great difficulty acting** in any consistent, balanced way **to protect privacy interests on surveillance issues**. On one hand, when setting broad priorities in general terms, it attaches considerable weight to privacy interests. On the other hand, when faced with specific issues of investigatory authority, it readily makes sweeping, indiscriminate sacrifices of those same interests—even without distinct evidence of serious threat. overlapping jurisdictions among the Homeland Security, Intelligence, and Judiciary panels prevent any one of them from being held accountable for stalled policy or lapses in oversight.4 The lack of consistency in defending privacy interests has several sources. Most fundamental, legislators reflect the attitudes and demands of their constituencies. The American public has generally been quite willing to surrender privacy rights for the sake of enhanced security, against even unspecified, highly indefinite terrorist threats.1 In addition, there are generally no well-

organized, powerful constituencies for privacy interests.2 But several factors exaggerate the effect. First, decisions on surveillance are largely about risk (for example, the probability of an abusive "fishing expedition" versus that of a major terrorist attack). Congress members have strong temptations to defer to the executive branch on decisions that could, therefore, turn out badly. Second, the president's party is more interested in defending the executive than in checking its decisions.3 Third, surveillance politics is complicated by long-term partisan and ideological divisions that were shaped by the particular conflicts of the Cold War era. For generations, the main targets of intelligence-agency surveillance have been mostly on the political left. This history may inhibit the response of many Republicans to the threat of intrusive government, even though the main targets and likely victims of intrusive surveillance are no longer a well-defined ideological category. Fourth, the committee system has been another impediment: overlapping jurisdictions among the Homeland Security, Intelligence, and Judiciary panels prevent any one of them from being held accountable for stalled policy or lapses in oversight.4 Finally, and very important, Congress has particular difficulties with policies that must be decided in secret—such as those for controlling technologically advanced surveillance methods. To prevent profuse leaks, Congress and the executive have imposed severe restrictions on members' access to information. When the full House or Senate decides policy, however, the restricted information encourages some members to opt out of serious participation, degrading the intelligence of deliberation and promoting deference to the executive. Lacking any settled disposition on surveillance issues, Congress will respond to the leadership, and sometimes merely the political cover, provided by other institutions—especially the president, the intelligence agencies, and the FISA Court. It may take cues from the Justice Department or other executive agencies, and it will defer to rulings by the regular federal courts. In the end, Congress's performance in protecting privacy may depend on the design of the legislative arrangements for dealing with secret programs and on the structures and missions of relevant administrative and judicial institutions

AT: Prez Powers

Obama wouldn't support executive delegation: No desire for pres power

Ruder, **Phd in Political Science 2014**

Alex I. "Institutional Design and the Attribution of Presidential Control: Insulating the President from Blame." Quarterly Journal of Political Science 9.3 (): 301-335. http://www.nowpublishers.com/articles/quarterly-journal-of-political-science/QJPS-13093?journal=Foundations+and+Trends%C2%AE+in+Entrepreneurship

At the same time, presidential scholars have argued that voters hold presidents responsible for nearly all agency actions (Moe and Wilson, 1994). I find that voters can be sophisticated allocators of blame. Survey respondents are far less likely to blame the president for an agency's action when informed that the agency is insulated from presidential control. Moreover, respondents are generally more likely to blame Congress and the agency leadership itself for agency actions. Finally, a large literature in bureaucratic politics discusses the conditions under which legislatures delegate policymaking authority to agencies. The standard model of bureaucratic discretion frames delegation largely as a tradeoff between control and expertise: more discretion is given as preferences between principal and agent align or as policy complexity is increased (Bawn, 1995; Epstein and O'Halloran, 1996, 1999; Huber and Shipan, 2002; Callander, 2008). In this literature, extensions of the standard model explicitly include agency structure. For example, Volden (2002) shows that the executive and legislative branches are more likely to empower independent agencies under divided government. More recent works, which discuss delegation in relation to representation and accountability (Maskin and Tirole, 2004; Fox and Jordan, 2011; Krause, 2013), respond to scholars who are wary of the anti-democratic consequences of delegation (Lowi, 1979; Fiorina, 1982; Schoenbrod, 1993).[1] These scholars suggest that Congress delegates authority to agencies in order to avoid blame for the often controversial elements of policymaking. Many have criticized this stance, as it seems at odds with empirical observations of legislative attempts to control these agencies. Posner and Vermeule (2002), for example, explicitly state that democratic accountability is secure as long as media provides voters with information about elected officials and their bureaucratic agents. The results presented here show that elected officials must consider more than preferences and agency expertise when delegating policymaking authority to an agency. Delegation to executive agencies increases control, but at the cost to the president of greater attribution of responsibility for the agency's actions. Less control may reduce the officials' policy utility, but with the benefit of being shielded from electoral blame. These effects, however, depend largely on the accuracy of the information given to voters through sources such as the news.

Prez powers don't get abused

Posner and Vermeule, Professors of Law University of Chicago. 02 (Eric and Adrian Vermeule: *University of Chicago Law Review:* "Interring the Nondelegation Doctrine" published Fall, 2002)KalM

But it is true that the naive view of delegation commits us to defending the constitutionality of, for example, a statute granting the president statutory authority to make rules on any subject

[1] Gailmard and Patty (2012) provide an excellent discussion of why less accountability, in terms of political control, induces agencies to acquire the very expertise that justifies delegation in the first place.

within the constitutional powers of Congress. If this is too fanciful, consider the example beloved of nondelegation proponents: the Reichstag's 1933 decision to enact a statute authorizing Adolf Hitler to rule by decree. n82 How do we know it couldn't happen here? (And maybe it already did, depending on how broad we take the National Industrial Recovery [*1742] Act, invalidated on nondelegation grounds in 1935, n83 to have been.) Shouldn't constitutional law hold some sort of nondelegation rule in reserve against that eventuality? All this strikes us as a flawed form of argument on at least four grounds. (1) It won't happen. Despite the breadth in the modern era of congressional grants of statutory authority to the executive, a dominant fact of modern government is that Congress and the president are institutional rivals along many dimensions. Distrust of executive agents frequently causes Congress to attempt to control the smallest details of executive action, as it did in the hyper-detailed environmental legislation of the 1960s and 1970s. n84 **No serious person compares Roosevelt to Hitler**.

Making rules around hype doesn't solve real problems

Posner and Vermeule, Professors of Law University of Chicago. 02 (Eric and Adrian Vermeule: *University of Chicago Law Review:* "Interring the Nondelegation Doctrine" published Fall, 2002)KalM

(4) In general, developing rules with a view to improbable political scenarios is poor constitutional design. No engineer builds a house capable of resisting a meteor strike; the house would be a bunker unusable for its primary purpose. Tailoring constitutional rules to the improbable case, rather than the usual case, has the same defects. Constitutional law should instead be tailored to the run of cases that might occur under plausible political circumstances; n87 to tailor it to the most lurid and feverish of hypotheticals is to distort its function. On both methodological and political grounds, there's no reason to fear a slide down the slippery slope, and no reason to twist the constitutional structure out of shape merely to provide against an unlikely political disaster.

Non-delegation doesn't solve prez powers if they are bad

Posner and Vermeule, Professors of Law University of Chicago. 02 (Eric and Adrian Vermeule: *University of Chicago Law Review:* "Interring the Nondelegation Doctrine" published Fall, 2002)KalM

(3) If it did happen, and it were bad, the nondelegation doctrine couldn't prevent it anyway. If an Adolf Hitler came within striking distance of attaining power in the modern United States, it would presumably be unwise to rely on the nondelegation doctrine, or any other [*1743] esoteric legal principle, as the final barrier. Far better to rely on a countervailing power with real muscle, like an opposing political party or the army. Note that the Schechter Poultry decision is not a plausible example of the Supreme Court invoking the nondelegation doctrine to save the nation from a slide into executive tyranny. The National Industrial Recovery Act had already lost political support by the time the Court heard the nondelegation challenge; the Court's decision to invalidate the statute amounted to little more than piling on. There's little reason to think that the Court would ever enforce

the doctrine against a nationwide majority convinced that a broad grant of statutory authority to the executive was necessary to national survival.

AT: FISA/FISC CP

2AC FISA/FISC CP

Perm do both

Perm do the CP

Non-compliance guarantees circumvention – no oversight means precedent is reversed or ignored by lower FISC court or the NSA

Stanley 13 Jay Stanley, Senior Policy Analyst, ACLU Speech, Privacy & Technology Project. "The FISA Court's Problems Run Deep, and More Than Tinkering is Required" NOVEMBER 21, 2013. ACLU. https://www.aclu.org/blog/fisa-courts-problems-run-deep-and-more-tinkering-required

With the latest release of documents about the NSA and the FISA Court (this one in response to an ACLU/EFF Freedom of Information Act request) we now have yet more evidence that the NSA's compliance with the court's orders has been poor. We learn, for example, that, according to the court, "the NSA exceeded the scope of authorized [metadata] acquisition continuously during the more than [redacted] years of acquisition under these orders." And, "NSA's record of compliance with these rules has been poor." Extraordinary powers require extraordinary oversight. But we're gradually beginning to see the full scope of the FISA Court's inadequacy as an oversight institution. The latest disclosures follow other evidence that this court has had less than a stellar record in enforcing its rulings. Previous documents revealed, for example, that the NSA repeatedly violated court-imposed limits on its surveillance powers, and that the agency experienced numerous so-called "compliance incidents" such as staff using the agency's tremendous powers to spy on love interests. And as my colleague Jameel Jaffer points out, the record suggests that the government has felt free to make bolder, less-supportable arguments before the secret FISA Court than it's willing to make before real courts that are open to the public. It has often been pointed out that the FISA Court is not a normal court, a big reason being that all of its proceedings are ex parte (that is, there is no adversarial proceeding, the court only hears from one side) and that it operates within an ocean of secrecy and compartmentalization. My colleagues Patrick Toomey and Brett Max Kaufman yesterday detailed the sorry story of how these characteristics allowed the court to stretch the law to permit bulk metadata collection.

Can't solve and turn – no accountability for decisions, no review process, and no investigative authority - destroys court transparency

Setty 15 (Sudha Setty; Professor of Law and the Associate Dean for Faculty Development and Intellectual Life at Western New England University School of Law; "Surveillance, Secrecy, and the Search for Meaningful Accountability" Faculty Publications; Digital commons; Western New England University School of Law; 51 STAN. J. INT'L L 16 (2015) http://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1305&context=facschol)

Two forms of relatively weak judicial review exist over the NSA Metadata Program. The primary mechanism by which the NSA has legitimated its surveillance activities is the Foreign Intelligence Surveillance Court (FISC), a closed, non-adversarial setting. Article III courts have had the opportunity to consider post-9/11 surveillance programs on numerous occasions, and with few exceptions, Article III courts have refused to review matters of national securityrelated surveillance. I. Foreign Intelligence Surveillance Court The FISC differs from Article III courts in numerous ways: Its statutory scope is limited to matters of foreign intelligence gathering; its judges are appointed in the sole discretion of the Chief Justice of the United States Supreme Court; its proceedings are secret; its opinions are often secret or are published in heavily redacted form; and its process is not adversarial as

only government lawyers make arguments defending the legality of the surveillance being contemplated. 70 Many of these differences bring into doubt the legitimacy of the court, its ability to afford adequate due process regarding civil liberties concerns, and its ability to uphold the rule of law in terms of government accountability. Compounding this legitimacy deficit is the FISC's own loosening of the relevance standard under Section 215 of the PATRIOT Act such that the FISC has found that bulk data collection without any particularized threat or connection to terrorism is legally permissible. 71 Historically, the FISC has rejected NSA surveillance applications too infrequently to be considered a substantial check on government overreach as an ex ante matter. 72 As an ex post matter, it is unclear to what extent the FISC's work guarantees any meaningful accountability over NSA surveillance activities. On the one hand, because the FISC lacks an adversarial process and has no independent investigative authority, the FISC only addresses ex post compliance problems when the government itself brings the problem to the comt's attention. 73 As such, FISC judges rely on the statements of the government as to the govemment's own behavior and lack the authority to investigate the veracity of the government's representations. 74 For example, in 2011, the FISC found one aspect of the surveillance program brought to its attention months after the program went into effect to be unconstitutional. 76 Additionally, in one declassified opinion, the FISC critiques the NSA's sloppy over-collection of metadata of U.S. communications, and questions the efficacy of bulk data collection as a national security measure. 77 At one point, the FISC sanctioned the NSA for overreaching in saving all metadata and mining daily metadata against an "alert list" of approximately 17,800 phone numbers, only 10% of which had met FISC's legal standard for reasonable suspicion. 78 On such occasions, the administration has modified problematic aspects of the surveillance and continued forward without further impediment by the FISC. 79 On the other hand, the fact that the NSA itself has brought potential compliance incidents to the notice of the FISC indicates at least some internal policing of these programs. However, this is hardly an effective substitute for external review and accountability mechanisms that would ensure that consistent controls are in place. Further, the self-reporting of these compliance incidents does not in any way allow for discourse over the larger structural questions surrounding the surveillance programs. Finally, the ability of the FISC to act as an effective check on NSA oveneaching is severely limited by the secrecy and lack of information available to the FISC judges. Judge Reggie B. Walton, formerly the Chief Judge of the FISC, lamented that "[t]he FISC is forced to rely upon the accuracy of the information that is provided to the Court .... The FISC does not have the capacity to investigate issues of noncompliance .... " 81 The ability of the NSA to not only gather and retain bulk metadata, but also to build in backdoor access into data files despite private encryption efforts has been largely sanctioned by the FISC based on NSA representations as to the seriousness of the security threats posed to the nation. 82 In an enviromnent in which there is a tremendous fear of being held responsible for any future terrorist attack that might occur on U.S. soil, 83 and in which there is a information deficit for those outside of the intelligence community, the FISC has consistently deferred to the NSA's assertions and has not been able to act as an effective accountability mechanism.

That’s key to the democratic process – ensures further infringements on rights and replicates the error – perm is key to transparency and public engagement

HRW 14 (Human Rights Watch; Kenneth Roth; Executive Director of HRW; “Letter to President Obama Urging Surveillance Reforms” January 16, 2014 http://www.hrw.org/news/2014/01/16/letter-president-obama-urging-surveillance-reforms)

Vast changes to US law on surveillance have happened in secret without adequate oversight. The lack of public information has prevented debate about issues of great importance to the democratic process and individual rights. In addition, the companies and organizations that have participated in US surveillance programs have been prevented from disclosing basic data about the information that the government has been demanding of them. You have in the past stated that you welcome a debate

about these matters, and your decision to establish the review group to recommend possible reforms implicitly recognizes the importance of this discussion. Yet **it is impossible to have a healthy and open democratic debate about these matters when the public – and most of the US Congress – is kept in the dark about the scope of the programs and their implementation**. There are legitimate reasons to classify certain types of information – for example, to protect the identities of vulnerable individuals or to protect the public from harm. But classification can too easily become a tool to prevent embarrassment or exposure of wrongdoing, or to conceal information about the functioning of public institutions. Protecting national security does not have to come at the expense of public accountability. For example, there was no legitimate reason why the extent of the government collection of metadata should have been kept from the general public. We urge you to disclose much more about the scope of terms of surveillance occurring under Section 702 and Executive Order 12333, which could have enormous implications for the rights of foreigners abroad. US persons have the same interest as those abroad in knowing when their privacy rights are protected, and that can be revealed without disclosing information that would threaten national security. We also encourage you to support legislative reforms suggested by the review group, including transparency measures to require greater reporting to Congress and the public about use of intelligence gathering powers, and to permit technology companies to report on the number of orders they receive for user data. They also recommended a strong presumption of transparency in decisions about whether to keep programs of the magnitude of the 215 bulk telephony metadata program secret. These measures will not only assist democratic debate today, but guard against abuse of power in the future. The review group also made a number of other specific recommendations with which we agree, and which we hope you adopt and encourage Congress to act on. These include: * Ending the widespread use of National Security Letters (NSLs) without judicial review: National security letters are a form of administrative subpoena that give the FBI and other government agencies expanded power to compel the production of records. Under the PATRIOT Act of 2001, authorization for their use was greatly expanded; the need for individualized suspicion was reduced and a broader array of officials became authorized to issue them. As a result, the use of NSL's dramatically increased to the point where the FBI currently issues nearly 60 NSLs per day without judicial approval and accompanied by strict gag orders on the recipients. According to a report by the Office of the Inspector General in the Department of Justice, the lack of oversight has resulted in serious compliance issues and extensive misuse of NSL authority.[9] The review group effectively called for an end to this practice, saying that NSLs should be subject to judicial authorization, like 215 orders. We agree with these recommendations, and though they require Congressional action we strongly urge you to support them. * Creating an Institutional Advocate at the Foreign Intelligence Surveillance Court (FISC): For years, the FISC has been authorizing dramatic changes to US law in secret without any adversary's view being part of the process. That is a recipe for decisions that set the wrong balance between security and rights, because any judge is more likely to be persuaded by the side whose views he or she hears. The panel supported creating an institutional advocate with appropriate security clearances at the FISC to represent the public's privacy interests. We strongly urge you to support legislative action on this matter. * Strengthening the Privacy and Civil Liberties Oversight Board (PCLOB) and Investing It with Whistleblower Reporting Authority: The PCLOB was established by Congress after September 11, 2001, to conduct oversight of the intelligence community and make recommendations about how to improve privacy and civil liberties protections. But for years, the board remained dormant, without a chairman or staff. It now has a chairman and staff but limited resources. If strengthened further and provided with adequate resources, it can help to check the powers of an intelligence

community that gravitates toward over-classification and secrecy. Additionally, we agree with the review group that the PCLOB should be empowered to receive whistleblower complaints. Would-be whistleblowers need an independent and effective body to which they can report abuses or wrongdoing without having to report them internally first. A presidential policy directive issued in 2012, intended to improve whistleblower protections for federal employees, does not cover contractors and requires whistleblowers to report to a person in their direct chain of command instead of a more independent body.[10] While this would not adequately address the need for whistleblower reform that Human Rights Watch has previously identified, it would be a starting point. More complete whistleblower reform would require more than just creating an independent body to report wrongdoing. It would also require providing whistleblowers with legal protection against retaliation and legal defenses to prosecution. We urge you to propose to Congress a law that will grant such protections to federal employees and consultants in this sector. The rules that the United States establishes today on these matters will likely govern surveillance long after your administration has completed its term. They will also set a key precedent to which other countries will look to as they debate crucial questions about privacy and Internet freedom across the world. We strongly urge you, even as US surveillance capabilities continue to increase, to ensure that those capabilities are effectively regulated, within a framework of the rule of law, maximum transparency, and respect for democracy and human rights. Adopting the recommendations outlined above will be a first step in that direction.

2AC Addon — Internet Freedom

Public surveillance reform key to revive US credibility on the internet freedom agenda
Ries '14

(Internally quoting Zeke Johnson, director of Amnesty International's Security & Human Rights Program. Also internally quoting Cynthia M. Wong is the senior researcher on the Internet and human rights for Human Rights Watch. Before joining Human Rights Watch, Wong worked as an attorney at the Center for Democracy & Technology (CDT) and as director of their Project on Global Internet Freedom. She conducted much of the organization's work promoting global Internet freedom, with a particular focus on international free expression and privacy. She also served as co-chair of the Policy & Learning Committee of the Global Network Initiative (GNI), a multi-stakeholder organization that advances corporate responsibility and human rights in the technology sector. Prior to joining CDT, Wong was the Robert L. Bernstein International Human Rights Fellow at Human Rights in China (HRIC). There, she contributed to the organization's work in the areas of business and human rights and freedom of expression online. Wong earned her law degree from New York University School of Law. Also internally quoting Center for Democracy and Technology Senior Counsel Harley Geiger – Brian Ries is Mashable's Real-Time News Editor. Prior to working at Mashable, Brian was Social Media Editor at Newsweek & The Daily Beast, responsible for using Twitter, Facebook, and Tumblr to cover revolutions, disasters, and presidential elections. During his time at The Daily Beast, he contributed to a team that won two Webby Awards for "Best News Site". "Critics Slam 'Watered-Down' Surveillance Bill That Congress Just Passed" - Mashable - May 22, 2014 – http://mashable.com/2014/05/22/congress-nsa-surveillance-bill/)

As a result, many of its initial supporters pulled their support. "We supported the **original** USA Freedom act, **even though it didn't do much for non-US persons,"** Zeke Johnson, director of Amnesty International's Security & Human Rights Program told Mashable after Thursday's vote. He described the **original version as "a good step to end bulk collection."** However, in its current version, it's not even clear that this bill does that at all, Johnson said. He added that Congress left a lot of "wiggle room" in the bill – something he said is a real problem. "Where there is vagueness in a law, **you can count on the administration to exploit it,"** Johnson said. However, Laura W. Murphy, director of the ACLU Washington Legislative Office, took a more positive view of the bill. "While far from perfect, this bill is an unambiguous statement of congressional intent to rein in the out-of-control NSA," she said in a statement. "While we share the concerns of many — including members of both parties who rightly believe the bill does not go far enough — without it we would be left with no reform at all, or worse, a House Intelligence Committee bill that would have cemented bulk collection of Americans' communications into law." The Electronic Frontier Foundation simply called it "a weak attempt at NSA reform." "The ban on bulk collection was **deliberately watered down** to be ambiguous and exploitable," said Center for Democracy and Technology Senior Counsel Harley Geiger. "We withdrew support for USA FREEDOM when the bill morphed into a codification of large-scale, untargeted collection of data about Americans with no connection to a crime or terrorism." And **Cynthia Wong**, senior Internet researcher at Human Rights Watch, said, "This so-called reform bill won't restore the trust of Internet users in the US and around the world. **Until Congress passes real reform, U.S. credibility and leadership on Internet freedom will continue to fade."**

That's key to the global economy
Kalathil '10

Shanthi Kalathil - Adjunct Faculty and Adjunct Lecturer in the Communication, Culture, and Technology (CCT) Master of Arts Program at Georgetown University. Kalathil has extensive experience advising the U.S. government, international organizations and nonprofits on supporting civil society, independent media, technology, transparency and accountability. Previously a senior Democracy Fellow at the U.S. Agency for International Development and she has authored or edited numerous policy and scholarly publications, including the edited volume Diplomacy, Development and Security in the Information Age. She has taught courses on international relations in the information age at the Monterey Institute of International Studies and Georgetown University. Kalathil holds degrees from U.C. Berkeley and the London School of Economics and Political Science – "Internet Freedom: A Background Paper" – October 2010 - Available via: http://www.aspeninstitute.org/sites/default/files/content/images/Internet_Freedom_A_Background_Paper_0.pdf

As use of the Internet has grown exponentially around the world, so too have concerns about its defining attribute as a free and open means of communication. Around the world, countries, companies and citizens are grappling with thorny issues of free expression, censorship and trust. With starkly different visions for the Internet developing, this era presents challenges—and also opportunities—for those who wish to ensure the Internet remains a **backbone of** liberty and **economic growth. U.S. officials have made clear their vision for the Internet**'s future. President Obama, in a speech before the UN General Assembly, said that **the U.S. is committed** to promoting new communication tools, "so that people are empowered to connect with one another and, in repressive societies, to do so with security. We will support a free and open Internet, so individuals have the information to make up their own minds." His words were reinforced by FCC Chairman Julius Genachowski: "It is essential that we preserve the open Internet and stand firmly behind the right of all people to connect with one another and to exchange ideas freely and without fear."1 Indeed, a free, widely accessible Internet stands **at the heart of** both global communication and **global commerce.** Internet freedom enables dialogue and direct diplomacy between people and civilizations, facilitating the exchange of ideas and culture while bolstering trade and economic growth. Conversely, censorship and other blockages stifle both expression and innovation. When arbitrary rules privilege some and not others, the investment climate suffers. Nor can access be expanded if end users have no trust in the network. However, making reality live up to aspirations for Internet freedom can prove difficult. Numerous global initiatives—spearheaded by governments, private sector and civil society—are attempting to enshrine the norms, principles and standards that will ensure the Internet remains a public space for free expression. At the same time, other norms are fast arising—particularly those defined by authoritarian countries that wish to splinter the Internet into independently controlled fiefdoms. Even as Internet access has expanded around the world, many governments are attempting to control, regulate and censor the Internet in all its forms: blogs, mobile communication, social media, etc. Such governments have devoted vast resources to shaping the Internet's development within their own borders, and they are now seeking to shape the Internet outside their borders as well. Indeed, Internet experts are worried that national governments of all stripes will increasingly seek to extend their regulatory authority over the global Internet, culminating in a balkanized Internet with limited interoperability. Hence, the next few years present a distinct window of opportunity to elevate the principles of the free exchange of ideas, knowledge and commerce on the Internet. While U.S. leadership within this window is vital, a global effort is necessary to ensure that these norms become a standard part of the Internet's supporting architecture.

Decline leads to war
Merlini '11

[Cesare Merlini, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs (IAI) in Rome. He served as IAI president from 1979 to 2001. Until 2009, he also occupied the position of executive vice chairman of the Council for the United States and Italy, which he co-founded in 1983. His areas of expertise include transatlantic relations, European integration and nuclear non-proliferation, with particular focus on nuclear science and technology. A Post-Secular World? DOI: 10.1080/00396338.2011.571015 Article Requests: Order Reprints : Request Permissions Published in: journal Survival, Volume 53, Issue 2 April 2011 , pages 117 - 130 Publication Frequency: 6 issues per year Download PDF Download PDF (~357 KB) View Related Articles To cite this Article: Merlini, Cesare 'A Post-Secular World?', Survival, 53:2, 117 – 130]

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even **involving the use of nuclear weapons.** The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be

exacerbated. One way or another, the secular rational approach would be sidestepped by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism.

1AR Transparency Turn

FISA courts undermine democracy

Timm 13 (Trevor Timm; co-founder and the executive director of the Freedom of the Press Foundation. He is a journalist, activist, and lawyer; JD in law from New York Law school; "Reform the FISA Court: Privacy Law Should Never Be Radically Reinterpreted in Secret" JULY 10, 2013; https://www.eff.org/deeplinks/2013/07/fisa-court-has-been-radically-reinterpreting-privacy-law-secret)

It's likely the precedent laid down in the last few years will stay law for years to come if the courts are not reformed. FISA judges are appointed by one unelected official who holds lifetime office: the Chief Justice of the Supreme Court. Under current law, for the coming decades, Chief Justice John Roberts will solely decide who will write the sweeping surveillance opinions few will be allowed to read, but which everyone will be subject to. Judge James Robertson was once one of those judges. He was appointed to the court in the mid-2000s. He confirmed yesterday for the first time that he resigned in 2005 in protest of the Bush administration illegally bypassing the court altogether. Since Robertson retired, however, the court has transitioned from being ignored to wielding enormous, undemocratic power. **"What FISA does is not adjudication, but approval**," Judge Robertson said. "This works just fine when it deals with individual applications for warrants, but the [FISA Amendments Act of 2008] has turned the FISA court into administrative agency making rules for others to follow." Under the FISA Amendments Act, "the court is now approving programmatic surveillance. **I don't think that is a judicial function."** He continued, "**Anyone who has been a judge will tell you a judge needs to hear both sides of a case…This process needs an adversary**." **No opposing counsel, rulings handed down in complete secrecy by judges appointed by an unelected official, and no way for those affected to appeal**. As The Economist stated, **"Sounds a lot like the sort of thing authoritarian governments set up when they make a half-hearted attempt to create the appearance of the rule of law**." This scandal should precipitate many reforms, but one thing is certain: **FISA rulings need to be made public so the American people understand how courts are interpreting their constitutional rights. The very idea of democratic law depends on it.**

Further lack of transparency undermines public confidence in federal surveillance – stymies legal reform and ensures further violations

Butler 13 (Alan Butler; Appellate Advocate Counsel, Electronic Privacy Information Center; J.D., UCLA School of Law; B.A., magna cum laude, Economics, Washington University in St. Louis. "Standing Up to Clapper: How to Increase Transparency and Oversight of FISA Surveillance" New England Law Review v. 48, 55, p 59-100; 2013)

The failure to publish FISC opinions over the last ten years is the root of the current loss of public confidence in the Administration's use of foreign intelligence authorities.192 The court's legal analysis and conclusions, as opposed to the operational details of surveillance activities, are part of the law that cannot properly develop without public oversight. Promulgation of the law is a central requirement of democracy; the **failure** to promulgate **results in a "fail[ure] to make law**." 193 Both the FISC and the Attorney General bear the responsibility to promote public understanding of the FISA process and what it encompasses. This is especially true where the court attempts to strike some balance between national security and civil liberties concerns.194 Secret law undermines our system of checks and balances by disabling the democratic oversight by which the public governs its government.195

1AR Solvency Deficit

Adversarial system is key to consistent rulings – even if they fiat FISCR compliance, trials still ensure NSA noncompliance – specifically true of 702 and 4th amendment rulings

Butler 13 (Alan Butler; Appellate Advocate Counsel, Electronic Privacy Information Center; J.D., UCLA School of Law; B.A., magna cum laude, Economics, Washington University in St. Louis. "Standing Up to Clapper: How to Increase Transparency and Oversight of FISA Surveillance" New England Law Review v. 48, 55, p 59-100; 2013)

The recent revelations about the extent and nature of FISA surveillance have highlighted the important and unreviewed body of constitutional and statutory law being developed by the FISC.205 Unlike other ex parte proceedings, the FISC reviews of applications submitted under Section 702 require extensive analysis and create precedent for the court.206 **But this lawmaking process only works when the judges hear both sides of the argument**. In addition, the Fourth Amendment issues and technical details of surveillance tactics are very complex, **and FISC judges cannot adequately evaluate the various interests without in-depth briefing on both sides**. Any FISC reform should address this problem by providing for a "Special Advocate" to the court, who would operate with a security clearance and argue in opposition to the Department of Justice on important legal questions regarding FISA and the Constitution. The FISC is developing complex legal interpretations under a provision of the FAA that requires the FISC to find that the "targeting and minimization procedures" adopted by the Government are "consistent with . . . the fourth amendment to the Constitution . . . ."207 **But these decisions are necessarily complex and difficult to make in the abstract context of a Section 702 application because Fourth Amendment analysis is necessarily fact-based**.208 In the American judicial system, facts are developed through an adversarial process.209 The government has an interest in arguing in favor of the surveillance applications that it submits to the FISC; a Department of Justice lawyer's role is not to present the judges with reasons why the application might be denied or modified. There is currently no advocate on the other side of these complex and novel issues judged by the FISC. And while recipients of FISA-authorized surveillance orders and directives can file challenges under certain circumstances,210 they cannot review the classified opinions or government briefs and do not have the necessary opportunity or incentive to develop fact-based constitutional arguments. The difficulty in having an adversarial process at the FISC is that the materials presented by the government are highly classified. However, classified proceedings have become more prevalent over the past ten years in the United States211 as well as in the United Kingdom.212 The use of specially appointed, security-cleared attorneys to challenge government legal arguments in national security cases has been in place for more than a decade in the United Kingdom.213 The use of such a "Special Advocate" would be appropriate in the FISA context where FISC judges are asked to make novel and significant legal determinations regarding important constitutional rights. Two former FISC judges,214 and other prominent legal scholars,215 have proposed adding such an adversarial position to ensure that legal developments at the FISC do not suffer from unbalanced advocacy.216

AT: SOP CP

2AC

2AC Nondelegation DA

The CP rules on the nondelegation doctrine – their ev

Slobogin 15

(Christopher -Milton Underwood Professor of Law, Chris Slobogin has authored more than 100 articles, books and chapters on topics relating to criminal procedure, mental health law and evidence. Named director of Vanderbilt Law School's Criminal Justice Program in 2009, Professor Slobogin is one of the five most cited criminal law and procedure law professors in the country, according to the Leiter Report, Vanderbilt University Law School, Standing and Covert Surveillance, Pepperdine Law Review, February 18, 2015, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2567070, JZG)

140 More specifically, panvasive surveillance might be challengeable on one of three grounds: (1) the surveillance is not authorized by the appropriate legislative body; (2) the authorizing legislative body does not meaningfully represent the group affected by the surveillance; or (3) the resulting legislation or law enforcement's implementation of it violates notions underlying the non-delegation doctrine.141 The first and third of these grounds are based explicitly on separation of powers concerns. As I pointed out, some panvasive surveillance has not been legislatively authorized or has been authorized by legislation that does not announce an "intelligible principle" governing the implementing agency.142 Panvasive surveillance is also defective under non-delegation principles if, as I have argued is true of the NSA's metadata program, it is implemented by rules or practices that are not explained, were produced through flawed or non-transparent procedures, or are applied unevenly.143

That prevents executive agencies from making regulation – like the EPA

Rappaport 14

(MIKE - Professor Rappaport is Darling Foundation Professor of Law at the University of San Diego, where he also serves as the Director of the Center for the Study of Constitutional Originalism. Professor Rappaport is the author of numerous law review articles in journals such as the Yale Law Journal, the Virginia Law Review, the Georgetown Law Review, and the University of Pennsylvania Law Review, Reinvigorating the Nondelegation Doctrine through the Constitutional Amendment Process, SEPTEMBER 12, 2014, http://www.libertylawsite.org/2014/09/12/reinvigorating-the-nondelegation-doctrine-and-the-constitutional-amendment-process/, JZG)

One of the ways that small government and democratic accountability could be promoted in the modern world is through the reinvigoration of the nondelegation doctrine. Under that doctrine, administrative agencies would be prohibited from making discretionary legislative decisions and therefore Congress would have to do so. If Congress, rather than administrative agencies, were to make the discretionary legislative decisions, this would both reduce the number of regulations that were enacted and would ensure that members of Congress would have to be responsible for their decisions. By contrast, under the current system of delegation, the administrative agencies can use the efficiency of the administrative process to pass large numbers of regulations and members of Congress can avoid accountability for these regulations, always claiming that they did not intend any particular regulation which might turn out to be unpopular or controversial.

The EPA will create climate regulations now that are key to signaling support for Paris Harder 15

(Amy, Obama Administration Readies Big Push on Climate Change, June 9, 2015, http://www.wsj.com/articles/obama-administration-readies-big-push-on-climate-change-1433873269, JZG)

The Obama administration is planning a series of actions this summer to rein in greenhouse-gas emissions from wide swaths of the economy, including trucks, airplanes and power plants, kicking into high gear an ambitious climate agenda that the president sees as key to his legacy. The Environmental Protection Agency is expected to announce as soon as Wednesday plans to regulate carbon emissions from airlines, and soon after that, draft rules to cut carbon emissions from big trucks, according to people familiar with the proposals. In the coming weeks, the EPA is also expected to unveil rules aimed at reducing emissions of methane—a potent greenhouse gas—from oil and natural-gas operations. And in August, the agency will complete a suite of three regulations lowering carbon from the nation's power plants—the centerpiece of President Barack Obama's climate-change agenda. The proposals represent the biggest climate push by the administration since 2009, when the House passed a national cap-and-trade system proposed by the White House aimed at reducing carbon emissions. Anticipating the rules, some of which have been telegraphed in advance, opponents of Mr. Obama's regulatory efforts are moving to block them. Senate Majority Leader Mitch McConnell (R., Ky.), is urging governors across the country to defy the EPA by not submitting plans to comply with its rule cutting power-plant emissions. Nearly all Republicans and some Democrats representing states dependent on fossil fuels say the Obama administration is going beyond the boundary of the law and usurping the role of Congress by imposing regulations that amount to a national energy tax driven by ideological considerations. "The Administration seems determined to double down on the type of deeply regressive regulatory policy we've already seen it try to impose on lower-and-middle-class families in every state," Mr. McConnell said in a statement. "These Obama administration regulations share several things in common with the upcoming directives: they seem motivated more by ideology than science, and they're likely to negatively affect the economy and hurt both the cost and reliability of energy for hard-working American families and small-business owners." Supporters of Mr. Obama's efforts say the regulatory push has the backing of both science and the force of law. They cite a 2007 Supreme Court decision that compelled the EPA to regulate greenhouse-gas emissions if the agency found they endanger the public's health and welfare, which the EPA did in 2009 with a scientific finding shortly after Mr. Obama became president. They also argue that the moves became necessary after the Senate in 2010 rejected the administration proposal to cap the amount of carbon emitted in the U.S. Mr. Obama in 2013 issued an executive order directing the EPA to issue the regulations, which it did a year later, in June 2014. "It's a demonstration of his commitment. He tried one path, it wasn't successful, so he took another path that was available," said Carol Browner, Mr. Obama's top climate adviser for the first two years of his administration and EPA administrator for President Bill Clinton. "He's following the law Congress passed in 1990," added Ms. Browner, referring to the 1990 Clean Air Act Amendments. The actions expected as soon as this week include a scientific finding concluding that carbon emissions from aircraft contribute to climate change, a move that legally prompts the requirement to regulate based on the 2007 ruling by the Supreme Court, and new carbon-emission standards for big trucks and trailers, such as a typical 18-wheeler semi-truck. Two factors are driving the timing of the push this summer. The administration wants to complete it ahead of December's United Nations summit on climate change, where world leaders will meet in Paris to decide whether to agree on a global accord to cut carbon emissions. The EPA's regulatory agenda represents nearly everything Mr. Obama is set to offer world leaders on what the U.S. is doing to address climate change. Secondly, once the EPA rules on emissions by power plants become final, states will have a year to submit plans while lawsuits challenging the rule are expected to be heard by the courts. The administration wants to make sure that its officials can oversee as much of these two developments as possible instead of relying on the next president, especially if it is one of the GOP White House candidates who have expressed opposition to the EPA's climate agenda altogether. "When you're regulating as much of the economy as he [Mr. Obama] is attempting to regulate by executive order, that's clearly an overreach," said Tim Phillips, president of Americans for Prosperity, a political advocacy group backed by the wealthy Koch brothers.

By preventing the EPA from doing regulations the CP allows the Senate to block

*GOP will also crush NEPA

Plautz 15

(Jason, How Mitch McConnell Is Attacking Obama's EPA, 6-16-15, http://www.nationaljournal.com/energy/mitch-mcconnell-epa-climate-change-appropriations-20150616, JZG)

June 16, 2015 Senate Majority Leader Mitch McConnell said he joined the appropriations subcommittee in charge of the Environmental Protection Agency this year to "fight back against this administration's anti-coal jobs regulations." Looks like he's doing just that. The fiscal 2016 spending bill passed by the Interior and Environment Subcommittee Tuesday includes language that would bar federal enforcement of the EPA's rules limiting greenhouse-gas emissions for existing power plants. That would allow states to opt out of the rule without fear of the EPA stepping in with a federal implementation plan. The rider on the EPA's power-plant rule would represent a significant blow to President Obama's climate plan by giving states the opportunity to sit out rather than crafting an individual plan to clean up its power plants and improve energy efficiency. McConnell has been pushing his "just say no" plan to governors, warning that the climate rule will kill jobs while delivering minimal environmental benefits. McConnell earlier this year wrote to all 50 governors telling them to sit out the EPA rule, saying the plan was "already on shaky legal grounds" and that EPA was out of bounds in requiring states to write plans to cut their emissions. So far only one governor, Oklahoma's Mary Fallin, has said publicly she would opt out, although Wisconsin Gov. Scott Walker, an expected presidential candidate, has indicated he would opt out as well. Overall, the $30.01 billion bill would cut $539 million from the EPA compared to the fiscal 2015 enacted levels, for a total funding level of $7.6 billion. That's also well below President Obama's request of $8.6 billion. The bill seeks to cut $75 million as well from EPA clean-air and clean-water programs and cuts $7.5 million from civil and criminal enforcement at the agency. The bill passed by a voice vote, as is traditional in the Senate committee, and will face a full committee markup on Thursday. The spending bill also looks to block several other landmark EPA rules, like the agency's clarification of its Clean Water Act authority. Republicans have long argued that the so-called Waters of the United States rule is a regulatory overreach and would give EPA too much power over agriculture and construction interests. Another rider would bar the EPA from lowering the standard for ground-level ozone, or smog, until 85 percent of counties that currently do not meet the standard come into compliance. It would also block EPA from regulating lead fishing and tackle, and block a rule requiring companies to make financial plans to clean up hazardous-waste contaminations, which Democrats say would leave taxpayers on the hook. Another rider in the bill would stop a White House guidance instructing federal agencies to consider climate-change impacts when they conduct National Environmental Policy Act reviews for major infrastructure projects. Subcommittee Chairman Lisa Murkowski, R-Alaska, said the riders were designed to "rein in the EPA," adding that she was concerned the NEPA requirements would block construction projects.

Absent Paris, temperature rise and tipping points are inevitable

Ward 14 - Grantham Research Institute on Climate Change and the Environment at London School of Economics and Political Science

(Bob, "The UN climate change summit is a vital chance for the world to avoid catastrophe", 9-20-14, http://www.theguardian.com/commentisfree/2014/sep/20/un-climate-change-suummit-vital-leaders-act-reverse-carbon-emissions, JZG)

This week, I will witness a key test of whether we will betray our children, grandchildren and future generations through a lack of ambition and will. I will be at the headquarters of the United Nations in New York on Thursday to listen to David Cameron, Barack Obama and more than 120 other political leaders outline how they intend to tackle the growing risks from climate change. The summit has been called by the United Nations secretary general, Ban Ki-moon, to try to build high-level support for efforts to reach an international agreement to avoid dangerous levels of global warming, which is due to be signed in Paris

in December 2015. The ambition is that countries will outline how they intend to stop and reverse, within the next 10 years, the growth in annual emissions of carbon dioxide and other greenhouse gases, and put us on a path towards zero emissions by the second half of this century. Without a treaty, it will be hard for the world to avoid the potentially catastrophic impacts of the global average temperature rising by more than 2C degrees above its pre-industrial level. The consequences of creating a climate not seen on Earth for millions of years will not be suffered primarily by us but by those who will be here next century. By then, if the climate has warmed by three degrees or more, the Earth is likely to have passed a number of tipping points, such as irreversible melting of the Greenland ice sheet, leading to gradually accelerating and potentially irreversible disruption of lives and livelihoods. Even though nearly all of us will be gone by the start of the next century, it is we who have to determine in the next 15 months whether our descendants in the 22nd century will have to cope with the risks created by a climate that modern Homo sapiens, less than 250,000 years old, has never experienced. This choice is shockingly clear from the scientific evidence for climate change that has now been assembled. But we have constructed an economic and political system that leads us to disregard this threat to the prosperity and wellbeing of our children and grandchildren. We make decisions about our economy based on models that discount the future such that the further in the future someone is born, the less they are worth. This means the impacts of climate change on them are simply dismissed. Yet a major report published last week, The New Climate Economy, showed that many of the actions we have to take to prevent future generations from facing huge risks from climate change would also have other more immediate economic benefits, such as reducing local air pollution. We hold public discussions about climate change that are mediated by newspapers and broadcasters, many of whom are obsessed with perpetuating controversy about whether there is a problem, instead of focusing attention on what should be done. Yet few of the editors of our national media bother to cover the mounting evidence that the UK is already experiencing climate change. Our seven warmest years and four of our five wettest years on record have all occurred from 2000 onwards. This year has so far been both the warmest and wettest since records began in 1910, and has included the rainiest winter we have seen. But worst of all, we have constructed a political process that focuses on narrow, near-sighted concerns rather than on the profound long-term challenges that we face. In doing so, we have undermined the legitimacy of our democratic elections by alienating many young people who are turning their backs on traditional party politics, not out of apathy, but out of sheer disgust and disillusionment. It is a symptom of how little politics has to offer the young that none of the leaders of the three biggest political parties in parliament has made a major speech on climate change since the last election more than four years ago. Meanwhile, Ukip has surged in popularity, mainly among older voters, while embracing outright denial of climate change as part of its laughable energy policy that pledges a revival of coal, the dirtiest of the fossil fuels. It is little wonder then that there could be a record low turn-out of young voters in the general election next May, even though whichever party wins will help to decide whether there should be a strong international agreement on climate change. Our best hope is for young voters to express their despair about our dismal politics, not by boycotting the general election as some have advocated, but instead by speaking out loudly and fiercely, and forcing potential MPs to confront long-term issues such as climate change in the run-up to the next general election. In doing so, they would ensure that their best interests, and the best interests of future generations, are not betrayed by those political leaders who will decide in Paris next year whether the world will avoid dangerous climate change.

The impact is billions of deaths
Cummins ‘10

(Ronnie, International Director – Organic Consumers Association and Will Allen, Advisor – Organic Consumers Association, “Climate Catastrophe: Surviving the 21st Century”, 2-14, http://www.commondreams.org/view/2010/02/14-6)

The hour is late. Leading climate scientists such as James Hansen are literally shouting at the top of their lungs that **the world needs to reduce emissions** by 20-40% as soon as possible, and 80-90% by the year 2050, if we **are to avoid climate chaos, crop failures, endless wars, melting of** the **polar icecaps, and a disastrous rise in ocean levels. Either we** radically **reduce CO2** and carbon dioxide equivalent (CO2e, which includes all GHGs, not just CO2) pollutants (currently at 390 parts per million and rising 2 ppm per year) to 350 ppm, including agriculture-derived methane and nitrous oxide pollution, **or** else **survival** for the present and future generations **is in jeopardy**. As scientists warned at Copenhagen, business as usual and a corresponding 7-8.6 degree Fahrenheit rise in global temperatures means that the carrying capacity of the Earth in 2100 will be reduced to one billion people. Under this hellish scenario, **billions will die of thirst, cold, heat, disease, war, and starvation. If the U.S.** significantly **reduces** greenhouse gas **emissions, other countries will follow**. One hopeful sign is the recent EPA announcement that it

intends to regulate greenhouse gases as pollutants under the Clean Air Act. Unfortunately we are going to have to put tremendous pressure on elected public officials to force the EPA to crack down on GHG polluters (including industrial farms and food processors). Public pressure is especially critical since "just say no" Congressmen-both Democrats and Republicans-along with agribusiness, real estate developers, the construction industry, and the fossil fuel lobby appear determined to maintain "business as usual."

AT Democracy Impact – Squo Solves

Squo solves democracy – marriage ruling
Battle Creek Enquirer Editorial Board 6-27

(Editorial: Marriage ruling a victory for democracy, June 27, 2015, http://www.battlecreekenquirer.com/story/opinion/editorials/2015/06/27/marriage-ruling-victory-democracy/29395721/, JZG)

In a scathing dissent, Justice Antonin Scalia writes that the U.S. Supreme Court's ruling that states cannot ban gay marriage threatens our democracy. The irony is that it does precisely the opposite. The majority opinion handed down Friday in Obergefell v. Hodges is nothing less than a reaffirmation of the very tenets of our Constitution and our system of judicial review. It will stand among the most consequential rulings in U.S. history. Justice Anthony Kennedy's soaring rationale not only carried the day, but firmly established precedent ensuring that any law targeting people based on sexual orientation calls for heightened scrutiny. Further, its penultimate graph signals that no statute-grounded animus or religious doctrine can supersede the fundamental rights of a United States citizen, making this a decision that will transcend the issue of gay marriage and will reverberate for generations. Kennedy wrote: "No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right." The opinion's sweeping embrace of "equal dignity in the eyes of the law" has predictably unhinged Kennedy's strict-constructionist colleagues. Chief Justice John Roberts Jr., reading his dissent from the bench, chastened those basking in the glow of the ruling: "Celebrate today's decision … but do not celebrate the constitution." Scalia's ignoble, insulting rhetoric set a new low for the court's most conservative jurist, who called Kennedy's opinion "egotistic" and "silly," filled with "straining-to-be-memorable passages." Scalia's diatribe mocked the "hubris" of those in the 5-4 majority whom he accused, by virtue of their privilege and position, of making a "naked judicial claim to legislative – indeed, super-legislative power; a claim fundamentally at odds with our system of government." It often seems as though Scalia resides in an alternate universe, utterly blind to the forces of avarice, bigotry and political privilege that are indeed dismantling our system of government. It's a system in which cynically drawn legislative districts and statutory shrouds of secrecy around campaign finance and administrative functions continually marginalize the disenfranchised and people of modest means struggling to build lives for themselves and their families. It's a system in which lawmakers, including many in Michigan, are granted safe harbor to pursue blatantly discriminatory legislation, such as the bills Gov. Rick Snyder signed just this month allowing faith-based agencies to turn away gay and lesbian couples seeking state-supported adoptions. Another bill, just introduced, would allow only clergy to perform marriages. The court's ruling in in Obergefell v. Hodges is indeed a triumph, but it is far from the end of our collective struggle to ensure justice for all. Justice Kennedy's opinion sets us more firmly on that course, opening the door for more Americans to join the struggle. Scalia is simply wrong. That was a decisive victory for democracy.

1AR

1AR Nondelegation UQ

Climate control protections coming now – dramatically reduces warming
Restuccia 6-22

(Andrew - Andrew Restuccia is an energy reporter for POLITICO Pro. Prior to joining POLITICO, Restuccia covered energy and environmental politics and policy at The Hill. He also reported on energy policy for The Washington Independent and Inside Washington Publishers., White House climate strategy hits its stride, 6/22/15, http://www.politico.com/story/2015/06/white-house-climate-strategy-hits-its-stride-119310.html, JZG)

Critics of the Environmental Protection Agency's climate change agenda should brace themselves — the Obama administration isn't letting up. President Barack Obama has launched an unprecedented regulatory assault on greenhouse gas emissions, putting the White House's executive branch power on display and enraging conservative opponents as the president works to cement his environmental legacy. It's the result of 24 months of heavy lifting by EPA that started when Obama unveiled a sweeping climate plan on a sweltering day at Georgetown University two years ago this week, telling students there he refused "to condemn your generation and future generations to a planet that's beyond fixing." Now, the administration is in full swing: The EPA on Friday proposed new fuel efficiency rules for heavy-duty trucks, the agency recently took the first step toward cutting airplane emissions, and its planning to curb methane emissions from new oil and gas operations. That's on top of the Interior Department's plans to regulate hydraulic fracturing on federal lands, EPA's proposal to veer the country's ethanol trajectory away from Congress' goals, and new water rules that have enraged agricultural groups. It's all building to August, when the EPA is expected to finalize first-ever greenhouse gas rules for the nation's massive fleet of power plants, a plan that's set to pummel an already-ailing coal industry. Environmentalists, who for years have complained about the failure of the U.S. to take on climate change, are now hailing Obama's vigor in trying to cut the emissions blamed for the warming planet. "The president's climate action plan identified the biggest opportunities to cut carbon pollution using the authority of existing laws. His agencies are now delivering, as promised," said David Doniger, director of the Natural Resources Defense Council's climate and clean air program. But Republicans are furious, deriding the strategy as executive overreach for a policy that Obama couldn't get passed in Congress. "EPA's overreach comes at a significant cost to American taxpayers and energy consumers," Senate Environment and Public Works Committee Chairman Jim Inhofe (R-Okla.), the most vocal climate change skeptic in Congress, said through a spokeswoman. "The administration's extremist agenda on global warming will reduce grid reliability, raise the cost of energy, undermine the Clean Air Act, move jobs overseas and ignores the will of Congress." Obama's climate agenda hasn't won him many friends in the fossil fuel industry either. "What started out as an academic speech two years ago will long be remembered for its role in leading us down a path away from the intent of Congress and the people and towards governance through executive fiat," Laura Sheehan, a spokeswoman for the American Coalition for Clean Coal Electricity, a coal industry group. "So far-reaching are the administration's environmental missives that they will undermine our nation's energy security and wreak havoc on families' budgets; all for negligible climate impact." Obama jaunted into his second term with a renewed desire to take action on climate change. But, having been burned by a first-term push to pass cap-and-trade legislation, he knew Congress had no appetite for the issue. In a much-heralded speech at Georgetown University in June 2013, the president unveiled a 21-page plan that outlined his agenda. The takeaway from the speech was clear: The administration would go it alone, abandoning its years-long push for a climate bill in favor of dozens of new regulations and initiatives that touch on most major sectors of the economy. Two years later, scarcely a week goes by without the administration unveiling a new climate change initiative. The EPA last week proposed a new regulation that would require makers of heavy-duty trucks to hike fuel efficiency by up to 24 percent. The rule, the agency said, would save 1 billion metric tons of carbon dioxide over the life of the vehicles sold during the program.

1AR Nondelegation AT SCOTUS Ruling

SCOTUS ruling actually helped Obama, and it shows that only bad court precedents can stop Obama

Drajem 6-24

(Mark, Obama May Win by Losing in Quirk of Supreme Court EPA Review, June 24, 2015, http://www.bloomberg.com/news/articles/2015-06-24/obama-may-win-by-losing-in-quirk-of-supreme-court-epa-review, JZG)

Here's a twist for the Obama administration as it awaits a U.S. Supreme Court decision on the biggest environmental rule of its first term: A loss shores up the legal basis of the biggest environmental rule of the second term. The high court is set to decide as soon as Thursday on the 2012 rule by the Environmental Protection Agency that ordered curbs in mercury and other toxic pollutants emitted from coal-fired power plants. As a result of the rule, dozens of old coal plants were shuttered, and utilities have invested billions of dollars to install expensive scrubbers. The legal irony in this case is that when industry lawyers challenged another major EPA initiative -- a proposal to also mandate cuts in carbon emissions from power plants -- they argued that the Clean Air Act would preclude that regulation if the mercury rule is in effect. If the mercury rule were tossed out, that argument might go with it. "It unquestionably would help EPA's carbon rule," said Brian Potts, an attorney specializing in Clean Air Act cases. "Both sides have something to lose by winning here." The legal two-step for the EPA underscores the degree to which President Barack Obama's environmental legacy, especially in regulating greenhouse gases blamed for climate change, is dependent on favorable decisions from federal courts. The mercury rule was fought all the way to the Supreme Court, even as analysts say utilities such as American Electric Power Co. and Southern Co. won't reverse decisions to close old coal plants if the EPA loses.

1AR Nondelegation Link

CP revives a doctrine that kills obama's policy
Shapiro 15

(Stuart is Associate Professor and Director, Public Policy Program at Rutgers University, President Obama using EPA to bypass Congress is not illegal, june 11, 2015, http://www.sciencecodex.com/president_obama_using_epa_to_bypass_congress_is_not_illegal-159116, JZG)

President Obama using EPA to bypass Congress is not illegal It's a big few weeks at the Environmental Protection Agency (EPA). The EPA issued a regulation clarifying its authority to regulate bodies of water throughout the country. This week it issued an "endangerment finding," a precursor to a regulation governing carbon emission from aircrafts. There is also a plan to raise fuel efficiency standards on trucks. And within the next week or two, the Supreme Court will issue a ruling regarding whether the EPA unreasonably refused to consider costs when issuing its recent standard on mercury emissions from power plants. But while it is a big few weeks, it is not an unusual few weeks for the Obama Administration EPA. The mercury, aircraft emission and clean water regulations are all examples of major policy initiatives taken by the executive branch of the government during this administration. President Obama said in 2014 that in the wake of Congressional gridlock, he would use his "pen and phone" to make policy without Congress. In no policy area (save perhaps immigration) has that been more evident than in environmental policy. Common playbook Not surprisingly, President Obama's opponents have reacted strongly to the policy-making through regulation. The clean water rule was described as an "egregious power grab." Republican senators unhappy with EPA attempts to regulate greenhouse gases have spoken of the need to "rein in" the executive branch. However, two of the premises behind these attacks are at best questionable. The first is that the Obama Administration emphasis on regulation is unprecedented, and the other is that issuing regulations is an unchecked exercise of executive power. The use of executive power by a president to get his wishes, particularly in a second term, is extremely common. Every two-term president since Franklin Delano Roosevelt has been confronted by a Congress with at least one house controlled by the opposition party in his second term. This severely constrains the ability of the president to affect domestic policy through legislation. As such, sometime around their second inauguration, presidents typically switch from a "legislative presidency" where they advocate for new laws in Congress, to an "administrative presidency" where they use their executive powers to enact their policy preferences. Increasingly, that has meant using regulation as a policy tool. Statutes passed in the 1960s and 1970s gave the president considerable ability to set policy through regulation. **The Supreme Court has repeatedly upheld the constitutionality of this delegation of power to the president from Congress.** Hence, all presidents from Carter through Obama have issued hundreds of significant regulations, and presidents all pick up the pace of regulating as their time in office grows short.

1AR Nondelegation Paris IL

Paris can solve – even if initial commitments are insufficient – the new framework allows for success

Freedman 15

(Andrew, Why the Paris Climate Summit might actually work, JUN 02, 2015, http://mashable.com/2015/06/02/paris-climate-summit-global-warming-agreement/, JZG)

The Paris Climate Summit is approaching more quickly than it might seem. Though it actually takes place in early December, there are fewer than 20 negotiating days left on the diplomatic calendar before the international community gathers in the French capital. Their goal is to construct something that has eluded the world for more than two decades: a meaningful, effective and enforceable global climate change agreement. Based on recent climate science findings, the summit can be viewed as the last chance for the global community to meet the mandate countries agreed to back in 1992 — avoiding "dangerous human interference with the climate system." Negotiators have defined that danger threshold as global warming greater than 2 degrees Celsius, or 3.6 degrees Fahrenheit. Emissions of planet-warming greenhouse gases would have to plummet in the next decade to avoid overshooting that 2-degree target, according to many studies. Increasingly, it seems that leaders recognize this, as many are publicly talking about including a long-term goal of zero or negative emissions (when more emissions are taken out of the atmosphere than added to it) in the Paris Agreement. Positive signs Recently, there have been a number of indications that Paris is unlikely to be a repeat of the debacle that occurred in Copenhagen in 2009. That's when world leaders, including a then-new President Barack Obama, jetted into Denmark expecting to sign a completed treaty text ready for signature — only to be disappointed and embarrassed by the weak "accord" they hastily adopted when negotiations all but collapsed. There were many reasons for Copenhagen's failure. But perhaps the best explanation is this: the world was not yet ready to undertake the serious actions that solving this issue requires. Oil and coal companies were still fighting the science. China and the U.S. were still at loggerheads over China's responsibility to cut its rapidly-growing emissions. Leaders were not yet feeling much heat at home for failing to move forward. All that, and more, has changed. A global movement is underway to encourage entities of all sizes, from cities to colleges to entire countries, to divest from fossil fuel companies. The movement has met with growing success. The U.S. and China struck a climate agreement that would bring a massive expansion in China's renewable energy use, and a peak in its carbon emissions by 2030. The U.S. has committed to cutting its emissions by up to 28% below 2005 levels by 2025. Currently, U.N. climate negotiators are meeting in Bonn, Germany, to work on the rough draft of an agreement that will be up for debate in Paris. As it is currently written, the draft is sprawling, with brackets surrounding the most contentious issues. The task before the negotiators is to whittle away at the text and get closer to widespread agreement on some of the major sticking points — such as financial assistance from the industrialized world to pay for the impact of climate change in developing countries, and to assist with their transition from fossil fuels to renewable energy. Fossil fuel companies are feeling more pressure from governments and their shareholders to consider the possibility that some of their assets may become "stranded" because of the need to cut emissions. On Monday, the leaders of six global oil and gas companies sent a letter to top U.N. climate official Christiana Figueres, offering support for the implementation of a carbon price. The chief executives of Shell, BP, Total, Statoil, Eni and the BG Group wrote: We acknowledge that the current trend of greenhouse gas emissions is in excess of what the Intergovernmental Panel on Climate Change (IPCC) says is needed to limit the temperature rise to no more than 2 degrees above pre-industrial levels. The challenge is how to meet greater energy demand with less CO2. We stand ready to play our part. The letter endorsed the increased use of natural gas, a fuel that has less carbon compared to oil, but is still not a clean energy source, to help fight climate change. A carbon price could encourage the use of natural gas, according to National Journal. While no one believes the oil companies are about to stop drilling anytime soon — just look at Shell's summer plans for the Arctic — there are other important signs that the Paris meeting will be very different from past negotiating sessions. An old house with new beams and a better foundation For one thing, the agreement that is up for negotiation is entirely different from what was on the table in Copenhagen, and even earlier, in Kyoto, Japan. These talks are not aimed at creating a top-down mandate from the U.N. that will be legally binding on some countries but not others. Instead, it's the reverse: a bottom-up approach in which each country determines what it is willing to do to address its share of the global warming problem. These individual goals will then be stitched together into some kind of patchwork quilt that has legal force to it. This ad-hoc structure may seem wonky, and only of interest to diplomacy nerds, but it's actually a fundamental part of why many longtime observers of climate talks are more optimistic about Paris than any of its predecessors. Such a framework allows the agreement to be built upon in later years. Each country's target can be ratcheted

up gradually, in terms of ambition. "I think the Paris agreement is likely to be structured to bring countries back regularly to the table to strengthen their commitment to complete the job," says Jennifer Morgan, global director of the climate program at the World Resources Institute in Washington, an environmental think tank. Under the old system, there were good reasons for countries to resist ambitious emissions reduction targets — because they were legally binding and came from a complicated, largely arbitrary calculation by the U.N. bureaucracy. Now, though, each country has an incentive to act more swiftly in order to be recognized for early action, and to help put pressure on other nations to do the same. "The idea is to have both that long-term target and then a process where countries would come back to the table say every five years, and in the actual Paris agreement would be a commitment that they would increase their ambition, or not roll back their ambition, every five years," Morgan said on a call with reporters. "There could even be assessments of the country's proposed commitments for the future when they come out. All of those things are ways to try and create a positive momentum or signals that would get the countries closer and closer to staying below 2 degrees [Celsius]".

1AR Nondelegation AT CO2 Ag

CO2 increases hurt crops – decrease sunlight, make food less nutritious
Radford 15

(Tim, Climate News Network, Rise in CO2 Could Restrict Growing Days for Crops, Jun 20, 2015, http://www.truthdig.com/report/item/rise_in_co2_could_restrict_growing_days_for_crops_20150620, JZG)

LONDON—The positive consequences of climate change may not be so positive. Although plants in the colder regions are expected to thrive as average global temperatures rise, even this benefit could be limited. Some tropical regions could lose up to 200 growing days a year, and more than two billion rural people could see their hopes wither on the vine or in the field. Even in temperate zones, there will be limits to extra growth. Plants quicken, blossom and ripen as a response to moisture, warmth and the length of daylight. Global warming will clearly change the temperatures and influence the patterns of precipitation, but it won't make any difference to the available hours of sunlight at any point on the globe. Scientists at the University of Hawaii at M?noa report in the Public Library of Science journal PLOS Biology that they looked at the big picture of complex change. Higher concentrations of atmospheric carbon dioxide—the greenhouse gas from car exhausts, forest fires and factory chimneys—are expected overall to aid crop and forest growth. Extended season Average global warming of less than 1°C in the last 30 years has extended the northern hemisphere growing season by up to 11 days, but plants are still limited by radiation. "Those that think climate change will benefit plants need to see the light, literally and figuratively," says Camilo Mora, lead author of the report and assistant professor in the Department of Geography at the University of Hawaii. "A narrow focus on the factors that influence plant growth has led to major underestimations of the potential impacts of climate change on plants, not only at higher latitudes but more severely in the tropics, exposing the world to dire consequences." Professor Mora has made a career of thinking about global consequences. He and colleagues recently tried to calculate the possible dates at which local climates could shift inexorably in different parts of the world, and tried also to build a picture of how ocean warming and acidification would affect incomes everywhere. "Many plants will not be able to take advantage of those warmer temperatures because there will not be enough sunlight to sustain their growth." His team is not the first to try to calculate the potential impact of catastrophic global warming on global food supply. Cereals are vulnerable to extremes of heat, and climate change may already be affecting yields in Europe. But the Hawaiian scientists tried a simple theoretical approach, by first identifying the ranges of temperature, soil moisture and light that drive 95% of the world's plant growth today. They then tried to calculate the number of days in a year in which these growth conditions could be expected at various latitudes in the future, as carbon dioxide levels—and average temperatures—climb. They found that, nearer the poles, the number of days above freezing would increase by 7%. "But many plants will not be able to take advantage of those warmer temperatures because there will not be enough sunlight to sustain their growth," says Iain Caldwell, of the Hawaii Institute of Marine Biology. The same warming at the lowest latitudes could be devastating: in some tropical regions, conditions could become too hot and dry for any growth. Overall, the planet could see an 11% reduction in the number of days suited to growth, and some places in the tropics could lose 200 growing days a year. Although some regions in China, Russia and Canada will see an improvement, around 2.1 billion people who rely on forests and agriculture for food and revenue could lose 30% of the days they now bank on for plant growth. But rising levels of carbon dioxide could also affect the quality of plant growth, according to a new study in Global Change Biology. Zhaozhong Feng, of the Department of Biological and Environmental Sciences at the University of Gothenburg, Sweden, and colleagues looked at the results of eight experiments in four continents on crops, grasslands and forests, and found that as carbon dioxide levels go up, the nitrogen content of the crop is lowered. In the case of wheat and rice, this would also mean lower protein levels. Negative effect "Furthermore, we can see that this negative effect exists regardless of whether or not the plants' growth increases, and even if fertiliser is added," says Johan Uddling, a plant physiologist at Gothenburg, and a co-author of the report. "This is unexpected and new." In the same week, a team of scientists at the University of Alaska

Fairbanks produced evidence that climate change has already begun to alter the forests of the far north. They report in the journal Forest Ecology and Management that in the interior of Alaska, already at the optimum temperature range for white spruce, tree growth slowed as summer temperatures rose.

Newest studies prove – the deniers use too short of studies that don't take into account all the variables

Abrams 15

(Lindsay, Scientists destroy another climate denier myth: Rising CO2 levels aren't good for plants, MAY 22, 2015, http://www.salon.com/2015/05/22/scientists_destroy_another_climate_denier_myth_rising_co2_levels_arent_good_for_plants/ , JZG)

Plants need carbon dioxide to grow. Humans are emitting the stuff into the atmosphere in excess. Therefore, humans are helping plants. So goes one of the more long-lived arguments put forward by people who deny the reality of man-made climate change — an who attempt to turn the CO2 –> global warming –> bad narrative on its head. The Heartland Institute, most recently, made it the focal point of a campaign asserting that CO2 is actually good for human and environmental health. There are already a number of flaws in this line of reasoning, but new research from Montana State University illustrates how, in reality, the benefits of added CO2 can't necessarily compete with the harmful downsides of a changed climate. The study, published last week in the journal Nature Communication, examines one Montana meadow over 44 years — a period during which atmospheric carbon dioxide concentrations increased by about 75 ppm (they were 20 percent lower when the study started, in 1969, than they were when it ended in 2012). At the same time, the greater Yellowstone climate became more arid — and the grasslands' productivity, by the study's end, had decreased by half. "Our long-term results of declining grassland production contrast with the results of some models and short-term experiments," study coauthor Jack Brookshire explained in a statement. "We find that increasing dryness over the last several decades is outpacing any potential growth stimulation from increasing atmospheric carbon dioxide and nitrogen deposition." In other words, as the Daily Climate explains, studies that look solely at carbon's direct impact on plants through fertilization, and even at the benefits conferred by slightly warmer temperatures, fail to take the entire picture into account. Factors like altered rainfall, that occur as a result of climate change, can cancel out the positives, as they do here. Might some plants, in some regions, still benefits in a warmer climate? Sure. But that's a long way from saying that continuing to pump CO2 into our atmosphere will be, in the aggregate, anything but a disaster.

1AR AT Adaptation

( ) Can't adapt to warming – rates likely to be too fast to ensure resilience.
EPA '7

[United States Environmental Protection Agency. "Climate Change-health and environmental effects: ecosystems and biodiversity." http://www.epa.gov/climatechange/effects/ecosystemsandbiodiversity.html -- 12/20]

Observations of ecosystem impacts are difficult to use in future projections because of the complexities involved in human/nature interactions (e.g., land use change). Nevertheless, the observed changes are compelling examples of how rising temperatures can affect the natural world and raise questions of how vulnerable populations will adapt to direct and indirect effects associated with climate change. The IPCC (IPCC, 2007) has noted, During the course of this century the resilience of many ecosystems (their ability to adapt naturally) is likely to be exceeded by an unprecedented combination of change in climate and in other global change drivers (especially land use change and overexploitation), if greenhouse gas emissions and other changes continue at or above current rates. By 2100 ecosystems will be exposed to atmospheric CO2 levels substantially higher than in the past 650,000 years, and global temperatures at least among the highest as those experienced in the past 740,000 years. This will alter the structure, reduce biodiversity and perturb functioning of most ecosystems, and compromise the services they currently provide.

1AR AT Warming Not Real

( ) Global Warming is happening – most recent and best evidence concludes that it is human induced

Muller '12

[Richard, professor of physics at the University of California, Berkeley, and a former MacArthur Foundation fellow, "The Conversion of a Climate-Change Skeptic", http://www.nytimes.com/2012/07/30/opinion/the-conversion-of-a-climate-change-skeptic.html?pagewanted=all]

CALL me a converted skeptic. Three years ago I identified problems in previous climate studies that, in my mind, threw doubt on the very existence of global warming. Last year, following an intensive research effort involving a dozen scientists, I concluded that global warming was real and that the prior estimates of the rate of warming were correct**.** I'm now going a step further: Humans are almost entirely the cause. My total turnaround, in such a short time, is the result of careful and objective analysis by the Berkeley Earth Surface Temperature project, which I founded with my daughter Elizabeth. Our results show that the average temperature of the earth's land has risen by two and a half degrees Fahrenheit over the past 250 years, including an increase of one and a half degrees over the most recent 50 years. Moreover, it appears likely that essentially all of this increase results from the human emission of greenhouse gases. These findings are stronger than those of the Intergovernmental Panel on Climate Change [IPCC], the United Nations group that defines the scientific and diplomatic consensus on global warming. In its 2007 report, the I.P.C.C. concluded only that most of the warming of the prior 50 years could be attributed to humans. It was possible, according to the I.P.C.C. consensus statement, that the warming before 1956 could be because of changes in solar activity, and that even a substantial part of the more recent warming could be natural. Our Berkeley Earth approach used sophisticated statistical methods developed largely by our lead scientist, Robert Rohde, which allowed us to determine earth land temperature much further back in time. We carefully studied issues raised by skeptics: biases from urban heating (we duplicated our results using rural data alone), from data selection (prior groups selected fewer than 20 percent of the available temperature stations; we used virtually 100 percent), from poor station quality (we separately analyzed good stations and poor ones) and from human intervention and data adjustment (our work is completely automated and hands-off). In our papers we demonstrate that none of these potentially troublesome effects unduly biased our conclusions. The historic temperature pattern we observed has abrupt dips that match the emissions of known explosive volcanic eruptions; the particulates from such events reflect sunlight, make for beautiful sunsets and cool the earth's surface for a few years. There are small, rapid variations attributable to El Niño and other ocean currents such as the Gulf Stream; because of such oscillations, the "flattening" of the recent temperature rise that some people claim is not, in our view, statistically significant. What has caused the gradual but systematic rise of two and a half degrees? We tried fitting the shape to simple math functions (exponentials, polynomials), to solar activity and even to rising functions like world population. By far the best match was to the record of atmospheric carbon dioxide (CO2), measured from atmospheric samples and air trapped in polar ice.

( ) Consensus is on our side

EDF 9.

[ENVIRONMENTAL DEFENSE FUND, 1-13 "GLOBAL WARMING MYTHS AND FACTS" -- http://www.edf.org/page.cfm?tagID=1011]

FACT: There is no debate among scientists about the basic facts of global warming. The most respected scientific bodies have stated unequivocally that global warming is occurring, and people are causing it by burning fossil fuels (like coal, oil and natural gas) and cutting down forests. The U.S. National Academy of Sciences, which in 2005 the White House called "the gold standard of objective scientific assessment," issued a joint statement with 10 other National Academies of Science saying "the scientific understanding of climate change is now sufficiently clear to justify nations taking prompt action. It is vital that all nations identify cost-effective steps that they can take now, to contribute to substantial and long-term reduction

in net global greenhouse gas emissions." (Joint Statement of Science Academies: Global Response to Climate Change [PDF], 2005) The only debate in the science community about global warming is about how much and how fast warming will continue as a result of heat-trapping emissions. Scientists have given a clear warning about global warming, and we have more than enough facts — about causes and fixes — to implement solutions right now.

AT-COURTS CP – COURTS BAD

Won't Solve – Precedent

Legal precedents are ineffective; debate is never-ending

Pierre **Schlag**, **1985**, "Rules and Standards,"
https://lawweb.colorado.edu/profiles/pubpdfs/schlag/schlagUCLALR.pdf

Every student of law has at some point encountered the "bright line rule" and the "flexible standard." In one torts casebook, for instance, Oliver Wendell Holmes and Benjamin Cardozo find themselves on opposite sides of a railroad crossing dispute. They disagree about what standard of conduct should define the obligations of a driver who comes to an unguarded railroad crossing. Holmes offers a rule: The driver must stop and look. Cardozo rejects the rule and instead offers a standard: The driver must act with reasonable caution. Which is the preferable approach? Holmes suggests that the requirements of due care at railroad crossings are clear and, therefore, it is appropriate to crystallize these obligations into a simple rule of law. Cardozo counters with scenarios in which it would be neither wise nor prudent for a driver to stop and look. Holmes might well have answered that Cardozo's scenarios are exceptions and that exceptions prove the rule. Indeed, Holmes might have parried by suggesting that the definition of a standard of conduct by means of a legal rule is predictable and certain, whereas standards and juries are not. This dispute could go on for quite some time. But let's leave the substance of this dispute behind and consider some observations about its form. First, disputes that pit a rule against a standard are extremely common in legal discourse. Indeed, the battles of legal adversaries (whether they be judges, lawyers, or legal academics) are often joined so that one side is arguing for a rule while the other is promoting a standard. And this is true regardless of whether the disputes are petty squabbles heard in traffic court or cutting edge controversies that grace the pages of elite law reviews. As members of the legal community, we are forever involved in making arguments for or against rules or standards. This brings us to a second observation: The arguments we make for or against rules or standards tend to be pretty much the same regardless of the specific issue involved. The arguments are patterned and stereotyped; the substantive context in which the arguments arise hardly seems to influence their basic character. The arguments are drearily predictable, almost routine; they could easily be canned for immediate consumption in a Gilbert's of legal reasoning. But if we accept these two observations, the implications are far from dreary or routine. On the contrary, it follows that much of legal discourse (including the very fanciest law-talk) might be nothing more than the unilluminating invocation of "canned" pro and con arguments about rules and standards. This prospect is neither dreary nor routine; it is, however, somewhat humbling. Lest undue humility get the upper hand, there are two major ways of avoiding this vexing embarrassment. First, we can argue that the two observations above are wrong. Unfortunately, I happen to think that they are in some sense correct-and part of this Article is devoted to supporting this contention. Second, we can argue that even if the observations are correct, there is more wisdom or rationality or sense (or other good stuff) to the rules v. standards dispute than first meets the eye. In other words, even if rules v. standards disputes are stereotyped, almost caricatured, forms of argument, there may be more substance to these arguments about form than we might have guessed. But I don't think so: Ultimately, all the more promising conventional ways of understanding the rules v. standards dispute will turn out to be located within the bounds of that dispute. The conventional forms of legal thought allow us no place outside of the rules v. standards dichotomy from where we can make sense of the dispute. In the end, no explanation (or all explanations) of the rules v. standards dispute is left standing. The attempt to tie form to substance is just so much form.

Legal precedents ultimately fail due to debate

Pierre **Schlag**, **1985**, "Rules and Standards,"
https://lawweb.colorado.edu/profiles/pubpdfs/schlag/schlagUCLALR.pdf

A conclusion in a law review article is usually a tidy summation of what has transpired during the course of the reading. The virtue of a conclusion is that it ties together all the various strands of the article and synthesizes the various parts into a sensible bit of legal wisdom, complete, finished, and, in appearance at least, unassailable. There is something comical about this ritual. For if we are convinced of anything, it is that there are no conclusions, that things go on, and that everything will always be revised. A conclusion here would be particularly ironic. After all, this Article is about a dialectic I claim is omnipresent, yet bereft of any synthesis. What to say? Here are a couple of possibilities: The mainstream message is that much of our legal argumentation seems to track a dialectic that is incapable of resolution. The steps in this argumentation are patterned and predictable. We cannot be sure whether the argumentation reflects anything of substance or not. Therefore, it behooves us to be on our guard when we find ourselves making these arguments and to consider whether they truly do reflect concerns of substance or not. The danger of the dialectic is that we may think we are discovering something about substance, when in fact we are only discovering something about form. A less mainstream conclusion might go like this. Much of legal argument tracks the dialectic. This dialectic cannot be anchored in matters of substance. Indeed, the very attempt to explain this aspect of form in terms of substance succeeds in doing quite the reverse: It puts us on the road to explaining substance by means of form. The short of it is that much of legal argumentation is simply an exercise in the formalistic mechanics of a dialectic which doesn't go anywhere. The point of further study ought to be to ascertain why and how it is that we allow such silly games to have such serious consequences.

No legal weight behind precedents

Neil **Duxbury**, 10-28-**2005**, "The Authority of Precedent: Two Problems,"
https://www.mcgill.ca/files/legal-theory-workshop/Neil-Duxbury-McGill-paper.pdf

The proposition that laws bind, while unlikely to startle anybody, is one which legal philosophers rightly accord serious attention. The binding force of legal rules, the classical legal positivist claims, is attributable to the fact that they are backed by sanctions emanating from a habitually-obeyed authoritative source. Hans Kelsen repeatedly emphasized in process of developing his so-called Pure Theory of Law that these rules or norms are not moral norms: morality merely condones conduct conforming to, and disapproves of conduct contravening, its norms, whereas law is a coercive order which seeks to attach sanctions to behavior which opposes its norms. In this respect, he noted 'the Pure Theory of Law continues in the tradition of nineteenth-century positivist legal theory' – the theory according to which, in the words of John Austin, '[t]he binding virtue of a law lies in the sanction annexed to it.' It is well known that this theory of law as coercive orders was dismantled by H. L. A. Hart in The Concept of Law. Yet, before the theory had come under Hart's scrutiny, at least one of its shortcomings was starkly highlighted by the doctrine of stare decisis. As any law student knows, stare decisis is the idea that precedents ought to be adhered to when, in later cases, the material facts are the same. The doctrine brings with it numerous difficulties – not least that of determining which cases are materially alike. But the difficulty which stare decisis posed for classical legal positivism was very specific. Though a decision of a court must (unless successfully appealed) be accepted by the litigants,

and though it may establish a precedent which is more generally binding on the citizenry, it is not immediately clear what it means to say – even though we often do say – that the decision binds future courts. Cross and Harris, in Precedent in English Law, observe that '[t]he peculiar feature of the English doctrine of precedent is its strongly coercive nature.' English judges, unlike their counterparts in many other jurisdictions, 'must have regard to' the previous decisions of higher courts, and 'are sometimes obliged to follow a previous case although they have what would otherwise be good reasons for not doing so.' As a piece of doctrinal description, this statement is unremarkable. But from the perspective of classical legal positivism, it poses a serious difficulty. For what does it mean to say that precedents bind? The answer seems to be that precedents bind because judges consider themselves to be bound by them.

No punishment for not following precedent

Neil **Duxbury**, 10-28-**2005**, "The Authority of Precedent: Two Problems," https://www.mcgill.ca/files/legal-theory-workshop/Neil-Duxbury-McGill-paper.pdf

Yet if precedents bind, must there not be an identifiable sanction applicable to a judge who refuses to respect stare decisis? 'If a judge persistently and vociferously declined to follow cases by which he was bound', Cross and Harris reply, it is possible that steps would be taken to remove him from his office, but it would be a mistake to think in terms of such drastic sanctions for the judge's obligation to act according to the rules of precedent. Those rules are rules of practice, and, if it is thought to be desirable to speak of a sanction for the obligation to comply with them, it is sufficient to say that non-compliance might excite adverse comment from other judges. Needless to say, there are not many examples of such comment in the law reports because the obligation to follow a practice derives its force from the fact that the practice is followed with a high degree of uniformity. The idea of the doctrine of precedent creating an occasion for judicial lawbreaking is treated by Cross and Harris with near bewilderment. The question of what ought to be done about a judge who flagrantly abuses the doctrine does not tax them for the simple reason that judges do not behave thus. Although a formal sanction could be applied to a judge for eschewing precedent, the likelihood of this occurring is remote because concerns about reputation and fear of informal criticism motivate judges to treat precedents as binding upon them. There is nothing naïve about Cross and Harris's assessment. The 'rules' of precedent are prudential rules; judges apply them so as to maintain a system of case-law rather than fear breaking them in case they are punished. Where judges do not wish to follow a precedent it is commonly assumed that they will either distinguish the precedent from the present case or, when permissible, overrule the precedent on the basis of an especially compelling reason or set of reasons. Neither judges nor jurists pay much attention to the question of what should happen to the judge who is manifestly disrespectful towards and neglectful of precedent, probably because that judge rarely if ever exists outside fictional literature. For the classical legal positivist, however, the idea that precedents bind future decision makers is intelligible only if there is stipulated a sanction which will be prima facie applicable to those decision makers when they ignore precedents.

Won't Solve – NSA Compliance

NSA will not comply

Patrick **Toomey**,, 6-10-20**14**, "Too Big To Comply? NSA Says It's Too Large, Complex to Comply With Court Order," American Civil Liberties Union, https://www.aclu.org/blog/too-big-comply-nsa-says-its-too-large-complex-comply-court-order

In an era of too-big-to-fail banks, we should have known it was coming: An intelligence agency too big to rein in — and brazen enough to say so. In a remarkable legal filing on Friday afternoon, the NSA told a federal court that its spying operations are too massive and technically complex to comply with an order to preserve evidence. **The NSA,** in other words, **now says that it cannot comply with the rules that apply to any other party before a court** — the very rules that ensure legal accountability — **because it is too** big**.** The filing came in a long-runninglawsuit filed by the Electronic Frontier Foundation challenging the NSA's warrantless collection of Americans' private data. Recently, the plaintiffs in that case have fought to ensure that the NSA is preserving relevant evidence — a standard obligation in any lawsuit — and not destroying the very data that would show the agency spied on the plaintiffs' communications. Yet, as in so many other instances, **the NSA appears to believe it is exempt from the normal rules.** In its filing on Friday, the NSA told the court:

[A]ttempts to fully comply with the Court's June 5 Order would be a massive and uncertain endeavor because the NSA may have to shut down all databases and systems that contain Section 702 information in an effort to comply. For an agency whose motto is "Collect It All," the NSA's claim that its mission could be endangered by a court order to **preserve** evidence is a remarkable one. That is especially true given the immense amount of data the NSA is known to process and warehouse for its own future use. The NSA also argued that retaining evidence for EFF's privacy lawsuit would put it in violation of other rules designed to protect privacy. But what the NSA presents as an impossible choice between accountability and privacy is actually a false one. Surely, the NSA — with its ability to sift and sort terabytes of information — can devise procedures that allow it to preserve the plaintiffs' data here without retaining **everyone's** data. The crucial question is this: If the NSA does not have to keep evidence of its spying activities, how can a court ever test whether it is in fact complying with the Constitution? Perhaps most troubling, **the new assertions continue the NSA's decade-long effort to evade judicial review** — at least in any public court. **For years, in cases like the ACLU's** Amnesty v. Clapper**, the NSA evaded review by telling courts that plaintiffs were speculating wildly when they claimed that the agency had intercepted their communications**. Today, of course, we know those claims were prescient: **Recent disclosures show that the NSA was scanning Americans'** international **emails en masse all along**. Now, the NSA would put up a new roadblock — claiming that it is unable to preserve the very evidence that would allow a court to fully and fairly review those activities. As Brett Max Kaufman and I have written before, our system of oversight is broken — this is only the latest warning sign flashing red. **The NSA has grown far beyond the ability of its overseers to properly police its spying activities. That includes the secret FISA Court, which has struggled to monitor the NSA's compliance with basic limits on its surveillance activities**. It includes **the congressional oversight committees, which operate with too little**

information and too often appear captive to the interests of the intelligence community. And, now we are to believe, **it includes the public courts as well.**

NSA has historically ignored the law, will not follow

Thomas **Gaist**, 12-27-**2014**, "The Authority of Precedent: Two Problems,"
https://www.mcgill.ca/files/legal-theory-workshop/Neil-Duxbury-McGill-paper.pdf

The US National Security Agency (NSA) published a cache of "transparency" reports on its web page Wednesday in response to a Freedom of Information Act (FOIA) request submitted by attorneys for the American Civil Liberties Union (ACLU). The internally generated NSA reports, covering the years 2001-2013 and previously submitted to the Presidential Intelligence Oversight Board, show that NSA agents have consistently violated US law and the agency's own internal regulations over the past decade. The timing of the release, on Christmas Eve, was clearly designed to ensure that the event could be buried by the US media. The reports show that NSA agents have carried out a range of illegal activities, including electronic spying on US persons (USP), stockpiling data that the agency is required by law to delete, continuing surveillance against targets after they have been found to be USP, and "disseminating" data acquired from surveillance against USP to other government agencies and entities. Agents specifically targeted individuals not covered by any existing order from the Foreign Intelligence Surveillance Court and used electronic surveillance technology to spy on significant others, spouses, and other associates. Agents have failed to implement legally required "minimization" procedures, which supposedly remove individuals who have been "incidentally" swept up in the electronic dragnet from the agency's constantly expanding set of surveillance targets, frequently neglecting to remove targets from surveillance lists even after they are known to the agency to be USP or other unauthorized targets. The reports make clear that NSA agents have enormous leeway to spy on targets of their choosing, and that the already minor restrictions on spying stipulated by the Foreign Intelligence Surveillance Act are not seriously enforced. Making a mockery of claims that the agency is implementing "greater transparency," huge portions of the reports are either redacted entirely or redacted to the point of being completely unintelligible. In one report, immediately under the heading "Computer Network Exploitation," which refers to the US government's hacking and electronic data mining programs, the first several large paragraphs are completely redacted. All numbers referring to the quantity of violations have been redacted. One report states, for instance, that agents executed a "REDACTED" number of "overly broad" "database queries," which led to the unlawful targeting of USP. Ominous references to the expansion of surveillance operations within the US appear in one of the NSA reports, dated 2010. After a lengthy redaction, the report states, "If approved, this change [text containing referent completely redacted] would align NSA/CSS's procedures with the Federal Bureau of Investigation's (FBI) procedures, which permit such searches." Brushing aside the overwhelming evidence provided by Edward Snowden's leaks and substantiated in its own reports, the NSA claims in a statement on the documents that "the vast majority of compliance incidents involve unintentional technical or human error." "The NSA goes to great lengths to ensure compliance with the Constitution, laws and regulations," the official NSA

statement reads. In reality, the NSA's own documents further substantiate the mountain of evidence showing that the agency is responsible for systematic crimes against US and international law.

NSA will fail to comply with legislature, historic examples prove

David **Lerman**, 12-24-20**14**, "U.S. Spy Agency Reports Improper Surveillance of Americans," Bloomberg, http://www.bloomberg.com/news/articles/2014-12-24/spy-agency-to-release-reports-documenting-surveillance-errors

(Bloomberg) -- The National Security Agency today released reports on intelligence collection that may have violated the law or U.S. policy over more than a decade, including unauthorized surveillance of Americans' overseas communications. The NSA, responding to a Freedom of Information Act lawsuit from the American Civil Liberties Union, released a series of required quarterly and annual reports to the President's Intelligence Oversight Board that cover the period from the fourth quarter of 2001 to the second quarter of 2013. The heavily-redacted reports include examples of data on Americans being e-mailed to unauthorized recipients, stored in unsecured computers and retained after it was supposed to be destroyed, according to the documents. They were posted on the NSA's website at around 1:30 p.m. on Christmas Eve. In a 2012 case, for example, an NSA analyst "searched her spouse's personal telephone directory without his knowledge to obtain names and telephone numbers for targeting," according to one report. The analyst "has been advised to cease her activities," it said. Other unauthorized cases were a matter of human error, not intentional misconduct. Last year, an analyst "mistakenly requested" surveillance "of his own personal identifier instead of the selector associated with a foreign intelligence target," according to another report. In 2012, an analyst conducted surveillance "on a U.S. organization in a raw traffic database without formal authorization because the analyst incorrectly believed that he was authorized to query due to a potential threat," according to the fourth-quarter report from 2012. The surveillance yielded nothing. The NSA's intensified communications surveillance programs initiated after the Sept. 11, 2001, terrorist attacks on New York and Washington unleashed an international uproar after they were disclosed in classified documents leaked by fugitive former contractor Edward Snowden last year. Congress has considered but not passed new legislation to curb the NSA's collection of bulk telephone calling and other electronic data. The Privacy and Civil Liberties Oversight Board, created by lawmakers under post-Sept. 11 anti-terrorism laws, issued a 238-page report in January urging the abolition of the bulk collection of Americans' phone records. The five-member board said the program has provided only "minimal" help in thwarting terrorist attacks. The ACLU, which filed a lawsuit to access the reports, said the documents shed light on how the surveillance policies of NSA impact Americans and how information has sometimes been misused. "The government conducts sweeping surveillance under this authority -— surveillance that increasingly puts Americans' data in the hands of the NSA," Patrick C. Toomey, staff attorney with the ACLU's National Security Project, said in an e-mail. "Despite that fact, this spying is conducted almost entirely in secret and without legislative or judicial oversight," he said. The reports show greater oversight by all three branches of government is needed, Toomey added. The ACLU filed suit to turn a spotlight on an executive order governing intelligence activities that was first issued by President Ronald Reagan in 1981 and has been modified many times since then. The order allows the NSA to conduct surveillance outside the U.S. While the NSA by law can't deliberately intercept messages from

Americans, it can collect messages that get vacuumed up inadvertently as part of its surveillance of foreigners overseas.

NSA fails to comply with legislature, historic examples proves

Charlie Savage and Scott Shane, 8-23-20**13**, "Surveillance Court castigated NSA; Surveillance within US violated Constitution, judge said in 2011 rebuke" The International Herald

A federal judge sharply rebuked the National Security Agency in 2011 for repeatedly misleading the court that oversees its surveillance on domestic soil, including a program that is collecting tens of thousands of domestic e-mails and other Internet communications of Americans each year, according to a secret ruling made public this week. The ruling, by Judge John D. Bates, then serving as chief judge on the Foreign Intelligence Surveillance Court, involved an N.S.A. program that systematically searches the contents of Americans' international Internet communications, without a warrant, in a hunt for discussions about foreigners who have been targeted for surveillance. The Justice Department had told Judge Bates that N.S.A. officials had discovered that the program had also been gathering domestic messages for three years. Judge Bates found that the agency had violated the U.S. Constitution and declared the problems part of a pattern of misrepresentation by agency officials in submissions to the secret court. Wednesday's release of the ruling, the subject of a Freedom of Information Act lawsuit, was the latest effort by the Obama administration to gain control over revelations about N.S.A. surveillance prompted by leaks by the former agency contractor Edward J. Snowden. The collection is part of a broader program under a 2008 law that allows warrantless surveillance on domestic networks as long as it is targeted at noncitizens abroad. The purely domestic messages collected in the hunt for discussions about targeted foreigners represent a relatively small percentage of what the ruling said were 250 million communications intercepted each year in that broader program. While the N.S.A. fixed problems with how it handled those purely domestic messages to the court's satisfaction, the 2011 ruling revealed further issues. ''The court is troubled that the government's revelations regarding N.S.A.'s acquisition of Internet transactions mark the third instance in less than three years in which the government has disclosed a substantial misrepresentation regarding the scope of a major collection program,'' Judge Bates wrote. One of the examples was redacted in the ruling. Another involved a separate N.S.A. program that keeps logs of all domestic phone calls, which the court approved in 2006 and which came to light in June as a result of leaks by Mr. Snowden. In March 2009, a footnote said, the surveillance court learned that N.S.A. analysts were using the phone log database in ways that went beyond what the judges believed to be the practice because of a ''repeated inaccurate statements'' in government filings to the court. ''Contrary to the government's repeated assurances, N.S.A. had been routinely running queries of the metadata using querying terms that did not meet the standard for querying,'' Judge Bates recounted. He cited a 2009 ruling that concluded that the requirement had been ''so frequently and systematically violated that it can fairly be said that this critical element of the overall ... regime has never functioned effectively.'' The Electronic Frontier Foundation, a free speech and privacy rights group, sued to obtain the ruling after Senator Ron Wyden, an Oregon Democrat who sits on the Senate Intelligence Committee, fought last summer to declassify the basic fact that the surveillance court had ruled that the N.S.A. had violated the Fourth Amendment of the Constitution, which guards against unreasonable searches. In a statement, Mr. Wyden - an outspoken critic of N.S.A. surveillance - said declassification of the ruling was ''long overdue.'' He maintained that while the N.S.A. had increased privacy protections for purely domestic and unrelated communications that were swept

up in the surveillance, the collection itself ''was a serious violation of the Fourth Amendment.'' Mark Rumold of the Electronic Frontier Foundation praised the administration for releasing the document with relatively few redactions, although he criticized the time and the difficulty in obtaining it. But he also said the ruling showed the surveillance court was not equipped to perform adequate oversight of the N.S.A. ''This opinion illustrates that the way the court is structured now, it cannot serve as an effective check on the N.S.A. because it's wholly dependent on the representations that the N.S.A. makes to it,'' Mr. Rumold said. ''It has no ability to investigate. And it's clear that the N.S.A. representations have not been entirely candid to the court.'' A senior intelligence official, speaking to reporters in a conference call, portrayed the ruling as showing that N.S.A. oversight was robust and serious. He said that some 300 N.S.A. employees were assigned to seek out even inadvertent violations of the rules and that the court conducted ''vigorous'' oversight.

Hollow Hope DA

Even if the courts rule progressive, they will not and cannot enact actual social change – they will leave loopholes and lower institutions will refuse to comply – legal history analysis proves – litigation is a hollow hope

Rosenberg 5 (Dr. Gerald Rosenberg, Associate Professor of Political Science and Lecturer in Law, University of Chicago, B.A., Dartmouth College, 1976; M.A., Oxford University, 1979; J.D., 1983, University of Michigan; Ph.D., 1985, Yale University, "Courting Disaster: Looking for Change in All the Wrong Places", 54 Drake Law Review 795 (2005), http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2922&context=journal_articles) //RL

III. THE ILLUSION OF PROGRESS¶ An obvious response to the discussion of the historic role of the Court¶ as a protector of privilege is that history is not destiny. Merely because the¶ Court has acted in defense of privilege for most of its history does not¶ mean it is destined to always so act. Indeed, many people believe the role¶ of the Court fundamentally changed in the post-World War II era. The¶ Court, many claim, became a great defender of the relatively¶ disadvantaged.¶ **While history may not determine the future, structural constraints¶ limit it.** 86 That is, it is more likely than not that the Court will consistently,¶ over time, support conservative outcomes. This is the case for four main¶ reasons. First, the appointment process means that federal judges, and¶ particularly Supreme Court Justices, must be broadly acceptable.¶ Presidents are unlikely to nominate radical Progressives and the Senate is¶ even less likely to confirm such nominees. This is because Progressives¶ lack the political support that would make their appointments broadly¶ acceptable. Second, the Constitution is a conservative document. It¶ protects private control over the allocation and distribution of resources. It¶ does not provide for basic Progressive rights such as employment, health¶ care, decent housing, adequate levels of welfare, or clean air. Third, the¶ Court is constrained from pushing too far ahead of the positions of the¶ other branches because it needs their support to implement its decisions¶ and is susceptible to sanctions. Fourth, the Court lacks the power to¶ implement its decisions. Thus, even if it overcomes the first three¶ constraints and issues an opinion that furthers the Progressive agenda, that¶ decision is unlikely to be implemented. This point is illustrated with brief¶ discussion of three important cases.¶ 86.¶ argument.¶ See ROSENBERG, supra note 4, at 9-41 for further development of this¶ [Vol. 54¶ HeinOnline -- 54 Drake L. Rev. 808 2005-2006¶ Courting Disaster¶ **A. The Victory That Wasn't: Brown v. Board of Education 87¶** Brown v. Board of Education may be the most well-known and¶ widely celebrated case in Supreme Court history. 88 In declaring that racial¶ segregation of public schools was unconstitutional, the Court repudiated its¶ prior, pro-segregation approach to the Constitution. This was clearly for¶ the good but the question for Progressives is whether Brown made a¶ difference in ending race-based segregation in public schools in particular,¶ and racial discrimination more broadly. The answer is no.¶ **On the most straight-forward level, public schools remained¶ segregated after Brown. A decade after Brown virtually nothing had¶ changed for African-American students living in the eleven states of the¶ former Confederacy that required race-based school segregation by law.¶** For example, in the 1963-1964 school year, barely one in one hundred¶ (1.2%) of these African-American children was educated in a nonsegregated¶ school. 89 That means that for nearly ninety-nine of every one¶ hundred African-

American children in the South a decade after Brown, the¶ finding of a constitutional right changed nothing.90 Change did come to the¶ South, but that occurred only after the Congress acted-providing¶ monetary incentives for desegregation and threatening to cut off federal¶ funds if segregation was maintained. 91¶ More subtly, **there is little or no evidence that supports the claims¶ that Brown gave civil rights salience, pressed political elites to act, pricked¶ the consciences of whites, legitimated the grievances of blacks, or inspired¶ the activists of the civil rights movement**. What Brown did do was energize¶ civil rights opponents and channel resources away from building the civil¶ rights movement.92 In the wake of Brown, resistance to ending segregation¶ increased in all areas, not merely in education but also in voting,¶ transportation, and the use of public places. Brown "unleashed a wave of¶ 87. Brown v. Bd. Of Educ., 349 U.S. 294 (1954).¶ 88. For an extensive exploration of Brown's lack of efficacy, see ROSENBERG,¶ supra note 4, at 42-169.¶ 89. Gerald Rosenberg, Substituting Symbol for Substance: What Did Brown¶ Really Accomplish?, PS: POLITICAL SCIENCE & POLITIcs 205,205, Apr. 2004, at 205.¶ 90. Id.¶ 91. Id. at 205-06.¶ 92. Id. at 207.¶ 2006]¶ HeinOnline -- 54 Drake L. Rev. 809 2005-2006¶ Drake Law Review¶ **racism that reached hysterical proportions**."93 By stiffening resistance to¶ civil rights and raising fears before the activist phase of the civil rights¶ movement was in place, Brown may actually have delayed the achievement¶ of civil rights.¶ Litigation may also have delayed the achievement of civil rights by¶ channeling resources toward litigation and away from political organizing.¶ Progressive reformers always have scarce resources. There was great¶ hostility over both fundraising and tactics between the NAACP and the¶ groups that led the activist wing of the civil rights movement. As Martin¶ Luther King, Jr. complained: "to accumulate resources for legal actions¶ imposes intolerable hardships on the already overburdened. '¶ " 94¶ In sum, Brown's constitutional mandate that racial segregation in¶ public schools end confronted a culture opposed to that change. The¶ American judicial system, constrained by the need for both elite and¶ popular support, was unable to overcome this opposition.¶ B. **The Decision That Didn't: Roe v. Wade** 95¶ In many ways Roe fared better than Brown. That is, the number of¶ legal abortions increased in the years following Roe-though at a slower¶ rate-both numerically and percentage-wise, than in the years immediately¶ preceding the decision. But they did so unevenly, with abortion services¶ widely available in some states and virtually unobtainable in others. What¶ explains both the increase in the number of legal abortions and the uneven¶ availability of the constitutional right Roe proclaimed?¶ The number of legal abortions increased after Roe because there was¶ public support for legal access to abortion, and demand for the service. A¶ national abortion repeal movement was flourishing with widespread¶ support among relevant professional elites and rapidly growing public¶ support. By the eve of the Court's decisions, eighteen states had reformed¶ their restrictive abortion laws to some degree. Indeed, in 1972, the year¶ before the decision, there were nearly 600,000 legal abortions performed in¶ the U.S.96 To the extent that Roe increased women's access to legal¶ 93. ADAM FAIRCLOUGH, To REDEEM THE SOUL OF AMERICA: THE¶ SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE AND MARTIN LUTHER KING, JR. 21¶ (1987).¶ 94. MARTIN LUTHER KING, JR., WHY WE CAN'T WAIT 157 (1963).¶ 95. Roe v. Wade, 410 U.S. 113 (1973). For an extensive exploration of Roe's¶ mixed record of efficacy, see ROSENBERG, supra note 4, at 175-201.¶ 96. ROSENBERG, supra note 4, at 180 tbl.6.1.¶ [Vol. 54¶ HeinOnline -- 54 Drake L. Rev. 810 2005-2006¶ Courting Disaster¶ abortion it did so because a grass-roots political movement had won many¶ legislative victories and had dramatically influenced both elite and public¶ opinion.¶ On the other hand**, Roe faced the same problem as Brown-the¶ existing institutions necessary to implement the decisions (hospitals in the¶ case of abortion) refused to do so**. Indeed, the overwhelming majority of¶ both public and private, short-term, non-Catholic hospitals, have never¶ performed an abortion.97 Like public schools and desegregation,

the existing institutions ignored the law. **Constitutional rights were protected under law, but denied in practice.** However, in Doe v. Bolton,98 the companion case to Roe, the Court struck down Georgia's requirement that all abortions be performed in accredited hospitals. 99 This allowed market forces to meet the demand for abortion services by opening abortion clinics. Pro-choice activists, feminists, and doctors, who wanted to expand their practices, were relatively free to respond to the demand. Clinics could and did open to implement the decision. **The problem with market mechanisms is that they implement rights unevenly. This is principally because they are dependent on local beliefs and culture**. In places where political leaders or large segments of the population oppose abortion, it is less likely that such clinics will open. Thus, the availability of abortion services varies widely across the country. Considering that the Court has held that women have a fundamental constitutional right to obtain abortions, the drawbacks to the market mechanism as a way to implement constitutional rights are important. The availability of a market mechanism can help implement Court decisions, but cannot guarantee them. In addition to only providing limited access to legal abortion, Roe, like Brown, appears to have strengthened the losers in the case-the antiabortion forces-and weakened the winners. The fledgling anti-abortion movement grew enormously after Roe and the pro-choice movement that had been able to change laws in eighteen states collapsed. One of the results of the collapse was the lack of pressure on local institutions to provide abortion services. This history suggests that if Roe is overturned there may be a massive mobilization of pro-choice forces. While at least some states may prohibit abortion, these are likely to be states where, under Roe, abortion services are virtually impossible to obtain.

97. Id. at 190.

98. Doe v. Bolton, 410 U.S. 179 (1973).

99. Id. at 194.

2006] HeinOnline -- 54 Drake L. Rev. 811 2005-2006 Drake Law Review In sum, the finding of a constitutional right to terminate a pregnancy has not guaranteed access to abortion for women. It derailed the prochoice movement and energized its opponents. As the executive director of a Missoula, Montana, abortion clinic destroyed by arson in 1993 put it: "It does no good to have the [abortion] procedure be legal if women can't get it."'''° C. The Opinion That Backfired: Goodridge v. Department of Public Health1 01 Goodridge, perhaps more than any other modern case, highlights the folly of Progressives turning to litigation in the face of legislative hostility. In Goodridge, the Supreme Judicial Court of Massachusetts held that the state could not deny marriage licenses to same-sex couples. 0 This decision followed an earlier decision of the Hawaii Supreme Court that the state's refusal to recognize same-sex marriages, absent a compelling justification, violated the state constitution's guarantee of equal protection of the laws,103 and a decision of the Vermont Supreme Court that essentially forced the Vermont legislature to enact civil unions. 1°4 The result of these judicial victories has been nothing short of disastrous for the right to same-sex marriage. **The people of Hawaii effectively overturned their court's decision by constitutional amendment.** Then, in 1996, the U.S. Congress passed the so-called Defense of Marriage Act denying all the federal benefits of marriage to same-sex couples.10 5 Many states followed suit, and as of the 2004 election, at least thirty-nine states had adopted measures designed to prevent the recognition of samesex marriage. 106 Even worse, there was a movement to limit marriage to heterosexual couples by amending both the federal and state constitutions. While a federal amendment has yet to be passed by Congress, every constitutional amendment presented to state voters has been approved-in

100. Gerald N. Rosenberg, The Real World of Constitutional Rights: The Supreme Court and the Implementation of the Abortion Decisions, in CONTEMPLATING COURTS 390, 417 (Lee Epstein ed., 1995) (quotation and emphasis omitted).

101. Goodridge v. Dep't of Pub. Health, 798 N.E.2d 941 (Mass. 2003). For an extensive exploration of the impact of the attempt to win the right to same-sex marriage through litigation, see GERALD N. ROSENBERG, THE HOLLOW HOPE (2d.

ed.¶ forthcoming 2007).¶ 102. Goodridge, 798 N.E.2d at 948.¶ 103. Baehr v. Lewin, 852 P.2d 44, 67-68 (Haw. 1993).¶ 104. Baker v. State, 744 A.2d 864, 867 (Vt. 1999).¶ 105. 28 U.S.C. § 1738C (2000).¶ 106. See, e.g., ALA. CODE § 30-1-19 (LexisNexis Supp. 2005).¶ [Vol. 54¶ HeinOnline -- 54 Drake L. Rev. 812 2005-2006¶ Courting Disaster¶ almost all cases by lopsided majorities. As 2004 came to a close, more than¶ one-third of all states, representing close to one-quarter of the American¶ population, had banned same-sex marriage by constitutional amendment.¶ With several constitutional amendments on ballots in 2006, and perhaps in¶ 2008, more states are likely to join the list.¶ What happened? The answer is simple. Same-sex marriage¶ proponents had not built a successful movement that could persuade their¶ fellow citizens to support their cause and pressure political leaders to¶ change the law. Without such a movement behind them, winning these¶ court cases sparked an enormous backlash. They confused a judicial¶ pronouncement of rights with the attainment of those rights. The battle for¶ same-sex marriage would have been better served if they had never¶ brought litigation, or had lost their cases. Now, they must either convince¶ majorities in more than one-third of the states to remove the constitutional¶ prohibitions on same-sex marriage that have just been added or hope that¶ the U.S. Supreme Court will strike down prohibitions on same-sex¶ marriage as unconstitutional. This is a daunting task-one that ought not¶ to have been faced.¶ IV. **WHEN WILL THEY EVER LEARN**? RETURNING TO PAST¶ UNDERSTANDINGS¶ **The sad story of the turn to litigation by same-sex marriage¶ proponents illustrates the current Progressive failure to understand that¶ successful social change requires building social movements**. From Brown¶ to Roe to Goodridge the Progressive agenda was hijacked by a group of¶ elite, well-educated and comparatively wealthy lawyers who uncritically¶ believed that rights trump politics and that successfully arguing before¶ judges is equivalent to building and sustaining political movements.¶ **Litigation is an elite, class-based strategy for change. 107 It is premised on¶ the notion that it is easier to persuade similarly educated and wealthy¶ lawyers who happen to be judges of certain liberal principles than to¶ organize everyday citizens. That might be true but without broad citizen¶ support change will not occur.¶** Litigation substitutes symbols for substance. The collapse of the pro-¶ 107. As Alexis de Tocqueville noted more than a century and a half ago,¶ lawyers are elitist by training. He wrote: "hidden at the bottom of a lawyer's soul one¶ finds some of the tastes and habits of an aristocracy.... [American lawyers] conceive a¶ great distaste for the behavior of the multitude and secretly scorn the government of¶ the people." ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 243 (J.P. Mayer &¶ Max Lerner eds., George Lawrence trans., Harper & Row 1966) (1848).¶ 20061¶ HeinOnline -- 54 Drake L. Rev. 813 2005-2006¶ Drake Law Review¶ choice movement after Roe is a perfect illustration as it remains the case¶ that for many women abortion services are difficult to find. Similarly, the¶ growing re-segregation of the nation's public schools is occurring at a time¶ when Brown has achieved almost mythical, symbolic status. The danger of¶ celebrating a symbol is that it can lead to a sense of self-satisfaction and¶ insensitivity to actual practice. Seen in this light, Brown is "little more than¶ an ornament, or golden cupola, built upon the roof of a structure found¶ rotting and infested, assuring the gentlefolk who only pass by without¶ entering that all is well inside. '10 8 Celebrating legal symbols encourages us¶ to look to legal solutions for political and cultural problems. Without¶ political support, court decisions will not produce social change. To¶ valorize lawyers and courts encourages reformers to litigate for social¶ change. But if political support is lacking, the effect of this vision is to limit¶ change by deflecting claims for reform away from substantive political¶ battles, where success is possible, to harmless legal ones where it is not. In¶ this way, courts play a deeply conservative ideological function in defense¶ of the status quo. When social reformers succumb to the "lure of¶ litigation" they forget that deep-seated social conflicts cannot be resolved¶ through litigation.¶ Today, there is some

hope that Progressives may be turning away¶ from litigation as a strategy for change. The cause, alas, is not a re-learning¶ of historical lessons and an understanding of the limitations on courts and¶ the need for political mobilization. Rather, it is a realization that the¶ current Supreme Court is unlikely to promote progressive principles. If¶ this were the only effect of a conservative Court it would be a good thing.¶ The problem, of course, is that even if courts are limited in their ability to¶ help Progressives, they have more room to do damage. Courts are not¶ symmetrically constrained from furthering both progressive and¶ conservative change. This is because typically Progressives are asking¶ courts to require change while Conservatives are supporting the status quo.¶ Further, it is easier to dismantle Progressive programs than to create them.¶ For example, with Justice Alito replacing Justice O'Connor, affirmative¶ action plans may be found to be unconstitutional. We are now in a position¶ where courts can be an obstacle to change.¶ None of this means that law is irrelevant or that courts can never¶ further the goals of the relatively disadvantaged. For the civil rights¶ 108. Michael E. Tigar, The Supreme Court 1969 Term-Foreword: Waiver of¶ Constitutional Rights: Disquiet in the Citadel, 84 HARV. L. REV. 1, 7 (1970). Tigar¶ wrote these words specifically about the Warren Court's criminal rights decisions but¶ they are more generally applicable.¶ [Vol. 54¶ HeinOnline -- 54 Drake L. Rev. 814 2005-2006¶ Courting Disaster¶ movement, for example, courts played an important role in keeping the sitin¶ movement going, ending the Montgomery bus boycott by providing the¶ boycotters with leverage, furthering school desegregation by threatening to¶ cut off federal funds under Title VI, and upholding affirmative action¶ programs. But in each case courts were effective because a political¶ movement was supporting change. The analysis does mean that courts¶ acting alone, as in Brown or Goodridge, are structurally constrained from¶ furthering the goals of the relatively disadvantaged.¶ **As Progressives look to the future, they must understand that¶ American courts are not all-powerful institutions. They were designed with¶ severe limitations and placed in a political system of divided powers**. To¶ rely on litigation rather than political mobilization, as difficult as it may be,¶ misunderstands both the limits of courts and the lessons of history. It¶ substitutes symbols for substance and clouds our vision with a naive and¶ romantic belief in the triumph of rights over politics. And **while romance¶ and even naivete have their charms, they are no substitute for substantive¶ change.**

Specifically, the Supreme Court leans hard to the right on surveillance and privacy protection – empirical serial policy failure proves that the plan will be fail

Rosenberg 5 (Dr. Gerald Rosenberg, Associate Professor of Political Science and Lecturer in Law, University of Chicago, B.A., Dartmouth College, 1976; M.A., Oxford University, 1979; J.D., 1983, University of Michigan; Ph.D., 1985, Yale University, "Courting Disaster: Looking for Change in All the Wrong Places", 54 Drake Law Review 795 (2005), http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2922&context=journal_articles) //RL

In the 1960s and 1970s, while government at all levels took steps to¶ harass civil rights and antiwar activists, the Court became somewhat more¶ protective of political dissent. 67 However, the level of protection must not¶ be overstated. It was also the case that **the federal government engaged in¶ massive surveillance of the lawful political actions of countless Americans,¶ and the Supreme Court upheld the program in 1972 in Laird v. Tatum**. 68¶ Those who publicly dissented against the war in Vietnam, and even those¶ who did not-such as parents, relatives, and friends of protesters-ran the¶ risk

of government surveillance and harassment. 69 One must also remember that it was not until 1965 that the U.S. Supreme Court first invalidated a congressional act on First Amendment free speech grounds.70 64. See Herbert H. Hyman, England and America: Climates of Tolerance and Intolerance-1962, in THE RADICAL RIGHT 227, 231 (Daniel Bell ed., 1963) (writing about the United Kingdom, but his statements apply to France as well). 65. Robert A. Dahl, Epilogue to POLITICAL OPPOSITIONS IN WESTERN DEMOCRACIES 387,391 (Robert A. Dahl ed., 1966). 66. MARTIN SHAPIRO, FREEDOM OF SPEECH: THE SUPREME COURT AND JUDICIAL REVIEW 109 (1966). 67. See generally ROSENBERG, supra note 4 (examining social change in the 1960s and 1970s and both the courts' role and governmental reactions). 68. Laird v. Tatum, 408 U.S. 1 (1972); see generally Developments in the Law: The National Security Interest and Civil Liberties, 85 HARV. L. REV. 1133, 1133 (1972) (discussing the extent of government surveillance). 69. See INTELLIGENCE ACTIVITIES AND THE RIGHTS OF AMERICANS, S. REP. No. 94-755, at 165-82 (1976) (discussing the overbroad scope of domestic intelligence gathering by the federal government). 70. Lamont v. Postmaster Gen., 381 U.S. 301, 307 (1965) (invalidating an act requiring addressees to affirmatively notify post office of their desire to receive foreign communist political propaganda). [Vol. 54 HeinOnline -- 54 Drake L. Rev. 804 2005-2006 Courting Disaster **And, of course, historically, the First Amendment was entirely useless in protecting the speech rights of African-Americans.** 7 ' Given the Court's historic support of governmental repression of dissident speech, how did criticism of the Vietnam War flourish, and how has muted criticism of the War in Iraq been protected? The answer is that both elites and regular citizens were divided over both wars, increasing the political costs of repression. **When elite elected officials and media organizations (such as The New York Times and the Washington Post) take up the cause of political dissent it is likely to be better protected than when such elite support is missing**. In such situations there will be both fewer governmental attempts at repression and less judicial support for them. This suggests, however, that it is political support, not judicial action, which protects political dissent. **Perhaps no case more powerfully and poignantly illustrates the Court's unwillingness to protect even the most fundamental civil liberties and civil rights as Korematsu v. United States.**72 In this World War II era case, the Court upheld the conviction of Mr. Korematsu for remaining in a military control area in violation of an executive order requiring all persons of Japanese ancestry on the West Coast be evacuated from the area.73 As commentators have repeatedly pointed out, none of the 112,000-120,000 people subject to the order, including approximately 70,000 U.S. citizens, were charged with a crime. 74 No evidence was presented that they had violated any laws and no hearings were held. Yet they were all shipped to what were in essence prisoner-of-war camps, where they remained throughout the war. It is hard to imagine a more blatant violation of civil liberties. Indeed, in 1988 Congress agreed, enacting legislation giving all living survivors of the camps a $20,000 payment.75 In addition, Congress offered an apology: "For these fundamental violations of the basic civil liberties and constitutional rights of these individuals of Japanese ancestry, the Congress apologizes on behalf of the Nation. ' 76 71. See, e.g., Dred Scott, 60 U.S. (19 How.) 393, 417 (1856) (declining to extend the privileges and immunities of citizens to African-Americans because "it would give them the full liberty of speech in public and in private upon all subjects"). 72. Korematsu v. United States, 323 U.S. 214 (1944). 73. Id. at 215-16. 74. See PERSONAL JUSTICE DENIED: REPORT OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS 2-3 (1982); PETER IRONS, JUSTICE AT WAR 297 (1983); Eugene V. Rostow, The Japanese American Cases-A Disaster, 54 YALE L.J. 489, 496-97 (1945). 75. 50 U.S.C. app. § 1989b-4 (2000). 76. 50 U.S.C. app. § 1989a(a) (2000). 20061 805 HeinOnline -- 54 Drake L. Rev. 805 2005-2006 Drake Law Review As with civil rights, this brief history shows that historically the Court has supported repressive

majorities against vulnerable minorities. Civil¶ liberties have only been protected when there was more than a minimum¶ of elite and popular support for them. Looking to the Court to protect¶ core freedoms has not worked historically. Elliott Richardson put the¶ point well, writing more than half a century ago:¶ The great battles for free expression will be won, if they are won, not¶ in courts but in committee rooms and protest-meetings, by editorials¶ and letters to Congress, and through the courage of citizens¶ everywhere. **The proper function of courts is narrow. The rest is our¶ responsibility**

And the Supreme Court is specifically hard on immigration

Danielle **Renwick** and Brianna **Lee 2-26**-2015, "The U.S. Immigration Debate," Council on Foreign Relations, http://www.cfr.org/immigration/us-immigration-debate/p11149

The uneven enforcement of immigration laws and the unclear boundaries between federal and state jurisdiction have sent many debates over U.S. immigration policy to the courts. In 2012, the Supreme Court struck down three of the four major parts of Arizona's SB 1070 law, including provisions that made it a state crime for undocumented immigrants to seek or perform work or fail to carry registration papers, and a provision that allowed law enforcement to arrest them without a warrant if there was "probable cause" that they committed a public offense. However, in 2012 the court upheld the controversial "papers, please" provision allowing law enforcement to ask for proof of citizenship, ruling that Arizona did not overstep its jurisdiction by enacting this portion of the law. In 2014, the Obama administration dropped its case against Arizona, allowing the "papers, please" clause to stand as Arizona ceased its efforts to reinstate the part of SB 1070 that made it a crime to harbor undocumented immigrants. In February 2015, a federal judge in Texas ruled in favor of a suit brought by Texas and twenty-five states against Obama's Immigration Accountability Executive Action, ruling that the Obama administration had not followed legal procedures for changing federal rules. The administration has said it would appeal the decision, and experts say the case will likely go to the Supreme Court. "It's a very important setback, but it's not the last word on the subject," says Muzaffar Chishti, director of the think tank Migration Policy Institute's office at New York University's School of Law. "A case involving five million people as potential beneficiaries of deferred action has never gone to any court. Having said that, the Supreme Court has granted a lot of deference to the federal government in exercise of enforcement of immigration laws."

Courts don't solve- inability to hear cases about the underlying issue and decreasing public support

Rosenberg 08 (Gerald N. Rosenberg, Associate Professor of Political Science and Lecturer in Law at UChicago, The Hollow Hope 2nd edition published 2008 , Kindle location 231)

The view of courts as unable to produce significant social reform has a distinguished pedigree reaching back to the founders. Premised on the institutional structure of the American political system and the procedures and belief systems created by American law, it suggests that the conditions required for courts to produce significant social reform will seldom exist. Unpacked, packed, the Constrained Court view maintains that courts will generally not be effective producers of significant social reform for three reasons: the limited nature of constitutional rights, the lack of judicial independence, and the judiciary's inability to develop appropriate policies and its lack of powers of implementation. The Limited Nature of Rights The Constitution, and the set of beliefs that surround it, is not unbounded. Certain rights are enshrined in it and others are rejected. In economic terms, private control over the allocation and distribution of resources, the use of property, is protected (Miller 1968). "Rights" to certain minimums, mums, or equal shares of basic goods, are not. Further, judicial discretion is bound by the norms and expectations of the legal culture. These two parameters, believers in the Constrained Court view suggest, present a problem for litigators pressing the courts for significant social reform because most such litigation is based on constitutional claims that rights are being denied.; An individual or group comes

into a court claiming it is being denied some benefit, fit, or protection from arbitrary and discriminatory action, and that it is entitled to this benefit or that protection. Proponents of the Constrained Court view suggest that this has four important consequences for social reformers. First, they argue, it limits the sorts of claims that can be made, for not all social reform goals can be plausibly presented in the name of constitutional rights. For example, there are no constitutional rights to decent housing, adequate levels of welfare, or clean air, while there are constitutional rights to minimal governmental interference in the use of one's property. This may mean that "practically significant but legally irrelevant policy matters may remain beyond the purview of the court" (Note 1977, 436). Further, as Gordon (1984, 111) suggests, "the legal forms we use set limits on what we can imagine as practical outcomes." Thus, the nature of rights in the U.S. legal system, embedded in the Constitution, may constrain the courts in producing significant social reform by preventing them from hearing many claims. A second consequence from the Constrained Court perspective is that, even where claims can be made, social reformers must often argue for the establishment of a new right, or the extension of a generally accepted right to a new situation. In welfare rights litigation, for example, the Court was asked to find a constitutional right to welfare (Krislov 1973). This need to push the courts to read the Constitution in an expansive or "liberal" way creates two main difficulties. Underlying these difficulties is judicial awareness of the need for predictability in the law and the politically exposed nature of judges whose decisions go beyond the positions of electorally accountable officials. First, the Constitution, lawyers, judges, and legal academics form a dominant legal culture that at any given time accepts some rights and not others and sets limits on the interpretation and expansion of rights. Judicial discretion is bound by the beliefs and norms of this legal culture, and decisions that stray too far from them are likely to be reversed and severely criticized. Put simply, courts, and the judges that compose them, even if sympathetic to social reform form plaintiffs, may be unwilling to risk crossing this nebulous yet real boundary.' Second, and perhaps more important, is the role of precedent and what Justice Traynor calls the "continuity scripts of the law" (Traynor 1977, 11). Traynor, a justice of the California Supreme Court for twenty-five years, Chief Justice from 1964 to 1970, and known as a judge open to new ideas, wrote of the "very caution of the judicial process" (1977, 7). Arguing that "a judge must plod rather than soar," Traynor saw that the "greatest judges" proceed "at the pace of a tortoise that steadily makes advances though it carries the past on its back" (1977, 7, 6). Constrained by precedent and the beliefs of the dominant legal culture, judges, the Constrained Court view asserts, are not likely to act as crusaders. Third, supporters of the Constrained Court view note, as Scheingold (1974) points out, that to claim a right in court is to accept the procedures and obligations of the legal system. These procedures are designed, in part, to make it difficult for courts to hear certain kinds of cases. As the Council for Public Interest Law (CPIL) puts it, doctrines of standing and of class actions, the so-called political question doctrine, the need to have a live controversy, and other technical doctrines can "deter courts from deciding cases on the merits" (CPIL 1976, 355) and can result in social reform groups being unable to present their best arguments, or even have their day in court. Once in court, however, the legal process tends to dissipate significant social reform by making ing appropriate remedies unlikely. This can occur, McCann (1986, 200) points out, because policy-based litigation aimed at significant social reform is usually "disaggregate(di ... into discrete conflicts among limited actors over specific individual entitlements." Remedial decrees, it has been noted, "must not confuse what is socially or judicially desirable with what is legally required" (Special Project 1978, 855). Thus, litigation seldom deals with "underlying issues and problems" and is "directed more toward symptoms than causes" (Harris and Spiller 1976, 26). Finally, it has long been argued that framing issues in legally sound ways robs them of "political and purposive appeal" (Handler 1978, 33). In the narrow sense, the technical nature of legal argument can denude issues of emotional, widespread appeal. More broadly, there is the danger that litigation by the few will replace political action by the many and reduce the democratic nature of the American polity. James Bradley Thayer, writing in 1901, was concerned that reliance on litigation would sap the democratic process of its vitality. He warned that the "tendency of a common and easy resort" to the courts, especially in asking them to invalidate acts of the democratically accountable branches, would "dwarf the political capacity of the people" (Thayer 1901, 107). This view was echoed more recently by McCann, who found that litigation-prone activists' "legal rights approach to expanding democracy has significantly narrowed their conception of political action itself" (McCann 1986, 26). Expanding the point, McCann argued that "legal tactics not only absorb scarce resources that could be used for popular mobilization ... [but also] make it

difficult to develop broadly based, multiissue grassroots roots associations of sustained citizen allegiance" (McCann 1986, 200). For these reasons, the Constrained Court view suggests that the nature of rights in the U.S. constrains courts from being effective producers of significant social reform. Thus, Constraint I: The bounded nature of constitutional rights prevents courts from hearing or effectively acting on many significant social reform claims, and lessens the chances of popular mobilization.

Court's don't solve- lack of enforcement power

Rosenberg 08 (Gerald N. Rosenberg, Associate Professor of Political Science and Lecturer in Law at UChicago, The Hollow Hope 2nd edition published 2008 , Kindle location 266)

For courts, or any other institution, to effectively produce significant social reform, they must have the ability to develop appropriate policies and the power to implement them. This, in turn, requires a host of tools that courts, according to proponents of the Constrained Court view, lack. In particular, successful implementation requires enforcement powers. Court decisions, requiring people to act, are not self-executing. But as Hamilton pointed out two centuries ago in The Federalist Papers (1787-88), courts lack such powers. Indeed, it is for this reason more than any other that Hamilton emphasized the courts' character as the least dangerous branch. Assuaging fears that the federal courts would be a political threat, Hamilton argued in Federalist 78 that the judiciary "has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments" (The Federalist Papers 1961, 465). Unlike Congress and the executive branch, Hamilton argued, the federal courts were utterly dependent on the support of the other branches and elite actors. In other words, for Court orders to be carried out, political elites, electorally accountable, must support them and act to implement them. Proponents of the Constrained Court view point to historical recognition of this structural "fact" of American political life by early Chief Justices John Jay and John Marshall, both of whom were acutely aware of the Court's limits.12 President Jackson recognized these limits, too, when he reputedly remarked about a decision with which he did not agree, "John Marshall has made his decision, now let him enforce it." More recently, the unwillingness of state authorities to follow court orders, and the need to send federal troops to Little Rock, Arkansas, to carry them out, makes the same point. Without elite support port (the federal government in this case), the Court's orders would have been frustrated. While it is clear that courts can stymie change (Paul 1960), though ultimately not prevent it (Dahl 1957; Nagel 1965; Rosenberg 1985), the Constitution, in the eyes of the Constrained Court view, appears to leave the courts few tools to insure that their decisions are carried out. If the separation of powers, and the placing of the power to enforce court decisions in the executive branch, leaves courts practically powerless to insure that their decisions are supported by elected and administrative officials, then they are heavily dependent on popular support to implement their decisions. If American citizens are aware of Court decisions, and feel duty-bound to carry them out, then Court orders will be implemented. However, proponents of the Constrained Court view point out that survey data suggest that the American public is consistently uninformed of even major Supreme Court decisions and thus not in a position to support them (Adamany 1973; Daniels 1973; Dolbeare 1967; Goldman and Jahnige 1976). If the public or political elites are not ready or willing to make changes, the most elegant legal reasoning will be for naught. This constraint may be particularly powerful with issues of significant social reform. It is likely that as courts deal with issues involving contested values, as issues of significant social reform do almost by definition, they will generate opposition. In turn, opposition may induce a withdrawal of the elite and public support crucial for implementation. Thus, proponents of the Constrained Court view suggest that the contested nature of issues of significant social reform makes it unlikely that the popular support necessary for implementation mentation will be forthcoming.

Increasing popular pressure lead to Brown v Board, not the other way around

Rosenberg 08 (Gerald N. Rosenberg, Associate Professor of Political Science and Lecturer in Law at UChicago, The Hollow Hope 2nd edition published 2008, Kindle location 2413)

The spread of mass communication was having an impact as television and radio brought the talents of black entertainers or sports heroes like Jackie Robinson to all (Kluger 1976, 749). By the 1960s the media coverage of the brutality of segregation had a receptive audience. The combination of all these factors-growing civil rights pressure from the 1930s, economic changes, the Cold War, population shifts, electoral concerns, the increase in mass communication-created the pressure that led to civil rights. The Court reflected that pressure; it did not create it. Even Jack Greenberg, head of the NAACP Inc. Fund, admits that by the time of Brown there "was a current of history and the Court became part of it" (Greenberg 1977, 589). That current was growing in force and, as my analysis has shown, the Court contributed little to it. So strong was the pressure for change, argues Peltason, that "even if the Supreme Court had sustained segregation, such a decision could not have long endured" (Peltason 1971, 249). Reflecting on the growing social, political, and economic forces of the time, the government's civil rights litigator Elman put it this way: "In Brown nothing that the lawyers said made a difference. Thurgood Marshall could have stood up there and recited `Mary had a little lamb,' and the result would have been exactly the same" (Elman 1987, 852). But I need not engage in historical speculation. All I need to show is that there is evidence that the changes in civil rights could plausibly have happened without Supreme Court action. For if they could have, then my finding that the courts contributed little to civil rights does not violate the skeptic's concern for causation. And while there is no way to be certain, the lack of evidence for the contribution of the courts, and the evidence of the strength of social, economic, and political change, go a long way toward establishing causal connections.

Courts empirically fail to solve sexism- wage discrimination

Rosenberg 08 (Gerald N. Rosenberg, Associate Professor of Political Science and Lecturer in Law at UChicago, The Hollow Hope 2nd edition published 2008, Kindle location 2917)

Fortunately for the analysis, but unfortunately for America, there has been uneven improvement in the position of American women in the key areas of income and jobs. Despite Court and government action prohibiting sex discrimination, there has been "little discernible progress in the relative labor market status of women" (Johnson and Solon 1986, 183). And in the places where change has occurred, students trace it to congressional and executive branch action, not Court action. A particularly depressing measure of the lack of progress is the difference between the salaries of men and women. Table 7.1 presents the figures of the "earnings gap." As can be seen clearly from the table, year-round full-time women workers made a smaller percentage of their male counterparts' salaries in 1980 than they did in 1955! Even by 1987, after nearly two decades of Court and government action, the relative position of men and women in terms of income was about the same as it was over thirty years earlier." "Even when adjustments are made for education and occupation," the U.S. Commission mission on Civil Rights (USCCR) found in 1978, "women earn less than men" (USCCR 1978, 9).12 Other studies, controlling for factors such as age, work experience, and education still find a large gap (Reskin and Hartmann 1986, 10-11, 70-73, 123; Blau 1984, 133-39). In terms of education, the Women's Bureau found that "in 1974 women with 4 years of College had lower incomes than men who had only completed the 8th grade" and "fully employed women high school graduates (no college) had less income on the average than fully employed men who had not completed elementary school" (USDL 1976b, 2-3). By the 1980s, little had changed, with one study concluding that in 1984, among all workers, "male high school graduates have median incomes one and one-half times greater than women with college and graduate degrees" (Tan-Whelan 1984, 3). With full-time workers, in 1985 female college graduates made less than male high school graduates and women with graduate education made less than male college dropouts! (The American Woman 1988, 389). And a recent study by the Rand Corporation found that if "current trends continued women would earn only 74 percent of men's income by the year 2000" ("Women's Pay" 1984, 16). Any contribution of the Court to ending sex discrimination is not found in the area of wage discrimination. 1 I . A 1984 study by a senior official of the Census Bureau found that the wages of white women

entering the job market in 1980 were further behind the wages of comparable white men than they were in 1970 (Pear 1984). 12. This 1978 study corroborated one done by the commission in 1974 which found the gap remaining large even when age, skill level, race, and part-time work were controlled for (USCCR 1974c, 5). The lack of Court efficacy also holds in the area of comparable worth. Despite litigation, where comparable worth policies have been instituted, they have been the result of collective bargaining and state government action, not litigation. From California and Washington to Minnesota, comparative worth policies have been instituted "through the legislatures and private negotiation," not courts (Clauss 1986, 8). Blumrosen found that "long before the courts" became involved, "state and local governments began identifying and attacking the problem of wage discrimination against women" (Blumrosen 1984, 111 n.5). In other words, "even before Gunther there had been considerable activity in the states, which themselves were under pressure from unions and women's groups" (Blumrosen 1984, 111). As of September, 1983,

Political Capital DA

<<PLAN UNPOPULAR / CONTROVERSIAL>>

Supreme Court justices have finite political capital – controversial decisions will be followed by moderate decisions and avoidance of other major issues

Grosskopf and Mondak, Profs of Poli Sci Long Island U and U of Illinois, **1998**
(Anke Grosskopf, Assistant Prof of Political Science @ Long Island University, & Jeffrey Mondak, Professor of Political Science @ U of Illinois, 1998, "Do attitudes toward specific supreme court decisions matter? The impact of Webster and Texas v Johnson on Public Confidence in the Supreme Court" Political Research Quarterly, vol. 51 no 3 633-54 September1998)

> The existence of a strong link between basic values and diffuse support does not necessarily preclude a role for specific decisions, particularly when we seek to understand how support comes to change over time (e.g., Caldeira and Gibson 1992: 658-61). We believe that any claim that the Supreme Court is fully immune to backlash against controversial decisions can be rejected on a prima facie level. First, consider the extreme case. Were the Supreme Court to make its occasional blockbusters-Brown v. Board of Education, Roe v. Wade, Texas v. Johnson, etc.-the norm by routinely ruling on the thorniest social questions, we see it as implausible that such actions would bring no cumulative impact on how people view the Court. Second, the Supreme Court's typical mode of operation suggests that justices themselves view institutional support as an expendable political capital (Choper 1980). That is, the Court recognizes its own political limitations, and thus justices pick their spots carefully when approaching potentially controversial cases. From this perspective, the apparent dominance of democratic values as a determinant of institutional support (e.g., Caldeira and Gibson 1992) means not that the Court is insulated from backlash, but that strategic justices tread cautiously so as to keep backlash to a minimum. Consequently, how and where we examine whether public response to Supreme Court decisions affects institutional support may shape what answer we find.

This paves the way for unchecked human rights violations in lower courts, including racialized and class-based incarceration – controversial issues are rejected out of hand regardless of import and the Supreme Court has the only power on these matters

Katz 8 (Josh, Staff Attorney at Simpson Thacher & Bartlett LLP, "Supreme Court Rejects Controversial Case of Troy Davis", FindingDulcinea, October 14th, 2008, http://www.findingdulcinea.com/news/Americas/October-08/Supreme-Court-Rejects-Controversial-Case-of-Troy-Davis-0.html) //RL

The U.S. Supreme Court rejected Troy Davis' last appeal today, the Los Angeles Times reports, permitting Georgia to proceed with the death penalty. The justices left no explanation for their decision. ¶ **Davis' conviction and his death sentence have generated a great deal of controversy**. Nine witnesses testified to Davis' guilt during his trial in Georgia. Since then, seven of them have recanted their testimony. Davis' attorneys say that the real culprit was Coles, who was one of the witnesses who

testified against Davis, according to the Associated Press. ¶ "The Supreme Court's decision is truly shocking, given that significant evidence of Davis' innocence will never have a chance to be examined," said Larry Cox, executive director of Amnesty International USA. "Faulty eyewitness identification is the leading cause of wrongful convictions, and the hallmark of Davis' case."¶ According to the Los Angeles Times, the justices may have concluded that the prior guilty judgements from the state of Georgia were correct.¶ Georgia was scheduled to execute Troy Davis by lethal injection on Sept. 23, but the Supreme Court intervened and granted a stay of execution with less than two hours to spare. ¶ Davis had been convicted for shooting and killing 27-year-old off-duty police officer Mark MacPhail in a clash in a Burger King parking lot in 1989. MacPhail allegedly approached Davis and Davis's friend Sylvester "Red" Coles after the two got into a skirmish with a homeless man, the Associated Press reports.¶ The trial lacked physical evidence and no weapons had been discovered, CNN reports. The witnesses who retracted their statements said that "they were mistaken, they feared retribution from the man they say actually killed MacPhail or that police pressured them into fingering Davis," according to CNN.¶ **Former President Jimmy Carter, South African Archbishop Desmond Tutu, Pope Benedict XVI and Rev. Al Sharpton have all called on the state of Georgia to spare the life of Davis, and have called for a new trial**. Celebrities including Susan Sarandon, Harry Belafonte and the Indigo Girls, Congressman John Lewis, D-Ga., and former U.S. lawmakers Bob Barr and Carolyn Moseley Braun have also stood in support of Davis. Amnesty International has coordinated rallies inside and outside of the United States in Davis's defense, CNN reports.¶ Sources in this Story¶ Los Angeles Times: Supreme Court clears way for Georgia execution¶ The Atlanta Journal-Constitution: Supreme Court issues stay of execution for Davis¶ Associated Press: Georgia set to execute man for officer's death¶ CNN: High court to rule whether convicted cop killer dies¶ Georgia Supreme Court: Davis v. the State¶ Atlanta Journal-Constitution: Troy Davis may be innocent¶ The American Prospect: NO JUSTICE FOR TROY DAVIS.¶ Reason: Is Georgia About to Execute an Innocent Man?¶ findingDulcinea: On this Day: Illinois Governor Commutes 167 Death Sentences¶ Death Penalty Information Center: Causes of Wrongful Convictions¶ But the prosecutors claim that the evidence still points to Davis' culpability. Anneliese MacPhail, the mother of the fallen police officer, said, "Troy Davis was judged by his peers. All the courts have found him guilty. It was proven he was guilty. Please let us have some peace. Let Mark rest in peace. Let justice be done."¶ The Georgia Supreme Court has turned down Davis' insistence for a new trial twice, and rejected his appeal by a 6-1 vote to stay the execution before the U.S. Supreme Court intervened, according to the AP. Since 1973, the state of Georgia has executed 42 other inmates.¶ Opinion & Analysis: Davis' fate¶ The Georgia Supreme Court had refused to grant Davis a stay, citing evidence from the trial that appeared to pinpoint Davis as the man who murdered MacPhail. According to the court, evidence from the trial indicated that MacPhail chased after Davis and Coles. Coles then allegedly stopped, and MacPhail continued to chase Davis. Davis then reportedly shot MacPhail, stood over the police officer "smiling and fired again." ¶ The state Supreme Court rejected the argument of Davis' lawyers that the execution should be stayed because so many of the trial witnesses have recanted their testimony. According to the Court, such "Declarations made after the trial are entitled to much less regard than sworn testimony delivered at the trial," because, among other reasons, memory is more likely to change over time. Davis' lawyers argued that his situation was "extraordinary," but the Court called that argument "unpersuasive."¶ A number of op-ed pieces disagreed with the Georgia Supreme Court's opinion. Cynthia Tucker of the Atlanta Journal-Constitution argues that this case is less about justice and more about the state of society: **"If Troy Anthony Davis had occupied a higher rung on the social ladder, he probably would not have been convicted of murder in the August 1989 shooting death of a Savannah police officer."** She accuses the Savannah

police of pressuring witnesses to give them the testimony they needed. Tucker also cites data indicating that "More than 75 percent of the people exonerated by DNA evidence had been falsely convicted by bad eyewitness testimony in their original trials."¶ Adam Servwer of the American Prospect makes a similar argument, claiming in strong words that race has directly played into the Davis case. "This is the logical extension of holding 'black people' accountable for urban crime, rather than the individuals themselves. In this scheme of thought**, as long as a black man pays for the crime—any one will do. This is, quite plainly, a lynching, of the decidedly more fatal low-tech variety."** ¶ Radley Balko of Reason magazine does not know whether Davis is truly guilty, and he asserts the court cannot be sure either, because of the recent recantations. "It looks as if there's at least enough doubt that we can't say for sure," says Balko. "And that ought to be more than enough doubt to hold off on the execution."

Link

Anthony Kennedy is the only vote on the Supreme Court that matters – and recently he's made some risky liberal decisions

Hasen 7/7 (Richard L. Hasen is a professor of law and political science at University of California Irvine, "Richard L. Hasen: More than ever, it's a Kennedy court", The Morning Call, July 7th, 2015, http://www.mcall.com/opinion/mc-supreme-court-justice-kennedy-inflenece-yv-0708-20150707-story.html) //RL

Forget the debate over whether the Supreme Court has taken a liberal turn. It is not a liberal court or a conservative court. **It's a Kennedy court. On major constitutional and statutory questions, Justice Anthony M. Kennedy's views matter more than anything else.**¶ Liberals do have more to celebrate this term **than in the recent pas**t, from the same-sex marriage and Obamacare decisions, to a major housing discrimination case, to a surprising win for minority plaintiffs in a voting rights lawsuit. In those cases, Kennedy was in the majority, and all but one — Obamacare — were decided 5 to 4.¶ But there were some victories for conservatives as well. The court blocked a key environmental rule on mercury pollution. It upheld Oklahoma's lethal injection method. And it rejected an attempt to put a Texas voter identification law on hold, even though a federal court found that the legislature intended to discriminate against minority voters. Kennedy was in the majority in these rulings.¶ Indeed, there were only a handful of important cases this term in which Kennedy was on the losing side of a 5-4 split, such as the Williams-Yulee case, in which Chief Justice John G. Roberts Jr. sided with the four liberals against Kennedy and three conservatives to uphold Florida's ban on judicial candidates personally soliciting campaign contributions.¶ cComments¶ Got something to say? Start the conversation and be the first to comment.¶ ADD A COMMENT ¶ 0¶ Looked at over the long run, Kennedy's influence seems even greater. Think of the Supreme Court's 5-4 decision in the 2010 Citizens United case striking down the ban on corporate spending in elections, which has opened the floodgates to super PACs and big money in politics. Or consider the court's 5-4 decision in the 2013 Shelby County case, which eviscerated a key provision of the Voting Rights Act. Kennedy was in the majority in each instance.¶ **His power won't lessen any time soon.** Last week, the court said it would review a case that could kill public sector unions, overturning long-standing precedent. Kennedy will probably cast the crucial fifth vote. And, no doubt, the court's upcoming decision on how far states can go in restricting abortion will depend on Kennedy's view of what constitutes an "undue burden" on a woman's right to choose.¶ **It is no surprise, as professor Nan Hunter of Georgetown Law School remarked, that Supreme Court advocates often write their briefs for an audience of one: Kennedy.**

Impact

Empirically proven – multiple legal loopholes allow the Supreme Court to throw out cases, especially those that have to do with minority rights

Kloppenberg 01 (Lisa A. Kloppenberg is Dean of the Santa Clara University School of Law, *Playing It Safe : How the Supreme Court Sidesteps Hard Cases and Stunts the Development of Law*, In Critical America.New York : NYU Press. 2001, p.25-31) //RL

compil

Despite the time, money, and energy invested in the litigation over eight years, the Court threw Yniguez out because it determined that the immediate parties no longer had a live controversy over what Yniguez could say on the job. This ruling was consistent with its **mootness prece- dent**s and could have been avoided if Ms. Yniguez's lawyers had filed the suit as a class action composed of numerous state employees as plaintiffs, some of whom still worked for Arizona at the time the case reached the Supreme Court. But their client did not want to file a class action suit be- cause she did not want to turn the English-Only issue into one of "His- panics versus the English speakers of Arizona." Moreover, class actions are not easy to pursue. They require special procedural knowledge and often can be more expensive and burdensome than ordinary litigation.¶ Finally, the Supreme Court took the unusual step of vacating the ear- lier Yniguez opinions, effectively erasing the findings that the law was un- constitutional and destroying the prior victories of those who opposed the English-Only law. Without much explanation, the Court concluded that vacating the opinions was appropriate because the case presented federalism concerns and "exceptional circumstances."¶ Many people reacted strongly to the Court's decision. The mootness ruling, on the heels of the long, complicated history of the Yniguez case, caused much confusion and frustration among Arizona voters and others concerned with the English-Only issue. As one editorial writer put it, "Eight years after voting to do the state's business in English, Arizonans still don't know whether their own judgment about how their own em- ployees should behave at work will be allowed to become law by judges who don't pay a dime of Arizona taxes. And they likely won't know for another couple of years."18 He continued: "Sadly, this decision did noth- ing to end the legal chaos. It only shifted the battleground to the state courts . . . and left open a distinct possibility of having to fight the war again in the federal court." Many Californians had closely watched the lit- igation, in light of litigation challenging their own recent anti-immigrant measure, Proposition 187. This measure, entitled "Save Our State," denied¶ state services such as education and health care to those suspected of being undocumented immigrants. After voters approved the law in 1994, it soon faced court challenges. In 1996, Californians had also enacted an initiative that limited affirmative action in public contracting, employ- ment, and education. In 1986, California voters had approved by direct democracy an English-Only law, but the law required legislative approval for enforcement and the legislature never approved it. One senator com- plained: "They left it up to the Legislature, and when you leave anything up to the Legislature, nothing happens." He indicated that the Supreme Court's mootness ruling "could put political pressure on a balky Califor- nia Legislature."19¶ When we await the Court's pronouncements on the constitutionality of an important new law, avoidance can be at best frustrating and at worst dangerous. One of the problems of avoidance through procedural rulings like mootness (and even refusals to hear a case by denying certio- rari) is that the public often misconstrues avoidance rulings as victories. It is not surprising that some observers viewed the rejection of Yniguez's

challenge as a signal on the merits of the dispute. The English-Only law was not displaced; indeed, the lower court opinions overturning it were erased. Mauro Mujica, chairman of U.S. English, triumphantly declared, "This should be a clear indication to the lower courts that it is inappro- priate to tamper with the will of the people after they have exercised their vote within the democratic process."20¶ **The Court's mootness ruling "delighted states' rights advocates who say such an approach may blunt other constitutional attacks, including the pending challenge to California's [anti-affirmative action mea- sure]**."21 The Supreme Court did encourage the lower federal courts to certify the dispute over how narrowly to construe the English-Only law to the Arizona courts to try to save the statute. Although an amicus brief highlighted the question of how much deference courts owe direct democracy measures, the Court did not tackle that issue directly. Never- theless, some judges are likely to read Yniguez as mandating a "cautious" approach to direct democracy controversies. Subsequently, for example, a federal trial judge found that the California measure conflicted with the federal Constitution. Three Ninth Circuit judges, relying on the Court's admonitions in Yniguez, expressed concern that if the trial judge had in- correctly interpreted the Constitution, he thwarted the will of 4,736,180 voters with a single stroke of a pen. But rather than certifying the mea- sure to the California state courts, the Ninth Circuit interpreted the state¶ law itself. The judges reached the merits and found that it did not offend the Constitution. The U.S. Supreme Court avoided the controversy when it denied certiorari, leaving the Ninth Circuit's invalidation intact.¶ Others expressed frustration with the Yniguez Court's focus on byzan- tine technicalities and the lack of guidance from the Court on the merits of language restrictions. A California state senator said, "I wish they had decided this on the merits, instead of just saying it was a 'moot ques- tion.'"22 When the Supreme Court avoids constitutional issues, the rest of the country can only guess at the likely outcomes when it does address them, years later. Some justices view this as fostering debate and not fore- closing options, allowing a pluralistic society to live with deep differences of opinion.23 But the Court's avoidance techniques often do not foster de- bate. Politicians are still reluctant to tackle difficult and controversial is- sues, particularly those that are not a significant concern to a majority of voters. Frequently, the persons or groups most likely to suffer from these unresolved differences are members of political, racial, cultural, sexual, or religious minority groups. **The lack of guidance from the Court on con- stitutional law is also disturbing. When the Court does not promote uni- form national constitutional interpretation, the content of Equal Protec- tion or First Amendment rights will vary with a citizen's locale.**¶ Avoidance through Certification and the Avoidance Canon¶ **The Court in Yniguez went beyond a simple mootness ruling**, which it could have completed in a few paragraphs, and gave a long lecture on how the lower federal courts should have disentangled themselves from this volatile controversy earlier. Justice Ginsburg, one of the Court's liber- als, wrote the unanimous opinion. As a former Civil Procedure teacher, she is an expert on jurisdictional technicalities. The Court's disdain for what it viewed as procedural mistakes by the lower federal courts in this suit is thinly disguised.¶ The Court warned other federal courts to avoid federal constitutional issues by sending novel state law issues like the interpretation of the Ari- zona law to the state court system through certification. Certification statutes allow a federal court to send state law issues to a state's highest court. In Yniguez, certification would mean that the Arizona Supreme Court would have to figure out whether the English-Only law applies only to official documents and acts like judicial opinions or more broadly¶ to government-employee speech. After a state supreme court ruling, the parties return to the federal system for rulings on federal law issues. The opinion closed on a hopeful note, awaiting the Ruiz decision, which the Court said might greatly simplify the federal constitutional questions presented.¶ In Yniguez, **the Supreme Court also reminded the lower federal courts how**

certification can interact with the avoidance canon to deflect diffi- cult constitutional controversies presenting federalism concerns. The avoidance canon is a rule of statutory construction that encourages judges to determine whether a law can be read in a narrow way to contain it within constitutional bounds. The Yniguez Court implied that if the lower federal courts or, preferably, the Arizona Supreme Court on certifi- cation had found the state's narrowing interpretation persuasive, the liti- gants could have relied on that interpretation in federal court, and the law could have been upheld on federal constitutional grounds. If, on cer- tification, the Arizona court refused to apply the canon and read the law broadly, only then would the federal courts need to face the constitu- tional challenges. Of course, this reasoning contains interpretations of the Constitution: it hints that a narrow reading of the English-Only law would not offend the First Amendment or other constitutional provi- sions and that a broader reading might. Those hints are not binding precedent. However, they are an indirect way of expressing the constitu- tional thinking of some of the justices and can thus constrain other courts without clearly changing the content of the Court's constitutional precedents. The Court frequently shapes the direction of constitutional law with such quasi-constitutional rulings.¶ In urging avoidance through certification, the Court highlighted the po- tential importance of the English-Only issue for Arizona, the unsettled state law question of the meaning of the new law, the attorney general's narrow- ing construction, and the primary sponsors' belated agreement with that construction as reasons for avoidance. The Court concluded that the "more cautious approach" of certification was better than a ruling on the merits, particularly because of the federalism concerns posed. Federalism is the bal- ance of powers between the national and state or local governments. The Rehnquist Court in the 1990s went to great lengths to enlarge and protect the areas in which states have autonomy to operate without federal over- sight, as chapter 7 details. The Yniguez Court meant that the federal courts could have avoided friction between the two court systems and potential error on the state law issue through certification.¶ The Court did not elaborate much on how certification would build a "cooperative judicial federalism," but it probably reasoned that the lower federal courts could have shown more respect for Arizona's legal, social, and political predicament by allowing the Arizona court a chance to agree that the attorney general's narrow construction of the English-Only law was the correct one. This might have saved the statute's constitution- ality while also taking away much of its force—appeasing both sides of the controversy. Additionally, the Court wanted the lower federal courts to avoid friction-generating "error" by construing the law one way and then facing potential embarrassment and inconsistent rulings if the Ari- zona court construed it differently. By giving the Arizona court the first opportunity to speak, the Court hoped to foster Arizona's authority in this controversy while also relieving the federal courts of pressure and responsibility.¶ **Sixty years before Yniguez, the Court created an abstention doctrine in order to avoid an Equal Protection challenge brought by a railroad com- pany and black Pullman porters to a Texas law which favored white con- ductors.** As described in the Introduction, **the Court preferred that Texas courts first review the state law issues, hoping to avoid federal constitu- tional rulings in the "socially sensitive" area of race and gender rela- tions.24** The Yniguez Court conceded the errors of Pullman abstention. It acknowledged that this kind of abstention "proved protracted and expen- sive in practice, for it entailed a full round of litigation in the state-court system before any resumption of proceedings in federal court." The Yniguez Court insisted that certification will work better than abstention because it only requires one round of litigation (in the state's highest court) before proceedings resume in federal court. Certification certainly might save the federal courts time, energy, and resources. But the Court does not mention that certification still imposes additional cost and delay on the litigants, as compared to remaining in federal court and allowing the federal court to

construe the scope of the English-Only law. More- over, certification adds work to the state courts. Thus, litigants may face long waits or hostility to certification requests in some courts. Busy state courts do not always appreciate having controversies delegated to them. For example, the Arizona Supreme Court put the related Ruiz litigation on hold while Yniguez was pending. It did not have to do so; it chose to await the federal system's outcome to discourage forum shopping (when litigants "shop around" for the court, judge, jury, or law which they be- lieve will be most favorable for them). The Arizona court also sought to encourage uniform state and federal court interpretation of the English- Only law by awaiting the outcome of the U.S. Supreme Court's ruling. If it was anxious to rule definitively on the state law issues, the Arizona court could have ruled on the law's construction (and even on its consti- tutionality) before the U.S. Supreme Court issued its opinion. Indeed, the state supreme court gets the last word on state law issues such as the scope of a state law (assuming a court does not construe a law narrowly solely to evade federal court review). So, even if the federal courts had all construed the law broadly, the Arizona court could diverge on the state law question of interpretation and find the attorney general's narrow construction persuasive after a federal court ruling. The state supreme court could even have the last word on state law after a ruling from the U.S. Supreme Court. Thus, any error in construing state law made by a federal court is easily correctable. Further, the Yniguez Court ignored that state supreme courts do not always welcome the additional political pressure when sensitive issues are certified to them. The Arizona court did not discuss this political concern when it put Ruiz on hold, but few judges would think it appropriate to ac- knowledge that type of pressure. Nevertheless, in an era of increasing at- tacks on judicial independence and increasing use of initiatives for con- troversial lawmaking in nearly half of our states, many elected state judges feel the pressure. Although both state and federal judges face criti- cism for their unpopular rulings, federal judges enjoy life tenure and are much more protected than most state court judges. State judicial election and retention campaigns are becoming more expensive and contentious. State judges have come under attack for their rulings in criminal cases and for rejecting popular direct democracy enactments. In such an at- mosphere, many judges try to avoid appearing "activist."25 **It is easy to understand why supporters of the English-Only law might read into Yniguez's cautionary warnings a philosophy of federal court judicial restraint**. The Court's unstated premise seems to be that controversies that present federalism concerns are best decided by the more politically responsive state court judges, not by their life-tenured federal counterparts. Perhaps the justices reason that Arizona voters would resent the judicial system less if their state courts (rather than the federal courts) limited or voided the English-Only law. Moreover, if vot- ers disagree with the Arizona Supreme Court's interpretation of the English-Only law or their conclusion about its constitutionality, the vot- ers will have redress at the polls. In other cases, the Supreme Court has been explicit about basing avoidance techniques in part on the impor- tance of protecting the federal courts from charges of interference with the will of the voters or the products of the majoritarian political process. Thus, not only can certification save the federal courts a lot of work, it can take some political heat off the federal system by transfer- ring it to state courts. In Yniguez, if certification had worked as the Court envisioned, the federal courts could have saved a narrow version of the English-Only law, attributing the narrow reading to state courts. Of course, the federal courts also could have done that without the cost and delay of certification by using the avoidance canon to adopt the state's narrowing construction. As explained shortly, the lower federal courts chose not to use that option because the construction was so im- plausible and conflicted so greatly with voter intent. **The Supreme Court's avoidance through certification strategy poses problems similar to those that courts and litigants struggled with under Pullman abstention. Certification may be a little less harsh than Pullman**

abstention, but it still imposes additional costs and delay for the parties and places additional burdens on the state courts. And, not surprisingly, the Court chooses a controversy strikingly similar to the Pullman case in which to substitute certification for abstention. Once again, the Court promotes a deferral device in a racially charged, socially sensitive, politi- cally heated setting without even mentioning the racial or cultural ten- sions in the English-Only dispute or any of the real-life significance of the controversy. Under the Court's reasoning, the more significant and controversial a state law is, the more risk of friction between the state and the federal court system. Thus, federal judicial review is deemed most ap- propriate where it is least needed: for state laws that do not present seri- ous constitutional problems and for state laws that are not important or controversial.¶ The Yniguez Court approved so heartily of avoiding federal constitu- tional issues that it also suggested to the Arizona Supreme Court that it use its own version of the avoidance canon to construe the English-Only law narrowly. But the Arizona Supreme Court declined to follow the U.S. Supreme Court's avoidance advice. In Ruiz, the Arizona court found that its own attorney general's narrowing construction was implausible and conflicted with the voters' intent, and it struck down the broad English- Only law as a violation of the federal First Amendment.

Politics Links to Courts

Elections

The next presidential election will replace four Supreme Court justices – even if they don't retire, natural factors and mathematical models prove their seats will be vacated anyway – most recent analysis proves the link to politics

Cilliza 7/14/15 (Chris Cillizza writes "The Fix", a politics blog for the Washington Post. He also covers the White House for the newspaper and Web site. Chris has appeared as a guest on NBC, CBS, ABC, MSNBC, Fox News Channel and CNN to talk politics, "The massive stakes in the 2016 election, in 1 graphic", The Washington Post, July 14th, 2015, http://www.washingtonpost.com/blogs/the-fix/wp/2015/07/14/a-reminder-of-the-stakes-in-the-2016-election-in-1-graphic/) //RL

There has been considerable speculation -- and even some urging by Democrats -- that Ginsburg and Stephen Breyer, who is 76, should retire before President Obama's term expires, a move that would allow him to appoint their replacements rather than wait until the uncertain outcome of the 2016 election.¶ That's not a new argument. Here's Randall Kennedy, a law professor at Harvard University, making the case for retirement way back in April 2011 in a New Republic piece:¶ Justices Ruth Bader Ginsburg and Stephen Breyer should soon retire. That would be the responsible thing for them to do. Both have served with distinction on the Supreme Court for a substantial period of time; Ginsburg for almost 18 years, Breyer for 17**. Both are unlikely to be able to outlast a two-term Republican presidential administration,** should one supersede the Obama administration following the 2012 election.¶ Seth Masket, writing in the Pacific Standard in 2014, sounded a similar note:¶ In short, Ginsberg and Breyer are on the left of a sharply divided Court and they are not young. Ginsburg, in particular, is in her eighties, has already suffered through a cancer battle, and has experienced a range of injuries. What's more, the current partisan arrangement allowing Democrats to dominate the justice selection process may not last long. Democrats have around a 50 percent chance of holding the Senate this year, and probably roughly similar odds of holding the White House in 2016. Should the justices step down now, they could be replaced by people of similar ideological persuasions. Waiting longer holds out **a real chance that they would be replaced by people well to the right of them, tipping the Court's precarious balance on such issues as abortion rights.¶** The older justices, for their part, are generally tight-lipped about their retirement plans. (They are, of course, tight-lipped about almost everything.)¶ "I'm concerned about doing the job full steam," Ginsburg told MSNBC's Irin Carmon in February. "Once I sense that I am slipping, I will step down. This is a very intense job." "I'll know when I'm not hitting on all eight cylinders," Justice Antonin Scalia told New York magazine's Jennifer Senior in 2013.¶ **Whether or not they talk about it, the law of averages would suggest that a few retirements at the Court are coming some time soon**. The average age at which Justices retire from the Supreme Court is 78.7, according to a 2006 study by the Harvard Journal of Law and Public Policy. Ginsburg, Scalia and Anthony Kennedy are already past that average; Breyer will be by the time the next presidential term begins.¶ Looking at the most recent departures from the Court provides a mixed bag. John Paul Stevens left in 2010 at age 90. David Souter retired in 2009 at 70. Sandra Day O'Conner stepped aside at 75.¶ While the Court does much to promote the idea that it is entirely separate from politics and political concerns, there's some evidence that planning retirements based on the party affiliation of the president does happen. "I think certainly it's natural and an appropriate thing to think about your successor," Stevens acknowledged in a 2014 interview.¶ Notice that I said "some evidence" in the paragraph above. Here's why: From 1953 to 2010, 46 percent of exiting Supreme Court justices left during a presidency that

shared their partisanship, according to a 2011 study from the Quinnipiac Law Review. That means 54 percent didn't. (Math!)¶ In the more hyper-partisan political environment in which the Court (and all of us) now reside, it's hard to imagine that the outcome of the 2016 election won't have some impact on the go/no-go decisions of the likes of Breyer, Kennedy, Scalia and Ginsburg. Given that, **the stakes of the 2016 election are remarkably high. Who wins the White House will not only shape the country over the following four years but could well leave an impact on the Court that stretches decades beyond that.**

It's the largest issue of 2016 and tips the balance of governmental power

Berry 7/15 (Conor, Longtime newspaper reporter in New York, Vermont and Massachusetts, covering everything from politics and marine science issues to crime and courts, "Of politics & punditry: why the 2016 presidential election is all about the Supreme Court", The Republican, July 15th, 2015, http://www.masslive.com/politics/index.ssf/2015/07/punditry.html) //RL

According to political oddsmakers, however, the 2016 presidential election may boil down to one big domestic issue: the Supreme Court.¶ Pundits, the self-anointed prophets of politics, say the desire – and ability – of the president to tilt the court to the left or right is potentially the biggest item on our next leader's plate. Because controlling the country's high court helps control the political tenor and trajectory of the nation as a whole, future appointments to the big bench may help cement a president's legacy and change the sociopolitical history of the U.S.¶ The odds are "quite high" that the next president will be able to leave the Supreme Court with a strong majority leaning toward his or her ideology, columnist and blogger Paul Waldman writes in The American Prospect.¶ "That kind of shift hasn't happened in decades; the last time a retiring justice was replaced by someone appointed by a president from the other party was in 1991, when Clarence Thomas replaced Thurgood Marshall," Waldman says.¶ "Presidents Clinton, Bush, and Obama only got the chance to replace a justice they liked with another justice they liked, leaving the court's balance unchanged," he says. "But that streak will probably be broken by the next president. And the results for the country will be at least as profound as anything else the president does."¶ William Falk, editor of The Week and a former Newsday staffer who was part of two Pulitzer Prize-winning reporting teams at the Long Island daily, says the Supreme Court has essentially "become the most powerful branch of government, making decisions that polarized voters and a gridlocked Congress and president cannot."¶ Filling a court vacancy is now the president's most consequential domestic decision." ~ William Falk¶ After all, the high court has decided presidential elections and, with the sweep of a hand, seemingly has ended decades-long debates over social issues that have proven too weighty for mere mortals to sort out.¶ "It's the court that decides whether gay couples can marry, how campaigns are financed, whether to pull the plug on ObamaCare or the death penalty, and even who wins contested presidential elections," writes Falk. "Since justices serve for life, filling a court vacancy is now the president's most consequential domestic decision. The next president may replace up to four justices – and utterly reshape the court."¶ Yes, it's true ... the Supremes are very likely to lose some of their graying members over the next few years.¶ By Inauguration Day 2017, Justices Ruth Bader Ginsburg, Antonin Scalia and Anthony Kennedy will all be in their 80s, and Stephen Breyer will be 78. If a Democrat were to appoint replacements for all four of them, the court would swing to a 6-3 liberal majority, according to Falk. If a Republican replaces all four, the hawks would likely

gain a 7-2 edge over the doves.¶ "Even if there are just two replacements, the court – and the country – will very likely take a sharp left or right turn and stay on that path for decades," Falk says. "No wonder there are growing murmurs about changing the lifetime tenure of justices to 18-year terms. Only czars and popes should expect to rule for life."¶ One of the biggest problems, however, is predicting whether left- and right-leaning appointees to the court will stay the course. The bankability factor is no longer what it used to be: bankable.¶ Take the case of Chief Justice John Roberts, "once a darling of the right," according to Ken Walsh, blogger, columnist and writer for U.S. News. But Roberts has since become "the target for special scorn" from the right, says Walsh. Most recently, he upset conservatives with his support for Obamacare's constitutionality as part of a 6-3 ruling, in which Roberts was in the majority.¶ Following recent Supreme Court decisions affirming a constitutional right to same-sex marriage and upholding the validity of the Affordable Care Act, Sen. Ted Cruz, R-Texas, decried the rulings as "the latest in a long line of judicial assaults on our Constitution and Judeo-Christian values." To underscore his displeasure with the rulings, Cruz is proposing a constitutional amendment that would subject Supreme Court justices to periodic judicial retention elections.¶ According to law professor Erwin Chemerinsky, Ted Cruz is right: The Supreme Court needs term limits. But mere "retention elections" would endanger the independence of the court, not bolster it, Chemerinsky writes in NewRepublic.com. What's truly deserving of thoughtful consideration is implementing actual term limits, he says.¶ "In a year in which both liberals and conservatives have had plenty of decisions to cheer for and to criticize, term limits appropriately does not favor either political party or any ideology and has strong bipartisan support," Chemerinsky writes. "There are many ways to accomplish term limits, but the best idea is that each justice should be appointed for an 18-year, non-renewable term, thus creating a vacancy every two years."¶ Calls for reform aside, others view Supreme Court nominations as a black and white issue (read: Democrats vs. Republicans).¶ Depsite grumbling from the left, Democrats must support Hillary Clinton if she ends up getting her party's nod, Mark E. Anderson writes in DailyKos.com. "If she is the nominee, we must support her whether or not we think she is the establishment candidate or the corporate candidate. Why? The U.S. Supreme Court. The next president will likely nominate several Supreme Court justices," says Anderson.¶ "If we fail to turn out on Election Day ... and the Democratic nominee loses, the Supreme Court will tilt right for the foreseeable future. If we do turn out, and the Democratic nominee wins, we can change the current makeup of the court and it will lean to the left," he says.¶ "We already know what damage a right-leaning court can do – just think about Citizens United and Bush v. Gore, and then imagine if America gets one more conservative justice," says Anderson.

Prez PC

Presidents expend PC to get their nominees into the Supreme Court

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Minneapolis, MN 55455 (jroberts@polisci.umn.edu), "Presidential Capital and the Supreme Court Confirmation Process", The Journal of Politics, Vol. 66, No. 3, August 2004, http://www.polisci.umn.edu/~tjohnson/MyPapers/JOP2004.pdf) //RL

On September 4, 2003, after seven failed cloture votes on his nomination,¶ Estrada withdrew his name from consideration. Despite the fact that the battle is¶ now over, it is seen by many as a harbinger of things to come—as there is open¶ speculation that President G. W. Bush would like to ultimately nominate Estrada¶ to the U.S. Supreme Court.34 The important point for our analysis is that, despite¶ the successful filibuster waged by the Senate Democrats, the White House never¶ backed down, and continued to apply a great deal of public pressure on the Senate¶ until the bitter end. As Dewar (2003) points out, President Bush personally went¶ public on several occasions accusing Senate Democrats of "shameful politics"¶ and declaring, "fairness demands that he receive an up or down vote on the Senate¶ floor [as quickly as possible]."35 In short, President Bush responded to the Senate¶ filibuster as our model predicts—rather than accepting the apparent reality that¶ there were not enough votes to break the filibuster on Estrada, he continued to¶ exert public pressure on the Senate in hopes of changing votes. We have provided¶ evidence that is consistent with the Bush administration's current strategy. That¶ is, we provide a general explanation of how and when presidents choose to exercise¶ their political capital by "going public" to support their nominations to the¶ United States Supreme Court. This comports with, and adds to, Maltese's argument¶ that presidents have developed:¶ ... their own strategic resources to help secure confirmation of their judicial nominees,¶ resources used to "sell" their Supreme Court nominees. Presidents now have an unprecedented¶ ability to communicate directly with the American people, to mobilize interest groups, and to¶ lobby the Senate. (1995, 11)¶ We confirm Maltese's argument by demonstrating that, at least since 1970, presidents¶ have effectively used public statements to pressure the Senate by publicly¶ selling their nominees.¶ At the same time, our findings add to the recent empirical works that seek to¶ explain how presidents choose the ideology of nominees to the United States¶ Supreme Court (Moraski and Shipan 1999). Moraski and Shipan show how presidents¶ often win confirmation battles by nominating individuals whom the Senate¶ will not object to ideologically. What they do not determine, however, is when¶ presidents will actually invoke their political resources in a public manner to fight¶ for their chosen nominees. The findings in this paper do so.¶ At the end of the day, most presidents probably feel the way President Nixon¶ did when he faced a hostile Senate, and most senators probably believe what¶ Senator Leahy argued after the Pickering nomination process. What we demonstrate¶ is that while the Senate does advise and consent on Supreme Court nomi-¶ 680 Timothy R. Johnson and Jason M. Roberts¶ 34 Judiciary Committee Chairman Orrin Hatch made this point bluntly arguing, "They (Democrats)¶ know he (Estrada) is on the fast track for the Supreme Court, and that's what they are worried about." 35The President's full comment was

that “Miguel Estrada is highly qualified, extremely intelligent.¶ He has the votes necessary to be confirmed. Yet a handful of Democrats in the Senate are playing¶ politics with his nomination, and it’s shameful politics” (Dewar 2003).¶ nations, **presidents will do anything**—**including going public to support their¶ nominees**—in an attempt to make the consensual aspect of the Senate’s role much¶ more likely

Court Stripping

1NC

Congress is against curtailing surveillance

Trevor **Timm**, 3-14-20**15**, "Congress won't protect us from the surveillance state – they'll enhance it," Guardian, http://www.theguardian.com/commentisfree/2015/mar/14/congress-wont-protect-us-from-the-surveillance-state-theyll-enhance-it

The same Senator who warned the public about the NSA's mass surveillance pre-Snowden said this week that the Obama administration is still keeping more spying programs aimed at Americans secret, and it seems Congress only wants to make it worse.

In a revealing interview, Ron Wyden – often the lone voice in favor of privacy rights on the Senate's powerful Intelligence Committee – told Buzzfeed's John Stanton that American citizens are being monitored by intelligence agencies in ways that still have not been made public more than a year and a half after the Snowden revelations and countless promises by the intelligence community to be more transparent. Stanton wrote:

Asked if intelligence agencies have domestic surveillance programs of which the public is still unaware, Wyden said simply, "Yeah, there's plenty of stuff."

Wyden's warning is not the first clue about the government's still-hidden surveillance; it's just the latest reminder that they refuse to come clean about it. For instance, when the New York Times' Charlie Savage and Mark Manzetti exposed a secret CIA program "collecting bulk records of international money transfers handled by companies like Western Union" into and out of the United States in 2013, they also reported that "several government officials said more than one other bulk collection program has yet to come to light."

Since then – beyond the myriad Snowden revelations that continue to pour out – the public has learned about the Postal Service's massive database containing photographs of the front and back of every single piece of mail that is sent in the United States. There was also the Drug Enforcement Administration's mass phone surveillance program – wholly separate than the NSA's – in which "phone records were retained even if there was no evidence the callers were involved in criminal activity," according to the New York Times. And recently, the Justice Department's "national database to track in real time the movement of vehicles around the US", reported by the Wall Street Journal.

That there are still programs aimed at Americans that the Obama administration is keeping secret from the public should be a front page scandal.

Instead of exposing and informing these programs, however, Congress seems much more intent on giving the intelligence agencies even more power. On the same day that Wyden issued his warning, the Senate Intelligence Committee passed its latest version of CISA, a supposed "cybersecurity" bill that allows companies to hand over large swaths of personal information to the government without any court order at all – and gives the companies immunity from any privacy lawsuits that may result.

When Congress is bypassed, they strip courts of their jurisdiction

Donald S. **Dobkin**, 20**07** (Donald S. Dobkin is a lawyer with a Master's degree in law from Northwestern University), "Court Stripping and Limitations on Judicial Review of Immigration Cases," http://cdm16501.contentdm.oclc.org/cdm/ref/collection/federal/id/30

Congressional "court stripping," or the attempt to take jurisdiction away from courts to review matters of all types, is not new. Jurisdiction-stripping proposals were advanced in Congress as early as 1830. Between 1953 and 1968, over sixty bills were introduced into Congress to restrict federal court jurisdiction over particular topics. The 1970s and 1980s saw efforts to strip the courts of jurisdiction in busing, abortion, and school-prayer cases. Sen. Jesse Helms once proposed a bill to strip the federal courts of jurisdiction to review school-prayer cases. Barry Goldwater, upon learning of the Helms bill, dismissed the proposal as the equivalent of "outlawing the Supreme Court." Congress has for years attempted to strip courts of their jurisdiction to review actions of federal law-enforcement agencies and state courts in order to reverse decisions they do not like, punish judges, or even avoid future rulings they may not like. Federal courts, which have been essential in expanding and preserving individual rights, are now being barraged by congressional attempts to strip the courts of their power to review. Congress's decisions about the courts' jurisdiction, including appellate jurisdiction, have considerable effects on their caseloads, although not always in ways that might have been anticipated. Nowhere has this trend been more apparent than in Congress's legislation in the immigration area. With the enactment of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), a Republican Congress and the Clinton administration fundamentally altered judicial review of immigration matters. Despite this legislation restricting judicial review, the caseload at the U.S. Court of Appeals has risen markedly, so much so that immigration cases now comprise 18 percent of the federal appellate civil docket.

Court Stripping leads to the collapse of the judicial system

Michael J. **Gerhardt**, Summer 20**05**, " The Constitutional Limits to Court Stripping," http://law.lclark.edu/live/files/9695-gerhardtpdf

Referring to the Court's decision in Martin v. Hunter's Lessee, Justice Oliver Wendell Holmes remarked, "I do not think the United States would come to an end if we [judges] lost our power to declare an Act of Congress void. I do think the Union would be imperiled if we could not make that declaration as to the laws of the several States." Without the authority to review state court judgments on federal law recognized in Martin (and ever since), there would be no means by which to ensure uniformity and finality in the application of federal law across the United States. This would be particularly disastrous for constitutional law. Federal rights, for instance, would cease to mean the same thing in every state. States could dilute or refuse to recognize these rights without any fear of reversal; they would have no incentive to follow the same constitutional law. Indeed, many state court judges are subject to majoritarian pressure to rule against federal rights, particularly those whose enforcement would result

in a diminishment of state sovereignty. The Fourteenth Amendment would amount to nothing if Congress were to leave to state courts alone the discretion to recognize and vindicate the rights guaranteed by the Fourteenth Amendment. Judicial review within the federal courts is indispensable to the uniform, resolute, and final application of federal rights protected by the Fourteenth Amendment. However, this Act, limiting jurisdiction over the Defense of Marriage Act, allows the highest courts in each of the fifty states to become the courts of last resort within the federal judicial system for interpreting, enforcing, and adjudicating certain claims under the Fifth and Fourteenth Amendments. The Act allows different state courts to reach different conclusions regarding the viability of various claims differently, without any possibility of review in a higher tribunal to resolve conflicts among the states. Thus, the Act precludes any finality and uniformity across the nation in the enforcement and interpretation of the affected rights. An equally troubling aspect of this Act is its implications for the future of judicial review. The Constitution does not allow Congress to vest jurisdiction in courts to enforce a law, but prohibit it from considering the constitutionality of the law that it is enforcing. The Task Force of the Courts Initiative of the Constitution Project unanimously concluded that "the Constitution's structure would be compromised if Congress could enact a law and immunize that law from constitutional judicial review." For instance, it would be unconstitutional for a legislature to assign the courts to enforce a criminal statute but preclude them from deciding the constitutionality of the law. It would be equally unlawful to immunize any piece of federal legislation from judicial review. If Congress could immunize its laws from the Court's power of judicial review, then Congress could use this power to insulate every piece of federal legislation from Supreme Court review. If Congress could immunize all federal laws from federal judicial review, it would eviscerate the Court's power to say what the law is with respect to the constitutionality of those laws. And, if Congress had the power to immunize all of its laws from judicial review, it is unclear why it then could not also immunize all or some state laws from judicial review by the Supreme Court. The end result would be the destruction of the Supreme Court's power of judicial review. In addition, courts must have the authority to enjoin ongoing violations of constitutional law. For example, Congress may not preclude courts from enjoining laws that violate the First Amendment's guarantee of freedom of speech. If an Article III court concludes that a federal law violates constitutional law, it would shirk its duty if it failed to declare the inconsistency between the law and the Constitution and proceed accordingly. Proposals to exclude all federal jurisdiction would, if enacted, open the door to another, equally disastrous constitutional result—allowing Congress to command the federal courts on how they should resolve constitutional questions. In United States v. Klein, the Supreme Court declared that it seems to us that it is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power . . . . What is this but to prescribe a rule for the decision of a cause in a particular way? . . . Can we do so without allowing that the legislature may prescribe rules of decision to the Judicial Department or the government in cases pending before it? We think not. . . . We must think that Congress has inadvertently passed the limit which separates the legislature from the judicial power.

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Weakening domestic security leads to Court Stripping; 9/11 Proves

Ronald **Weich**, October 20**01**, "Upsetting Checks and Balances,"
https://www.aclu.org/sites/default/files/FilesPDFs/ACF47C9.pdf

Throughout American history, threats to domestic security have triggered unjustified assaults on civil liberties. Today the most basic civil liberty of all – the right to judicial review of executive authority – is uniquely vulnerable. Anti-terrorism laws passed by Congress in 1996 and again in 2001 reflect growing hostility to the role of judges in our constitutional system. This report, planned long before September 11, focuses on the laws enacted five years ago rather than the USA-PATRIOT Act signed into law by President Bush last Friday. But enactment of the most recent anti-terrorism legislation provides new urgency for considering a theme common to all these laws: the role of the judiciary in curbing the excesses of executive authority in pursuit of politically popular goals. The USA-PATRIOT Act has antecedents stretching back to the earliest days of the Republic. The Alien and Sedition Acts of 1798, criminal restrictions on speech during World War I, the internment of Japanese-Americans following the attack on Pearl Harbor, and the blacklists and domestic spying of the Cold War are all instances in which the government was granted (or assumed) summary powers in a moment of crisis, to the inevitable regret of later generations. The diminution of liberty that accompanied these episodes was later understood as an overreaction to frightening circumstances; each is now viewed as a shameful passage in the nation's history. After the immediate danger passed, it was recognized that the government had already possessed ample powers to address the threats at hand; the new tools were unnecessary at best and dangerous at worst. Only rarely have the courts intervened to curb government authority during periods of genuine insecurity, even though many Americans now wish they had. In Schenck v. U.S. the Supreme Court unanimously upheld a World War I-era conviction for printing leaflets that urged Americans to resist the draft. In the infamous case of Korematsu v. United States the Court declined to overturn evacuation orders that led to the detention of thousands of Japanese-Americans during World War II. Yet in Watkins v. United States and related cases, the Court played a crucial role in limiting and eventually discrediting the reach of Cold War-era red-baiting tactics. In any event, it was a vital sign of America's constitutional democracy that such court challenges could be brought even in times of war and other perceived crises. Judicial review is a cornerstone of our system of government. But the unbearably tragic September 11 attacks, which toppled many cornerstones and caused others to tremble, have led to enactment of an anti-terrorism bill that undercuts the role of the judiciary in scrutinizing executive actions. Many provisions of the USA-PATRIOT Act limit judicial review of law enforcement activities altogether, or create the illusion of judicial review while transforming judges into mere rubber stamps: Section 203 permits the disclosure of sensitive information about American citizens obtained through grand jury investigations and wiretaps to intelligence agencies without judicial review of the justification for such disclosure; Section 216 minimizes judicial checks on electronic surveillance by permitting the police to obtain information about private Internet communications under a meaningless standard of review; and Section 358 allows law enforcement and intelligence agencies to obtain sensitive personal information without judicial review, while section 508 permits access to student records based on a mere certification by the law enforcement agent that the records are relevant to an investigation; Under many of these provisions the judge exercises no review function whatsoever; the court must issue an order granting access to sensitive information upon mere

certification by a government official. The Act reflects a distrust of the judiciary as an independent safeguard against abuse of executive authority.

Bypassing Congress through the courts leads to Court Stripping, which ravages the legal system

Ronald **Weich**, October 20**01**, "Upsetting Checks and Balances,"
https://www.aclu.org/sites/default/files/FilesPDFs/ACF47C9.pdf

As a practical matter, court-stripping may be self-defeating. Such legislation is typically motivated by congressional anger toward the content of certain court rulings. But removing future jurisdiction over the issue may simply serve to lock in "bad" precedent – a conundrum even some critics of so-called activist judging have acknowledged. Former Judge Bork notes that: Some state courts would inevitably consider themselves bound by the federal precedents; others, no longer subject to review, might not. The best that Congress could hope for would be lack of uniformity. This is a far cry from amending the Constitution or even overruling a case. While it may seem preferable to some to lack uniformity on a particular issue rather than to have a repugnant uniform rule, the government could not easily bear many such cases and certainly could not long endure a complete lack of uniformity in federal law. Thus there are practical limitations on excessive use of the Exceptions Clause. More troublesome is that court-stripping defeats the spirit of the Constitution. The Framers took care to create an independent judiciary to safeguard individual liberty. Removing important issues from the purview of the courts, especially those concerning the rights of unpopular minorities, is a direct assault on these constitutional protections. By the same token, Congress does great harm to the integrity of the federal judiciary when it leaves issues before the courts, but attempts to manipulate how judges may remedy violations of constitutional or statutory rights. Even scholars who believe that the Constitution allows significant congressional control of federal jurisdiction generally agree it would be unwise to invoke it over any significant category of federal law or use it to achieve a desired substantive outcome. Thus Professor Gerald Gunther, writing at the time Congress was considering court-stripping bills in the early 1980s regarding abortion, busing and school prayer, concluded "I would urge the conscientious legislator to vote against the recent jurisdiction-stripping devices because they are unwise and violate the 'spirit' of the Constitution, even though they are, in my view, within the sheer legal authority of Congress." Put another way, "[w]hat may be conceivable in theory would be devastating in practice to the real world system of checks and balances that has enabled our constitutional system to function for 200 years."

Congress can strip courts of authority; even Supreme Court agrees

Martin J. **Katz**, Summer 20**09**, " GUANTANAMO, BOUMEDIENE, AND JURISDICTION-STRIPPING**:** THE IMPERIAL PRESIDENT MEETS THE IMPERIAL COURT,"
http://www.law.du.edu/documents/directory/publications/Jurisd_Strip_2009_0202.pdf

A. Stripping Jurisdiction from Lower Federal Courts: The first question in the jurisdiction-stripping debate is whether Congress can restrict the jurisdiction of the lower federal courts (district courts and circuit courts) to hear a particular type of case. This question assumes that only the lower

federal courts are closed - that the Supreme Court's original and appellate jurisdiction remains intact. Proponents of allowing this form of jurisdiction-stripping point to the text of Article III, which gives Congress the power to "ordain and establish" lower federal courts. The argument is that (1) the Ordain and Establish Clause gave Congress discretion over whether to create lower federal courts, and (2) if Congress could decline to create lower federal courts, then Congress can limit such courts' jurisdiction. Most commentators today seem to accept the basic idea that the Ordain and Establish Clause permits Congress to restrict or even eliminate the jurisdiction of the lower federal courts. Some of these commentators have also suggested that there might be limits on this power. For example, nearly all commentators have suggested that the "ordain and establish" power is limited by substantive provisions elsewhere in the Constitution, such as the Equal Protection Clause; so Congress could not, for example, preclude jurisdiction only over cases brought by African Americans or Catholics. [n19] Also, as noted above, most of the commentators who believe Congress has the power to limit lower federal court jurisdiction assume that some alternative court would remain open to hear the cases in question - an assumption which is likely incorrect in a case like Boumediene. But subject to these two potential limits, [n21] the "traditional view" is that Congress can exercise its "ordain and establish" power to close lower federal courts. The courts, too, [n23] seem largely to accept the "traditional view" - that Congress has the power to restrict lower federal court jurisdiction. The Supreme Court has, on at least five occasions, suggested that Congress can limit lower federal court jurisdiction pursuant to the Ordain and Establish Clause. However, none of these cases appears to have tested the potential [*384] limits on the exercise of this power. As I will discuss below, Boumediene suggests such a limit. B. Stripping the Supreme Court's Appellate Jurisdiction: The second question in the jurisdiction-stripping debate is whether Congress can strip the Supreme Court of its appellate jurisdiction. This question assumes that the lower federal courts, as well as the Supreme Court's original jurisdiction, remain open. The idea that Congress can strip the Supreme Court of its appellate jurisdiction flows primarily from the text of Article III, which gives Congress the power to make "Exceptions, and ... Regulations" to the Supreme Court's appellate jurisdiction. At least some commentators have gone beyond this simple textual argument to suggest a structural purpose underlying this textual provision: that the Framers included this language to provide [*385] Congress with a means to check the power of the Supreme Court. Most commentators accept the idea that the Exceptions Clause permits Congress to exercise such control over the Supreme Court's appellate jurisdiction. However, some notable commentators have suggested that there might be some limits on this power. For example, Professor Hart argued that Congress cannot use this power to destroy the "essential functions" of the Supreme Court, which include maintaining the supremacy and uniformity of federal law. Others have suggested that, at least in certain types of cases, Congress cannot use its Exceptions Clause power in a way that would foreclose all avenues to the Supreme Court. As with the issue of lower court jurisdiction-stripping, the Supreme Court has only occasionally weighed in on the issue of Supreme Court appellate jurisdiction-stripping. The Court has said several times that Congress can use its Exceptions Clause [*386] power to restrict the Court's appellate jurisdiction. However, in repeated dicta, the Court appears to have endorsed one limit on this power: Congress may need to leave open some avenue by which certain types of cases can be litigated in federal court (and possibly the Supreme Court). But the Court never actually struck down a law limiting its appellate jurisdiction on these grounds - until Boumediene.

Court Stripping works retroactively, preventing enforcement of laws

Tom **Wicker**, 4-24-19**81**, " In The Nation: Court Stripping,"
http://www.nytimes.com/1981/04/24/opinion/in-the-nation-court-stripping.html

…The ''Court-stripping plan'' of the Mssrs. Helms, Crane et al actually goes further. Eliminating the Supreme Court's jurisdiction over whole classes of cases would mean that the Court could not even enforce rulings already made in those areas. Thus, Court-stripping would work retroactively, not just on future cases. This is not an idle threat. No one should discount Jesse Helms's power. Even in the last Congress, the Senate passed his stripping bill on school prayer; it missed coming to the House floor by only 32 votes (on a petition to discharge it from the Judiciary Committee). In the new, more conservative Congress, and with the tacit support - so far at least - of President Reagan, that particular bill's chances of passage are ominous. So, probably, are those of stripping bills on school busing and abortion. But won't the Supreme Court itself declare such measures unconstitutional? Probably, but if by the time they reach the Court Mr. Reagan has appointed one or two new ''conservative'' justices, who can tell? And in the meantime, severe damage could be done to what people have thought were constitutional rights. Court-strippers make a constitutional argument, of sorts, based on Article III, Section 2, which makes Supreme Court jurisdiction subject to ''such exceptions ... as the Congress shall make.'' They say the framers adopted this language precisely for situations where the Court might have ''usurped'' power or misinterpreted the Constitution. If so, nobody explained that intention in the Federalist papers or other writings of the time. Most constitutionalists, including many conservatives, believe the provision was intended for lesser ''housekeeping'' purposes and deny that it gives Congress authority to prevent the Court from making constitutional interpretations. Representative Robert Kastenmeier of the House Judiciary Committee points out that ''to do so would make (members of Congress) the sole judges of what the Constitution is.'' And former Solicitor General Robert Bork of the Yale Law School says the exceptions clause would have been an ''odd way for the framers to have provided for Congressional revision of Court decisions,'' since it would ''create chaos.'' It would do so by leaving state court decisions on constitutional matters unreviewed by the Supreme Court. Thus, if the states ruled variously on, say, abortion, American citizens in one state could have constitutional rights not enforced in another. And any time Congress didn't like Supreme Court rulings in some area - on gun legislation, for example - it could strip the Court of jurisdiction in that field. In fact, of course, the motivation for Court-stripping is political, not constitutional. Strippers like Mr. Helms and Mr. Crane want to prohibit abortion and school busing and overturn a 17-yearold ruling of the Court on school prayer. But they fear they do not have the votes to pass a constitutional amendment on any of those issues. So they are attempting to muscle their way through a back door Congress has never before been willing to open - not when the same disingenuous arguments were made for Court-stripping during the era of McCarthyism, or when they were put forward after the landmark school desegregation case of 1954. True conservatives should be first among those opposed to this radical power grab.

AT-EXECUTIVE ORDER CP

Solvency

General

Congress exercises full control over domestic surveillance programs.
Erica Werner, The Associated Press Published Wednesday, June 3, 2015 5:58AM EDT

WASHINGTON -- **Congress approved sweeping changes Tuesday to surveillance laws enacted after the Sept. 11 attacks, eliminating the National Security Agency's disputed bulk phone-records collection program and replacing it with a more restrictive measure to keep the records in phone companies' hands**. Two days after Congress let the phone-records collection and several other anti-terror programs expire**, the Senate's 67-32 vote sent the legislation to President Barack Obama, who signed it** Tuesday night. "**This legislation will strengthen civil liberty safeguards and provide greater public confidence in these programs," Obama said** in a statement. Officials said it could take at least several days to restart the collection. The legislation will revive most of the programs the Senate had allowed to lapse in a dizzying collision of presidential politics and national security policy. But the authorization will undergo major changes, the legacy of agency contractor Edward Snowden's explosive revelations two years ago about domestic spying by the government. In an unusual shifting of alliances, **the legislation passed with the support of Obama and House Speaker John Boehner**, R-Ohio, but over the strong opposition of Senate Majority Leader Mitch McConnell. McConnell failed to persuade the Senate to extend the current law unchanged, and came up short in a last-ditch effort Tuesday to amend the House version, as nearly a dozen of his own Republicans abandoned him in a series of votes. "This is a step in the wrong direction," a frustrated McConnell said on the Senate floor ahead of the Senate's final vote to approve the House version, dubbed the USA Freedom Act. He said the legislation "does not enhance the privacy protections of American citizens. And it surely undermines American security by taking one more tool form our warfighters at exactly the wrong time**." The legislation remakes the most controversial aspect of the USA Patriot Act -- the once-secret bulk collection program that allows the National Security Agency to sweep up Americans' phone records and comb through them for ties to international terrorists.** Over six months the NSA would lose the power to collect and store those records, but the government still could gain court orders to obtain data connected to specific numbers from the phone companies, which typically store them for 18 months. It would also continue other post-9-11 surveillance provisions that lapsed Sunday night, and which are considered more effective than the phone-data collection program. These include the FBI's authority to gather business records in terrorism and espionage investigations and to more easily eavesdrop on suspects who are discarding cellphones to avoid surveillance. **In order to restart collection of phone records, the Justice Department will need to obtain a new order from the Foreign Intelligence Surveillance Court. "This legislation is critical to keeping Americans safe from terrorism and protecting their civil liberties," Boehner said**. "I applaud the Senate for renewing our nation's foreign intelligence capabilities, and I'm pleased this measure will now head to the president's desk for his signature." The outcome capped a dramatic series of events on Capitol Hill that saw a presidential candidate, GOP Sen. Rand Paul of Kentucky, defy fellow Republicans and singlehandedly force the existing law to lapse Sunday at midnight, leading to dire warnings of threats to America. The suspense continued Tuesday as McConnell tried to get the Senate to go along with three amendments he said would make the House bill more palatable. But House leaders warned that if presented with the changes the House might not be able to approve them. The Senate denied McConnell's attempts, an embarrassment for the leader six months after Republicans retook Senate control. The changes sought by McConnell included lengthening the phase-out period of the bulk

records program from six months to a year; requiring the director of national intelligence to certify that the NSA can effectively search records held by the phone companies; and making phone companies notify the government if they change their policy on how long they hold the records. Most controversially, McConnell would have weakened the power of a new panel of outside experts created to advise the Foreign Intelligence Surveillance Court.

Congress is bipartisan on domestic surveillance policy, and is willing to curtail surveillance.

Reuters June 2, 20**15** 4:42 pm WASHINGTON (Reuters), (Reporting by Patricia Zengerle; Editing by Sandra Maler)

– **The U.S. Senate passed a bill on Tuesday that ends spy agencies' bulk collection of Americans' telephone records, a vote that reversed national security policy** that had been in place since shortly after the September 11, 2001, attacks. After weeks of often angry debate over how to balance concerns about privacy with worries about terrorist attacks, **the Senate passed the USA Freedom Act by a vote of 67-32, with support from both Democrats and Republicans**. **Because the House of Representatives passed the bill last month, the Senate vote sends the bill to the White House**, where President Barack Obama has promised to sign it into law. The measure replaces a program in which the National Security Agency sweeps up data about Americans' telephone calls with a more targeted system.

The president fails –trumanites write their own orders

Glennon '14, Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University. (1/11/14, Michael J. Glennon, Harvard National Security Journal, http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, vol.5)

Put differently, the question whether the President could institute a complete about-face supposes a top-down policy-making model. The illusion that presidents issue orders and that subordinates simply carry them out is nurtured in the public imagination by media reports of "Obama's" policies or decisions or initiatives, by the President's own frequent references to "my" directives or personnel, and by the Trumanites own reports that the President himself has "ordered" them to do something. But true top-down decisions that order fundamental policy shifts are rare.369 The reality is that when the President issues an "order" to the Trumanites, the Trumanites themselves normally formulate the order.370 The Trumanites "cannot be thought of as men who are merely doing their duty. They are the ones who determine their duty, as well as the duties of those beneath them. They are not merely following orders: they give the orders."371 They do that by "entangling"372 the President. This dynamic is an aspect of what one scholar has called the "deep structure" of the presidency.373 As Theodore Sorensen put it, "Presidents rarely, if ever, make decisions—particularly in foreign affairs—in the sense of writing their conclusions on a clean slate . . . . [T]he basic decisions, which confine their choices, have all too often been previously made."374

Justice Douglas, a family friend of the Kennedys, saw the Trumanites' influence first-hand: "In reflecting on Jack's relation to the generals, I slowly realized that the military were so strong in our society that probably no President could stand against them."375 As the roles of the generals and CIA have converged, the CIA's influence has expanded—aided in part by a willingness to shade the facts, even with sympathetic Madisonian sponsors. A classified, 6,000-word report by the Senate Intelligence Committee reportedly concluded that the CIA was "so intent on justifying extreme interrogation

techniques that it blatantly misled President George W. Bush, the White House, the Justice Department and the Congressional intelligence committees about the efficacy of its methods."376 "The CIA gets what it wants," President Obama told his advisers when the CIA asked for authority to expand its drone program and launch new paramilitary operations.377

Sometimes, however, the Trumanites proceed without presidential approval. In 1975, a White House aide testified that the White House "didn't know half the things" intelligence agencies did that might be legally questionable.378 "If you have got a program going and you are perfectly happy with its results, why take the risk that it might be turned off if the president of the United States decides he does not want to do it," he asked.379 Other occasions arise when Trumanites in the CIA and elsewhere originate presidential "directives"—directed to themselves.380 Presidents then ratify such Trumanite policy initiatives after the fact.381 To avoid looking like a bystander or mere commentator, the President embraces these Trumanite policies, as does Congress, with the pretense that they are their own.382 To maintain legitimacy, the President must appear to be in charge. In a narrow sense, of course, Trumanite policies are the President's own; after all, he did formally approve them.383 But the policies ordinarily are formulated by Trumanites—who prudently, in Bagehot's words, prevent "the party in power" from going "all the lengths their orators propose[]."384 The place for presidential oratory, to the Trumanites, is in the heat of a campaign, not in the councils of government where cooler heads prevail.385

The idea that presidential backbone is all that is needed further presupposes a model in which the Trumanites share few of the legitimacy conferring features of the constitutional branches and will easily submit to the President. But that supposition is erroneous. Mass entertainment glorifies the military, intelligence, and law enforcement operatives that the Trumanites direct. The public is emotionally taken with the aura of mystery surrounding the drone war, Seal Team Six, and cyber-weapons. Trumanites, aided by Madisonian leaks, embellish their operatives' very real achievements with fictitious details, such as the killing of Osama bin Laden386 or the daring rescue of a female soldier from Iraqi troops.387 They cooperate with the making of movies that praise their projects, like Zero Dark Thirty and Top Gun, but not movies that lampoon them, such as Dr. Strangelove (an authentic F-14 beats a plastic B-52 every time).388 Friendly fire incidents are downplayed or covered up.389 The public is further impressed with operatives' valor as they are lauded with presidential and congressional commendations, in the hope of establishing Madisonian affiliation.390 Their simple mission—find bad guys and get them before they get us—is powerfully intelligible. Soldiers, commandos, spies, and FBI agents occupy an honored pedestal in the pantheon of America's heroes. Their secret rituals of rigorous training and preparation mesmerize the public and fortify its respect. To the extent that they are discernible, the Trumanites, linked as they are to the dazzling operatives they direct, command a measure of admiration and legitimacy that the Madisonian institutions can only envy.391 Public opinion is, accordingly, a flimsy check on the Trumanites; it is a manipulable tool of power enhancement. It is therefore rarely possible for any occupant of the Oval Office to prevail against strong, unified Trumanite opposition, for the same reasons that members of Congress and the judiciary cannot; a non-expert president, like a non-expert senator and a non-expert judge, is intimidated by expert Trumanites and does not want to place himself (or a colleague or a potential political successor) at risk by looking weak and gambling that the Trumanites are mistaken. So presidents wisely "choose" to go along.

Legislative action is key to creating cultural change. Executive action doesn't engage the public enough.

Stoddard 97 Thomas B. Stoddard, attorney and adjunct professor at the New York University School of Law New York University Law Review November, 1997 72 N.Y.U.L. Rev. 967 ESSAY: BLEEDING HEART: REFLECTIONS ON USING THE LAW TO MAKE SOCIAL CHANGE

Changes that occur through legislative deliberation generally entail greater public awareness than judicial or administrative changes do. Public awareness is, indeed, a natural concomitant of the legislative process. A legislature-- any legislature--purports to be a representative collection of public delegates engaged in the people's business; its work has inherent public significance. Judicial and administrative proceedings, by contrast, involve private actors in private disputes. Those disputes may or may not have implications for others, and they are often subject to the principle of stare decisis, but they are not public by their very nature. (Administrative rulemaking is a different animal, akin--at least in theory--to legislative activity, but it is still typically accorded less attention than the business of legislatures.) Legislative lawmaking is, by its nature, open, tumultuous, and prolonged. It encourages scrutiny and evaluation. Thus, it is much more likely than other forms of lawmaking to promote public discussion and knowledge. For that reason alone, such lawmaking possesses a special power beyond that of mere rulemaking. Indeed, the real significance of some forms of legislative lawmaking lies in the debate they engender rather than the formal consequences of their enactment. Between 1971 and 1986, the New York City Council had before it every year a bill that would amend the city's human rights laws to protect lesbians and gay men from discrimination in employment, housing, and public accommodations. The bill failed each year until 1986, principally because of the personal opposition of the council's majority leader. (In 1986, the majority leader retired, and the election of a new majority leader allowed the measure to emerge from committee and then attain the approval of the entire council.) As a perennial lobbyist for the gay rights bill, and a gay man to boot, I publicly bemoaned the bill's failure year after year. However, in hindsight, I am not unhappy that enactment of the bill took fifteen years. Over those fifteen years, the city council and the citizens of New York more generally had to confront continually the issue of discrimination against lesbians and gay men. They had to hear again and again the assertions made by my colleagues and by me that gay people exist; that gay people encounter constant scorn, disapproval, and prejudice; and that gay people deserve protection from discrimination in the basic necessities of life. The city council, for a full decade and one-half, became a city-wide civic classroom for a course on sexual orientation discrimination--an intracity teach-in, if you will. If we had our platform during the fifteen years of the bill's pendency, so did our opponents, but in many ways the other side's comments (especially the more rancorous observations) bolstered our advocacy, for the comments prolonged the discussion--and also helped to demonstrate our claims of the existence of prejudice. Immediate passage of New York City's gay rights bill as early as 1971 or 1972 would have afforded immediate political gratification to me and my colleagues (I would have been very gratified indeed), but immediate passage would also have deprived the city and its residents of the extended exploration of the subject of gay people and their rights. And, I am now convinced, it is the city-wide debate of the subject, rather than mere passage itself, that has helped to open eyes and hearts. Mere passage would have added up to "rule- shifting" when "culture-shifting" is what this controversial and often misunderstood issue really required. Mere passage would have given lesbians and gay men who suffered discrimination (and who could prove their assertions) a form of redress, and it would probably have led some especially principled employers to adopt implementing guidelines, but

enactment of the gay rights bill would have eluded the attention of many, if not most, non-gay New Yorkers. The fifteen years of struggle, however, made the subject ultimately inescapable to New Yorkers--and led to genuine and deep "culture-shifting." [FN24] From my experience on the gay rights bill, and my experience as an activist more generally, I harbor a bias in favor of legislative reform. Legislative reform makes real change--"culture-shifting"--more probable, since it is much more likely than other forms of lawmaking to engage the attention of the public. "Rule-shifting" has its merits and advantages, but it is simply less potent than "culture-shifting" in accomplishing the things I want to accomplish.

FISA

Congress creates and controls federal courts

Jennifer Mueller-Bachelor of Arts in political science from the University of North Carolina at Asheville and a Juris Doctor from Indiana University Maurer School of Law. (http://classroom.synonym.com/three-responsibilities-congress-respect-federal-courts-17943.html)

Article III, Section 1 of the Constitution creates the Supreme Court and provides that Congress may establish other federal courts below it. Congress has used this power to create 89 district courts organized in 13 circuits. Each circuit has its own court of appeals. Congress not only creates the courts themselves, but also determines what types of cases they will hear. The Constitution specifies that the Supreme Court has original jurisdiction over certain types of cases, such as those involving other countries or disputes between two states. However, Congress reserves the power to limit the appellate jurisdiction of the Supreme Court and all other federal courts. While Congress does not have the power to create state courts, it can pass legislation allowing them to decide certain types of cases.

Prez Powers

Congressional Power

Domestic surveillance is congressional authority – not presidential

Kitrosser,8 Heidi Kitrosser, Associate Professor, University of Minnesota Law School. I am grateful to the organizers of the symposium for which this paper was written, particularly David Gans, Michael Herz, and Kevin Stack. I also owe many thanks to former Vice President Walter Mondale for a fascinating and inspiring discussion about congressional oversight of national security activities. Finally, I am very grateful to Professor Suzanne Thorpe of the University of Minnesota Law Library for her research assistance and to University of Minnesota co-deans Guy Charles and Fred Morrison for their continued support. January, 2008, 29 Cardozo L. Rev. 1049

Opponents of the warrantless surveillance program dispute the administration's statutory and constitutional points. On the statutory front, opponents argue that the general language of the AUMF does not override FISA's specific requirements for electronic surveillance. [n23] They further note that FISA provides a fifteen-day exemption from its requirements following a congressional declaration of war and that FISA was amended several times after the AUMF's passage. Both the fifteen-day exemption and the post-AUMF amendments would be superfluous, opponents argue, had the AUMF implicitly overridden FISA. [n24] On the constitutional points, opponents argue that Congress and the President share powers in both military and domestic affairs, **that domestic surveillance falls well within Congress' legislative powers, and that the President thus must conduct any operations within FISA's parameters.** [n25]

Uniqueness

Recent decisions about executive appointments already kill presidential powers

SHEAR, MICHAEL. "Decision by Justices Opens a New Debate on the Limits of Presidential Power." The New York Times. (June 27, 2014 Friday): 1005 words. LexisNexis Academic. Web. Date Accessed: 20**15**/07/17.

Thursday's decision by the Supreme Court to curb President Obama's ability to make recess appointments opened a new debate in the nation's capital about the proper limits of presidential power in an era of intense partisan gridlock. Republicans hailed the ruling as a repudiation of what they called Mr. Obama's abuse of his constitutional power when he tried in 2012 to fill vacancies at two federal agencies without Senate confirmation. But Mr. Obama and his allies noted that the decision stopped short of severely undermining the broader appointment power of the presidency, as an appeals court had ruled earlier. White House officials had worried that the court's more conservative members might emerge victorious with a far more restrictive view of presidential power. They did not. ''We're, of course, deeply disappointed in today's decision,'' Josh Earnest, the White House press secretary, said. ''We are, however, pleased that the court recognized the president's executive authority as exercised by presidents going all the way back to George Washington.'' Mr. Obama had tried to maneuver around longstanding Republican efforts to block his appointments to the National Labor Relations Board by seating members during pro forma sessions of the Senate when almost all of the senators were at home in their districts and no legislative business was conducted. The court ruled that the president's action violated the Constitution and said that the Senate and House have the ultimate power to block such recess appointments by scheduling the mini-sessions when they want to. But the justices for the first time recognized the basic right of the president to make appointments without the consent of the Senate when the Congress is in an extended recess during a two-year session, as it often is during the summer, around Christmas and in the spring. Republicans said the decision amounted to a rebuke of the president at a time when they are arguing that Mr. Obama is repeatedly exceeding his authority to get around a Congress that does not do what he wants it to. ''He picks and chooses what parts of the Constitution and duly passed legislation he wants to enforce or follow,'' said Representative Kevin McCarthy of California, the incoming majority leader in the House. ''The president's attempt at illegitimate administrative appointments is a prime example of overreach. This bolsters the case for the House to take further action to ensure our laws are properly executed and our freedoms are protected.'' Representative Darrell Issa, a California Republican and chairman of the House Oversight and Government Reform Committee, said the court's decision made it clear that ''President Obama acted without any legitimate authority.'' The decision comes a day after Speaker John A. Boehner said he would seek legislation allowing the House to sue Mr. Obama over the president's use of executive actions. Republicans say Mr. Obama has exceeded his authority, pointing to the president's delaying of some parts of the Affordable Care Act and his granting of deportation deferrals to some immigrants who are in the country illegally. White House officials have dismissed Mr. Boehner's threats of a lawsuit as a stunt, saying that Mr. Obama's executive actions are based on the president's well-established powers. They argue that the president has the right to act on behalf of the American people where he can.

Link

Establishing non-congressional legislative bodies kills presidential review and skews checks and balances

Ronald A. **Cass 15**, Ronald A. Cass is Dean Emeritus of Boston University School of Law, President of Cass & Associates PC, and author of "The Rule of Law in America.", 7-8-2015, "Out Of Control: Separation Of Powers And Encroaching Delegations," The Washington Times, http://www.washingtontimes.com/news/2015/jul/8/celebrate-liberty-month-out-of-control-separation-/

Separation of powers as a tool for limiting discretionary official power is the foundation stone of our Constitution and the rule of law. No institutional device does more to protect liberty. James Madison called separation of powers "the first principle of a free government" and helped craft a Constitution that divides government power between national and state governments and between different branches of government. In Federalist 51, Madison explained the related concept of checks and balances, saying that "the great security against a gradual concentration" of government power (once separated) "consists in giving those who administer each department, the necessary constitutional means and personal motives, to resist encroachments of the others." Not all encroachments, however, have been resisted. A decision in the recently concluded U.S. Supreme Court term highlights one type of encroachment that has grown out of control. Department of Transportation v. Association of American Railroads asked whether granting Amtrak power to help frame regulations that apply to private railroad enterprises violates the Constitution. The primary complaint was that this grant of power breaches the "non-delegation doctrine." When the Supreme Court passed that issue back to the lower court, Justices Alito and Thomas thoughtfully described considerations that should guide further review. The essence of the non-delegation doctrine is that Congress cannot give its legislative power to others. The "vesting clauses" of the Constitution assign different powers to each of the three branches, stating, for example, that "All legislative powers herein granted shall be vested in a Congress of the United States" before going on to state how the Congress will be composed, what powers it will have, and what processes it must observe in passing laws. The Constitution similarly vests executive power in the President's hands and judicial power in the courts created under Article III. The divisions of power among the branches and the processes established to govern each are essential protections against tyranny; they are the mechanisms that check expansion of discretionary official power. The Supreme Court has been fairly vigilant in preventing exercise of judicial power by officials not appointed and tenured in accord with Article III's commands or assignments of executive power that do not observe constitutional requirements respecting appointment and control of executive officers. Its record with respect to congressional efforts to outplace legislative authority, however, has been far weaker. Basic policy choices on rules that regulate the behavior of others have to be made by Congress: it can't empower any other official or body to make those rules—essentially to enact laws—bypassing democratic election of the officials, bicameralism (different constituencies, criteria, and terms of office for House and Senate), **presentment to and approval by the President, and other procedural protections built into the Constitution's design**. Language from Supreme Court opinions in the late 1800s and 1920s, however, laid the groundwork for judicial acceptance of laws authorizing broad policy-making by executive officials (outside fields of independent, constitutionally-assigned executive power)

The new republican controlled congress threatens to take down presidential powers.

PARKER, By JEREMY. "On War and Immigration, Obama Faces Tests of Authority From Congress." The New York Times. (December 5, 2014 Friday): 1083 words. LexisNexis Academic. Web. Date Accessed: 20**15**/07/17.

WASHINGTON -- Congress moved on two fronts Thursday to test the limits of presidential authority, with a surprising maneuver in the Senate to begin debating President Obama's war powers against the Islamic State and a vote in the House to prohibit him from enforcing his executive action on immigration. With the two parties in a perpetual state of dispute, the actions represented a rare, if unplanned, shared view among liberals and conservatives: Through Congress's passivity or its inability to compromise, it has ceded too much authority to an executive branch more than willing to step into the void. Mr. Obama has angered Republicans on Capitol Hill by announcing that he would use his executive authority to shield millions of undocumented immigrants from deportation, a decision conservatives condemn as an abuse of his constitutional powers. And lawmakers in both parties have rebuked the president for executing a war in the Middle East that many believe has not been properly authorized by Congress. The simultaneous moves in the two chambers demonstrated a strong desire to wrest some of that power back. ''The executive gets more powerful the more dysfunctional Congress gets,'' said Senator Christopher S. Murphy, Democrat of Connecticut, who supported forcing a vote to revisit the president's war authority. ''So there's a natural transition of power away from the legislature to the executive when nothing can happen here.'' The action on Capitol Hill focused on two of the most urgent and divisive issues of the moment -- immigration and war policy -- and foreshadowed the kinds of debates likely to dominate the new Congress after it is sworn in next month. Adding more volatility to the mix will be the frenzied politics of a presidential campaign, which is likely to feature several members of Congress. The dynamics of the 2016 campaign were on display as senators on the Foreign Relations Committee unexpectedly found themselves confronting the question of war against the Islamic State. It began with procedural sleight of hand by Senator Rand Paul of Kentucky, who is expected to seek the Republican nomination for president and has positioned himself as a less hawkish alternative to the other potential candidates in his party. Mr. Paul used a routine meeting over an unrelated issue -- clean water -- to force his colleagues to schedule a vote on authorizing force against the Islamic State. The committee agreed to move forward, though only after dissent from Republicans like Senator John McCain of Arizona who take a more traditional interventionist approach. Mr. McCain called Mr. Paul's proposal, which would prohibit the use of ground forces in most cases and set strict time limits on the conflict, ''crazy.'' A vote, on either Mr. Paul's plan or a similar one, could happen as early as Tuesday. If a plan is approved, it would get a floor vote before the end of the year if Majority Leader Harry Reid agreed to put it at the top of a crowded Senate calendar. At issue is the administration's position that it is justified in engaging in military activity today because of two acts of Congress that are now more than a decade old: a 2001 authorization passed after the Sept. 11 attacks, and a 2002 authorization sought by President George W. Bush for the Iraq war. ''Thirteen years later, we are still working off a 2001 authorization that has led us to many places well beyond the Afghanistan-Pakistan border,'' said Senator Robert Menendez, Democrat of New Jersey and the Foreign Relations Committee chairman. Across the Rotunda, House Republicans turned their attention to the pressing matter of preventing a government shutdown when federal spending authority runs out on Dec. 11. **The House on Thursday voted 219 to 197 in favor of a resolution by Representative Ted Yoho, Republican**

of Florida, to halt implementation of the president's order stopping the deportations of millions of unauthorized immigrants. Three Democrats supported the measure, and three Republicans voted present. But the vote was largely symbolic, enabling angry House Republicans to express displeasure with the president for altering the nation's immigration policy without congressional approval. Mr. Reid has already made clear that he will not take up the House's measure. With immigration politics caught up in the fight over government spending, Thursday's vote was part of a two-step strategy by House Republican leaders to corral their more conservative members and pass a broad spending bill so the government does not close on Dec. 11. Next week, House Speaker John A. Boehner and his leadership team plan to bring to the floor legislation that would fund almost all of the government through the next fiscal year, while funding the Department of Homeland Security -- the agency primarily charged with executing the president's immigration policy -- only into early next year. At that point**, Republicans will control both chambers of Congress and believe they will have more political might to chip away at the president's order**. **Many Republicans see the new Congress as an opportunity to curtail presidential power.** ''I think he's abusing the powers of the presidency and he is setting a whole new bar in terms of executive overreach that this country has never seen before,'' said Representative Steve Daines, Republican of Montana, who was elected as a senator last month. But Republicans face their own divisions. Many of the more conservative members pushed Mr. Boehner to take a harder line against the president. Mr. Boehner instead is prepared to go around them and rely on Democrats to pass his bill. Both Mr. Boehner and Representative Nancy Pelosi of California, the minority leader, believe the bill could pass with bipartisan support, but there are some policy differences to be bridged. The decision by the Republican leadership to rely on Democrats has frustrated many of the House's more conservative members. Representative Matt Salmon, Republican of Arizona, said Thursday's vote was toothless. ''I think it would be a lot cheaper and cost-effective and quicker to send the president a Hallmark card,'' he said. Some Republicans have urged Mr. Boehner to retaliate by canceling the president's State of the Union address to Congress. When asked if the State of the Union invitation was in jeopardy, Mr. Boehner responded with a laugh. ''The more the president talks about his ideas, the more unpopular he becomes,'' he said. ''Why would I want to deprive him of that opportunity?''

AT POLITICS

Obama has bipartisan support to fight terrorism, executive order is not necessary
JEREMY W. **PETERS, "**Obama to Seek War Power Bill from Congress, to Fight ISIS", Peters is a reporter for the NY Times in Washington, FEB. 10, 20**15,** New York Times

WASHINGTON — **The Obama administration has informed lawmakers that the president will seek a formal authorization to fight the Islamic State** that would prohibit the use of "enduring offensive ground forces" and limit engagement to three years. **The approach offers what the White House hopes is a middle way on Capitol Hill for those on the right and left who remain deeply skeptical of its plans to thwart extremist groups**. The request, which could come in writing as early as Wednesday morning, would open what is expected to be a month's long debate over presidential war powers and the wisdom of committing to another unpredictable mission in the Middle East while the nation is still struggling with the consequences of two prolonged wars. Congress has not voted to give a president formal authority for a military operation since 2002 when it backed George W. Bush in his campaign to strike Iraq after his administration promoted evidence, since discredited, that Saddam Hussein's government possessed unconventional weapons. **The new request** to conduct military operations would repeal that authorization. But it **would leave in place the broad authority to counter terrorism that Congress granted** Mr. Bush in 2001 **after the Sept. 11 attacks**, which many Democrats now believe is being interpreted too broadly to justify military actions that were never intended. After more than a decade of war and 7,000 American military lives lost in Iraq and Afghanistan, President Obama will face doubts not only from Democrats who want stricter limitations set on where he can send troops and how long his authority will last, but also from Republicans, who are dubious of the administration's strategy for defeating the Islamic State extremist group. **The White House has tried to address concerns by drafting a resolution that tries** to be both circumscribed and flexible. It would explicitly disallow extended use of combat forces, lawmakers and aides who are familiar with the plan said Tuesday. That language is intended as a compromise **to ease concerns of members in both noninterventionist and interventionist camps**: those who believe the use of ground forces should be explicitly forbidden, and those who do not want to hamstring the commander in chief. The resolution also requests authority to wage battle beyond the fight against the Islamic State to include "associated forces." It would contain no geographic limitations. Both are sticking points for many Democrats, who expressed concern that the president was setting the country up for another open-ended conflict. Those tensions surfaced on Tuesday as Mr. Obama's chief of staff, Denis McDonough, visited the Capitol to present Democrats with the outlines of the language the White House plans to send to Congress. By most accounts, he faced a skeptical audience. Senator Richard Blumenthal, Democrat of Connecticut and a member of the Armed Services Committee, said as he left the meeting that he had "grave reservations" and that he had "yet to be convinced." Senator Joe Manchin III, Democrat of West Virginia, echoed the concerns of many lawmakers who are worried that giving the president approval would only reward a decade of

mismanagement in the Middle East. “If money or military might would change that part of the world, we’d be done a long time ago,” he said. “In West Virginia, we understand the definition of insanity.” The Obama administration has insisted that it does not need Congress’ authority to continue its military campaign. But an affirmative vote from Congress would bolster the legitimacy that the president already claims as commander in chief in the battle against the Islamic State, which is also known as ISIS or ISIL, and confer a stronger legal underpinning for his actions. Many Republicans, despite opposing Mr. Obama on almost every other issue, seem willing to give him that authority. “I have disagreements with the president’s conduct of foreign policy and what he’s done,” said Senator Jeff Flake, Republican of Arizona and a member of the Foreign Relations Committee. “But in this instance, we need an Authorization for the Use of Military Force. Our enemies and our allies need to know that we speak with one voice.”

Backlash

Backlash means Executive Orders crush pres powers

PCAP 08 (Presidential Climate Action Project, Nonpartisan Project at the University of Colorado Denver, "Climate Action Brief: The Use of Presidential Power", 2008 is the last date cited, http://www.climateactionproject.com/docs/briefs/Climate_Brief_Presidential_Power.pdf)

Among the issues the Bush Administration will leave for the next president is a continuing controversy about the use of presidential power. A number of President Bush's actions – among them his order directing warrantless domestic surveillance and his use of signing statements as a virtual line-item veto of Congressional intent – have led to protests that the President has violated the boundaries of executive authority. The American Bar Association criticized President Bush's use of signing statements as "contrary to the rule of law and our constitutional system of separation of powers." i This legacy could lead the Congress, the courts and the voters to push the presidential power pendulum to the opposite extreme, handcuffing the executive branch even in areas where its powers are clear. Yet the 44th President will need all the tools he or she commands to deal with the serious problems the next administration will have to tackle, including global climate change.

Congress backlash from XO-immigration proves

Snell 15 Kelsey Snell, , 7-8-2015, "Republicans again propose blocking Obama's immigration orders," Washington Post, http://www.washingtonpost.com/news/powerpost/wp/2015/07/08/republicans-again-propose-blocking-obamas-immigration-orders/

The House Appropriations Committee on Wednesday released a draft Homeland Security funding bill that includes language that would prevent the Obama administration from enforcing executive actions on immigration he issued in November 2014 until a court decides if the orders are legal. "This bill rejects the President's attempt to undermine our laws and uses the tax payers' dollars in a fiscally responsible manner," Homeland Security Subcommittee Chairman John Carter (R-Texas) said in a statement. The bill would require the Homeland Security Department to enforce all immigration laws as written and disregard any executive actions that have not been approved by Congress. If enacted, the measure would have no immediate impact on DHS activities because a federal judge has already ordered the agency not to act on the executive order until the court process is complete.

Perm do Both

Perm – have the executive and congress work together. Unilateral executive action on surveillance kills separation of powers and leads to tyrannical rule.

Glenn **Harlan 14**, 2-10-2014, "NSA spying undermines separation of powers: Column," USA TODAY, http://www.usatoday.com/story/opinion/2014/02/10/nsa-spying-surveillance-congress-column/5340281/

Most of the worry about the National Security Agency's bulk interception of telephone calls, e-mail and the like has centered around threats to privacy. And, in fact, the evidence suggests that if you've got a particularly steamy phone- or Skype-sex session going on, it just might wind up being shared by voyeuristic NSA analysts. But most Americans figure, probably rightly, that the NSA isn't likely to be interested in their stuff. (Anyone who hacks my e-mail is automatically punished, by having to read it.) There is, however, a class of people who can't take that disinterest for granted: members of Congress and the judiciary. What they have to say is likely to be pretty interesting to anyone with a political ax to grind. And the ability of the executive branch to snoop on the phone calls of people in the other branches isn't just a threat to privacy, but a threat to the separation of powers and the Constitution. As the Framers conceived it, our system of government is divided into three branches -- the executive, legislative and judicial -- each of which is designed to serve as a check on the others. If the president gets out of control, Congress can defund his efforts, or impeach him, and the judiciary can declare his acts unconstitutional. If Congress passes unconstitutional laws, the president can veto them, or refuse to enforce them, and the judiciary, again, can declare them invalid. If the judiciary gets carried away, the president can appoint new judges, and Congress can change the laws, or even impeach. But if the federal government has broad domestic-spying powers, and if those are controlled by the executive branch without significant oversight, then the president has the power to snoop on political enemies, getting an advantage in countering their plans, and gathering material that can be used to blackmail or destroy them. With such power in the executive, the traditional role of the other branches as checks would be seriously undermined, and our system of government would veer toward what James Madison **in The Federalist No. 47 called "the very definition of tyranny," that is, "the accumulation of all powers, legislative, executive, and judiciary, in the same hands.**" That such widespread spying power exists, of course, doesn't prove that it has actually been abused. But the temptation to make use of such a power for self-serving political ends is likely to be very great. And, given the secrecy surrounding such programs, outsiders might never know. In fact, given the compartmentalization that goes on in the intelligence world, almost everyone at the NSA might be acting properly, completely unaware that one small section is devoted to gather political intelligence. We can hope, of course, that such abuses would leak out, but they might not. Rather than counting on leakers to protect us, we need strong structural controls that don't depend on people being heroically honest or unusually immune to political temptation, two characteristics not in oversupply among our political class. That means that the government shouldn't be able to spy on Americans without a warrant — a warrant that comes from a different branch of government, and requires probable cause. The government should also have to keep a clear record of who was spied on, and why, and of exactly who had access to the information once it was gathered. We need the kind of extensive audit trails for access to information that, as the Edward Snowden experience clearly illustrates, don't currently exist. In addition, we need civil damages — with, perhaps, a waiver of governmental immunities — for abuse of power here. Perhaps we should have bounties for whistleblowers, too, to help encourage wrongdoing to be aired. Is this strong medicine?

Yes. But widespread spying on Americans is a threat to constitutional government. That is a serious disease, one that demands the strongest of medicines.

Patriot Act

Congress curtail surveillance through changing Patriot Act

Harper 15 (Casey Harper 6/2/15"Here's Everything You Need To Know About The Patriot Act Changes"¶ **http://dailycaller.com/2015/06/02/heres-everything-you-need-to-know-about-the-patriot-act-changes/)**

Majority Leader Mitch McConnell suffered a serious embarrassment over the weekend when Congress let certain key provisions of the Patriot Act expire at 12:01 a.m. Monday morning. At the end of a chaotic weekend and with a new bill likely to pass in the next few days addressing the vast and complex federal surveillance infrastructure, it's hard to know exactly what's happening and what it means.¶ Here's everything you need to know about the changes so far.¶ The Patriot Act was passed shortly after the Sept. 11, 2001 terror attacks to give the federal government the authority to track suspects and potential terrorists. The program quickly expanded and began taking in large amounts of information from American citizens, including huge amounts of telephone "metadata" from communications companies.¶ Now, three major parts of the law that required reauthorization before June 1 have expired:¶ ¶ Section 215¶ The most consequential thing to happen was the expiration of the infamous Section 215 of the Patriot Act, the provision that allowed for bulk collection of private phone data from millions of Americans not suspected of any crime and the most decried section by privacy advocates. The provision allows the government to bulk collect "metadata," which is what time a calls is made, how long the conversation lasted, and what phone numbers sent and received that call.¶ Section 215's expiration only means that rather than collecting the data first-hand, the Agency will eventually have to go to the communications companies themselves in a more targeted manner.¶ Lone Wolf¶ This provision allowed the federal government to track a "lone wolf," someone who could be a terrorist threat but is not connected to any group like ISIS. The Feds say they've never had to use this provision and that it is not for use on U.S. citizens but still stress its importance.¶ Roving Wiretap¶ This provision allows the NSA to track people on multiple electronic devices without getting individual approval for each one. The Feds claim this is rarely used and needs an approval from a federal court.

AT: Constitutionality CP

Fast track amendments i.e. the 1NC are ineffective in solving for large scale impacts

Malcolm 2015

(Jeremy Malcolm works for the global NGO Consumers International, coordinating its program Consumers in the Digital Age. Jeremy graduated with degrees in Law (with Honours) and Commerce in 1995 from Australia's Murdoch University. "Fast Track Amendments Are Too Little Too Late to Salvage the TPP Agreement." https://www.eff.org/deeplinks/2015/05/fast-track-amendments-are-too-little-too-late-salvage-tpp. Date Accessed- 07/17/15. Anshul Nanda)

As part of the congressional to-and-fro over the pending Fast Track bill, senators with concerns about the process and substance of trade negotiations have been putting forward some proposed amendments. None of these amendments would alter the substance of what Fast Track is—a bill to authorize the President to enter into binding trade agreements such as the Trans-Pacific Partnership (TPP) without proper congressional oversight over these secretive, industry-led deals. As such, even if they were to be adopted, the amendments do not address our most fundamental concerns with the bill.¶ Nevertheless, they do hone in on a couple of the most egregious problems with Fast Track and with the trade deals that it enables, including the TPP and Trans-Atlantic Trade and Investment Partnership (TTIP). Perhaps the issue that has received the most attention has been that of investor-state dispute settlement (ISDS); which gives foreign corporations a free pass to overturn or receive compensation for the effects of democratically-enacted laws that negatively affect their business.¶ Senators Elizabeth Warren and Heidi Heitkamp, with support of 13 other senators, have tabled an amendment that would exclude access to the Fast Track procedure [PDF] for any trade agreement that contains an ISDS clause. As things stand, that would include both the TPP and the TTIP, which means that both of those agreements would have to come before Congress before the United States signs them—which in turn would probably defeat the agreements.¶ A second amendment, from Sens. Blumenthal, Brown, Baldwin, and Udall, addresses the lack of transparency of the agreement, and would require "all formal proposals advanced by the United States in negotiations for a trade agreement" to be published on the Web within five days of those proposals being shared with other parties to the negotiations. This would bring the United States up to the same level as the European Commission, which has already begun publishing its own TTIP position papers and text proposals to the public.¶ Sooner or later, these sorts of reforms are inevitable, as pressure for the U.S. Trade Representative to adopt them is echoing from all sides. Apart from its own senators, multiple calls for the U.S. to improve the transparency of trade negotiations and to reject ISDS have issued from law professors [PDF], economists, pro-trade think tanks, businesses and users. EFF has also proposed that standards of transparency and participation in trade negotiations be incorporated into the next set of commitments that the United States adopts under the Open Government Partnership.¶ From Congress on down, there has never been such a broad consensus that secretive trade negotiations and ISDS processes must be condemned as illegitimate. Thus, we do not think it is a question of whether these will ultimately be rejected, but when. However, time is not on our side. With the TPP negotiations widely tipped to conclude this year (if they conclude at all), the time to take a stand against these undemocratic processes is now. And our best opportunity to do so is by not merely amending Fast Track, but rejecting it, and the TPP along with it. Tell your representative to do that now.¶

Solvency Deficit- passing amendments take longer and don't usually have that bipartisan support that legislation has—

Vitka 14

(Sean Vitka is the federal policy manager at the Sunlight Foundation. He holds a J.D. from Boston College Law School. "This Meaningful Surveillance Reform Had Bipartisan Support. It Failed Anyway." http://www.slate.com/blogs/future_tense/2014/12/10/massie_lofgren_surveillance_reform_amendment_fails_despite_bipartisan_support.html. Date Accessed- 07/17/15. Anshul Nanda)

At a time when Americans are frustrated over legislative gridlock, Congress has outdone itself. Congressional leadership is has killed the rarest of birds: legislative reform of surveillance with overwhelming bipartisan support.¶ At

issue is an anti-surveillance amendment that passed the House of Representatives in June by a vote of 293 to 123—an overwhelming, veto-proof majority. It was the most significant post-Snowden reform to pass either the House of Representatives or Senate. Now, after ongoing secret leadership negotiations, it's been switched out for a replicant that does little—if anything—but restate the status quo.¶ The original Massie-Lofgren amendment would have instituted two of the many reforms needed to rein in dragnet surveillance. First, it would have defunded warrantless backdoor searches, which occur when the government searches already-harvested emails and other information. While the government has to do some extra work to target Americans specifically, it sweeps up vast swaths of our information through bulk (and bulky) surveillance anyway. When it searches that database for anyone communicating about, say, Osama Bin Laden, it returns the Americans' information, including email messages themselves, with the other, non-American results. The intelligence community can retain, examine, and make use of the information in a broad variety of situations. As the Guardian reported in 2013, the Foreign Intelligence Surveillance Act Court allows the government to "[r]etain and make use of 'inadvertently acquired' domestic communications if they contain usable intelligence, information on criminal activity, threat of harm to people or property, are encrypted, or are believed to contain any information relevant to cybersecurity."¶ The amendment would also have, via defunding, stopped the government from forcing companies to insert security vulnerabilities that make surveillance easier—no matter who is doing it. The amendment was written as a defunding because it was attached to the Defense Appropriations bill—generally considered a "must-pass" piece of legislation.¶ Needless to say, activists were thrilled when the amendment made it through the House. Its reforms are particularly important given that the USA FREEDOM Act, another surveillance reform effort, failed to move through the Senate in November amid concerns that it didn't do enough, sacrificed too much, and did too much. These varied disagreements show how extraordinary this amendment's strength and success were—and why it's so disturbing that secret dealing by leadership in Congress ripped the reform out of existence.¶ Here's why the amendment died: The so-called CRomnibus, a comprehensive bill to fund the government, supplants other spending legislation, including the Defense Appropriations bill to which this amendment was attached. And the CRomnibus did not contain amendment. Reps. Jim Sensenbrenner, Thomas Massie, and Zoe Lofgren put out a statement Wednesday in response to the exclusion from the CRomnibus, saying, "Thus far, Congress has failed to rein in the Administration's surveillance authorities and protect Americans' civil liberties. Nevertheless, the Massie-Sensenbrenner-Lofgren amendment established an important record in the full House of Representatives—an overwhelming majority will no longer tolerate the status quo."¶ The three representatives also introduced a bill last week that would accomplish some of what the amendment did, by prohibiting agencies from "mandat[ing]" companies change their products' security for the purposes of making surveillance easier (outside of the Communications Assistance for Law Enforcement Act). That would be a good step for all of our privacy (and the tech industry's bottom line), but it doesn't include the ban on backdoor searches of Americans' information, and it's unclear whether it applies to non-mandatory agreements to weaken security, which we've seen before.¶ So why wouldn't such a popular measure automatically be included? Omnibus funding bills are negotiated by leadership and tend to be later-stage efforts to merge all of the various funding bills and their compromises, resulting in something both parties can whip up support for. In doing so, they save time from being lost to deliberation about each individual deal and each individual amendment. It also ensures that "poison pills," or amendments that render a bipartisan bill unacceptable to a critical component of House members, don't make it onto the floor. Majority and minority leadership have tremendous procedural powers in Congress, which enable them to effectively say, "It's our way or the highway."¶ Democracy-be-damned, leadership doesn't want to enact any reform. So, even though both the Massie-Lofgren amendment and the 2015 Defense Appropriations Bill passed overwhelmingly through the House months ago, the Senate still hasn't considered the measures, and right now it looks like this surveillance reform will never pass the finish line, even after winning the race.¶ All of this is reminiscent of Rep. Justin Amash's attempt to broadly defund bulk surveillance shortly after the Snowden leaks began. That measure failed at the finish line, 205 votes to 217. That failure came thanks almost entirely to aggressive, united lobbying by House Speaker John Boehner and House Minority Leader Nancy Pelosi.¶ The Massie-Lofgren amendment also couldn't be added to the CRomnibus because leadership's procedural power also allows them to agree to bring bills up for consideration under closed rule, which prevents members from proposing amendments on the floor. Considering how contentious funding the government can be, that's the expected path for the CRomnibus.¶ The moral of the story? Surveillance reformers can't succeed even when they have enough allies inside Congress to override the president, bolstered by allies on the outside from across the political spectrum. Not as long as party leadership remains the same.

AT: Courts CP

Theory

Agent CPs bad

Agent counterplans are a voting issue:

A. Topic specific education – encourages lazy debating because the negative can just read politics and their agent counterplan every round as opposed to refuting the content of the 1AC

B. Moots the 1AC and undermines good impact calculus – all the aff advantages are based on the plan being good

C. Infinitely regressive – justifies infinite specification arguments that move debate away from policy and toward bad theory debates.

D. The negative can have agent based DAs but not CPs

Permutation

Court and Congressional action solves best

Gottlieb and Schultz 96(Stephen E Gottlieb and David Schultz - professors of law at Hamline University, , "Legal Functionalism and Social Change: A Reassessment of Rosenberg's 'The Hollow Hope," Journal of Law and Politics)

A. Two Models of Judicial Efficacy Rosenberg begins by stating clearly the inquiry which he seeks to pursue: "To what degree," he asks, "and under what conditions, can judicial processes be used to produce political and social change[?]"33 Rosenberg finds two models of court action in the scholarly literature, the "dynamic" and "constrained" models. Not only does he endeavor to test these two models of judicial behavior empirically, but he also aims to discover the particular conditions under which courts can act effectively, if, indeed, they can do so at all. Courts are, Rosenberg concludes, more nearly "constrained" institutions than "dynamic" ones, and they can effect change only when others reinforce their rulings and provide incentives for compliance. Rosenberg finds in the literature two views of the judicial role. Some scholars view the Court as a "dynamic" institution, able to affect society directly and indirectly.34 The Court's independence enables it to engage in social reform in ways that other branches of government cannot.35 Others see the Court as a "constrained" institution, little able to work change in society on any level.36 Rosenberg submits these two models to empirical analysis, asking if the evidence proves that the Court can implement "policy change with national impact."37 He concludes that the evidence does not support such a claim. The judiciary is not nearly so independent from other branches as supporters of the dynamic model would suggest. Further, judicial efficacy is hindered by the limited reach of the constitutional rights which the Court is authorized to enforce and by the Court's limited resources for developing and actively implementing visions of social change.38 In short, Rosenberg concludes, t he Court is far more "constrained" than it is "dynamic." 39 Such a "constrained" Court cannot influence policy without outside assistance. Only when others provide incentives to comply with the Court's vision, 4 0 when that vision can by implemented in the market, 4 1 or when the Court's decisions are used by others as "leverage, or a shield, cover, or excuse" to implement reform, 4 2 can judicial action play a role in major attempts to reform society. Alone, the Court can do little.

Courts cant ensure funding for their decisions

Rosenburg 2008 (Gerald N. Rosenburg - University of Chicago political science and law professor, "The Hollow Hope, Can Courts Bring About Social Change", p. 18-19)

A further obstacle for court effectiveness, assert believers in the Constrained Court view, is that significant social reform often requires large expenditures. Judges, in general prohibited from actively politicking and cutting deals, are not in a particularly powerful position to successfully order the other branches to expend additional funds. "The real problem" in cases of reform, Judge Bazelon wrote, "is one of inadequate resources, which the courts are helpless to remedy" (Bazelon 1969, 676). While there may be exceptions where courts seize financial resources, they are rare precisely because courts are hesitant to issue such orders which violate separation of powers by in effect appropriating public funds. Even without this concern, courts "ultimately lack the power to force state governments [or the federal government] to act" (Frug 1978, 792) because if governments refuse to act, there is little courts can do. They are unlikely to hold governors, legislators, or administrators in contempt or take other dramatic action because such action sets up a battle between the branches that effectively destroys any chance of government cooperation. Thus, judges are unlikely to put themselves in such no-win situations. Further, the "limits on government resources are no less applicable in the courtroom than outside of it" (Frug 1978, 788). As Frug asserts, "the judicial power of the purse will, in the final analysis, extend no further than a democratic decision permits" (Frug 1978, 794).

Courts cant implement their decisions

Rosenburg 2008 (Gerald N. Rosenburg - University of Chicago political science and law professor, "The Hollow Hope, Can Courts Bring About Social Change", p. 15-16)

For courts, or any other institution, to effectively produce significant social reform, they must have the ability to develop appropriate policies and the power to implement them. This, in turn, requires a host of tools that courts, according to proponents of the Constrained Court view, lack. In particular, successful implementation requires enforcement powers. Court decisions, requiring people to act, are not self-executing. But as Hamilton pointed out two centuries ago in The Federalist Papers (1787—88), courts lack such powers. Indeed, it is for this reason more than any other that Hamilton emphasized the courts' character as the least dangerous branch. Assuaging fears that the federal courts would be a political threat, Hamilton argued in Federalist 78 that the judiciary "has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments" (The Federalist Papers 1961, 465).Unlike Congress and the executive branch, Hamilton argued, the federal courts were utterly dependent on the support of the other branches and elite actors. In other words, for Court orders to be carried out, political elites, electorally accountable, must support them and act to implement them. Proponents of the Constrained Court view point to historical recognition of this structural "fact" of American political life by early Chief Justices John Jay and John Marshall, both of whom were acutely aware of the Court's limits.'2 President Jackson recognized these limits, too, when he reputedly remarked about a decision with which he did not agree, "John Marshall has made his decision, now let him enforce it." 13 More recently, the unwillingness of state authorities to follow court orders, and the need to send federal troops to Little Rock, Arkansas, to carry them out, makes the same point. Without elite support (the federal government in this case), the Court's orders would have been frustrated. While it is clear that courts can stymie change (Paul 1960), though ultimately not prevent it (Dahi 1957; Nagel 1965; Rosenberg 1985), the Constitution, in the eyes of the Constrained Court view, appears to leave the courts few tools to insure that their decisions are carried out.

Courts Don’t Solve

Courts Don't Solve Surveillance

The Supreme Court has made it difficult to challenge surveillance

Slobogin 2015 [Christopher Slobogin, Milton Underwood Professor of Law, Vanderbilt University Law School, Pepperdine Law Review Volume 42 pg 517-548 http://pepperdinelawreview.com/wp-content/uploads/2015/04/Slobogin-Final.pdf]

This Article describes and analyzes standing doctrine as it applies to covert government surveillance, focusing on practices thought to be conducted by the National Security Agency. Primarily because of its desire to avoid judicial incursions into the political process, **the Supreme Court has construed its standing doctrine in a way that makes challenges to covert surveillance very difficult.** Properly understood, however, such challenges do not call for judicial trenching on the power of the legislative and executive branches. Instead, they ask the courts to ensure that the political branches function properly. This political process theory of standing can rejuvenate the "chilling" arguments that the Supreme Court has rejected in Fourth and First Amendment cases. Additionally, the theory provides a third, independent cause of action against covert surveillance that is based on separation of powers principles, specifically the notion that, in a representative democracy governed by administrative law principles, one role of the courts is to ensure that the legislative branch authorizes and monitors significant executive actions and that the executive branch promulgates reasonable regulations governing itself. Litigants who can show that their participation in the political process has been concretely compromised by covert surveillance should have standing to bring any of these causes of action. By all reports, covert government surveillance activities—surveillance programs meant to be kept secret from the general public—have expanded tremendously in scope since September 11, 2001.1 **Because much of** this **surveillance is conducted without a warrant or probable cause, it may violate the Fourth Amendment or some other constitutional provision**.2 **But to make that argument** in court **a litigant must have standing, which according to the Supreme Court exists only when the challenger can make a plausible claim of "injury" that is "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling."3 Precisely because much modern-day surveillance is covert, this demanding standing test may be impossible to meet.4 If so, unconstitutional surveillance programs may be immune from judicial review**.5

Courts Fail to Implement Change in Reducing Domestic Surveillance

Richards 13 (Neil M. May 20. Professor of Law at Washington University in St. Louis. "The Dangers of Surveillance" http://harvardlawreview.org/2013/05/the-dangers-of-surveillance/)

Communications and bank records sought under the ECPA and the RFPA are protected by the additional requirement that the FBI certify that "such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States."48 Despite these protections, courts lack the tools to enforce them. This problem predates the current NSL framework. For example, in 1967, the President ordered the U.S. Army to engage in surveillance of domestic dissident groups, fearing civil disorder in the aftermath of the assassination of Martin Luther King, Jr.49 The program expanded over time to become a large-scale military surveillance program of the domestic political activities of American citizens.

The Supreme Court has made it difficult to challenge surveillance

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Surveillance isn't being challenged in our courts

Slobogin 2015 [Christopher Slobogin, Milton Underwood Professor of Law, Vanderbilt University Law School, Pepperdine Law Review Volume 42 pg 517-548 http://pepperdinelawreview.com/wp-content/uploads/2015/04/Slobogin-Final.pdf]

I**f panvasive surveillance cannot be challenged in court, it could well continue indefinitely despite its real threat to democratic institutions**. Despite all of the hullabaloo occasioned by Edward Snowden's disclosures, the NSA appears to be continuing its large-scale surveillance and Congress has yet to propose serious limitations on it.162 Although President Obama has put a few new restrictions on the NSA's programs,163 to date there have been few judicial assessments of their constitutional status, and Clapper stands as an obstacle to challenges to all but the most obviously panvasive government actions. While the limitations on standing may make sense in some types of cases, challenges to panvasive surveillance should be treated differently than most other generalized claims. The separation of powers, Fourth Amendment, and First Amendment concerns about this surveillance go to the core of American democracy. The Court's decision in De Jonge v. Oregon, decided almost eight decades ago, makes the point in language that still resonates in this post-9/11 era: The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government.164 Unwarranted surveillance broadly stifles fundamental liberties and undermines "the very foundation of constitutional government." **Government is no longer functioning as the framers of the Constitution imagined it should if political discourse, individual creativity, outspokenness and non-conformity are not allowed to flourish. This**

state of affairs threatens rather than sustains the notion of separate but equal governmental powers, because it diminishes the vitality of the legislative function, improperly enhances the executive function, and ignores the judiciary's role as a regulator of law enforcement through determinations of cause. Standing doctrine, meant to ensure each branch of government is allowed to do its job, should not prevent courts from ensuring that the other branches actually do it.

Surveillance is difficult for the courts to regulate

Slobogin 2015 [Christopher Slobogin, Milton Underwood Professor of Law, Vanderbilt University Law School, Pepperdine Law Review Volume 42 pg 517-548 http://pepperdinelawreview.com/wp-content/uploads/2015/04/Slobogin-Final.pdf]

Most of this **surveillance takes place without any type of judicial authorization**,17 **or is authorized only by** the Foreign Intelligence Surveillance Court **(FISC), which operates in secret**.18 Although regulation of these practices has recently ramped up, even today the decision about what to collect and what to target and query is largely in the hands of executive agency officials.19 **Thus**, good arguments can be made that **much, if not all, of this surveillance is unconstitutional under the Fourth Amendment, the First Amendment, separation of powers doctrine, or some combination thereof**.**20 But these arguments may never be fully fleshed out in the courts because of the Supreme Court's standing doctrine**. The Court's recent decision in Clapper v. Amnesty International USA21 involved a challenge to section 702 of the Patriot Act, which allows the NSA to intercept communications of non-U.S. persons outside the United States in the absence of individualized suspicion.22 **Despite the plaintiffs' showing that they routinely made overseas calls to parties likely to be targeted under section 702, the Court denied them standing because they could not show that their calls were in fact intercepted and thus could not prove that the injury they alleged due to the surveillance was either "actual" or "certainly impending**."23 As the outcome in Clapper illustrates, because NSA surveillance is, by design, covert, the standing requirement that plaintiffs allege a "concrete" injury can pose a serious obstacle to parties trying to challenge it.24 The majority in Clapper nonetheless insisted that "our holding today by no means insulates [section 702] from judicial review."25

Courts ineffective to challenge surveillance

Michelman 2009 [Scott Michelman, Staff Attorney, American Civil Liberties Union, "Who can sue over government surveillance?" UCLA Law Review Vol. 57 pg 71-114, 2009 http://www.uclalawreview.org/pdf/57-1-2.pdf]

In the fall of 2001, **President** George W. **Bush authorized the** National Security Agency **(NSA) to begin a program of warrantless electronic surveillance** that did not comply with the Foreign Intelligence Surveillance Act (FISA),1 the statute that had governed such surveillance since 1978.2 The program had been secret until the New York Times disclosed its existence in December 2005, after which the president and senior members of his administration discussed the program publicly.3 They explained that **the program involved the warrantless interception of emails and telephone calls that originated or terminated inside the United States**, and that **NSA "shift supervisors" initiated surveillance under the program when they believed there was a "reasonable basis to conclude that one party to the communication [was] a member of al Qaeda, affiliated with al Qaeda, a member of an organization affiliated with al Qaeda, or working in support of al Qaeda.**"4 **An independent analysis** by the Congressional Research Service **questioned the program's legality**,5 as did numerous legal scholars.6 In the flurry of legal activity that followed the disclosure of the program,

ACLU v. NSA7 **was the first direct challenge to the program to reach a federal court of appeals**.8 In that case, **a group of lawyers, journalists, and scholars asserted statutory, separation of powers, and First and Fourth Amendment claims against the program, which the plaintiffs alleged impeded their professional activities by chilling their speech or the speech of individuals integral to their work.**9 The district court had declared the program unconstitutional and enjoined it,10 but **in a splintered decision that produced no majority opinion, the Sixth Circuit reversed**, with two judges **concluding** for different reasons **that the plaintiffs did not have standing to bring the case.**11 This result perpetuated a troubling state of uncertainty regarding both the procedural and substantive issues presented. **Serious questions remain both about the legality of the program itself and who, if anyone, could have challenged the program in court.**

Privacy laws don't cover surveillance well

McFarland, No Date [Michael McFarland, computer scientist and privacy ethics professor, "Privacy and the Law", Santa Clara University, no date, http://www.scu.edu/ethics/practicing/focusareas/technology/internet/privacy/privacy-law.html]

There is no explicit mention of privacy in the United States Constitution. But **the courts have found a constitutional basis for privacy rights in the broad sense of freedom from interference in certain intimate realms of personal life**. This is based on the protection of individual liberty from government interference in the Fourth, Fifth and Fourteenth amendments to the Constitution. 3 The First Amendment protection of the freedoms of speech, assembly, religious practice, and so on, could also be seen as privacy protection in this sense. On the other hand, the right to free speech could be used to defend someone who invaded the privacy of others by publishing or disclosing their personal information. **Informational privacy has not been given the same strong constitutional protection by the courts to date**. The Supreme Court, in Whalen v. Roe, found that a New York law that required physicians and pharmacists to report all prescriptions of certain types of drugs to the state for storage in a comprehensive drug-use database, did not violate constitutional right, in spite of the protests of some patients and doctors involved that it was an invasion of privacy. The Court was willing to give the state interest in tracking drug use more weight against the individuals' interest in privacy because **"informational privacy is not a fundamental right**." Therefore, though the courts recognize some rights to privacy of information, these must be balanced, case-by-case, against the public interest in disclosure. In one subsequent case, United States v. Westinghouse, the Third Circuit Court worked out a "balancing test" for deciding between these competing interests. Some of the factors to be considered included what kind of information is sought, the harm that could be done by any further disclosure, the care taken to guard the information from any further disclosure, and the degree of public interest in its disclosure. 5 In 1967 in Katz v. United States, the Supreme Court extended Fourth Amendment protections to include some types of electronic communications and therefore informational privacy. Katz was convicted of illegal gambling based on FBI recordings of phone calls he made from a public pay phone. The recordings were made by a listening device placed outside the phone booth without a warrant. The appeals court allowed the conviction on the grounds that the FBI had not invaded a private space or tapped into a private network to obtain the evidence. The Supreme Court reversed the decision, finding that the recording of Katz's conversations was a violation of his Fourth Amendment privacy rights. What was determinative, the majority said, was not whether the space he was in was public or private, but whether his conversation could reasonably be considered a private one. The justices concluded that making a telephone call in a phone booth with the door closed met the criteria. **The Katz case gave rise to the "reasonable expectation of privacy" test that is still used today to define the limits of government surveillance**. 6 For example in January 2012 the Supreme Court overturned the conviction of an alleged drug dealer because it was based on evidence gathered from a GPS tracking device surreptitiously placed on his car. 7 These **cases have limited applicability and do not affect the private sector, where many privacy issues arise**. Therefore there is a need for legislation to set clearer guidelines on when and to what extent personal information is to be protected. Over the last few decades **the federal government has enacted a number of** such **laws. As a whole these are spotty: domain-specific, inconsistent and full of loopholes**. Still, they provide some protection in certain areas. The four most important laws are the Fair Credit Reporting Act (FCRA), which is concerned with record-keeping in the private sector; the Privacy Act (PA), which regulates record-keeping by the federal government; the Electronic Communications Privacy Act (ECPA), which safeguards the confidentiality of electronic transmissions; and the Health Insurance Portability and Accountability Act (HIPAA), which protects medical records. Other laws cover more specific issues.

Privacy laws aren't being kept up-to-date

Grande 13 [Allison Grande, senior business reporter, "Google Tracking win exposes cracks in stale privacy laws", Law 360, October 2013, http://www.law360.com/articles/479994/google-tracking-win-exposes-cracks-in-stale-privacy-laws]

Google Inc. last week **escaped** multidistrict **litigation accusing it of bypassing Apple Inc.'s Safari browser privacy settings to illegally track consumers' Internet activity, a decision that attorneys say further establishes courts' unwillingness to reinterpret outdated privacy laws to cover new uses of personal data.** In **a**n Oct. 9 opinion, **District of Delaware Judge** Sue L. Robinson **tossed the 24 consolidated suits against Google and several other online advertisers, finding the plaintiffs lacked standing because they hadn't alleged an injury-in-fact** from the companies' use of cookies to track the browsing activities of Safari users. The plaintiffs had attempted to avoid thorny injury issues and establish standing by shoehorning their claims into decades-old statutes such as the Electronic Communications Privacy Act and the Computer Fraud and Abuse Act, a failed effort that **attorneys say marks the latest example of judges' reluctance to read too far outside the outdated statutory language**. "Here we go again: parties losing really valid claims because courts cannot fit round pegs into square holes," Butzel Long PC shareholder Claudia Rast said. "Plaintiffs will continue to bring these types of lawsuits, but **I don't see our federal judges refashioning these statutes to meet today's innovative technologies**." According to Steptoe & Johnson LLP partner Jason Weinstein, the case is an example of courts increasingly demanding that plaintiffs show actual, rather than theoretical, harm. Although Judge Robinson acknowledged that a statutory violation can in some cases create standing absent actual injury, she refused to find that any statute currently on the books operated to bar the defendants' alleged browser tracking. For example, with respect to ECPA, the judge found that the URLs and other personal information allegedly tracked by Google did not qualify as "contents" of communications that the law was designed to protect, such as the spoken words of a telephone call. "Cookie litigation has been a tough road for plaintiffs for over a decade, and this case is no exception," Orrick Herrington & Sutcliffe LLP counsel Eulonda Skyles said. **While the court acknowledged that portions of ECPA were outdated, it refused to interpret how modern technology would fit with Congress' intent in drafting privacy law,** she said.

The Supreme Court mishandles policies that are taken to them. Obamacare proves.

Contini 7/9/**2015**

[Attilio; Writer to the Daily Freeman; *Supreme Court Allows Obamacare to Destroy best healthcare System in the World; http://www.dailyfreeman.com/opinion/20150709/letter-supreme-court-allows-obamacare-to-destroy-the-best-health-care-system-in-the-world;* Accessed on 7/29/2015]

So **the Supreme Court has saved Obamacare twice from its sloppy drafting.** Well, **two wrongs don't make a right and neither does three.** That's right, three. **The Supreme Court**, in its wisdom, **has made it unanimous: All three branches of the federal government are dysfucntional**, to put it mildly. **But then, the court has been legislating from the bench for years**, so what else is new? Some say the court did its job. No way. Supposedly it interpreted the law as a good-faith effort to accomplish what its drafters set out to do. Well, that is not what **the court** should do. It **should have pointed out** its **shortcomings and declared that it be referred back to Congress to be rewritten** (and amended) to correct the shortcomings. **The court had two choices: Declare it as unconstitutional as written or reject it as poorly written and state it should be redrafted. Declaring it unconstitutional would have made it null and void. Directing it be redrafted would have put it back in the hands of Congress. Either way, we would have had mass confusion** and another exercise in stupidity.

Congress Blocks Court Rulings

Courts Ineffective --- Tied to Congress

Carter 92 (Stephen L. "Do Courts Matter?" Law Professor at Yale. Yale Law School Legal Scholarship Repository. Pgs. 1216 – 1224)

William N. Eskridge has argued that congressional overrides of Supreme Courtð statutory interpretations are relatively rare not because the Court is powerful, but because theð Justices are unlikely to interpret a statute in a way that is contrary to the preferences of theð current (as against the enacting) Congress. If this is so, it implies að further limitation on the litigation strategy, for litigants will rarely obtain from the Court whatð they could not obtain in the political process. Moreover, importantð elements of the medical establishment have always opposed abortion,ð or supported it only weakly.

Circumvention/Precedents Fail

marriage equality Proves: states are able to resist supreme court decisions

McLaughlin ’15 (Elliott C. Mclaughlin is a newsdeck editor and field reporter, “Most states to abide by Supreme Court's same-sex marriage ruling, but …”, 6/30/15, CNN, http://www.cnn.com/2015/06/29/us/same-sex-marriage-state-by-state/ Accessed: 7/31/15, Chase Elsner, Utnif Cp Gripe)

With last week's Supreme Court ruling, same-sex couples are flocking to the altar in all 50 states, right? Eh, almost. There are still a few holdouts, as various politicians take firm stands against a 5-to-4 high court decision they argue is revisionist, or illegal even. Until Friday, same-sex marriage was already allowed in 37 states and the District of Columbia. Now, as wedding bells ring across much of the nation, here's a look at the states that have been less than enthusiastic about the Supreme Court ruling in Obergefell v. Hodges. We'll begin with Texas and Alabama, which have raised the most voluminous protests. Although same-sex marriage was legal in Alabama before Friday thanks to a federal court decision, state Supreme Court Chief Justice Roy Moore, who has remained notoriously resilient in his opposition, maintains that last week's high court decision does not mark the end of his fight. Texas "A judge-based edict that is not based in the law" -- that's how Attorney General Ken Paxton described the Supreme Court ruling in a Sunday statement. This, two days after he compared the ruling to the abortion decision, Roe V. Wade, which he cited as another example of how the U.S. Constitution "can be molded to mean anything by unelected judges." "But no court, no law, no rule, and no words will change the simple truth that marriage is the union of one man and one woman. Nothing will change the importance of a mother and a father to the raising of a child. And nothing will change our collective resolve that all Americans should be able to exercise their faith in their daily lives without infringement and harassment," his Friday statement said. In denouncing what he called a "fabricated" and "newly invented" constitutional right, the state's top law enforcement official repeatedly invoked freedom of religion and said he had issued an opinion, at Lt. Gov. Dan Patrick's request, that the state's county clerks "retain religious freedoms that may allow accommodation of their religious objections to issuing same-sex marriage licenses." Similarly, he wrote, judges "may claim that the government cannot force them to conduct same-sex wedding ceremonies over their religious objections." Paxton acknowledged that officials refusing to issue licenses to same-sex couple may be sued or fined, but he assured such-minded judges and clerks that "numerous lawyers" will help defend their rights, perhaps on a pro bono basis, and his office stands ready to assist them as well. Alabama Call it same-sex marriage redux. When a federal court issued a ruling that cleared the path for same-sex marriage in Alabama earlier this year, state Supreme Court Chief Justice Roy Moore told Alabama's probate judges not to issue the licenses, prompting at least one probate judge to liken Moore's stance to then-Gov. George Wallace's "stand in the schoolhouse door," an assertion Moore denied. "I'm not standing in any door. I did not bring this on. This was forced upon our state. This is simply federal tyranny," he told CNN. "This is not about race. This is about entering into the institution of marriage." Following Friday's ruling, Moore shared a Facebook post from his wife, the president of the Montgomery-based Foundation for Moral Law, "blowing the whistle on the illegitimacy of today's decision." "Not only does the U.S. Supreme Court have no legal authority to redefine marriage, but also at least 2 members of the Court's majority opinion were under a legal duty to recuse and refrain from voting. Their failure to recuse calls into question the validity of this decision," the statement said. (Moore told CNN in February that Justices Elena Kagan and Ruth Bader Ginsburg should recuse themselves because they've performed same-sex marriages.) On Monday, the state Supreme Court issued a writ of mandamus suspending same-sex marriages in Alabama for 25 days to give "parties" time to file motions "addressing" the U.S. Supreme Court ruling. Moore abstained from voting, according to the vote tally included in the writ. Gov. Robert Bentley gave no indication he would put his office's weight behind the U.S. Supreme Court ruling. "I have always believed in the Biblical definition of marriage as being between one man and one woman. That definition has been deeply rooted in our society for thousands of years. Regardless of today's ruling by the Supreme Court, I still believe in a one man and one woman definition of marriage,"

his statement said. Arkansas Gov. Asa Hutchinson has repeatedly said that he feels marriage can be only between one man and one woman, but earlier this year, he urged tolerance as the nation engages in dialogue and debate. He also acknowledged there's a generational divide when it comes to sentiments on this issue. Thus, it should no surprise that the governor issued a statement saying that while he didn't care for the ruling, he'd "direct all state agencies to comply with the decision." But there's a catch. He said the Supreme Court's decision is aimed only at states and "is not a directive for churches or pastors to recognize same-sex marriage. The decision for churches, pastors and individuals is a choice that should be left to the convictions of conscience." Georgia Gov. Nathan Deal kept it short and simple, both on Twitter feed and in his official response. "The state of Georgia is subject to the laws of the United States and we will follow them," he succinctly stated, while making it clear that he feels the Supreme Court overstepped its authority on an issue that should be decided by states. Kentucky The Kentucky Department of Libraries and Archives has received marching orders to revise its marriage license forms, effective Immediately, Gov. Steve Beshear said Friday. All Cabinet positions have been directed to alter any necessary policies to implement the Supreme Court ruling, which the governor said provided clarity on a confusing and unfairly administered issue. "The fractured laws across the country concerning same-sex marriage had created an unsustainable and unbalanced legal environment, wherein citizens were treated differently depending on the state in which they resided. That situation was unfair, no matter which side of the debate you may support," he wrote. Louisiana In line with its staunch opposition to same-sex marriage, Louisiana is not going to roll over simply because the Supreme Court issued a ruling. Court clerks were advised Friday to wait up to 25 days before issuing same-sex marriage licenses, as Attorney General Buddy Caldwell said he found nothing in the Supreme Court ruling that makes it effective immediately. "Therefore, there is not yet a legal requirement for officials to issue marriage licenses or perform marriages for same-sex couples in Louisiana. The Attorney General's Office will be watching for the Court to issue a mandate or order making today's decision final and effective and will issue a statement when that occurs," Caldwell said in a statement Friday. The state amended its constitution in 2004 to define marriage as between one man and one woman, he said, boasting that he "fought to uphold Louisiana's definition of traditional marriage." A federal court previously upheld the amendment, but it's expected to be overturned, in line with the Supreme Court's ruling. Gov. Bobby Jindal joined Caldwell in blasting the Friday ruling, saying, "Marriage between a man and a woman was established by God, and no earthly court can alter that." He also worried aloud that the high court had opened the door "for an all-out assault against the religious freedom rights of Christians who disagree with this decision." But on NBC's "Meet the Press," the presidential hopeful said Louisiana agencies had no choice but to abide by the ruling. He still took time to lob a shot across the bow of President Barack Obama and Hillary Clinton, who he accused of changing their position based on public opinion. "My views on marriage aren't evolving with the polls. I can read polls just like the President can," he told the show. "It's based on my faith. I think it should remain between a man and a woman." Michigan The matter is settled, said Gov. Rick Snyder, and Michigan "will follow the law and our state agencies will make the necessary changes to ensure that we will fully comply." "Let's also recognize while this issue has stirred passionate debate, we now should focus on the values we share," he said in his statement. Mississippi Neither Gov. Phil Bryant nor Attorney General Jim Hood did much grandstanding after the ruling, though both made it clear they disagreed with the decision. "Today, a federal court has usurped (the) right to self-governance and has mandated that states must comply with federal marriage standards -- standards that are out of step with the wishes of many in the United States and that are certainly out of step with the majority of Mississippians," Bryant said in a statement. Hood initially said the ruling was not "immediately effective" because the federal Fifth Circuit Court of Appeals had a stay in place as it determined the fate of Campaign for Southern Equality v. Bryant. Hood appealed the U.S. District Court's November ruling that the state's prohibition on same-sex marriages was unconstitutional. But he said he would not block the U.S. Supreme Court's decision. "The Office of the Attorney General is certainly not standing in the way of the Supreme Court's decision. We simply want to inform our citizens of the procedure that takes effect after this ruling. The Supreme Court decision is the law of the land and we do not dispute that. When the 5th Circuit lifts the stay ... it will become effective in Mississippi." Missouri Same-sex couples could already marry in St. Louis, and judging from the response of top officials, there will be no issues expanding the right to the rest of the Show Me State. Gov. Jay Nixon called the decision a "major victory for equality," and citing the U.S. Supreme Court's "binding ruling," Attorney General Chris Koster said he had dismissed two state appeals of same-sex marriage rulings, one in the Missouri Supreme Court and one at the federal appeals level. Nebraska Chalk Nebraska up as another state where the executive branch dislikes the ruling but will follow it nonetheless -- not terribly surprising when you consider seven out of 10 Nebraskans in 2000 amended the state constitution to say that the "uniting of two persons of the same sex in a civil union, domestic partnership, or other similar same-sex relationship shall not be valid or recognized." Still, Gov. Pete Ricketts conceded the high court ruling trumped the state constitution: "The U.S. Supreme Court has spoken. ... While 70 percent of Nebraskans approved our amendment to our state constitution that defined marriage as only between a man and a woman, the highest court in the land has ruled states cannot place limits on marriage between same-sex couples. We will follow the law and respect the ruling outlined by the court." North Dakota The state's 2004 constitutional ban on same-sex marriage was already under fire, and a federal judge earlier this year put those legal challenges on hold until the U.S. Supreme Court issued its ruling. Though Gov. Jack Dalrymple was quiet on his website and social media accounts, he issued a brief statement Friday to CNN affiliate WDAZ: "The U.S. Supreme Court has ruled that same-sex marriage is legal throughout the nation and we will abide by this federal mandate." Ohio Gov. John Kasich has said he opposes same-sex marriages but that wouldn't stop him from attending one. In fact, he told CNN in April, he and his wife were planning to attend a gay friend's nuptials. "My friend knows how I feel about the issue, but I'm not here to have a war with him. I care about my friend, and so it's pretty simple for me," he said. Kasich, who is expected to announce a White House bid this month, was quiet in terms of official statements Friday, but a spokesperson issued a statement to CNN affiliate WCMH: "The governor has always believed in the sanctity of marriage between a man and a woman, but our nation's highest court has spoken and we must respect its decision." The governor further told CBS' "Face the Nation" that it is "time to move on" and focus on bigger issues. "I think everybody needs to take a deep breath to see how this evolves," Kasich, who was one of the original defendants in Obergefell v. Hodges, said. "But I know this: Religious institutions, religious entities -- like the Catholic church -- they need to be honored as well. I think there's an ability to strike a balance." Attorney General Mike DeWine said he had an obligation to defend Ohio's laws -- including its 2004 voter-passed ban on same-sex marriage -- but "while Ohio argued that the Supreme Court should let this issue ultimately be decided by the voters, the Court has now made its decision." South Dakota Gov. Dennis Daugaard said he would have preferred to see the issue decided democratically, but he will work with South Dakota's attorney general "to ascertain what this ruling means" for South Dakota, which amended its state constitution in 2006 to ban same-sex marriage. Attorney General Marty Jackley issued his guidance the same day: "Absent further direction," the state will honor the ruling, but it might take a "reasonable period of time" to implement it. "It has always been my position that the citizens of our state should define marriage, and not the federal government," Jackley said in a statement. "Five members of the U.S. Supreme Court have now determined neither the States nor our citizens have the right or the ability to define marriage. Because we are a Nation of laws the State will be required to follow the Court's order." Tennessee Both Gov. Bill Haslam and Attorney General Herbert Slatery III decried the high court ruling, which they said robbed Tennesseans of their voice and vote. Both leaders said they would respect the court's decision anyway. The sentiment was not shared by at least two of the state's lawmakers, Reps. Bryan Terry of Murfreesboro and Andy Holt of Dresden, who announced Friday they intend to introduce a bill called the Tennessee Pastor

Protection Act. "If the issue is truly about equality of civil liberties and benefits, then this ruling should have minimal legal impact on churches," Terry said in a statement. "However, if the issue and the cause is about redefining marriage to require others to change their deeply held religious beliefs, then the concerns of many will be valid." The bill would allow clergy to refuse to perform same-sex marriages and provide "legal protection from being forced to perform same sex marriages on church property," according to a news release. "It's more important now than ever that we stand and resist the abuse of our own government and that is exactly what I plan to do by lobbying for the Pastor Protection Act with Rep. Terry," Holt said in a statement, adding that he does not recognize the high court ruling. "God is the ultimate Supreme Court and he has spoken. Marriage is between one man, and one woman."

Courts have limited oversight

Leonning 13 (Carol D. Leonning - investigative journalist and a Washington Post staff writer , "Court: Ability to police U.S. spying program limited", http://www.washingtonpost.com/politics/court-ability-to-police-us-spying-program-limited/2013/08/15/4a8c8c44-05cd-11e3-a07f-49ddc7417125_story.html, August 15th 2013)

The leader of the secret court that is supposed to provide critical oversight of the government's vast spying programs said that its ability to do so is limited and that it must trust the government to report when it improperly spies on Americans. The chief judge of the Foreign Intelligence Surveillance Court said the court lacks the tools to independently verify how often the government's surveillance breaks the court's rules that aim to protect Americans' privacy. Without taking drastic steps, it also cannot check the veracity of the government's assertions that the violations its staff members report are unintentional mistakes. "The FISC is forced to rely upon the accuracy of the information that is provided to the Court," its chief, U.S. District Judge Reggie B. Walton, said in a written statement to The Washington Post. "The FISC does not have the capacity to investigate issues of noncompliance, and in that respect the FISC is in the same position as any other court when it comes to enforcing [government] compliance with its orders." Walton's comments came in response to internal government records obtained by The Post showing that National Security Agency staff members in Washington overstepped their authority on spy programs thousands of times per year. The records also show that the number of violations has been on the rise. The court's description of its practical limitations contrasts with repeated assurances from the Obama administration and intelligence agency leaders that the court provides central checks and balances on the government's broad spying efforts. They have said that Americans should feel comfortable that the secret intelligence court provides robust oversight of government surveillance and protects their privacy from rogue intrusions.

Courts Fail in reducing Domestic Surveillance --- Plaintiffs can't prove they were Targets

Richards 13 (Neil M. May 20. Professor of Law at Washington University in St. Louis. "The Dangers of Surveillance" http://harvardlawreview.org/2013/05/the-dangers-of-surveillance/)

In Laird v. Tatum, 51 the Supreme Court held that it lacked jurisdiction over the claims that the surveillance violated the First Amendment rights of the subjects of the program, because the subjects claimed only that they felt deterred from exercising their First Amendment rights or that the government could misuse the information it collected in the future.52 The Court could thus declare that "[a]llegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm."53 More recent surveillance cases have followed the lead of the Laird Court. Challenges to the NSA's wiretapping program have foundered because plaintiffs have failed to convince

federal courts that secret surveillance has caused them any legally cognizable injury. In ACLU v. NSA, 54 the Sixth Circuit dismissed any suggestion that First Amendment values were threatened when the government listened to private conversations. As that court put it: "The First Amendment protects public speech and the free exchange of ideas, while the Fourth Amendment protects citizens from unwanted intrusion into their personal lives and effects."55 The court concluded that the plaintiffs had no standing to assert First or Fourth Amendment violations, as they could not prove that the secret government surveillance program had targeted them.56 Similarly, in Al-Haramain Islamic Foundation, Inc. v. Bush, 57 the government successfully invoked the state-secrets doctrine to stop the plaintiffs from finding out whether they were the subjects of secret surveillance under the program.58 This ruling created a brutal paradox for the plaintiffs: they could not prove whether their telephone calls had been listened to, and thus they could not establish standing to sue for the violation of their civil liberties.59 Despite the fact that the judges in the case knew whether surveillance had taken place, they believed that the state-secrets doctrine barred them from ruling on that fact.60 And the Court's most recent decision in Clapper affirmed this approach to standing to challenge surveillance. Plaintiffs can only challenge secret government surveillance they can prove, but the government isn't telling. Plaintiffs (and perhaps civil liberties) are out of luck. So far so bad. Or maybe not. Thus, in each of the traditional American justifications for freedom of speech,74 a commitment to freedom of thought — to intellectual freedom — rests at the core of the traditionAlthough most courts justify free speech in terms of truth-seeking or democratic selfgovernance, some scholars have argued that free speech is better justified in terms of the autonomy or self-development of the individual.

Court Precedents Fail --- Lower Court Circumvention Inevitable because precedents fail to take hold

Bell 92 (Derrick. Professor of Law at Harvard Law School. "Racial Realism" Connecticut Law Review. Volume 24. Pg. 363-379)

Closely linked with the Realists' attack on the logic of rights the- ory was their attack on the logic of precedent." **No two cases**, the Realists pointed out, **are ever exactly alike**. Hence a procedural rule from a former case cannot simply be applied to a new case with a mul- titude of facts that vary from the former case. Rather, the judge has to choose whether or not the ruling in the earlier case should be extended to include the new case. Such a choice basically is about the relevancy of facts, and decisions about relevancy are never logically compelled. Decisions merely are subjective judgments made to reach a particular result. Decisions about the relevance of distinguishing facts are value- laden and dependent upon a judge's own experiences." The imperatives of this Realist attack were at least two: first, to clear the air of "beguiling but misleading conceptual categories"[9] so that thought could be redirected towards facts (rather than nonexistent spheres of classism) and ethics. If social decisionmaking was inevitably moral choice, policymakers needed some ethical basis upon which to make their choices." And second, the Realists' critique suggested that the whole liberal worldview of private rights and public sovereignty me- diated by the rule of law needed to be exploded. The Realists argued that a worldview premised upon the public and private spheres is an attractive mirage that masks the reality of economic and political power." This two-pronged attack had profoundly threatening conse- quences: it carried with it the potential collapse of legal liberalism." Realism, in short, changed the face of American jurisprudence by ex- posing the result-oriented, value-laden nature of legal decisionmaking. Many divergent philosophies emerged to combat, not a little defen- sively, the attack on law as instrumental, not self-evidently logical, and "made by judges, not simply derived from transcendent or ultimate principles." As every civil rights lawyer has reason to know—despite law school indoctrination and belief in the "rule of law"—abstract princi- ples lead to legal results that harm blacks and perpetuate their inferior status.

Courts Ineffective --- Judicial Weakness

Carter 92 (Stephen L. “Do Courts Matter?” Law Professor at Yale. Yale Law School Legal Scholarship Repository. Pgs. 1216 – 1224)

In fact, Rosenberg suggests that all the old metaphors of judicial weakness, from Hamilton to Bickel, are truer than today's scholars seem to think - implying that our politics, and even our scholarship, should be little concerned with the output of the courts because there is little that the courts can actually accomplish. A part of the American mythos already accepts this claim, for competing sides in any struggle over constitutional meaning always argue that the law is already as they say it should be. The norms of legal argument hardly permit anything else, which is perhaps what Publius really had in mind in insisting in Federalist No. 78 that the judicial branch possesses neither force nor will. That the courts simply construe the law is hornbook civics. Even if smart theorists know that it is nonsense, the public, which probably also knows better, still cherishes the ideal of judicial weakness, which is one reason that political rhetoric about "strict construction" - fortunately, never defined - plays so well on the stump. The effort to show that the courts do not make new law has led to some very peculiar results, such as the insistence by former Attorney General Edwin Meese that Brown v. Board of Education 7 represented the rediscovery of an original understanding that Plessy v. Ferguson 8 had ignored.9 Still, such an argument is much in keeping with the ideal that the courts possess little power in American life. 6. But hardly anyone really believes this. Most Americans seem to think the courts have, or should have, sufficient authority to protect favored "constitutional" rights. The mythos of judicial weakness is most emphatically brushed aside during the campaigns (there is no other word) for and against the candidates (still no other word) for election (yet again, no other word) to the Supreme Court. At those defining moments of the people's relationship to their judicial branch, we discover all too often that we want not a least dangerous branch, nor even an independent one - rather, we want a branch possessed of considerable power yet willing to exercise that power only in accordance with our will. By the rhetoric of the President and the Senate, at least, servant is not too extreme a word to describe the judiciary's relationship to the public. If our fondest desire is to staff the bench with people whose votes on crucial issues are promised in advance, we certainly cannot use the word judge to describe the people the process produces. 10 But our tendency to treat the Justices as servants surely is bottomed on our fear of their power. Rosenberg suggests that this fear is unfounded - that the courts are less powerful engines of change than we seem to think. The endless squabbling over judicial personnel, Rosenberg implies, wastes enormous energy; **if we wish to influence public policy, we should not be so interested in the courts, for they cannot effect significant changes in American society**. According to Rosenberg, the Supreme Court might be part of a social movement, but it is rarely the motive force and never the key player. Rosenberg's analysis of Brown v. Board of Education, the paradigmatic case of judicial involvement in social change, best illuminates his thesis. In the orthodox view, Brown was a watershed, the crucial development in the movement to abolish legal segregation. Rosenberg, however, seems to delight in challenging the orthodoxy: "[T]here is little evidence that Brown helped produce positive change," he tells us, but "there is some evidence that it hardened resistance to civil rights among both elites and the white public" (p. 155). Rosenberg offers evidence that rates of school desegregation changed little during the decade after Brown, as the courts pressed their lonely battle for supremacy (pp. 49-57). In the particular case of the South, he insists, "virtually nothing happened" (p. 52); statistics on segregation were as dismal in 1964 as they had been in 1954. Other commentators have pointed to the Court's unanimity and steadfastness as critical to general obedience of the Brown decrees, but Rosenberg's god is data: "Despite the unanimity and forcefulness of the Brown opinion, the Supreme Court's reiteration of its position and its steadfast refusal to yield, its decree Was flagrantly disobeyed" (p. 52). The enactment of The themes in this paragraph are developed more extensively in Civil Rights Act, he says, tipped the balance - and rather dramatically at that, for the Southern states, with federal funding at issue, at last began to yield." The trouble, according to Rosenberg, is that the Dynamic Court model simply didn't work for school desegregation. The courts, he says, were constrained by a variety of rather Bickelian factors, notably the lack during the first decade after Brown of "the active support of political elites" (p. 74). The equivocation at the national level, he argues, encouraged private citizens and local government actors (and sometimes lower courts) to continue their resistance at the state level. "The only way to overcome such opposition," he writes, "is from a change of heart by electors and by national political leaders" (p. 81) - a change reflected in subsequent legislation. In the desegregation realm, he concludes, "it is clear that paradigms based on court efficacy are simply wrong" (p. 105). Rosenberg does not rest with this astonishing rebuttal of the received wisdom on Brown; instead, he trots out a variety of data in an effort to demolish one icon of liberal constitutionalism after another. His dismissal of the efficacy of the Court's effort to reform criminal procedure is succinct: "The revolution failed" (p. 335). Women's rights? There is, Rosenberg says, "little evidence that Court action was of help in ending discrimination against women" (p. 247). He is equally unpersuaded that clever litigation strategies can lead to liberal results by eliciting broad judicial readings of remedial statutes:

Surveillance is difficult for the courts to regulate

Slobogin 2015 [Christopher Slobogin, Milton Underwood Professor of Law, Vanderbilt University Law School, Pepperdine Law Review Volume 42 pg 517-548 http://pepperdinelawreview.com/wp-content/uploads/2015/04/Slobogin-Final.pdf]

Most of this **surveillance takes place without any type of judicial authorization**,17 **or is authorized only by t**he Foreign Intelligence Surveillance Court **(FISC), which operates in secret**.18 Although regulation of these practices has recently ramped up, even today the decision about what to collect and what to target and query is largely in the hands of executive agency officials.19 **Thus,** good arguments can be made that **much, if not all, of this surveillance is unconstitutional under the Fourth Amendment, the First Amendment, separation of powers doctrine, or some combination thereof**.**20 But these arguments may never be fully fleshed out in the courts because of the Supreme Court's standing doctrine**. The Court's recent decision in Clapper v. Amnesty International USA21 involved a challenge to section 702 of the Patriot Act, which allows the NSA to intercept communications of non-U.S. persons outside the United States in the absence of individualized suspicion.22 **Despite the plaintiffs' showing that they routinely made overseas calls to parties likely to be targeted under section 702, the Court denied them standing because they could not show that their calls were in fact intercepted and thus could not prove that the injury they alleged due to the surveillance was either "actual" or "certainly impending**."23 As the outcome in Clapper illustrates, because NSA surveillance is, by design, covert, the standing requirement that plaintiffs allege a "concrete" injury can pose a serious obstacle to parties trying to challenge it.24 The majority in Clapper nonetheless insisted that "our holding today by no means insulates [section 702] from judicial review."25

US constitutional legitimacy has declined

Stumpf et al 13 (The Honorable Dr. István Stumpf, Mila Versteeg, Ronald D. Rotunda and Jeremy Rabkin – The Heritage Foundation, "Model, Resource, or Outlier? What Effect Has the U.S. Constitution Had on the Recently Adopted Constitutions of Other Nations?", http://www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations, May 29th 2013)

For some time, both scholars and the public have considered the U.S. Constitution the world's dominant model. Those beliefs are not without foundation: Fundamental structures like judicial review, as well as the very notion of a written constitution, are American inventions which have long shaped global constitution-making. But a growing number of voices are questioning this notion of American constitutional hegemony, with much of this attention focusing on the reportedly declining importance of U.S. Supreme Court precedent in foreign judicial decisions and others, like Justice Ginsburg, suggesting that the Constitution itself is flagging as a model for foreign constitutional drafters. Methodology In this article,[10] David Law and I seek to reconcile these viewpoints empirically. One of the article's primary goals is to document the similarity between the American Constitution and evolving global constitutional practices over the past 60 years. As I describe in more detail below, we find evidence that the U.S. Constitution's typicality in the world and, it seems, its sway as a global model are dwindling. The basis for this analysis was a data set of world constitutions that I compiled between 2007 and 2008. The data set quantifies the rights-related provisions of all of the world's constitutions from 1946 to 2006—729 constitutional versions of 188 countries—on 237 variables. From these 237 variables, my co-author and I aggregated and condensed them into 60 variables that we believe capture the full substantive range of global constitutional rights. We also included two provisions that are not strictly rights-related: judicial review and a national ombudsman. Using this data, we compared each constitution in the data set to every other constitution, yielding a similarity index that ranges from 1 (perfect similarity) to –1 (perfect dissimilarity) between any two documents. Globally Generic Rights Before describing the results of the analysis with regard to the U.S. Constitution, it is worthwhile to explore one of the notions that underlies the question we attempt to answer. That is, how similar are the constitutional rights provisions among the world's constitutions? And if there exists a high degree of similarity—i.e., an international template of rights (as has been previously documented)—what specific rights does it include? To answer those questions, we created a table ranking all of the 60 identified rights by their world popularity in 2006. At the top of that ranking are rights such as freedom of religion, freedom of expression, the right to private property, equality guarantees, and the right to privacy, each of which appeared in at least 95 percent of constitutions in 2006. At the bottom of the list were provisions such as protection of fetus rights and the right to bear arms, which in 2006 appeared in just 8 percent and 2 percent of constitutions, respectively.

Other themes emerged from the data. For instance, almost all of the 60 constitutional components are increasing in similarity; even most of the unpopular ones (such as protection of fetuses) are becoming more popular. In fact, only two provisions, the right to bear arms and the recognition of an official state religion, are less popular now than they were just after World War II. Having assembled the world's most popular constitutional provisions, we engaged in a thought experiment. It so happens that the 25 most popular rights in 2006 appeared in at least 70 percent of constitutions. By coincidence, the average constitution over the entire 61-year period contained exactly 25 rights. We therefore compiled a theoretical "generic bill of rights" containing those 25 most popular rights. We then compared all of the world's constitutions over time to the generic bill of rights, finding that similarity has been increasing steadily since 1946 (an unsurprising finding, given that the generic bill of rights is crafted from rights popular in 2006). We also found that although constitutions are becoming more generic, not all constitutions are equally so. On one end of the spectrum, the constitutions of Djibouti, St. Lucia, Botswana, and Grenada are the world's most generic, with similarity indexes to the generic bill of rights above 0.70. On the other end, constitutions with very few rights, such as those of Saudi Arabia, Brunei, and Australia, are the most unusual, with similarity indexes at or below 0.12. The United States Constitution's Declining Similarity The existence of this generic set of rights begs the question of whether certain countries have led the way in adopting these generic rights and, if so, to what extent these rights pioneers have impacted the subsequent constitutional practices of other countries. As the article's title suggests, we focused first and foremost on the U.S. Constitution and whether the conventional wisdom of its status as a constitutional pioneer was supported by the data.[11] Unsurprisingly, attempting to gauge one constitution's "influence" on another involves various conceptual and methodological challenges. To illustrate, a highly generic constitution may be generic because others have followed its lead, because it has modeled others, or simply by coincidence. That said, if two constitutions are becoming increasingly dissimilar, by definition, one cannot be following the other. That is, neither is exerting influence on the other (at least not in a positive way). This is the phenomenon we observed in comparing the U.S. Constitution to the rest of the world; based on the rights index, the U.S. has become less similar to the world since 1946 and, with a current index of 0.30, is less similar now than at any point during the studied period. This phenomenon has occurred even among current American allies; among countries in regions with close cultural and historic ties to the U.S. (namely, Latin America and Western Europe); and among democracies. Only among common law countries is constitutional similarity higher than it was after World War II, but even that similarity has decreased since the 1960s. Rights provisions are not the only constitutional elements that have lost favor with the rest of the world; structural provisions pioneered by American constitutionalism—such as federalism, presidentialism, and judicial review—have also been losing their global appeal. For instance, in the early 20th century, 22 percent of constitutions provided for federalistic systems, while today, just 12 percent do. A similar trend has occurred for presidentialism, another American innovation. Since the end of World War II, the percentage of countries employing purely presidential systems has declined, mainly in favor of mixed systems, which were a favorite of former Soviet bloc countries. Finally, though judicial review is not mentioned in the U.S. Constitution, it has proved the most popular American structural innovation. But though the popularity of judicial review in general has exploded over the past six decades, most countries have opted for the European style of review (which designates a single, constitutional court which alone has the power to nullify laws inconsistent with the constitution) over the American model (in which all courts are empowered to strike unconstitutional laws). In 1946, over 80 percent of countries exercised American-style constitutional review; today, fewer than half do. Reasons for the Decline It appears that several factors are driving the U.S. Constitution's increasing atypicality. First, while in 2006 the average national constitutions contained 34 rights (of the 60 we identify), the U.S. Constitution contains relatively few—just 21—and the rights it does contain are often themselves atypical. Just one-third of constitutions provide for church and state separation, as does the U.S. Establishment Clause, and only 2 percent of constitutions (including, e.g., Mexico and Guatemala) contain a "right to bear arms." Conversely, the U.S. Constitution omits some of the most globally popular rights, such as women's rights, the right to social security, the right to food, and the right to health care. These peculiarities, together with the fact that the U.S. Constitution is both old and particularly hard to amend, have led some to characterize the Constitution as simply antiquated or obsolete. Thus, one reason why the Constitution is increasingly atypical may be that modern drafters in other countries prefer to look to modern legal innovations in crafting their own governing documents, and though American law may offer some such innovations, the U.S. Constitution cannot. In fact, foreign drafters may be attracted to provisions recognized in comparably modern U.S. statutory law, or even U.S. constitutional law—but not in the Constitution itself. Examples include the statutory innovations in the Civil Rights Act of 1964 and the Social Security Act, as well as the constitutional doctrines of substantive due process and judicial review.

Courts aren't modeled globally

Liptak 08 (Adam Liptak - Supreme Court correspondent of The New York Times. "U.S. Court Is Now Guiding Fewer Nations", http://www.nytimes.com/2008/09/18/us/18legal.html?pagewanted=all, September 17th, 2008)

Judges around the world have long looked to the decisions of the United States Supreme Court for guidance, citing and often following them in hundreds of their own rulings since the Second World War. But now American legal influence is waning. Even as a debate continues in the court over whether its decisions should ever cite foreign law, a diminishing number of foreign courts seem to pay attention to the writings of American justices. "One of our great exports used to be constitutional law," said Anne-Marie Slaughter, the dean of the Woodrow Wilson School of Public and International Affairs at Princeton. "We are losing one of the greatest bully pulpits we have ever had." From 1990 through 2002, for instance, the Canadian Supreme Court cited decisions of the United States Supreme Court about a dozen times a year, an analysis by The New York Times found. In the six years since, the annual citation rate has fallen by half, to about six. Australian state supreme courts cited American decisions 208 times in 1995, according to a recent study by Russell Smyth, an Australian economist. By 2005, the number had fallen to 72. The story is similar around the globe, legal experts say, particularly in cases involving human rights. These days, foreign courts in developed democracies often cite the rulings of the European Court of Human Rights in cases concerning equality, liberty and prohibitions against cruel treatment, said Harold Hongju Koh, the dean of the Yale Law School. In those areas, Dean Koh said, "they tend not to look to the rulings of the U.S. Supreme Court." The rise of new and sophisticated constitutional courts elsewhere is one reason for the Supreme Court's fading influence, legal experts said. The new courts are, moreover, generally more liberal than the Rehnquist and Roberts courts and for that reason more inclined to cite one another. Another reason is the diminished reputation of the United States in some parts of the world, which experts here and abroad said is in part a consequence of the Bush administration's unpopularity around the world. Foreign courts are less apt to justify their decisions with citations to cases from a nation unpopular with their domestic audience. "It's not surprising, given our foreign policy in the last decade or so, that American influence should be declining," said Thomas Ginsburg, who teaches comparative and international law at the University of Chicago.

Supreme Court decisions avert foreign law – no spillover

Liptak 08 (Adam Liptak - Supreme Court correspondent of The New York Times. "U.S. Court Is Now Guiding Fewer Nations", http://www.nytimes.com/2008/09/18/us/18legal.html?pagewanted=all, September 17th, 2008)

The adamant opposition of some Supreme Court justices to the citation of foreign law in their own opinions also plays a role**, some foreign judges say.** "Most justices of the United States Supreme Court do not cite foreign case law **in their judgments," Aharon Barak, then the chief justice of the Supreme Court of Israel, wrote in the Harvard Law Review in 2002. "**They fail to make use of an important source of inspiration**, one that enriches legal thinking, makes law more creative, and strengthens the democratic ties and foundations of different legal systems." Partly as a consequence, Chief Justice Barak wrote,** the United States Supreme Court "is losing the central role it once had among courts in modern democracies." **Justice Michael Kirby of the High Court of Australia said that his court no longer confined itself to considering English, Canadian and American law. "Now we will take information from the Supreme Court of India, or the Court of Appeal of New Zealand, or the Constitutional Court of South Africa," he said in an interview published in 2001 in The Green Bag, a legal journal. "America" he added, "is in danger of becoming something of a legal backwater." The signature innovations of the American legal system — a written Constitution, a Bill of Rights protecting individual freedoms and an independent judiciary with the power to strike down legislation — have been consciously emulated in much of the world. And American constitutional law has been cited and discussed in countless decisions of courts in Australia, Canada, Germany, India, Israel, Japan, New Zealand, South Africa and elsewhere. In a 1996 decision striking down a law that made it a crime to possess pornography, for instance, the Constitutional Court of South Africa conducted a broad survey of American First Amendment jurisprudence, citing some 40 decisions of the United States Supreme Court. That same year, the High Court of Australia followed a 1989 decision of the Supreme Court in a separation-of-powers case, ruling that a judge was permitted to prepare a report for a government minister about threats to aboriginal areas because the assignment did not undermine the integrity of the judicial branch. Sending American ideas about the rule of law abroad has long been a source of pride. "The United States Supreme Court is the oldest constitutional court in the world — the most respected, the most legitimate," said Charles Fried, a law professor at Harvard who served as solicitor general in the Reagan administration. But** there is an intense and growing debate about whether that influence should be a one-way street. **Justice Sandra Day O'Connor, in a speech before her retirement from the Supreme Court, advocated taking as well as giving. "I suspect that with time** we will rely increasingly on international and foreign law in

resolving what now appear to be domestic issues," **Justice O'Connor said. "Doing so may not only enrich our own country's decisions; it will create that all-important good impression.** When U.S. courts are seen to be cognizant of other judicial systems, our ability to act as a rule-of-law model for other nations will be enhanced." But many judges and legal scholars in this country say that consideration of foreign legal precedents in American judicial decisions is illegitimate, **and that there can be no transnational dialogue about the meaning of the United States Constitution. The Constitution should be interpreted according to its original meaning, said John O. McGinnis, a law professor at Northwestern, and recent rulings, whether foreign or domestic, cannot aid in that enterprise. Moreover, Professor McGinnis said, decisions applying foreign law to foreign circumstances are not instructive here. "It may be good in their nation," he said. "There is no reason to believe necessarily that it's good in our nation." In any event, said Eric Posner, a law professor at the University of Chicago, many Americans are deeply suspicious of foreign law.** "We are used to encouraging other countries to adopt American constitutional norms," he wrote in an essay last month, "but we have never accepted the idea that we should adopt theirs." **"It's American exceptionalism," Professor Posner added in an interview. "The view going back 200 years is that we've figured it out and people should follow our lead."**

American exceptionalism and individual bodies of precedent have decked influence

Liptak 08 (Adam Liptak - Supreme Court correspondent of The New York Times. "U.S. Court Is Now Guiding Fewer Nations", http://www.nytimes.com/2008/09/18/us/18legal.html?pagewanted=all, September 17th, 2008)

The rightward shift of the Supreme Court may partly account for its diminished influence. Twenty years ago, **said Anthony Lester, a British barrister, the** landmark decisions of the court were "studied with as much attention in New Delhi or Strasbourg as they are in Washington, D.C." **That is partly because the foundational legal documents of many of the world's leading democracies are of quite recent vintage. The Indian Constitution was adopted in 1949, the Canadian Charter of Rights and Freedoms in 1982, the New Zealand Bill of Rights in 1990 and the South African Constitution in 1996. All drew on American constitutional principles. Particularly at first, courts in those** nations relied on the constitutional jurisprudence of the United States Supreme Court, both because it was relevant and because it was the essentially the only game in town. But as constitutional courts around the world developed their own bodies of precedent **and started an international judicial conversation,** American influence has dropped. **Judge Guido Calabresi of the federal appeals court in New York, a former dean of Yale Law School, has advocated continued participation in that international judicial conversation. "**Since World War II, many countries have adopted forms of judicial review, **which — though different from ours in many particulars — unmistakably draw their origin and inspiration from American constitutional theory and practice," he wrote in a 1995 concurrence that cited the German and Italian constitutional courts. "These countries are our 'constitutional offspring,' " Judge Calabresi wrote, "and how they have dealt with problems analogous to ours can be very useful to us when we face difficult constitutional issues. Wise parents do not hesitate to learn from their children." (Judge Calabresi is Professor Calabresi's uncle.) The openness of some legal systems to foreign law is reflected in their constitutions. The South African Constitution, for instance, says that courts interpreting its bill of rights "must consider international law" and "may consider foreign law." The constitutions of India and Spain have similar provisions. Many legal scholars singled out the Canadian Supreme Court and the Constitutional Court of South Africa as increasingly influential. "In part, their** influence may spring from the simple fact they are not American," **Dean Slaughter wrote in a 2005 essay, "**which renders their reasoning more politically palatable to domestic audience in an era of **extraordinary** U.S. military, political, economic and cultural power and accompanying resentments." **Frederick Schauer, a law professor at the University of Virginia, wrote in a 2000 essay that the Canadian Supreme Court had been particularly influential because "Canada, unlike the United States, is seen as reflecting an emerging international consensus rather than existing as an outlier." In New Zealand, for instance,** Canadian decisions were cited far more often than those of any other nation from 1990 to 2006 in civil rights cases, **according to a recent study in The Otago Law Review in Dunedin, New Zealand. "As Canada's judges are, by most accounts, the most judicially activist in the common-law world — the most willing to second-guess the decisions of the elected legislatures — reliance on Canadian precedents will worry some and delight others," the study's authors wrote.** American precedents were cited about half as often as Canadian ones. "It is surprising," **the authors wrote,** "that American cases are not cited more often, since the United States Bill of Rights precedents can be found on just about any rights issue that comes up." American popular attitudes toward the citation of foreign law, **by contrast, Mark C. Rahdert wrote in the American University Law Review last year, "**tap into a longstanding tradition of exceptionalism." That tradition is rooted in a popular devotion to the Constitution unknown in the rest of the world. **It is supported by aspects of the American character that were formed by the nation's initial geographic**

isolation and pioneer spirit, which emphasized freedom, private property and individual responsibility. That has led, for instance, to a near-absolute commitment to free speech and a particularly tough approach to crime. In " 'A Shining City on a

Courts Don't Solve Facial Recognicion

The Supreme Court cannot enforce facial recognition laws due to other US department's rebuilding of databases for facial recognition.

Chayka 4/30/**2014**

[Kyle; writer for publications including Newsweek, The New Republic and The New Yorker. He is a weekly columnist for Pacific Standard and the author of an ebook, The Printed Gun.; *The Facial Recognition Databases are Coming. Why aren't the Privacy Laws?; http://www.theguardian.com/commentisfree/2014/apr/30/facial-recognition-databases-privacy-laws;* Accessed on 7/31/15]

This raises the question: **will the rest of us have the right to our own faces when they get stored in search engines of the future? The US government is** currently **building the largest biometrics database in the world with** Next Generation Identification**, a system meant to help identify criminals. The FBI estimates that it will store over 50m faces images by 2015,** according to documents obtained by the Electronic Frontier Foundation. **Facial recognition technology has plenty of practical applications**. Germany is beginning to use biometric data to scan individuals at border crossings, and **Facebook even collects face patterns to suggest who should be tagged in photos. The technology is contributing to what will become a $20bn market by 2020,** according to the Secure Identity Biometrics Association (Siba). **Companies** including Animetrics and Cognitec **are selling their technology to startups** like CreepShield **as well as to police and military, with success rates of over 98% for facial matching. From a clear face image, ethnicity can be identified with an error rate of 13% and gender with an error rate of 3%.**

Even if the Supreme Court could implement facial recognition laws, it would be ineffective. Only total federal government action solves.

Cackley 7/30/**15**

[Alicia; Researcher for US Government Accountability Office; *Rise of Facial Recognition Queried by US Agency;* http://www.bbc.com/news/technology-33736385; Accessed on 7/31/2015]

The GAO report pointed out that **there was currently a dearth of relevant legislation in the United States on the issue. "No federal privacy law expressly regulates commercial uses of facial-recognition technology, and** laws **do not** fully **address key privacy issues stakeholders have raised**," it said. The GAO's report had originally been requested by Senator Franken, who released a statement following the document's publication. "Facial recognition tracks you in the real world - from cameras stationed on street corners and in shopping centres, and through photographs taken by friends and strangers alike," he said. Senator Franken added that he believed **technology companies should adopt industry-wide standards for facial-recognition systems. He also called for federal standards which would protect consumers.**

Courts Don't Solve Drones

Federal agencies and courts fail to adequately enforce regulations on drones

Lowy 14 (Joan Lowy – PBS Associated Press, "FAA has no jurisdiction over small commercial drones, judge rules", http://www.pbs.org/newshour/rundown/commercial-drones-cleared-takeoff-judges-ruling/, March 7th 2014)

A federal judge has dismissed the Federal Aviation Administration's only fine against a commercial drone user on the grounds that the small drone was no different than a model aircraft, a decision that appears to undermine the agency's power to keep a burgeoning civilian drone industry out of the skies. Patrick Geraghty, a National Transportation Safety Board administrative law judge, said in his order dismissing the $10,000 fine that the FAA has no regulations governing model aircraft flights or for classifying model aircraft as an unmanned aircraft. FAA officials said they were reviewing the decision and had no further comment. The agency can appeal the decision to the full five-member safety board. The FAA levied the fine against aerial photographer Raphael Pirker for flying the small drone near the University of Virginia to make a commercial video in October 2011. Pirker appealed the fine to the safety board, which hears challenges to FAA decisions. FAA officials have long taken the position that the agency regulates access to the national airspace, and therefore it has the power to bar drone flights, even when the drone weighs no more than a few pounds. "There are no shades of gray in FAA regulations," the agency says on its website. "Anyone who wants to fly an aircraft —manned or unmanned —in U.S. airspace needs some level of FAA approval." FAA officials have been working for a decade on regulations to give commercial drones access to the national airspace without endangering manned aircraft and the public. Fed up with the agency's slow progress, Congress passed legislation in 2012 directing the FAA to safely integrate drones of all sizes into U.S. skies by September 2015. However, it's clear the agency won't meet that deadline. Regulations that would permit greater use of drones weighing less than 55 pounds have been repeatedly delayed, and are not expected to be proposed until November. It takes at least months, and often years, before proposed regulations are made final. Regulations governing medium and large-sized drones are also in the works, but are even farther off. There is increasing demand to use small drones for a wide array of commercial purposes. The FAA has identified the dividing line between a model aircraft and a small drone as more one of intent, rather than of technology. If it is used for commercial purposes, it's a drone. If it's used purely for recreational purposes, it's a model aircraft. The agency has issued guidelines for model aircraft operators, but they are voluntary and therefore cannot be enforced, Geraghty said.

Courts can't ensure drone privacy – technological advances and loopholes

Stanely 13 (Jay Stanely - Senior Policy Analyst, ACLU Speech, Privacy & Technology Project, "Five Reasons Why the Courts Aren't Enough to Ensure Drone Privacy", https://www.aclu.org/blog/five-reasons-why-courts-arent-enough-ensure-drone-privacy, March 15th 2013)

Yesterday the drone regulation bill in the Washington state legislature died, having failed to meet the cutoff date for moving to the House floor. Although our lobbyist there thought the bill would have passed both houses had the Democratic leadership allowed it to get there, they did not. Boeing lobbied against the bill, as did law enforcement. One of the arguments presented by opponents, our Washington state lobbyist Shankar Narayan reports, was the claim that no regulations are needed for drones because we ought to let the courts work out the privacy issues surrounding drones and deal with any abuses that arise. I have also heard spokespeople for the drone industry association, the AUVSI, making this argument lately. It seems to be emerging as a primary argument of drone-legislation opponents. This is a weak argument. Let me briefly give five reasons why: There is no reason to wait for abuses to happen when they are easily foreseeable. When you put an enormously powerful surveillance technology in the hands of the police and do not place any restrictions on its use, it will be abused, sooner or later, in ways illegal (i.e. by bad apples) and legal (i.e. through officially approved policies that nonetheless violate our Constitution and/or values). Why wait, when we can prevent them before they take place and spare their victims the grief? The legal system has always been very slow to adapt to new technology. For example, it took the Supreme Court 40 years to apply the Fourth Amendment

to telephone calls. At first the court found in a 1928 decision that because telephone surveillance did not require entering the home, the conversations that travel over telephone wires are not protected. It was not until 1967 that this literal-minded hairsplitting about "constitutionally protected areas" was overturned (with the court declaring that the Constitution "protects people, not places"). Today, technology is moving far faster than it did in the telephone era—but the gears of justice turn just as slowly as they ever have (and maybe slower). There are many uncertainties about how our Constitution will be applied by the courts to aerial surveillance. Just as the new technology of the telephone broke the Supreme Court's older categories of understanding, so too will drones with all their new capabilities bring up new situations that will not fit neatly within existing jurisprudential categories of analysis. For example, how will the courts view the use of drones for routine location tracking? The Supreme Court started to grapple with such questions in its recent decision in the Jones GPS case, but it is far from clear what the ultimate resolution will be. The Supreme Court has ruled before that the Fourth Amendment provides no protection from aerial surveillance, even in one's backyard surrounded by a high fence, and while the new factors that drones bring to the equation could shift that judgment, we cannot be certain. Legislators should not sit around waiting for cases to come before the courts; they should act to preserve our values now. Legislatures often set rules even when the Constitution would seem to cover something. To take just one example: after the Supreme Court issued that 1967 ruling that a warrant was needed to tap someone's phone, Congress went on to enact detailed standards the government had to follow before it could do so. What it did not do was throw its hands up and say "the court has ruled, if there are any further abuses we can let the courts take care of them." Our courts often defer to the judgments of elected bodies. While the courts' role is to step in and protect fundamental rights when they are threatened by the majority, they normally show great deference toward the judgments of elected representatives of the people. And for good reason—we live in a democracy, and unless fundamental rights are at stake decisions should be made by our democratic representatives. A legislature acting to protect fundamental rights such as privacy does not threaten such rights, and there is no reason why elected representatives shouldn't act to protect our fundamental values if they feel that the citizens in their districts want them to. Let's hope that state legislators in other states don't fall for this line of argument.

Courts Don't Solve Data Collection

Data collection is even harder to regulate

Slobogin 2015 [Christopher Slobogin, Milton Underwood Professor of Law, Vanderbilt University Law School, Pepperdine Law Review Volume 42 pg 517-548 http://pepperdinelawreview.com/wp-content/uploads/2015/04/Slobogin-Final.pdf]

If that reasoning is the correct approach to standing, then in **cases challenging covert surveillance on Fourth or First Amendment grounds everything rides on whether the surveillance**, as it operates in the way the plaintiff describes it, **infringes the plaintiff's reasonable expectations of privacy or speech and association interests.**134 While such a finding would presumably be made in the Clapper case, which involved the alleged interception of the content of overseas phone calls,135 **it is less certain in connection with collection** and querying **of metadata**. The Fourth Amendment is only meant to protect reasonable expectations of privacy.136 **Supreme Court case law** to date **strongly suggests that any privacy one might expect in one's metadata or Internet activity is unreasonable, because we assume the risk that third parties to which we knowingly impart information** (here phone companies and Internet service providers) **will in turn divulge it to the government**.137

Courts don't slow down data collection

Gastonne 5/8 [Philippe Gastonne, privacy writer, "Courts wont stop data-hungry feeds", The Daily Bell, May 8, 2015 http://www.thedailybell.com/news-analysis/36282/Courts-Wont-Stop-Data-Hungry-Feds/]

These **two court cases** in the same week **illustrate the** maddening distinctions and **hurdles that stand between citizens and any semblance of privacy**. **The first** case **involved a** criminal **conviction made with** the help of **phone location data given to law enforcement by the service provider.** The cellular network always knows roughly where your phone is located by virtue of which tower(s) receive its signals. This is necessary for the phone to make and receive calls. The only escape is to turn your phone off or not carry it with you. Nonetheless, **the court decided this is a "voluntary" act.** The phone carrier owns the information and can release it to government agents. **It** further **entitles the government to use this data to imprison you without obtaining a search warrant**. Note the very disturbing logic here. **What other "voluntary" acts release information we presume is private?** Your internet provider know what links you click. You give them that information voluntarily. Can they store your click data for later release to the government? This same reasoning would seem to allow it. The second case sounds a little more comforting at first, but is actually not. It applies only to one particular program operated by one particular agency under one particular statutory authority. The judges said nothing about the program's constitutionality. Furthermore, other appellate courts have issued conflicting decisions, so it will likely head to the Supreme Court for a final call. How they will rule is anyone's guess. **Any decision could be years away, and the Executive Branch will no doubt keep collecting data as zealously as ever in the meantime.**. Does it help that relevant provisions of the Patriot Act expire next month? Not really. If Mitch McConnell has his way, Congress will extend the entire act unchanged. It is also quite likely that NSA has other, as-yet undisclosed programs that are equally intrusive. The only solution that might work would be for telecom customers to demand contractual guarantees from the companies not to store or release sensitive data. It could even be a business opportunity; many customers might gladly pay an extra "privacy fee" on their bills. According to Edward Snowden and the many recent investigations, **the NSA data collection does nothing to keep anyone any safer. In the criminal case, the**

police could easily have acquired a search warrant. They simply chose not to. Leviathan is alive and well. Don't expect courts to slow him down

Courts have no precedent in data collection

Sputnik News 6/4 [Sputnik News, international intelligence paper, USA Freedom Act Reforms Intelligence Courts, Limits NSA Data Collection, June 4, 2015 http://sputniknews.com/analysis/20150604/1022923872.html**]**

Berman argued that "**we simply don't have enough Supreme Court precedent in this area to make a definitive statement** one way or the other," t**o determine if the USA Freedom Act will permit unconstitutional government behaviour**. Critics contend that although **the new law** will end the bulk collection of phone records, it **would still allow the NSA to collect targeted information about certain individuals, if granted permission to do so by a federal court.**

Courts Can't Solve Financial Surveillance

Courts can't solve financial surveillance

Richards 5/20/**13** [Neil M. Richards, Law Professor at Washington University in St. Louis, "The Dangers of Surveillance", Harvard Law Review, Volume 126, Issue 7, 1942-1944, http://cdn.harvardlawreview.org/wp-content/uploads/pdfs/vol126_richards.pdf]

B. Surveillance Law's Limited Protections ¶ American law governing surveillance is piecemeal, spanning constitutional protections such as the Fourth Amendment, statutes like the Electronic Communications Privacy Act of 198640 (ECPA), and private law rules such as the intrusion-into-seclusion tort.41 But the general principle under which American law operates is that surveillance is legal unless forbidden. Perhaps out of a fear that surveillance might be used to suppress dissent, American law contains some limited protections against government surveillance of purely political activity. For example, government investigators in antiterrorism cases possess a powerful tool known as the National Security Letter (NSL). NSLs are statutory authorizations by which the FBI can obtain information about people from their telephone companies, Internet service providers, banks, credit agencies, and other institutions with which those people have a relationship. NSLs are covert and come with a gag order that prohibits the recipient of the letter from disclosing its existence, even to the person whose secrets have been told to the government. NSLs can currently be obtained under four federal statutes: the Right to Financial Privacy Act of 197842 (RFPA), the ECPA,43 the Fair Credit Reporting Act44 (FCRA), and the National Security Act of 1947.45 Taken together, these provisions allow the FBI to access a wide variety of information about people, including historical and transactional information relating to telephone calls and emails, financial information, and consumer credit information.46 This information can be obtained by crossing a very low threshold — the FBI must merely certify in writing that the request is "relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities."47 Communications and bank records sought under the ECPA and the RFPA are protected by the additional requirement that the FBI certify that "such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States."48 ¶ Despite these protections, courts lack the tools to enforce them. This problem predates the current NSL framework. For example, in 1967, the President ordered the U.S. Army to engage in surveillance of domestic dissident groups, fearing civil disorder in the aftermath of the assassination of Martin Luther King, Jr.49 The program expanded over time to become a large-scale military surveillance program of the domestic political activities of American citizens.50 In Laird v. Tatum, 51 the Supreme Court held that it lacked jurisdiction over the claims that the surveillance violated the First Amendment rights of the subjects of the program, because the subjects claimed only that they felt deterred from exercising their First Amendment rights or that the government could misuse the information it collected in the future.52 The Court could thus declare that "[a]llegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm."53 ¶ More recent surveillance cases have followed the lead of the Laird Court. Challenges to the NSA's wiretapping program have foundered because plaintiffs have failed to convince federal courts that secret surveillance has caused them any legally cognizable injury. In ACLU v. NSA, 54 the Sixth Circuit dismissed any suggestion that First Amendment values were threatened when the government listened to private conversations. As that court put it: "The First Amendment protects public speech and the free exchange of ideas, while the Fourth Amendment protects citizens from unwanted intrusion into their personal lives and effects."55 The court concluded that the plaintiffs had no standing to assert First or Fourth Amendment violations, as they could not prove that the secret government surveillance program had targeted them.56 Similarly, in Al-Haramain Islamic Foundation, Inc. v. Bush, 57 the government successfully invoked the state-secrets doctrine to stop the plaintiffs from finding out whether they were the subjects of secret surveillance under the program.58 This ruling created a brutal paradox for the plaintiffs: they could not prove whether their telephone calls had been listened to, and thus they could not establish standing to sue for the violation of their civil liberties.59 Despite the fact that the judges in the case knew whether surveillance had taken place, they

believed that the state-secrets doctrine barred them from ruling on that fact.60 And the Court's most recent decision in Clapper affirmed this approach to standing to challenge surveillance. Plaintiffs can only challenge secret government surveillance they can prove, but the government isn't telling. Plaintiffs (and perhaps civil liberties) are out of luck.

Courts Can't Stop Financial Surveillance

Nojeim 99 (April 20. Gregory T. SENIOR COUNSEL AND DIRECTOR, FREEDOM, SECURITY AND TECHNOLOGY PROJECT. "FINANCIAL PRIVACY, REPORTING REQUIREMENTS UNDER THE BANK SECRECY ACT" https://www.aclu.org/report/financial-privacy-reporting-requirements-under-bank-secrecy-act)

No suspicion of crime -- probable cause, reasonable grounds to believe, or even mere relevance to an on-going investigation -- need be shown by the law enforcement agency to FinCEN before law enforcement accesses the report. **No court order, warrant, subpoena or even written law enforcement request showing a need for the information need be prepared and given FinCEN**. ð Instead of using these normal law enforcement tools -- often under judicial supervision -- many law enforcement agencies use a vacuum cleaner approach. They suck up everything FinCEN offers by periodically downloading the entire harvest of new information.17 The information can be maintained indefinitely by FinCEN for whatever purposes may be made of it in the future, even if no law enforcement agency uses it in connection with a criminal investigation and even if the statute of limitations on any such investigation has lapsed. This tremendous loss of personal privacy occurs daily and in secret, without the consent or knowledge of bank customers. ð There is little doubt that some law enforcement officials will argue that the massive invasion of customer privacy represented by these reporting requirements is counterbalanced by law enforcement needs. They will identify instances in which Suspicious Activity Reports were filed and notorious criminals arrested.

*Courts Fail to Protect Financial Security --- Emprics

EPIC 06 (Electronic Privacy Information Center. June. "Treasury's International Finance Tracking Program of Questionable Legality" https://epic.org/privacy/surveillance/spotlight/0606/)

The SWIFT program, where the U.S. government continues to gather massive amounts of financial data without the use of judicially approved subpoenas is the latest in a series of such secret programs, one of which a federal court has found to be illegal. In December 2005, the New York Times reported that President Bush had issued an order in 2002 allowing the National Security Agency unprecedented authority to conduct domestic surveillance.32 President Bush had authorized the warrantless surveillance of international telephone and Internet communications on American soil.33 The program was revealed to only a few Congressional leaders and the presiding judge of the Foreign Intelligence Surveillance Court, which issues warrants for domestic surveillance, and the officials were told not to discuss the secret surveillance program with anyone else, making it difficult to question or provide oversight for the program.34 On August 17, a federal court in Detroit held that this program is illegal and unconstitutional and ordered the government to halt the program.35 Judge Anna Diggs Taylor said the program violates the rights to free speech and privacy as well as separation of powers.36 Previous analyses by the Congressional Research Service and a coalition of distinguished scholars found the program violated laws.37 They concluded that Congress expressly intended for the government to seek warrants from a special Foreign Intelligence Surveillance Court before engaging in such surveillance when it passed legislation creating the court in 1978. The administration defends its international finance tracking program, claiming that it operates within the bounds of law. However, for many members of the American public, Congress, and foreign governments, the program's legality is an open question.

A2 Shielding

Courts don’t shield political capital

Justice appointment means Obama takes the blame for court rulings

Washington 15 [Blogger on advanced political information, Why is everybody picking on the Supreme Court?!, The Marshal Society, http://www.themarshallsociety.com/2015/07/why-is-everybody-picking-on-supreme.html]

The job of the Supreme Court is to act as a court of final authority and make assessments about controversies involving precisely what the law means. The nature of the selection of the justices, their tenure, and the near finality of their decisions frustrates the losing side of any particular case. Their only response is to criticize the decision making as somehow unjust or undemocratic. Because of the fact that both liberals and conservatives have suffered serious blows to their political agendas through the decisions of the Supreme Court, both sides have attempted to politicize the judicial process to the best of their abilities. The Supreme Court has become more politicized than what Americans would like, but it's not entirely possible to divorce the Court from the political process. The president has the power and responsibility of appointing justices to the Court, while the Senate must confirm these selections. As such, elected officials will attempt to influence the makeup and the decisions of the Court. We must remember that each justice is a willful, flawed human being who must struggle to decide cases objectively. Though the Supreme Court is more politicized, there's no reason to change the way we select justices, their tenure, or the current lineup of justices.

Courts don't shield politicians

Supreme Court decisions don't shield politicians from blame

Kelsey **Harkness 6/18**/15

(Kelsey Harkness, News producer at The Heritage Foundation's The Daily Signal, Conservatives Fear Blame for Supreme Court's Obamacare Decision, Newsweek, http://www.newsweek.com/conservatives-fear-blame-supreme-court-obamacare-decision-344342)

Later this month, the Supreme Court is set to decide on a case involving the legality of federal subsidies under the Affordable Care Act. While a ruling against President Barack Obama's signature legislation—popularly known as Obamacare—would be a nod to Republicans who have long argued the law is unconstitutional, it also has the party on edge. If the Supreme Court rules against the Affordable Care Act in King v. Burwell, millions of Americans across 34 states could be at risk of losing their subsidies. Should that happen, **Republicans fear** that, as with the government shutdown, **they'll bear the brunt of the blame.** "We shouldn't be afraid of victory," Representative Raul Labrador (R-Idaho) told a group of reporters June 16 on Capitol Hill. "We should embrace victory and show the American people how we can do it better." But embracing a victory—and **avoiding negative attention** for supporting a ruling that puts millions of Americans at risk of losing their health care subsidies—won't come easy for Republicans without a succinct strategy on how they can make health care better. But "amazingly," Labrador told reporters today, "we don't have a strategy." In 2014, Republicans gained majorities in both the House and the Senate, largely due to a promise to "repeal and replace" Obamacare. Now, having secured control of both chambers, some feel that—should the Supreme Court rule against Obamacare—it's time to cash in on that promise. "The Supreme Court is going to give us that opportunity to make some of those changes," said Representative Diane Black (R-Tenn.). "Whatever we do should say, there is no more individual mandate, and no more employer mandate." "We've been here for about 54 months and we've had no votes to replace [Obamacare]...nothing to point to," added Representative Tim Huelskamp (R-Kan.). Instead, many conservatives—like Huelskamp, Black and Labrador—support a patient-centered, market-based approach to health care, like the one proposed by the Republican Study Committee earlier this month. But given the likelihood of a presidential veto on any proposal that guts Obamas signature legislation, even conservatives admit this approach is more symbolic than realistic. "To fix it in one application isn't going to work," said Representative Paul Gosar (R-Ariz.). "You can't do this overnight," added Black. A Unified Front Should the Supreme Court strike down subsidies for millions of Americans who are enrolled in states with a federally run exchange—which reports say could affect as many as 9 million people—the Republican majorities would be in charge of figuring out how to "fix" the subsidy problem. Even the most conservative members said they support establishing some sort of safety net, although they had no clear consensus on how to do that. "Whatever we do as we transition, we want to make sure that we catch people that do really need that care," said Black, a former emergency room nurse. Some members favor a plan that would temporarily extend federal health care subsidies for 18 months, while others scoff at any proposal that allows Obamacare to continue. "The guiding principles are there. The details I think will fall out at a later time," Black said. Labrador blames the House leadership for failing to provide "direction" on how to approach the situation. "It's amazing that we don't have a strategy right now as a party," he said. "We've known that this was coming. "I think this is good for us as a party if we can show that the president illegally gave subsidies to certain individuals, which is what we have been saying all along.... But there seems to be a clear lack of direction of how to approach this."

Courts don't shield the pres from public

Obama Takes Blame for Supreme Court Decisions (This card is Boss)

Jeffrey **Toobin MAY 21**, 2015

(Jeffrey Toobin, Staff writer at The New Yorker since 1993 and the senior legal analyst for CNN since 2002 Has written articles on nearly every major legal controversy and trial of the past two decades, Obama's Game of Chicken with the Supreme Court, The New Yorker, http://www.newyorker.com/news/daily-comment/obamas-game-of-chicken-with-the-supreme-court?intcid=mod-latest)

Sometime next month, the Supreme Court will decide King v. Burwell, and the conventional wisdom about the stakes in the case appears to have shifted. The case represents a challenge to the core of the Affordable Care Act. The plaintiffs charge that, based on a strict reading of single sentence (actually, four words), federal health-insurance subsidies should be available only in the sixteen states (and the District of Columbia) that set up their own health exchanges, or marketplaces. This means, they argue, that there should be no subsidies for people who now buy insurance on the federal exchange in the other thirty-four states. At the moment, about thirteen million people receive those subsidies. **The people with the most riding on the outcome, of course, are those thirteen million. Without subsidies, it's likely that most of them will no longer be able to afford their insurance. Until recently, the perception has also been that the Democrats had the largest political stake in the case. After all, the A.C.A. is the signature achievement of the Democratic President. Suddenly, though, and paradoxically, it has come to seem that Obamacare's** Republican opponents are most at risk **if the decision goes their way. They have** the most to lose by winning. As Jonathan Chait wrote recently, "**The chaos their lawsuit would unleash might** blow back **in a way few Republicans had considered until recently, and now, on the eve of a possible triumph, they find themselves scrambling to** contain the damage**."** In this view, the peril is especially great for Republicans, because, as Jonathan Cohn recently pointed out, the G.O.P. has failed to propose any kind of plan to address the loss of insurance for so many millions of people. So that's the theory: **millions will suddenly be uninsured, and will** blame Republicans**.** As Harry Reid, the Democratic leader in the Senate, put it recently, "I don't think they will [win the case]. If they do, that's a problem that the Republicans have." No, it's not. **If the Obama Administration loses in the Supreme Court, the** political pain will fall almost exclusively on the President and his Party. To paraphrase Colin Powell and the Pottery Barn rule, President Obama will have broken health care, so he owns it. To the vast mass of Americans who follow politics casually or not at all, Obamacare and the American system of health care have become virtually synonymous. This may not be exactly right or fair, but it's a reasonable perception on the part of most people. The scope of the Affordable Care Act is so vast, and its effects so pervasive, that there is scarcely a corner of health care, especially with regard to insurance, that is unaffected by it. So if millions lose insurance, they will hold it against Obamacare, and against Obama. Blaming the President in these circumstances may be unfair, but it's the way American politics works. Republicans, of course, will encourage this sentiment. The precise legal claim in King v. Burwell is an esoteric one. It is not based on a claim that Obamacare is unconstitutional. (The Supreme Court upheld the constitutionality of the law three years ago.) Rather, the central assertion by the plaintiffs is that the Obama Administration violated the law itself. In any event, the subtlety of the issue at the heart of the case will surely be lost in its aftermath. The headlines will read, correctly, "Court rules against Obamacare," and this will be all that matters. The Republicans will argue that the Supreme Court showed that the law was flawed from the start, that the Obama Administration is lawless, that a full repeal of the law is the only appropriate response to the Court's decision—and that the millions who lose their subsides should blame the sponsor of the law. **Watch for references to a** "failed Presidency." **There'll be plenty of them. Understandably, perhaps, the Administration has courted this kind of reaction. Better than anyone, Administration officials know the** scale of the problems **that would be created by a loss in the Supreme Court.** Advertising this possibility makes sense as a litigation strategy; Obama officials don't want to make it easy for the Supreme Court to rule against them. In testimony before Congress and elsewhere, Sylvia Burwell, the Secretary of Health and Human Services (and the defendant in the case), said that the Administration has no contingency plan for an adverse ruling in the Supreme Court. **But playing chicken with the Justices only works if it works. If the Supreme Court strikes down the subsidies, the** Administration will also have to answer for why it didn't prepare for this possibility. **For many people, the President of the United States is the government of the United States.** It's why he gets the credit and blame for so many things**, like the economy, where his influence can be hard to discern. This is particularly true for a subject in which the** President has invested so much of his personal and political capital. **If the Supreme Court rules against him, the President can blame the Justices or the Republicans or anyone he likes, and he may even be correct. But the** buck will stop with him.

The American public generally blames the President on issues outside of their control when he or she is in office.

Zelizer 15, [Julian Zelizer, Professor of history and public affairs at Princeton University, *Obamacare ruling a time bomb for Democrats?,* CNN News, http://www.cnn.com/2015/05/31/opinions/zelizer-obamacare-supreme-court-democrats/]

Toobin notes: "To the vast mass of Americans who follow politics casually or not at all, Obamacare and the American system of health care have become virtually synonymous. ... So if millions lose insurance, they will hold it against Obamacare, and against Obama." Writing for The Week, Scott Lemieux generally agrees. "**The problem is that a separation-of-powers system dilutes accountability, and voters generally lack the information that will allow them to sort out the blame for a given disaster. Presidents generally get both more credit and more blame for what happens under their watch than is justified by their power."**

Courts don't shield the President

Miroff 2000 (Bruce Miroff – PhD, professor and chair of political science at the State University of New York at Albany."The Presidency and the Political System". http://www.kropfpolisci.com/vod.miroff.pdf, Ed. Michael Nelson. p. 304.)

Spectacle has also been fostered by the president's rise to primacy in the American political system. A political order originally centered on institutions has given way, especially in the public mind, to a political order that centers on the person of the president. Theodore Lowi wrote, Since the president has become the embodiment of government, it seems perfectly normal for millions upon millions of Americans to concentrate their hopes and fears directly and personally upon him" personal president' that Lowi described is the object of popular expectations: these expectations, Stephen Wayne and Thomas Cronin have shown, are both excessive and contradictory.

Court decisions bleed into the initiatives of the Obama Administration – only a risk that they affect public perception

Nakamura & Eilperin 15 (David Nakamura and Juliet Eilperin - Washington Post's White House bureau chiefs, "Judge's immigration ruling adds to Obama's list of potential legal pitfalls", http://www.washingtonpost.com/politics/federal-judge-in-texas-deals-legal-blow-to-obamas-immigration-action/2015/02/17/a93cb456-b6b8-11e4-aa05-1ce812b3fdd2_story.html, February 17th 2015)

President Obama's new immigration program was supposed to begin accepting applications Wednesday from thousands of illegal immigrants hoping for relief from the threat of sudden deportation. Instead, the administration abruptly postponed the launch after a federal judge in Texas temporarily blocked the White House initiative. In a decision late Monday, U.S. District Judge Andrew S. Hanen ruled that the deferred-deportation program should not move forward while a lawsuit filed by 26 states challenging it was being decided. Though Hanen did not rule on the constitutionality of Obama's November immigration order, he said there was sufficient merit to warrant a suspension of the new program while the case goes forward. All told, Obama's immigration actions are projected to benefit as many as 5 million immigrants, many of whom could receive work permits if they qualified. The effects of Hanen's procedural ruling rippled through Washington and underscored a broader challenge to the president as he seeks to solidify the legacy of his administration. Along with the immigration action, the fate of two of Obama's other signature initiatives — a landmark health-care law and a series of aggressive executive actions on climate change — now rests in the hands of federal judges. It is a daunting prospect for a president in the final two years of his tenure who believes he is on the path to leaving a lasting

impact on in-trac-table and politically perilous issues, despite an often bitter relationship with Congress. Now, Obama and his Republican antagonists in Congress face the uncertainty of having their disputes mediated by the third branch of government. In an appearance in the Oval Office on Tuesday, Obama said he was confident that he would prevail, telling reporters, "The law is on our side and history is on our side." "This is not the first time where a lower-court judge has blocked something or attempted to block something that ultimately is going to be lawful," he added, "and I'm confident that it is well within my authority" to execute this policy. The immigration fight will probably head next to the U.S. Court of Appeals for the 5th Circuit after the White House vowed to quickly appeal Hanen's ruling. In the meantime, Homeland Security Secretary Jeh Johnson said Tuesday that his agency would postpone plans to begin accepting applications for the new program, which would expand a 2012 program that defers deportations of immigrants who came to the United States illegally as children. (The 700,000 people who have already benefited from that program will not be affected by Hanen's ruling.) A second, much larger program designed to protect from deportation the undocumented parents of U.S. citizens and permanent legal residents was not scheduled to begin accepting applications until late May, and its future remains uncertain. On health care, the Supreme Court will hear arguments next month in King v. Burwell, a case that calls into question whether millions of people who have bought coverage on the federal health exchanges are entitled to subsidies. In April, the U.S. Court of Appeals for the District of Columbia Circuit, just one rung below the Supreme Court, will hear three consolidated cases challenging the Environmental Protection Agency's right to use a provision of the Clean Air Act to regulate greenhouse-gas emissions from power plants. "The Supreme Court's docket in recent terms looks a lot like an outline for a stump speech for a 2016 [presidential] candidate. Immigration, check. Climate, check. Health care, check," Doug Kendall, president of the Constitutional Accountability Center, said in an e-mail. "The court is deciding just about every major question that divides Americans along ideological lines." In addition to the ongoing immigration suit from the 26 states — 24 of which are led by GOP governors — House Republicans are considering filing their own suit against the administration over its immigration actions. "I guess we're getting used to getting sued," White House senior counselor John D. Podesta quipped in an interview last week, just before he stepped down from his West Wing role. The pending case over the Affordable Care Act — passed in 2010 — shows how in the never-ending political fight between the parties, even the passage of major legislation through Congress does not constitute a permanent victory, said Jonathan Oberlander, a professor of health policy at the University of North Carolina at Chapel Hill. "It's really incredible they attained the unattainable, and now the question is whether they can keep it," Oberlander said of Democrats. One senior Senate Democratic aide, who asked for anonymity in order to discuss party strategy, said one reason Senate leaders pushed so hard in the last Congress to seat Obama's nominees on the D.C. Circuit was that "having judges who may be more sympathetic to the administration's view is not an insignificant way of safeguarding against" legal reversals. Hanen, a George W. Bush appointee, has been critical of Obama's immigration policies in other cases. In the last Congress, the Senate confirmed four of Obama's nominees to the D.C. Circuit, which hears many challenges to executive actions. Active Democratic appointees now outnumber Republican ones there 7 to 4. Jeffrey R. Holmstead, a partner at the law firm Bracewell & Giuliani who represents several electric utilities, said Democrats should not be so confident, especially since the more conservative Supreme Court will have the final say in many of these cases. On immigration, Democrats and Republicans scrambled Tuesday to determine how Hanen's ruling would affect a showdown over GOP demands to make funding for the Department of Homeland Security, which expires next week, contingent on halting Obama's "deferred action" program. The White House has threatened to veto any legislation if it contains language overturning the president's immigration programs. Such a veto could lead to a partial DHS shutdown. Obama issued his immigration orders shortly after the midterm elections in November, saying he could no longer wait on Congress to reform border-control laws that have left more than 11 million illegal immigrants in limbo. An effort to pass a comprehensive immigration bill failed last summer. But in his lengthy memorandum opinion, Hanen ruled that no law gave the administration the power "to give 4.3 million removable aliens what the Department of Homeland Security itself labels as 'legal presence.' In fact, the law mandates that these illegally-present individuals be removed." Hanen's decision was a major, if temporary, defeat for the administration, which argued that the case should be thrown out because it is "based on rhetoric, not law." "This ruling underscores what the president has already acknowledged publicly 22 times: He doesn't have the authority to take the kinds of actions he once referred to as 'ignoring the law' and 'unwise and unfair,' " Senate Majority Leader Mitch McConnell (R-Ky.) said Tuesday. The White House has said the president's actions were based on the practice of "prosecutorial discretion," which allows law enforcement agencies with limited resources to set priorities. "The Supreme Court and Congress have made clear that the federal government can set priorities in enforcing our immigration laws — which is exactly what the president did," White House press secretary Josh Earnest said. Hanen based his temporary injunction on his belief that the administration, in making such a broad change to what current law "mandates," at the very least did not comply with the elaborate rulemaking process of the Administrative Procedure Act, the nearly 70-year-old stature that governs how federal agencies implement regulations — including its 90-day notices and comment periods. He said the case should go forward rather than be thrown out, as the administration has urged. Immigration advocates charged that Hanen had narrowly "cherry-picked" his ruling and said they would urge immigrants to keep preparing their applications. "Our message to our members and to families who are preparing for deferred action is: Don't panic. Keep preparing," said Debbie Smith, associate general counsel of the Service Employees International Union, which filed a legal brief in support of the administration. "We think this is a timeout, a bump in the road." If opponents of the president's health-care, climate and immigration policies prevail in court, it is unclear what Republicans would propose as replacements. Three House panels have just begun working on alternatives to the Affordable Care Act, but Republicans remain opposed to mandatory limits on carbon from power plants and have yet to draft a comprehensive immigration bill of their own. "They're tearing stuff down without trying to offer any alternative if this thing crashes," said Simon Rosenberg, founder of NDN, a liberal think tank. The administration, he added, is

"confident the laws are behind them, but they are aware this is out of their hands. We don't know what will happen." "There's a level of chaos that could affect the health-care system and the entire functioning of DHS," Rosenberg said. "[Republicans] are not taking responsibility for the chaos they're creating. If they win, what are they going to do?"

The Public blames the president for judicial rulings based on privacy and the 4th amendment

Fuchs '13 (Ilyssa Fuchs is an attorney, freelance writer, and holds a juris doctor and a political science degree. "Blaming President Obama for Loss of Privacy? What about the Supreme Court? ," 8/22/13, Forward Rrogressive, http://www.forwardprogressives.com/blaming-president-obama-for-loss-of-privacy-what-about-the-supreme-court/ Accessed: 7/31/15, Chase Elsner, Utnif Cp Gripe)

Over the past several decades, the Supreme Court has routinely and incrementally narrowed the scope of the 4th Amendment, which protects against unreasonable search and seizure, practically circumscribing it completely. Until recently, when the news broke about the National Security Agency's data collection practices, few had really been paying attention to its disappearance. With the plethora of news surrounding the controversy over the NSA's sweeping collection of metadata (and the subsequent debate about how to strike a balance between liberty and security) it seems as though everyone's attention is focused on the Obama Administration rather than on Congress and the Supreme Court. However, while pointing the finger solely at the Administration might seem like a good idea, doing so is misplaced for two significant reasons. First, while the executive branch can in some cases act unilaterally – through the use of executive orders – the Obama Administration did not unilaterally endow the NSA with these sweeping powers. On the contrary, the NSA gained the authority to carry out its data collection program because it was authorized to do so by the Patriot Act – which was enacted bilaterally by both the legislative and executive branches when it was passed by Congress in 2001 and signed by former President Bush, and then renewed by Congress in 2011 and signed by President Obama. Our government operates on a system of checks and balances, so no single branch can consolidate all government power. Notably, Congress recently debated reining in the Patriot Act, but ultimately did not pass any new laws repealing, replacing, or scaling it back. In fact, on July 24, 2013, the House voted 217-205 to reject limiting the law. More importantly, the government institution that poses the biggest threat to the 4th Amendment, privacy, and liberty, isn't the President or any executive agency per se. It is the Supreme Court, the only government institution with the power to determine the circumstances under which the 4th Amendment applies, carve out exceptions to the rule, and decide the constitutionality of the Patriot Act. Moreover, the Court has continuously scaled back the rights codified by the 4th Amendment over the past several decades. These exceptions, operating in tandem with the Patriot Act, allow the executive branch to legally take actions which would seem to contravene the rights the 4th Amendment exists to protect. For starters, the Court has ruled that the 4th Amendment simply isn't triggered unless law enforcement performs a search or a seizure. [1] Once a search or a seizure transpires, then and only then will a lower court inquire into whether a 4th Amendment violation occurred. For instance, the Supreme Court has explicitly held that a person cannot manifest a reasonable expectation of privacy (and thus the 4th Amendment is inapplicable) when it comes to

abandoned property, conversations with others (because there is no expectation that the other person will keep the conversation a secret), bodies of land that are open to public view (aka the "open fields doctrine") or in anything that a member of the public could easily access, such as ones trash. Moreover, even in circumstances when the 4th Amendment is applicable, the Supreme Court has consistently and unrelentingly narrowed its scope, through a plethora of exceptions to its requirements. To name a few: No warrant is necessary for an arrest in public so long as law enforcement has probable cause. [2] Law enforcement can stop and question someone without a warrant, based on their reasonable suspicion (articulable facts and inferences which create a reasonable or fair possibility) that criminal activity is going on, and can further frisk someone if they have reasonable suspicion that that person is carrying a weapon. [3] Law enforcement can always order a person out of their car during a traffic stop, [4] and can also order passengers out of the car. [5] Law enforcement can detain a person while they get a warrant. [6] Law enforcement can search a person and the area surrounding that person (including their vehicle if there is a possibility they can get back into it) without a warrant, once they are placed under arrest, even for minor offenses that do not carry jail time. [7] Any contraband items that are in plain view (touch, smell, etc.) can provide a basis for a further warrantless search and can be seized by law enforcement. [8] Law enforcement can search any containers in your vehicle without a warrant if they have probable cause to search the vehicle itself and vice versa. [9] Law enforcement does not need to obtain a warrant before a search or seizure if exigent circumstances exist. [10] Law enforcement can enter a location without a warrant in order to provide emergency aid. [11] In addition to the aforementioned list of exceptions, which is in no way exhaustive, law enforcement can perform warrantless searches at police checkpoints so long as the primary purpose of the checkpoint is something other than normal law enforcement, [12] at DWI/DUI checkpoints, [13] at the border, [14] and of course, as you know, at the airport. [15] Add to that the recent revelation that Chief Justice John Roberts has the exclusive authority to appoint judges to the secretive FISA court, which reviews the NSA's warrant applications, the reality that our conversations are not protected by the 4th Amendment, and the fact that the Court previously upheld controversial provisions of the Patriot Act – and you really have a recipe for disaster. In closing, while attention must be paid to the President and to the actions of his executive agencies, as well as to the legislature, we mustn't forget to scrutinize the judiciary despite the fact that members of the Supreme Court are appointed rather than elected. When we ignore the actions of the Supreme Court, we do so at our own peril.

Obama Tied with the Court Decisision --- Republican Media Spin

Toobin 15(May 21. Jeffrey. Legal analyst for CNN and the New Yorker. "Obama's Game of Chicken with the Supreme Court" http://www.newyorker.com/news/daily-comment/obamas-game-of-chicken-with-the-supreme-court

No, it's not. **If the Obama Administration loses in the Supreme Court, the political pain will fall almost exclusively on the President and his Party**. To paraphrase Colin Powell and the Pottery Barn rule, President Obama will have broken health care, so he owns it. To the vast mass of Americans who follow politics casually or not at all, Obamacare and the American system of health care have become virtually synonymous. This may not be exactly right or fair, but it's a reasonable perception on the part of most people. The scope of the Affordable Care Act is so vast, and its effects so pervasive, that there is scarcely a corner of health care, especially with regard to insurance, that is unaffected by it. So if millions lose insurance, they will hold it against Obamacare, and against Obama. Blaming the President in these circumstances may be unfair, but it's the way American politics works.ð Republicans, of course, will encourage this sentiment. The precise legal claim in King v. Burwell is an esoteric one. It is not based on a claim that Obamacare is unconstitutional. (The Supreme Court upheld the constitutionality of the law three years ago.) Rather, the central assertion by the plaintiffs is that the Obama Administration violated the law itself. In any event, the subtlety of the issue at the heart of the case will surely be lost in its aftermath. The headlines will read, correctly, "Court rules against Obamacare," and this will be all that matters. The Republicans will argue that the Supreme Court showed that the law was flawed from the start, that the Obama Administration is lawless, that a full repeal of the law is the only appropriate response to the Court's decision—and that the millions who lose their subsides should blame the sponsor of the law. Watch for references to a "failed Presidency." There'll be plenty of them.ð Understandably, perhaps, the Administration has courted this kind of reaction. Better than anyone, Administration officials know the scale of the problems that would be created by a loss in the Supreme Court. Advertising this possibility makes sense as a litigation strategy; Obama officials don't want to make it easy for the Supreme Court to rule against them. In testimony before Congress and elsewhere, Sylvia Burwell, the Secretary of Health and Human Services (and the defendant in the case), said that the Administration has no contingency plan for an adverse ruling in the Supreme Court. But playing chicken

with the Justices only works if it works. If the Supreme Court strikes down the subsidies, the Administration will also have to answer for why it didn't prepare for this possibility.∂ For many people, the President of the United States is the government of the United States. It's why he gets the credit and blame for so many things, like the economy, where his influence can be hard to discern. This is particularly true for a subject in which the President has invested so much of his personal and political capital. If the Supreme Court rules against him, the President can blame the Justices or the Republicans or anyone he likes, and he may even be correct. But the buck will stop with him.

Courts can't shield the President- all branches' approval ratings have fallen.

McCarthy 15, [Justin McCarthy, Journalist/Analyst, Americans Losing Confidence in All Branches of U.S. Gov't, Gallup, http://www.gallup.com/poll/171992/americans-losing-confidence-branches-gov.aspx]

Americans' confidence in all three branches of the U.S. government has fallen, reaching record lows for the Supreme Court (30%) and Congress (7%), and a six-year low for the presidency (29%). The presidency had the largest drop of the three branches this year, down seven percentage points from its previous rating of 36%. Americans' Level of Confidence in the Three Branches of Government These data come from a June 5-8 Gallup poll asking Americans about their confidence in 16 U.S. institutions -- within government, business, and society -- that they either read about or interact with. While Gallup recently reported a historically low rating of Congress, Americans have always had less confidence in Congress than in the other two branches of government. The Supreme Court and the presidency have alternated being the most trusted branch of government since 1991, the first year Gallup began asking regularly about all three branches. **But on a relative basis, Americans' confidence in all three is eroding**. Since June 2013, confidence has fallen seven points for the presidency, four points for the Supreme Court, and three points for Congress. Confidence in each of the three branches of government had already fallen from 2012 to 2013.

The Courts can't shield the President because he creates his own issues.

Eshbaugh-Soha and Collins 13, [Matthew Eshbaugh-Soha and Paul M. Collins, Jr, Associate Professor of Political Science and Associate Professor of Political Science, *Presidential Rhetoric and Supreme Court Decisions,* Wall Street Journal, http://online.wsj.com/public/resources/documents/PSQ14046.pdf]

At a joint press conference in April of 2012, a reporter asked President Barack Obama to speculate on how the Supreme Court might rule concerning the Patient Protection and Affordable Care Act. "Ultimately," the president said, "I'm confident that the Supreme Court will not take what would be an unprecedented, extraordinary step of overturning a law that was passed by a strong majority of a democratically elected Congress."1 Whether or not this statement shaped the Court's decision to uphold the Act in June, the president's rhetoric fueled a debate in the popular media about the appropriateness of the president attempting to influence the Court by going public in this manner (e.g., Editorial Board 2012; Hartman 2012). This is so even though the president mentioned National Federation of Independent Business v. Sebelius (2012) on only two occasions prior to the Court's decision. The bulk of the president's attention to this case occurred after the decision, in dozens of stump speeches delivered during the 2012 presidential election campaign.

Courts create political conflict – decisions draw in other institutions and amplify public attention

Flemming 97(Roy Flemming - Political scientists at Texas A&M University, October 1997, "One Voice Among Many: The Supreme Court's Influence on Attentiveness to Issues in the United States, 1947-92")

In this study we focus on the United States Supreme Court as a bell-wether of systemic attention to policy issues. In Federalist 78, Hamilton offered his by now famous and often repeated opinion that the Court would be "the least dangerous branch." Without the power of the sword or purse at its disposal, the Court's authority in American politics would ultimately depend on its ability to persuade. The Supreme Court, however, may be more effective in drawing attention to issues and identifying problems than in changing preferences about them (cf. Franklin and Kosaki 1989; Hoekstra l995). The judicial venue may increase issue visibility and legitimacy for issue advocates. As with other United States political institutions, Supreme Court decisions confer and remove benefits, both material and symbolic, and can under some circumstances rearrange the distribution of political influence. When decisions rearrange political benefits and influence, the response is predictably a continuation of conflict. Decisions that rearrange political benefits or influence in the extreme, as for example in cases involving school desegregation, flag-burning, or public school prayer, often expand the scope of conflict by activating new groups and accentuating old rivalries. These processes may, in turn, draw other political institutions into the fray, as well as amplify both public and media attention. Thus, under certain circumstances the Supreme Court may profoundly affect the agenda setting process in the United States, and in doing so constitute an institutional source of change in American public policy and politics.

Courts Don't Shield Anyone

Courts are not insulated from politics – congressional and presidential appointments have turned courts into politicized bodies

Harrison 05(Lindsay Harrison, Lecturer in Law at the University of Miami School of Law "Does the Court Act As "Political Cover" for the Other Branches?" http://legaldebate.blogspot.com/2005/11/does-court-act-as-political-cover-for.html, November 18th, 2005)

Does the Court Act as "Political Cover" for the Other Branches? While the Supreme Court may have historically been able to act as political cover for the President and/or Congress, that is not true in a world post-Bush v. Gore. The Court is seen today as a politicized body, and especially now that we are in the era of the Roberts Court, with a Chief Justice handpicked by the President and approved by the Congress, it is highly unlikely that Court action will not, at least to some extent, be blamed on and/or credited to the President and Congress. The Court can still get away with a lot more than the elected branches since people don't understand the technicalities of legal doctrine like they understand the actions of the elected branches; this is, in part, because the media does such a poor job of covering legal news. Nevertheless, it is preposterous to argue that the Court is entirely insulated from politics, and equally preposterous to argue that Bush and the Congress would not receive at least a large portion of the blame for a Court ruling that, for whatever reason, received the attention of the public.

Court decisions affect Congress and the President

McDonnell 97 (Brett McDonnell, associate professor of law at the University of Minnesota., California Law Review, "Dynamic Statutory Interpretations and Sluggish Social Movements", Vol. 85, No. 4, p. 921)

The changes may actually be partly endogenous. Court decisions may affect public opinion, which may in turn eventually affect the positions of Congress and the President. Similarly, political mobilization to change a law may change the views of political actors. Over a long period, the political branches' dissatisfaction with the Court may lead to appointments which change the view of the Court. Such long-term effects should be of interest for the theory of statutory interpretation. Moreover, insofar as the actors themselves take into account these future effects, their present behavior may change, leading to different predictions for the theory.

Theory Cards

Court Rulings Not Enforced

Supreme Court rulings cannot effectively enforce their decisions.

Clyne 15, [Melissa Clyne, Journalist, *Texas, Other States Resist Complying With Gay Marriage 'Edict'*, News Max, http://www.newsmax.com/Newsfront/states-gays-same-sex-marriage-supreme-court/2015/07/01/id/653035/]

While a host of state officials across the country have expressed sentiments ranging from disappointment to outrage over the Supreme Court's ruling legalizing gay marriage — stripping the issue from state control — some officials are not accepting the decision without a fight. Texas Attorney General Ken Paxton characterized the decision as "a judge-based edict that is not based in the law," according to CNN. In a statement on Friday, Paxton said "no court, no law, no rule, and no words will change the simple truth that marriage is the union of one man and one woman. Nothing will change the importance of a mother and a father to the raising of a child. And nothing will change our collective resolve that all Americans should be able to exercise their faith in their daily lives without infringement and harassment." Paxton, according to CNN, has issued an opinion that Lone Star State county clerks "retain religious freedoms that may allow accommodation of their religious objections to issuing same-sex marriage licenses." And judges "may claim that the government cannot force them to conduct same-sex wedding ceremonies over their religious objections." If refusal by a government official to conduct a same-sex marriage results in a lawsuit or fine, Paxton "assured such-minded judges and clerks that 'numerous lawyers' will help defend their rights, perhaps on a pro bono basis, and his office stands ready to assist them as well." Louisiana Attorney General Buddy Caldwell says there is "nothing in [the] decision that makes the court's order effective immediately" and contends that "therefore, there is not yet a legal requirement for officials to issue marriage licenses or perform marriages for same-sex couples in Louisiana," The Hill reports. Before the landmark decision, 13 states had same-sex marriage bans. States clustered in the South and upper Midwest are the most vocal critics of the high court's ruling and its "encroachment on states' rights and religious freedom," The Hill notes, though "most acknowledge they cannot ignore it." Kentucky's attorney general, Jack Conway, said states are just trying to understand the ruling's reach. "The ruling does not tell a minister or congregation what they must do, but it does make clear that the government cannot pick and choose when it comes to issuing marriage licenses and the benefits they confer," he said. Alabama Attorney General Luther Strange predicts the fight will now be "the exercise of one's religious liberty." Marc Solomon, national campaign director at Freedom to Marry, told The Hill that states that defy the high court's ruling would be imparting a "dangerous message." "The notion that public employees get to pick and choose which laws they follow based on their religious beliefs is a really dangerous precedent and a terrible public policy," Solomon said. "If you're a public official, you need to carry out those laws, and you don't get to decide whether they're right or wrong.

The Supreme Court is the weakest of the 3 branches.

Miller and Gershman 06, [Lisa Miller and Josh Gershman, Journalists, *Too Little Too Late: The Supreme Court as a Check on Executive Power,* Foreign Public Policy in Focus, http://fpif.org/too_little_too_late_the_supreme_court_as_a_check_on_executive_power/]

The actual role of the Supreme Court in American history is more modest and its decisions are as likely to reinforce excessive acts of legislative and executive power as to challenge them. As it turns out, Hamilton 's assumptions are quite accurate. The Supreme Court must rely on the other branches of government to enforce its decisions and as an unelected body that must react to cases brought before it, the Court is highly constrained in the issues it can address. A brief look at cases involving executive power reveals few instances in which the court bucked the status quo. The best we can say about Supreme Court rulings in this area is that they have, on occasion, drawn some loose boundaries around presidential authority. However, in the absence of clear congressional opposition to executive action, the Supreme Court has largely affirmed broad discretion, particularly in times of war or other national security crises. This is not surprising since the Constitution provides specific powers to both Congress and the executive in these areas but grants no such direct authority to the Supreme Court.

AT: Welfare States CP

States will push people off welfare to save cash – empirics prove

Budd, 2010 (Jordan C., Professor of Law @ University of New Hampshire School of Law, "A Fourth Amendment for the Poor Alone: Subconstitutional Status and the Myth of the Inviolate Home," Indiana Law Journal, Vol. 85, No. 2, 2010)

An important element of this massive restructuring effort has been the devolution of discretionary responsibility to local officials' 96 -- again, in keeping with poor relief of previous centuries.'97 In view of the statutory focus on caseload reduction, localities have devoted significant attention to reducing the number of recipients at the front-end by imposing stringent and frequently demeaning verification procedures governing applications for aid.' 98 As Mulzer explains, "In the hands of 'goal-oriented' welfare agencies, verification procedures become much more than a means of error or fraud control, leading to routine invasions of claimants' privacy and causing many eligible individuals to be denied benefits or discouraged from ever applying for them."' 199 The new and aggressive investigative techniques associated with this emerging "verification extremism"200 are designed not merely to ferret out applications submitted by the posited legions of welfare queens 201 but also "to augment the hassle, intimidation, and humiliation of applicants with an eye toward the policy goal of deterring all but the most desperate from seeking aid., 20 2 This "[i]nformal rationing allows states to reduce welfare rolls without cutting eligibility or benefit levels, leading the public to believe that the drop was caused by a genuine reduction in need., 20 3 Among the local verification methods devised to promote these objectives is a resurrected variant of the traditional home visit. However, rather than follow the template of the visits depicted in Wyman-where caseworkers met with families to promote rehabilitative services and the care of children-this new version is explicitly investigatory in design and conducted by law-enforcement officers whose sole purpose is to search the home for evidence of ineligibility or fraud.2° Verification programs in San Diego County, California, and Milwaukee County, Wisconsin, exemplify this aggressive approach, while California's Los Angeles County has implemented a moderated version of the same strategy.20 6 While there is significant variation among these and related programs in other jurisdictions, 20 7 several shared attributes broadly distinguish this new generation of home visits from the procedures at issue in Wyman.

State controlled welfare leads to racialized poverty

Brown 03, Investigating the relationship between changing conceptions of equality of opportunity and racial inequality since the end of slavery in the United States. (Michael K, Race and the Politics of Welfare Reform, Chapter 2: "Ghettos, Fiscal Federalism, and Welfare Reform," pgs 49-51, https://www.press.umich.edu/pdf/9780472068319-ch2.pdf)

Political conflict between Democrats and Republicans over fiscal federalism and social welfare that goes back to the 1930s produced the antinomy between race and fiscal federalism embedded in the welfare reform law. PRWORA's fiscal structure and incentives are the result of state governments' attempt to shift all the costs of federal social policy to the national government and Republicans' strategy of using block grants to limit growth of the welfare state. This fiscal structure is not easily reconciled with the urban concentration of racialized poverty, and, in fact, it is a consequence of the racial politics of welfare—opponents of federal social policy using race as a political weapon to undermine support for the welfare state. Why Liberals Should Hate Block Grants The contradiction between fiscal federalism and race was the unspoken corollary to the debate over race and poverty that preceded passage of the 1996 law. The debate assumed that the persistence of racialized poverty (African American and Latino poverty rates three times those of whites) was rooted in individual failure by and large—the failure of poor blacks to accept work when it was available, a failure to stay in school, or a refusal to get married. Conservatives demanded work requirements and individual responsibility of poor women as way of reforming "ghetto culture." Forcing poor African American mothers to work would change their values and "break the culture of poverty," according to Mickey Kaus (1992, 127). Liberals accepted the need for work and self-discipline; they merely sought to soften the program with a plan for guaranteed jobs. Although many liberals acknowledged that the massive decline in good jobs in big cities was the main cause of urban poverty, theynonetheless believed the so-called pathological behavior of the poor was just as relevant. Thus,

they were willing to accept time limits on bene fits and to allow states to make moral improvement a condition of aid. This debate misconstrues the problems facing poor women and their children and fails to explain why racialized poverty endures. Growth in the number of female-headed families among African Americans has less to do with persistent poverty than the loss of jobs in inner cities, declining demand for unskilled labor, and racially segregated neighborhoods. 1 Equally important to these well-known causes of racialized poverty is one that often goes unstated: public disinvestment in ghetto communities. The problem with governmental policy is not that it has been too generous or that it contributes to the bad behavior of poor women. Rather, it has always been insuf ficient. Neoliberal welfare reformers recognized these realities and assumed that any policy predicated on eliminating the AFDC entitlement and forcing poor women into the labor market would require substantial public investment in day care, employment training and education, health services, and a variety of social services. This was the premise underlying their hopes for the 1988 Family Support Act, which was supposed to provide new resources for poor women and their families. And it was the basis of the Faustian bargain neoliberals made when they agreed to the 1996 welfare reform bill. TANF appealed to many "new Democrats" because it held out the possibility of fashioning a race-neutral, work-conditioned safety net that could address inner-city poverty. Whites, particularly white Democrats, strongly prefer race-neutral policies (Sniderman and Carmines 1997, 104–10). Neoliberal welfare reformers also assumed that TANF was a way of reconciling the mantra of individual responsibility that is the ideology of welfare reform with the economic realities of low-wage labor markets. The challenge facing policymakers, they assume, is how to make a work-conditioned safety net function in an hourglass economy where demand for unskilled labor has dramatically declined and economic growth is less effective in reducing poverty. It was obvious during the long debate over welfare reform that any work-conditioned policy would be very expensive. Yet liberal welfare reformers lost their wager when they agreed to block grants. TANF's fiscal structure undermines any possibility of building a viable work-conditioned safety net: it gives states powerful financial incentives to reduce caseloads and few incentives to reduce concentrated poverty in inner cities. Under TANF federal funding no longer oscillates with changes in caseloads, as it did under AFDC. The AFDC entitlement was based on anopen-ended grant-in-aid in which the federal government matched state expenditures on a sliding scale that provided proportionally more resources to poor states. Regardless of the number of cases, the federal government paid from 50 to 80 percent of the statewide average cost of the caseload. Congress replaced this open-ended grant with a block grant and capped spending at $16.5 billion annually. The money is allocated to the states based on their 1994–95 caseloads. TANF is a far more rigid program than AFDC. From the vantage point of the federal budget, an "uncontrollable" entitlement program is now a fixed appropriation where Congress will determine the volume of spending. From the vantage point of states, caseload reductions yield a financial windfall. Since federal funding no longer ›uctuates with the size of the caseload, states are allowed to keep any unexpended federal dollars.

State controlled redistribution of wealth fails – leads to more poverty

Brown 03, Investigating the relationship between changing conceptions of equality of opportunity and racial inequality since the end of slavery in the United States. (Michael K, Race and the Politics of Welfare Reform, Chapter 2: "Ghettos, Fiscal Federalism, and Welfare Reform," pgs 53-54, https://www.press.umich.edu/pdf/9780472068319-ch2.pdf)

Race and fiscal federalism have been antagonistically linked since the New Deal, when the federal government assumed greater responsibility for subsidizing the activities of state and local governments. From FDR on, national politicians chose to use state and local governments as conduits for national policies; they only differed in the latitude they granted to subnational governments. If federalism has been constitutive of the welfare state, it has also impeded the redistributive policies needed to either ameliorate or diminish poverty while permitting racial discrimination to flourish and reinforcing the hierarchy of white over black. African Americans have always understood that a decentralized welfare state would only sustain the color line. During the debate over the 1935 Social Security Act, Walter White of the NAACP warned Eleanor Roosevelt that "if the Federal Government continues to make lump grants to the States and leaves expenditures to the States it should not abandon all responsibility to see that Federal funds are not used to grind a section of its citizenry further into the dust" (Kifer 1961, 234). Redistribution is a national function. Relying on the states to redistribute resources from wealthy citizens and places to impoverished citizens and communities is a dead end. Such a policy, Richard Musgrave observes, "can only operate within narrow limits" (1997, 67). States have few incentives to mount redistributive social programs and will seek, ordinarily, to shift the burden of spending to the national government. Tax revenues needed to fund governmental services depend on private investment and the willingness of taxpayers to pay up. Any government is an "economic parasite," Joseph Schumpeter memorably wrote, and it "must

not demand from the people so much that they lose financial interest in production or at any rate cease to use their best energies for it" (1991, 112). Since capital and taxpayers are highly mobile, state governments must compete for economic resources just as nation-states compete in the global economy. High-tax states intent on redistribution may find themselves at a disadvantage in attracting new investment and retaining the support of taxpayers. These costs can be avoided by transferring the burden for social expenditures to higher levels of government, in effect shifting the burden and political responsibility for taxation upward.

I/L Turn – Poor are more underrepresented in state based welfare policies – smaller states lack money and resources

Winston '99 [Pamela Winston – Ph. D. @ John Hopkins University; May 1999; "THE DEVIL IN DEVOLUTION: WELFARE, THE NATION AND THE STATES"]

There is an argument made by supporters of devolution that the capacity of social welfare advocacy groups in the states will build up over time, that the states have only had significant policy powers for a brief period. And there is undoubtedly some truth to this. At least one influential Washington advocacy organization has initiated a project to help state-based groups build their policymaking capacities, indicating growing attention to the issue. But most Washington groups are, themselves, short on funding and staff and are already challenged to exercise influence in the single national capital. These groups would be hard pressed to themselves decentralize, and fund and organize an effective presence in fifty different states. They are most likely to focus on those jurisdictions where they can make the most impact for their limited time and money, suggesting they may stay out of small states and those jurisdictions where they are least welcome, but perhaps most needed. Homegrown groups may fare better, if they can get funding and other support. National foundations and other organizations are starting to turn their attention to the states and localities. Gaining this support will require that advocacy groups in these jurisdictions become more sophisticated in the ways of grant-making and revenue-raising, while at the same time operating on shoestring budgets and with skeletal staffs. Often state groups are really just one or two committed people who make minimal salaries. This is certainly not impossible, but it seems unlikely that there will be more than a handful of organizations in each state able to do this successfully, particularly in many small and rural jurisdictions. In addition, with many states sending policymaking further down to the counties, state groups now also have to track and try to influence developments in dozens of localities, not only in their capitals. Of the actors I studied in the states, the most effective were affiliated with organizations with national scope — the Catholic Conference was present in every state as were legal aid organizations — or with national advocacy organizations like the Center on Budget and Policy Priorities, piggy-backing on their work to help gain funding. If North Dakota and, to a lesser extent, Texas are any example, there will be real challenges for these groups. This again is most likely to be the case in small, poor and rural states, particularly in the South and West, where it appears to be particularly difficult to gain the resources and political support necessary to represent effectively the interests of low income people. In all the states, and especially in these, they simply have a smaller pool of resources and people from which to draw.13 Much of the long-term future of state-based welfare policy depends on the economy, what Congress does with block grant amounts and the maintenance-of-effort requirement when it reauthorizes the federal bill, the financial and political pressures that face state lawmakers, and other factors, many of which are significantly outside state control. But my research indicates that interest group participation has also played a critical role in shaping the direction of welfare reform, both in Washington and in the states. And it suggests that Madison and McConnell were right when they warned about the repercussions for representation of shrinking the sphere of policymaking, at least in the case of welfare policy. By and large, I have found, poor children and their parents have a significantly harder time inserting their voices into the policymaking process in the states than in the nation's capital. And they appear to have an even more difficult time in certain states, especially small ones, than in others. Despite the rhetorical and political appeal of decentralization and localism, by shifting welfare policy from the "extended sphere" of Washington to the smaller jurisdictions of the states and localities, we have, in fact, moved it into a set of political arenas where the poor families who are its beneficiaries have even less power than they do in Washington. Without at least the presence of a reasonable number of advocates for low-income people

in the states, we are in danger of further "disappearing" the poor and their concerns from the policymaking process.

Federal welfare reform good – protects poor from individual state rollback

Whitaker, Assistant Professor of Sociology at Old Dominion University**, and Time**, Assistant Professor of Criminal Justice at Old Dominion University **01** (Ingrid Phillips and Victoria, "Devolution and Welfare: The Social and Legal Implications Of State Inequalities for Welfare Reform in the United States," http://www.socialjusticejournal.org/archive/83_28_1/83_08Whitaker.pdf)

Current welfare reform initiatives do raise serious legal considerations. Given the disparities in measures of wealth and willingness to provide assistance to the poor, institutionalized discrimination against the poor results regardless of conscious intent in states with limited resources. The notion of equal protection is thus incongruous with recent welfare reforms in the United States. Moreover, a welfare policy that significantly reduces the federal role in assisting the poor fails to provide for the "general welfare" of the nation's population. The same government has consistently provided benefits to people eligible for Social Security, without state discretion. By relinquishing most of its responsibility to the states for providing for poor families, the federal government acknowledged that only certain populations are deserving of federal oversight. This action raises the question of whether federal funding for welfare programs is inherently discriminatory in the U.S. Conclusions The Personal Responsibility and Work Opportunity Act of 1996 revolutionized welfare assistance for poor families with children in the United States. By giving states greater responsibility for the former AFDC program (now TANF), the federal government delivered the message that assistance to poor families is by no means a social right in the United States. Although reforming welfare is an important public agenda, the current approach to reform ignores the disparities between states on measures of their ability and willingness to assist poor families with children. Given the disparities between states, giving them greater control over welfare programs that specifically target the poor raises fundamental questions about the "equal protection" of populations, since states are not equal entities in terms of resources or their political culture. The treatment of the poor across states has become more unequal and, as a result, depending on where one lives as a poor person, one may be actively excluded from the benefits of our nation's safety net. Since other federally funded programs (i.e., Social Security) are not left to the states' discretion, does not the federal government discriminate in the case of social welfare programs (and subsequently populations) that warrant federal oversight? Thus, current welfare reform efforts challenge the notion that the federal government can abstain from intervening on behalf of certain populations

AT: Behavior Pattern Recognition CP

Case is a DA

BDO's harbor unconscious bias against minorities which translates to a more insidious form of racial profiling - psychoanalysis and empirics prove that bias is inescapable.

Florence and Friedman '09 [Justin Florence – Associate in O'Melveny & Myers LLP - J.D. @Yale Law School - M.A Harvard University, Robert Friedman – Associate in Venable LLP – J.D. Georgetown University, 12/27/2009, "PROFILES IN TERROR: A LEGAL FRAMEWORK FOR THE BEHAVIORAL PROFILING PARADIGM," http://www.georgemasonlawreview.org/wp-content/uploads/2014/03/17-2_FlorenceandFriedman.pdf]

What has long been suspected anecdotally, and posited as a matter of psychoanalytical theory,100 is now supported by a substantial body of empirical evidence. The Implicit Association Test ("IAT") was developed by Dr. Anthony Greenwald in 1994, working out of the University of Washington. The IAT is "designed to examine which words or concepts are strongly paired in peoples' minds."101 For example, in the early years of the test, Greenwald used stereotypically white-sounding names, such as Adam and Chip, and stereotypically black-sounding names, such as Alonzo and Jamel. He grouped these terms with pleasant words such as "dream," "heaven," and "candy" and unpleasant words such as "evil," "poison," and "devil." Given a random list of these words, the task of grouping the white-sounding names with pleasant words and the black-sounding names with unpleasant words was relatively simple. However, grouping the black-sounding names with pleasant words and the white-sounding names with unpleasant words was more difficult and took more time.102 And because it takes more time for the mind to connect concepts it perceives as incompatible, researchers have observed that the time differential can be quantified to measure implicit attitudes.103 The IAT's general methodology can be adapted to measure a wide variety of group-trait associations that underlie diverse attitudes and stereotypes.104 For example, psychologist Robert Livingston conducted a study in which volunteers were told that a woman had been assaulted and suffered a concussion which required several stitches. In half the subjects, the perpetrator was said to be "David Edmonds from Canada" and the other half were told the attacker was "Juan Luis Martinez from Mexico."105 The volunteers were asked an appropriate length of time to sentence the attacker to prison, and the IAT tended to predict a longer sentence for the Mexican.106 Research conducted in connection to IATs reveals how unconscious bias might play out in the profiling paradigm. Harvard University operates a website that aggregates tens of thousands of IATs taken anonymously by subjects online. One analysis indicated that more than two-thirds of nonArab, non-Muslim volunteers displayed implicit bias against Arab Muslims.107 While it is difficult to conclude with any degree of certainty whether BDOs harbor stereotypical views of air travelers, if their attitudes track the nation at large and hew to the views of the average American, then there is a good chance that some unconscious bias is present. Even before 9/11, some viewed Arab Americans and Muslims as likely terrorist suspects.108 And the events of 9/11 and its aftermath only solidified this stereotypical view in the eyes of some Americans.109 Finally, many have suggested that the media contributes to the development of these cultural stereotypes by regularly printing newspaper headlines with words such as "Islam" and "Muslim" next to words like "fanatic," "fundamentalist," "militant," "terrorist," and "violence."110 If federal officials are constantly on the look-out for behavior that illustrates characteristics related to terrorism, danger, and criminality, while at the same time harboring unconscious bias, they are more likely to make a decision about who to stop that is based on their (perhaps unconscious) stereotypes instead of a rational decision based on purportedly empirically-based criteria.

No Solve Crime/Terrorism NB

Special interest groups inflate threats to justify TSA programs

Port 12, Editor (Rob, "We Don't Need To Reform The TSA, We Need To Get Rid Of The TSA," April 29, *SayAnythingBlog*, https://sayanythingblog.com/entry/we-dont-need-to-reform-the-tsa-we-need-to-get-rid-of-the-tsa/)

According to Politico, political ire aimed at the rubber-gloved freedom fondlers at the TSA runs the gamut from libertarian-leaning Republicans to liberal Democrats. It seems like just about everybody is upset with the TSA, and political ideology has nothing to do with it. So in an environment like that you'd think the TSA would be headed for the chopping block, but you'd be wrong. There are a lot of plans to reform the TSa. Republican Rep. Marsha Blackburn wants to stop the TSA from wearing uniforms that make them look like police officers. Democrat Senator Chuck Schumer wants to fund "passenger advocates" who would act as liaisons between travelers and TSA agents. Republican Rep. Paul Broun wants the head of the TSA to resign. And there are a myriad of calls for studies into how the TSA does its job, not to mention the health hazards of the scanners used by the agency. But one thing nobody is talking about is eliminating the agency altogether. Why? Probably because after a decade in existence, there are simply too many special interests making a good living from the TSA. Whether it's labor unions gaining many dues-paying members from among the ranks of the federal TSA employees or contractors raking in big bucks to supply the TSA with their security equipment, it all adds up to a lot of political clout. There never was a good case for the TSA. It was created in the security hysteria following the 9/11 attacks under the assumption that a single federal bureaucracy would do a better job of airport security than the private contractors who were doing it previously. Yet since its inception, all the TSA seems to have accomplished is the irritation of a vast swath of the American public. We have a cavalcade of domestic law enforcement and intelligence agencies whose job it is to detect and thwart terror attacks. The TSA's job, really, is just to provide a baseline of security at the airports to catch the obvious things and the crazy lone actors who are almost impossible for intelligence/law enforcement types to preempt. And the private sector can do that job adequately, and without needing to violate the privacy rights of every citizen boarding an airplane.

No Solve Crime/Terrorism NB

Facial Action Coding System (FACS) fails terribly for multiple reasons – 1) facial expressions belie inner feelings – 2) there are infinite different expressions – 3) FACS is useless outside of laboratory

Florence and Friedman '09 [Justin Florence – Associate in O'Melveny & Myers LLP - J.D. @Yale Law School - M.A Harvard University, Robert Friedman – Associate in Venable LLP – J.D. Georgetown University, 12/27/2009, "PROFILES IN TERROR: A LEGAL FRAMEWORK FOR THE BEHAVIORAL PROFILING PARADIGM," http://www.georgemasonlawreview.org/wp-content/uploads/2014/03/17-2_FlorenceandFriedman.pdf]

Ekman and Friesen's work has been criticized on several grounds. First, and most fundamentally, some suggest that expressions do not reflect the inner feelings of the expresser.28 Instead of forecasting emotions in the person exhibiting a particular expression, these scholars argue that "[e]xpressions evolved to elicit behaviors from others."29 Thus, "a smile may encourage people to approach while a scowl may impel them to stay clear, and a pout may elicit words of sympathy and reassurance."30 If facial expressions are social cues intended to send signals to other human beings, then a SPOT security program premised on the scientific rationale of detecting suppressed emotions—especially a propensity for truthfulness— would be undermined. A second possible limitation in Ekman and Friesen's FACS model is that it contains only a subset of all human facial muscle movements and represents merely a recorded portion of the "total repertoire used by a person during his daily life."31 After all, the FACS catalogue was created by humans, and researchers can only score those expressions that have actually been observed. Therefore, it is possible that the facial expressions accompanying a terrorist's response to a BDO query might not register under the FACS coding framework and would tell security personnel nothing about that person's emotions. Moreover, even if the facial expression has been coded, humans differ greatly in the manner in which they process emotions: the relative speed at which an emotion arises, the level of intensity and duration, and the time an emotion takes to return to its baseline levels.32 A third critique of FACS concerns whether it can be used effectively outside of the laboratory environment. Ekman and Friesen's laboratory research relied on recorded interviews and the replaying and scrutinizing of videotapes in slow motion. Whether the accuracy of decoding facial expressions for deception cues can be effectively transferred from the laboratory setting to the real-time chaos and commotion of fast-paced American airports is an open question. And whether the skillful and expert detection abilities of scientists trained in the art of emotion recognition can be replicated by BDOs, who receive fairly limited substantive training, is equally uncertain. Ekman himself acknowledged some uncertainties about the translation of FACS from the lab to the airport.33 There are, for example, significant difference between the two environments when it comes to the potential for background noise and interruption. Because a person seeking to suppress an emotional response can typically do so one-twenty-fifth of a second after an emotion initially appears, observers who blink or are distracted may fail to see it.3

No NB – not popular

Reforms are unpopular – public wants major curtailment

Dick, 2013 [Adam, Ron Paul Institute, House 'Improves' TSA Instead of Ending It, http://www.ronpaulinstitute.org/archives/congress-alert/2013/december/02/house-improves-tsa-instead-of-ending-it.aspx]

Following another Thanksgiving travel period with the Transportation Security Administration subjecting travelers to infuriating harassment, the House of Representatives leadership has scheduled for House floor consideration Tuesday three bills that will tinker with the TSA while allowing the harassment to continue. The three bills are the TSA Loose Change Act (HR 1095), the Transportation Security Acquisition Reform Act (HR 2719), and the Aviation Security Stakeholder Participation Act (HR 1204) All three bills are scheduled for consideration under suspension of the rules—a process generally reserved for noncontroversial legislation. Because bills considered under suspension of the rules are not subject to amendments on the House floor, the House Republican and Democrat leadership have enured there will be no debate or vote on amendments that would end or significantly restrict the TSA harassment. Up first on the House's suspension schedule is HR 1095. The bill directs the TSA to start transferring money left behind at TSA checkpoints to nonprofit organizations that operate places for military members and their families to rest and recuperate at United States airports. HR 1095 arguably provides an improvement over the current law that allows the TSA to use the money for its own operations. But, the bill does nothing to reduce the TSA's main source of money—US government allocations. Also, by throwing some "loose change"—about a half million dollars a year according the the House Homeland Security Committee report on the bill—to nonprofit organizations, the legislation risks creating a new special interest supporting maintaining and expanding the TSA harassment. The committee report notes that the bill's requirements have been written such that the United Service Organizations (USO) is the only nonprofit currently qualified to receive the money. Next up, HR 2719 directs the TSA to take actions including developing and regularly updating a "strategic multiyear technology acquisition plan," making reports to House and Senate committees regarding certain technology acquisition intentions, creating "baseline requirements" for technology acquisitions, and using equipment in the TSA's inventory before acquiring more of the equipment. HR 2719 does nothing to restrict the TSA's daily agenda of detaining, questioning, and searching people for no cause whatsoever, much less the probable cause required under the Fourth Amendment of the US Constitution. Neither does the bill limit the TSA's regular seizures of people's property. Rather, HR 2719 attempts to ensure the TSA employs technology more efficiently while engaging in these constitutional violations. Finally, HR 1204 offers a classic legislative solution: it creates a committee. In particular, the bill creates an Aviation Security Advisory Committee and at least four subcommittees that will consult with and deliver periodic reports to the TSA. If the committee HR 1204 creates were charged with developing plans for reducing the activities of the TSA or increasing respect for individual rights, some good may come from the legislation. Unfortunately, the bill instead directs the committee to develop, at the TSA's request, recommendations for improvements in aviation security. Further, the TSA would appoint every member of the committee. The bill appears to advance the kind of bureaucracy-building exercise you typically see in growing government agencies. Congress earns its low approval rating through legislative schedules like this. With many Americans having just experienced their Thanksgiving TSA harassment and dreading another round at Christmas, cheers would sound across America if the House passed legislation terminating or, at least, greatly restricting the TSA assaults on our rights. Instead, the House's bipartisan leadership is demonstrating its allegiance to the TSA and the agency's abusive activities.

AT: PCLOB CP

Turn – Kills Accountability

Commissions destroy government accountability – replace elected officials with appointed decisionmakers

Glassman and Straus, 2015 Mathew E. Glassman and Jacob R. Straus are analysts on Congress. (Mathew E. Glassman and Jacob R. Straus, "Congressional Commissions: Overview, Structure, and Legislative Considerations", Pg.9-10, 1/27/15, Congressional Research Service, https://www.fas.org/sgp/crs/misc/R40076.pdf)//ER

Congressional commissions have been criticized by both political and scholarly observers. These criticisms chiefly fall into three groups. First, critics often charge that **commissions are an "abdication of responsibility" on the part of legislators**.41 Second**, commissions are undemocratic**, replacing elected legislators with appointed decision-makers. Third, critics also argue that **commissions are financially inefficient; they are expensive and their findings often ignored by Congress.** Abdicated Responsibility Critics of commissions argue that they **are primarily created by legislators specifically for "blame avoidance."**42 In this view, Congress uses commissions to distance itself from risky decisions when confronted with controversial issues. By creating a commission, legislators can take credit for addressing a topic of controversy without having to take a substantive position on the topic. If the commission's work is ultimately popular, legislators can take credit for the work. If the commission's work product is unpopular, legislators can shift responsibility to the commission itself.43 A second concern about commissions is that they are not democratic. This criticism takes three forms. First, **commissions may be unrepresentative of the general population**; the members of most commissions are not elected and may not reflect the variety of popular opinion on an issue.44Second, **commissions lack popular accountability**. Unlike Members of Congress, commission members are often insulated from the electoral pressures of popular opinion. Finally, commissions may not operate in public; unlike Congress, their meetings, hearings, and investigations may be held in private.45

Turn – Kills Accountability

Commissions bad – voter's power muted and limit debate on commissioned policies

The Fiscal Seminar, 2009

(The Fiscal Seminar is a group of scholars who discuss federal budget and fiscal policy issues under the auspices of The Brookings Institution and The Heritage Foundation, June, "THE POTENTIAL ROLE OF ENTITLEMENT OR BUDGET COMMISSIONS IN ADDRESSING LONG-TERM BUDGET PROBLEMS")

Criticisms of using a commission to formulate policy have rested on philosophical, political, and practical concerns. Different critiques apply to different models so it may be difficult to extrapolate them to commissions in general.1 Philosophical. The use of commissions is regarded by some observers as an inappropriate delegation of Congress' responsibilities and duties. Under this view, power originally given by voters to elected officials cannot be transferred to others. And yet the delegation of authority can be justified if the duties of the commission are clear and limited. Nonetheless, the delegation of certain powers does raise questions about representation in the policy-making process. Commissions, whether authorized by statute or through executive order, are often comprised of individuals who have noticeably different philosophical and political beliefs than the Congress. Such differences could therefore undermine the accountability of the Congress and transfer too much influence to unelected officials. Political. In some cases, reliance on the recommendations of commissions may have political ramifications as well. There are some instances where the recommendations of a commission have the effect of limiting debate in the Congress. (Indeed, that may be the intent.) For example, the Greenspan Commission's set of recommendations was approved in part because proponents made a persuasive argument that the package was of a take-it-or-leave-it form. That is, to change or substitute a different proposal for one of those recommended by the commission could lead to the collapse of a delicately balanced compromise. Similarly, because amending the package was considered dangerous to the passage of a legislative response to the looming Social Security insolvency, even the debate on the merits of the package and its components was largely muted.

Turn – Kills Accountability

Their "shields politics" arguments prove – commissions like PCLOB absorb blame, which takes out their accountability claims

Mayer, 2007

(Kenneth, Professor of Political Science @ University of Wisconsin-Madison, December, "THE BASE REALIGNMENT AND CLOSURE PROCESS: IS IT POSSIBLE TO MAKE RATIONAL POLICY?" *NYU Wagner Graduate School of Public Service*)

In practice, the complicated procedural language guarantees nothing. Moreover, the supermajority requirement – established to insure that any proposal has broad consensus – will make it nearly impossible to steer meaningful proposal through. The requirement that both chambers cast a vote on the final proposal could put pressure on members, who might be reluctant to take a clear position on a reform. But the lack of any substantive delegated power makes this commission comparable to efforts to shift blame and find consensus. It is not a serious effort to implement a solution. There is simply far too much controversy over what sorts of reforms are necessary. Should benefits be protected, or should cuts be considered? Should taxes be raised, and if so by how much? Should benefits be means tested? The retirement age raised? What should the transition period look like? No legislator is likely to give up decision making rights in the presence of such controversy and uncertainty about the scope of the final policy. And this is how it should be. Automatic delegation comes at the cost of accountability, which as a policy value is at least as important as rationality and efficiency. Delegating authority to an independent body, or governing via an automatic rule, is often a "blame avoidance" mechanism designed to obfuscate the ultimate responsibility and make it difficult for voters to connect cause and effect. As we have seen with BRAC, sometimes this works, at least in the sense of producing a generally preferred but politically difficult outcome that cannot be traced back to the actions of any legislator or group of legislators. But delegation, by itself, does not resolve underlying disagreement and controversies, and the electorate ought to have enough information to assign blame or credit. Ultimately, BRAC arose from an unusual set of circumstances, and it should replicated with great caution. .

No solvency – Lacks Authority

PCLOB cannot solve – has no power over policy + unable to see the larger scope of domestic surveillance

Goldfarb et al., '15 (Ronald Goldfarb - Washington, D.C. attorney and literary agent – JSD from Yale Law School, Hodding Carter, III, David Cole, Thomas S. Blanton, Jon Mills, Barry Siegel, Edward Wasserman, *After Snowden: Privacy, Secrecy, and Security in the Information Age*, pg. 233-234)

An important element of having a clear policy for domestic surveillance is to have reasonable and independent oversight of surveillance actions to assure compliance. Two groups currently oversee surveillance activities that are otherwise secret: members of the Privacy and Civil Liberties Oversight Board (PCLOB) and the federal judges who sit on the FISA court. Additionally, leaders of the intelligence community brief congressional intelligence and judiciary committees on their surveillance activities. Congress is also required to authorize amass data collection activities under Section 215 of the Patriot Act. Despite congressional approval and oversight, the discovery of the current ongoing domestic surveillance activities has been a shock to the American people. Perhaps as big a shock to Congress was that the CIA surveilled the computers of staffers on the Senate Intelligence Committee, the congressional committee charged with direct oversight of the intelligence community. Therefore, the restoration of public trust is going to require more or different oversight. The PCLOB has released reports on NSA and other agency compliance with Section 702 of the Foreign Intelligence Surveillance Act. It is generally tasked with balancing civil liberties and surveillance. Reviews have been mixed. Its reports indicate that any surveillance activities of Internet communications were in compliance. However, the report also indicated that outside of Section 702's "fundamental core," certain practices "push the program close to the line of constitutional reasonableness." The fundamental core is collection of foreign intelligence, but practices go beyond that. The analysis of the constitutional issue is greatly limited by the fact that the board was unable to evaluate "the unknown and potentially large scope" of Section 702's incidental collection of U.S persons' data. In other words, the board was not informed of the full impact of the government's "incidental collection." The oversight impact of the PCLOB is defined by two indisputable shortcomings. First, they have no authority to implement or control policy. Second, they apparently do not or cannot consider the full scope of government surveillance. The reports are, however, important and useful in understanding intelligence activities.

No Solvency – Lacks Authority

PCLOB has no power to enforce decisions or challenge an agency's secrecy powers

Stanley 13, Senior Policy Analyst, ACLU Speech, Privacy & Technology Project (Jay, "What Powers Does the Civil Liberties Oversight Board Have?" *ACLU,* November/4, https://www.aclu.org/blog/what-powers-does-civil-liberties-oversight-board-have)

What Congress did not give the PCLOB the power to do, unfortunately, is challenge agencies' secrecy powers when it finds those powers have been abused to cover up wrongdoing or incompetence or to prevent legitimate public debate. At a time when such abuses of secrecy powers are widespread, it is not clear how the PCLOB would or could proceed if, for example, it uncovers brazen violations of the law that are classified (as they most likely would be). The PCLOB also has no enforcement power. Other than by going to court like anyone else, it cannot order any government agency to change its practices or otherwise enforce the law. Other countries give their privacy commissioners such powers; in 2008, for example, the Italian government decided to publish the income tax returns of all Italian citizens on the Internet. The Italian data protection author-ity did not just condemn the action, or hold hearings, or file a court case--it ordered the information taken down, and it was. In some countries, such as Slovenia, the data protection commissioner also has the power to unilaterally declassify information

No solvency – Lacks Authority

PCLOB doesn't have power to change, can only make recommendations which won't always be taken into consideration

Setty, 2015

(Sudha, Professor of Law at Western New England University, "SEARCH FOR MEANINGFUL

ACCOUNTABILITY," *Stanford Journal of International Law*, 51:1, Online:
http://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1305&context=facschol)

What does it mean to maintain the rule of law, particularly when national security and counterterrorism policies are at issue? In its propagation of the "global war on terror" after the terrorist attacks of September 11, 2001, the Bush Administration was accused many times of behaving in a lawless fashion. 1 President Obama picked up on this theme, insisting early on that his administration would oversee a return to the primacy of the rule of law, regardless of whether the country viewed itself as being at peace or at war. 2 In doing so, Obama promised to restore the idea that the government should have limited power, should be held to account for its transgressions, and that the government's actions and the laws under which it acts ought to be transparent. 3 Yet the post-9/11 decision-making by both the Bush and Obama administrations has been characterized by excessive secrecy that stymies most efforts to hold the government accountable for its abuses. Particularly in the area of government surveillance, meaningful oversight has seemed impossible without the trigger of leaked information. The executive branch has consistently defended the legality and efficacy of these surveillance programs, insisting that the administration acts in accordance with the rule of law and that secrecy has been necessary, and that leaks by government insiders have been criminal and counterproductive. 4 Congress has enabled the executive branch to engage in widespread surveillance in the post-9/11 context and has not been able to compel the executive branch to make available information regarding its surveillance programs that could give any oversight efforts more muscle.

No Solvency – Recommendations Ignored

No Solvency – PCLOB's recommendations are ignored

Raul, '10 (Alan Charles Raul – vice chairman of the PCLOB 2006-2008, January-24-2010, "Where's the civil liberties oversight?" *The Washington Post*)

In 2007, the Justice Department's inspector general revealed the FBI's failure to comply with the statutory and procedural requirements on which its powerful national security letter (NSL) authority was conditioned. After the IG report, the White House Privacy and Civil Liberties Oversight Board further investigated the FBI's abuse of power and re-ported its conclusions to the attorney general and White House counsel. In the board's January 2008 report to Congress -- two years ago! -- we stated: "[T]he Board is concerned that the FBI has not made a conscious, direct, and thorough effort to explain to the public and to Congress exactly why NSLs should be retained in their current form. . . . The Board welcomes the FBI's decision to [eliminate] the use of 'exigent' letters. . . . Finally, the Board believes senior officials in the FBI bear responsibility for failing to create any sort of compliance mechanism prior to the Report and failing to craft procedures to allow information regarding NSL violations to flow to those in authority." What happened next? There was no apparent accountability for the FBI's lack of legal compliance, and Congress decided instead to move the administrative deck chairs around by enacting legislation to phase out the Privacy and Civil Liberties Oversight Board (which had only just been created in 2004 legislation), and transform it into an independent agency outside the White House. The Senate then failed to confirm President Bush's nominees for the reconstituted board, and President Obama has not nominated anyone at all. The American people are counting on the government to go after terrorists hard, and this means it must be equally serious about protecting our privacy and civil liberties. Right now it is not clear that these responsibilities are being dis-charged seriously.

No Solvency – Laundry List

No solv - PCLOB inadequate for a laundry list of reasons

Ben-Veniste and Cole, 2004

(Richard Ben-Veniste - a lawyer and former member of the 9/11 commission, Lance Cole - a professor at Penn State Dickinson School of Law and former consultant to the commission, September-7-2004, "How to Watch The Watchers," The New York Times)

Last week President Bush issued four executive orders addressing matters that were subjects of recommendations by the 9/11 commission. One of the four orders created a President's Board on Safeguarding Americans' Civil Liberties. While it is laudable that a civil liberties board was included in the first set of presidential actions in response to the commission's recommendations, the new board falls short of addressing the concerns that led the commission to recommend the creation of a meaningful oversight board in the first place. Since the attacks on the World Trade Center and the Pentagon, the government has acquired powerful new legal tools, including those provided by the Patriot Act, to collect intelligence on Americans. Government agencies are using ''data mining'' and other techniques to identify potential terrorists and cut off sources of terrorist financing. As the commission's report noted, the shift of power and authority to government must be tempered by an enhanced system of checks and balances to protect the personal liberties that define our way of life. One of the ways the commission sought to balance these competing objectives was to recommend the creation of a board within the executive branch to protect civil liberties and privacy rights. Unfortunately, the board created by the president has neither the right makeup nor the right powers to accomplish this objective. For starters, the large size of the president's board is a problem. With 20 or more people, individual members won't feel personally accountable or responsible, a fatal flaw for an effective civil liberties oversight body. But a more fundamental problem with the president's panel is the people who will serve on it. All its members are from within government and almost all are from the very agencies and departments whose actions are likely to be the subject of civil liberties challenges and complaints. The 9/11 commission demonstrated the value of a review of government actions by disinterested individuals from outside government. Only outsiders can supply both the independence and the skepticism that are essential to evaluate the merits of governmental assertions of power that intrude on personal privacy. In fact, the president's board seems especially unlikely to prevent one of the most serious potential problems brought on by the government's new powers -- the possibility of applying them in areas that have nothing to do with terrorism. Already, the Patriot Act has been used to investigate official corruption, money-laundering and computer hacking. A properly functioning civil liberties oversight board should also be nonpartisan, and the way to achieve that is through a balanced appointments process. The president's panel is made up almost entirely of presidential appointees and senior staff members who serve presidential appointees. But the public must have confidence that the board transcends the partisan interests of whatever administration is in power. A far better model would be a board that is chosen through an appointments process that provides not only balance along party lines, but also participation by both the executive and legislative branches. For example, a nine-member board could be created with a requirement that no more than five of its members be from the same political party. The chairman and vice chairman could be required to come from different parties. What's more, the president's nominees would be subject to Senate confirmation. This is similar to the model that has been shown to work well for independent regulatory agencies. There's another problem. While the commission recommended a board that would provide oversight, the president's board is only an advisory board, which means that it will simply provide advice and information. It has no obligation to disclose its findings to the public. That's a mistake. For such a board to be effective, it must be transparent. To that end, any panel should be required to provide quarterly reports of its findings to Congress and the public. As the 9/11 commission showed with its report, it is possible to remove references to sources and methods of intelligence collection and still provide an informative public accounting. In addition to the specifics set out in the commission report, there's another step that should be considered: departments and agencies that have responsibility for domestic intelligence collection and homeland security should put in place a kind of ''civil liberties ombudsman'' who would be responsible for bringing complaints and

challenges before the board. The individuals in those positions must have full access to the surveillance techniques and domestic intelligence collection practices their departments and agencies employ. There must also be confidentiality and whistleblower protections to ensure that complaints are reported without fear of reprisal. While the president's proposal is a welcome acknowledgment of the need for civil liberties protections, it seems that it will now be up to Congress to carry out the commission's recommendation for a genuine, effective oversight board. Only a truly independent board with real powers can help strike the right balance between enhanced powers to combat terrorism and adequate protection of our cherished civil liberties.

Perm – As Many Actors as Possible

Perm is essential – all actors must work to restore accountability

Setty, 2015

(Sudha, Professor of Law at Western New England University, "SEARCH FOR MEANINGFUL ACCOUNTABILITY," *Stanford Journal of International Law*, 51:1, Online: http://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1305&context=facschol)

Genuine accountability should not depend on the chance that an¶ unauthorized and illegal leak will occur. In the comparative example of the United¶ Kingdom, engagement with a European Union energized with a commitment to¶ increase privacy protections, along with domestic parliamentary oversight, provide¶ two potential avenues for increased constraint on surveillance. In India, the¶ parliament and the courts historically enabled, not constrained, the intelligence¶ community. Whether that stance will continue as the government's technological¶ capabilities increase is yet to be seen.¶ Domestically, it could be argued that the types of reform recommended¶ here to improve actual accountability and transparency over programs like the NSA¶ Metadata Program are overkill: They involve multiple branches of government, the¶ PCLOB, and the public. However, much of the accountability apparatus that has¶ been in place was dormant until the Snowden disclosures, and would have remained¶ passive without those disclosures. A multi-faceted, long-term, structural approach¶ to improving transparency and accountability--one that involves at a minimum the¶ courts and the PCLOB, but hopefully Congress, the executive branch, and the¶ public as well-improves the likelihood of sustained and meaningful accountability¶ as new surveillance capabilities are developed and implemented.

Perm – CP then Plan

PCLOB's recommendations are only as good as the authority implementing them – perm ensures they're codified

Setty, 2015

(Sudha, Professor of Law at Western New England University, "SEARCH FOR MEANINGFUL ACCOUNTABILITY," *Stanford Journal of International Law*, 51:1, Online: http://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1305&context=facschol)

Although Congress could launch a large-scale investigation into the programs Snowden disclosed, like the Church Committee in its time, [176] its ability to serve effectively as an ongoing accountability mechanism over intelligence gathering in the manner of a parliament seems unlikely. For the political and structural reasons discussed above, the appamtus of national security policy-making is somewhat intentionally insulated from Congress. On the one hand, the benefit of this structural arrangement is that it may facilitate expertise and efficient decision making, but a key effect is also that this apparatus is not really accessible to the other branches of government or the public. 177 This consolidation of decision making authority in the executive branch, plus the difference between congressional and parliamentary access to executive branch information, accounts for a different potential for legislative oversight in the United States as compared to the United Kingdom and India. Further, the lack of widespread and sustained public pressure on Congress 178 toward reform suggests that a meaningful increase in legislative oversight of the intelligence community will not occur in the near future. Leaks like that of Snowden, combined with rigorous and responsible press coverage, can provide some level of constraint on and accountability over intelligence community activity. [179] However, the tendency toward public inertia and the possibility that democratic institutions will not actually provide a substantive check on the surveillance apparatus 180 suggest weakness in relying solely on this approach. Further, the crackdown on leaking and the treatment of whistleblowers as criminals, even prior to Snowden's disclosures, 181 combined with heightened security measures, means that reliance on leaking as a meaningful structural check is misplaced. Tinkering with the structure inside of the NSA also seems to achieve more in terms of burnishing a veneer of accountability rather than creating genuine oversight. It is hard to understand how various proposed reforms, such as appointing a civilian to oversee the NSA 182 or creating a more adversarial internal review process within the NSA, 183 would increase accountability and transparency. For the executive branch, it seems more likely that pressure from business and corporate interests trying to retain consumer business 184 may shape NSA parameters for mass data collection and domestic surveillance in some respects, 185 but will likely not lead to institutional or structural changes as to the government's approach to surveillance without additional pressure from the public. One promising move with regard to oversight and transparency has been the establishment and staffing of the Privacy and Civil Liberties Oversight Board (PCLOB). 186 This board, tasked with assessing many aspects of the government's national security apparatus both for efficacy and for potentially unnecessary incursions into civil liberties, has a broad mandate and, compared with many national security decision makers, significant independence from the executive branch. 187 Retrospectively, the PCLOB has, among other things, issued the highly critical report of the NSA Metadata Program in January 2014 that led to further public pressure on the Obama administration to curtail this program; it is promising that the PCLOB's prospective agenda includes further analysis of various surveillance programs. 188 However, the PCLOB's potential influence in protecting civil rights may be limited by its position: The PCLOB is an advisory body that analyzes existing and proposed programs and possibly recommends changes, but it cannot mandate that those changes be implemented. The ability to have a high level of access to information surrounding counterterrorism surveillance programs and to recommend changes in such programs is important and should be lauded, but over-reliance on the PCLOB's non-binding advice to the intelligence community to somehow solve the accountability and transparency gap with regard to these programs would be a mistake. For example, on prospective matters, it is likely that intelligence agencies would consult the PCLOB only if the agency itself considers the issue being faced new or novel, as the NSA metadata program was labeled prior to its inception. In such cases, decision makers within an agency generally ask whether the contemplated program is useful or necessary, technologically feasible, and legal. If all three questions are answered affirmatively, the program can be implemented. Now that the PCLOB is fully operational, it seems likely that if a contemplated program is considered new or novel, an intelligence agency would consult the PCLOB at some stage of this process for its guidance on implementing the program. This nonpartisan external input may improve self-policing within the intelligence community and help intelligence agencies avoid implementing controversial programs or, even if implemented, set better parameters around new programs. 189 If the PCLOB is able to

exert some degree of soft power in influencing national security decision-making, then the judiciary represents hard power that could be used to force the protection of civil liberties where it might not otherwise occur. The FISC should be reformed to include a public advocate lobbying on behalf of privacy concerns, making the process genuinely adversarial and strengthening the FISC against charges that it merely rubber stamps applications from the intelligence community. 190 Article III courts need to follow the lead of Judge Leon in Klayman in conceptualizing privacy as broad and defensible, even in a world where electronics-based communication is dominant and relatively easy for the government to collect. If the judicial defense of privacy were combined with the possibility of liability for violations of that privacy, it is likely that this would incentivize increased self-policing among the members of the intelligence community. The creation of an active PCLOB and a more adversarial process before the FISC will not provide a perfect solution to the dilemmas posed by the government's legitimate need for secrecy and the protection of the public against potential abuse. Yet because these changes are institutional and structural, they are well-placed to improve the dynamic between the intelligence community, oversight mechanisms, and the public.

A2: Ptx NB – Transparency becomes polarized

Transparency results in a political firestorm – Benghazi etc prove

Vladek & Wright, 2014

(Steve – prof of law @ American U and Andy – prof at Savannah Law School & former counsel to the president, "Why (Some) Secrecy is Good for Civil Liberties," *JustSecurity*, July 24, Online: http://justsecurity.org/13189/secrecy-civil-liberties/)

Public transparency is a double-edged sword. On one hand, it disincentivizes misbehavior—immoral, unconstitutional, or otherwise illegal—in absolute terms. There is real value to the cliché that sunshine is the best disinfectant. However, as a relative matter, public transparency disincentivizes Executive Branch disclosure to Congress. Notwithstanding the recent bickering between the Senate Select Committee on Intelligence and Central Intelligence Agency over the handling of classified information, and a few other dust-ups, Congress has generally taken its national security secrecy obligations seriously (as evidenced, for example, in Members' responsible use of their Speech or Debate Clause immunity). If the Executive Branch could not have some level of confidence that Congress could maintain secrets, it would likely resist disclosure even more than it does at present. In addition, public oversight of sensitive national security matters creates unconstructive incentives to derail the fact-finding process with partisan politics. One need look no further than the congressional investigations of the attack on U.S. facilities in Benghazi, Libya and the problematic law enforcement tactics along the southwest boarder in Operation Fast and Furious to see that grandstanding is the norm rather than the exception. There, what remain of the Congressional-Executive information access disputes largely go to the politics of administration reaction rather than the underlying conduct under investigation. As Andy has written previously, there has been more heat than light.

A2: Ptx NB – Unpopular with Republicans

PCLOB is unpopular with House Republicans – they're sore over the chair's recent op-ed piece.

Nakashima 2015

(Ellen Nakashima, 6/10/15, "Upset over op-ed, GOP lawmakers seek to curb privacy board," Washington Post, https://www.washingtonpost.com/world/national-security/upset-over-op-ed-gop-lawmakers-seek-to-curb-privacy-board/2015/06/10/11ee864e-0f12-11e5-adec-e82f8395c032_story.html)

Republicans on the House Intelligence Committee, upset by an opinion piece penned by the chairman of a government watchdog on privacy issues, have advanced a measure to block the agency's access to information related to U.S. covert action programs. The provision, in the 2016 intelligence authorization bill, takes a jab at the Privacy and Civil Liberties Oversight Board, an independent executive-branch agency whose job is to ensure that the government's efforts to prevent terrorism are balanced with the need to protect privacy and civil liberties. David Medine, the board's chairman, co-authored an essay in April arguing that if the United States were to continue killing U.S. citizens by drone strikes, an independent review panel was needed to assess whether targeting decisions are appropriate. In the piece, Medine, who was speaking for himself, suggested that the PCLOB would be a good candidate to serve as that review board. That article "really stirred the pot," said one congressional aide, who like others interviewed for this article was not authorized to speak on the record. The committee majority saw that suggestion, along with other reviews the board was undertaking, the aide said, as "mission creep." The provision, which the committee approved by voice vote last week, was an attempt by Republicans to make sure the board members "stay in their lane," as another aide put it. "Covert action, by its very definition, is an activity that the United States cannot and should not acknowledge publicly," said the committee's chairman, Devin Nunes (R-Calif.). "Review of such activity is ill-suited for a public board like the PCLOB." But Democrats on the committee said the measure was unnecessary and short-sighted. "That's essentially asking an umpire to watch a game with one eye closed," said Rep. Jim Himes (D-Conn.). "The fact is there are covert activities that pose very deep and concerning civil liberties issues." A case in point is the killing of the American-born imam and al-Qaeda operative Anwar al-Awlaki in a drone strike in 2011, Himes said. "There is no more profound civil liberties issue that is less subject to cure or remedy than killing someone. So it does not seem to be smart to ask the PCLOB to refrain from reviewing programs that may pose the most profound civil liberties challenges." Democratic committee members said they will try to remove the provision, if not before a floor vote on the bill as early as Friday, then when the bill is reconciled with the Senate version. The oversight board was set up at the recommendation of the 9/11 Commission in 2007 but did not begin work until 2013. According to the law that authorizes it, the board may have access to all relevant reports and material from any executive branch agency. It may also interview government personnel and ask the attorney general to subpoena the production of any relevant information from the private sector. "The way we see it is they don't have the authority to access covert action now — there's nothing that grants them the authority," the second aide said. "But at the same time, there's nothing that specifically prohibits it. It's possible that someone there could take a broad view of their mandate and access that information. If so, that's a problem." In its two years of operation, the board has produced two reports, neither of which has touched on covert programs. And individuals familiar with board matters say the board has not sought access to such materials. At the same time, Himes noted, the board has never mishandled classified information. Covert action refers to secret activities undertaken to influence political events. They are designed to hide the identity of the government and can be denied by that government. The CIA's drone program in Pakistan, for instance, which has never been officially acknowledged, is covert, as was the operation to kill Osama bin Laden. The issues discussed in Medine's article — the targeted killing of U.S. citizens who are al-Qaeda members overseas — could fall under the board's statutory authority to review. And that, the second aide said, was worrisome to the Republicans. It was not just the Medine article that troubled the GOP. **The committee majority also had concerns that the board's review of Executive Order**

12333, which outlines the roles and responsibilities for U.S. intelligence agencies, would exceed the board's charge to look at counterterrorism programs. "Those two things in combination made the Republicans fear mission creep," the first aide said. To assuage the GOP's concerns, Himes offered an amendment to clarify that the bar on the PCLOB receiving information related to covert action should apply only to programs "unrelated to protecting the United States from terrorism." His amendment failed. If the GOP provision becomes law, Himes asserted, "it will hobble the PCLOB." Rep. Adam B. Schiff of California, the committee's ranking Democrat, said he hoped the GOP provision could be blocked. "If [the Republicans] are concerned that the PCLOB is going beyond their mandate, that's one thing," he said. "But if the desire is actually to curtail a mandate that the board has, that's another. I think they wanted to affirmatively narrow the PCLOB's oversight responsibilities, which we oppose."

A2: Civic Engagement NB (For Policy Affs)

Transparency is the wrong focal point for change – we should instead focus on institutionalizing accountability measures

Vladek & Wright, 2014

(Steve – prof of law @ American U and Andy – prof at Savannah Law School & former counsel to the president, "Why (Some) Secrecy is Good for Civil Liberties," *JustSecurity*, July 24, Online: http://justsecurity.org/13189/secrecy-civil-liberties/)

Indeed, whatever the merits of that specific episode, it illuminates a larger problem that both of us have observed not just in the ever-ongoing dialogue over surveillance reforms after and in light of the Snowden disclosures, but in public discourse over national security law, more generally: That, far too often, proposals to reform government counterterrorism and national security programs are demanding transparency in lieu of accountability—and missing the critical point that the former is just one (of several) means for achieving the (more important) latter. Part of this conflation may come from the different interests of the critics—some of which (e.g., civil liberties groups) may be anti-secrecy and pro-privacy; and some of which (e.g., the media) may be anti-secrecy and anti-privacy. Regardless of the cause of this trend, by insisting upon greater transparency as a goal unto itself, critics have missed (or wrongly rejected) two separate, but closely related points. First, recent revelations to the contrary notwithstanding, meaningful accountability of secret government programs is possible even without wide-scale transparency. Second, there is an array of circumstances in which properly accountable government secrecy is not anathema to civil liberties—and where transparency, as such, might actually compromise individual rights. This is especially true where the government is protecting the confidentiality interests of third parties (e.g., under the Privacy Act), but it may also be true in at least some cases in which the government is protecting its own secrets. Simply put, comprehensive transparency is neither normatively desirable nor practically achievable in the national security and counterterrorism spheres. Instead, as we aim to show in this post, true progressive reform in the national security space should be focused first and foremost on measures that will increase accountability, a goal to which increased transparency is only one of a number of potential routes—and, indeed, one with which such transparency is sometimes at odds. To unpack this argument, we focus on the two most significant external mechanisms for ensuring accountability of government national security programs: judicial review (Part I) and congressional oversight (Part II). After summarizing the critiques of the status quo, we explain why increased transparency—even if a necessary means of improving accountability—won't be sufficient, before highlighting what we view as the better way forward.

A2: Civic Engagement NB (For K Affs)

The issue isn't government transparency, it's the securitized public sphere – all information is rendered into soundbytes by the media – the only way to solve civic engagement is to focus on how these discursive processes structure our experience of governance and media.

Elmer and Opel, 2006

(Bell, Globemedia Research Chair in the School of Radio TV Arts at Ryerson University, and Andy Opel, assistant professor in the Department of Communication at Florida State University, "Surviving the Inevitable Future," July-September, *Cultural Studies,* 20:4-5)

Throughout the media discourse over the virtues or moral failings of the policy analysis markets, broader questions about the possibility of individuals 'knowing' anything new was never addressed. The problem of citizens producing 'accurate' information under the social conditions of consolidated media implicated with defense contractors is clearly problematic. With the dominant US news media issuing a series of mea culpa explanations for their failure to investigate governmental claims about WMD and Iraq Al Qaeda connections leading up the start of the Iraq war, coupled with scandals about forged documents, non-investigative journalism and a US, presidential election campaign dominated by discussion of television ads over social issues, the possibility of a well informed electorate making accurate forecasts of terrorist activity was unlikely and rather circular people betting on possible events based on information disseminated from the government seeking insights from the general public. Nevertheless, proponents of PAM assailed the critics for injecting morality into an amoral (sic) process. What we are left with is a call to embrace a market system that is driven, not by rational judgment and intelligence, but rather fueled by the emotion of fear. Morality, dissent, criticism and analytical thought must be evacuated for the market to perform smoothly. Citizens turned gamblers take part in homeland (in)security by wagering money on potential terror outcomes, based on information provided by a media that reproduces government allegation as fact. As we saw in the height of the Wall Street Technology insider driven bubble of the late 1990s, there was no need for analysis of a businesses balance sheet, it could be assumed that a 'new economy' had emerged. Decisions were made based on an inevitable future where evidence and balance sheets were replaced by optimism. Conversely, with PAM the market is driven by pessimism, the fear of what will happen. Conclusion In the lead up to the presidential election of 2004, the Bush Administration repeatedly defended the strategy of preemption and the actions taken against Iraq with statements that 'the world is safer'. This rhetorical turn exemplifies the language of the survival society, where statements about national security require little to no proof or evidence. Most Americans have no way to either refute or to affirm the central question raised: are we safer? Indeed in the face of so many troubling questions and such fearful uncertainties, facts fall by the wayside. Thus, in many respects the survivor society is sustained by a suspension of disbelief. Morality, critical thinking and dissent actively inhibit the smooth functioning of society. As inevitability becomes the dominant trope, individual agency is redirected toward survival, a hyper individualism that evacuates the possibility of critical exchange in the public sphere. Critical exchanges, dissent, hindsight and re-evaluation are said to support the enemy and undermine the preemptive efforts. Citizens are called upon to continue shopping and maintain 'normal' behavior because to do anything less would disrupt the flow of consumer goods and services and weaken a fragile economy. Theoretically we need to continue to question how surveillance functions in an environment where evidence is not needed to justify state violence, arrests, incarceration, etc. (America's pre-emptive policy at home and abroad). We've characterized this as shift in reasoning, from 'what-if' simulation models where surveillance

intelligence fuels forecasting models, to 'when, then' thinking where the future is deemed inevitable (i.e. 'not if but when terrorists will attack'). The RAND and DARPA terrorist preparation programs and terrorist futures market examples demonstrate that'when, then' reasoning is not as much about tracking and monitoring behaviour as it is evacuating the possibility of social critique and political debate. According to DARPA and other 'betting' proponents, rational thought and ethical questions about the market disable their predictive powers. Thus, in the survivor society social control is achieved through distancing the need for evidence and installing forecasting technologies that by their very nature must function critique-free. The discursive contours of the survivor society offer stark contrasts to those of the Cold War era and the emerging surveillance society. During World War II, the US government implored citizens to sacrifice for the collective good, initiating everything from recycling programs to gardening as a way to conserve resources and boost food production. Victory gardens became a symbol of civic participation, where individual actions were directed toward a collective good. These programs were materially based and discursively centered around active participation in the war effort. Alternatively, the war on terror has elicited calls for a hyper-individualism that focuses on the immaterial faith, wagering and the primacy of individual survival. Civic participation is equated with maintaining (or increasing) consumer debt, participating in the privatized 'marketplace of ideas' futures markets and avoiding any temptation to inject morality, dissent, criticism or analytical thought lest they aid and abet the enemy and interfere with the smooth functioning of predictive markets. This new rhetoric of the survivor society is amplified through an increasingly monolithic commercial televisual media system. Although policy documents offer more nuanced predictions about the war on terror, public statements by a host of government officials, broadcast repeatedly as sound bites, describe a stark, inevitable future of unending terror threats. The contradictions between the written documents and the public statements suggest a willful attempt to harness the immediacy (and uniformity) of network and cable news outlets to distribute and maintain an atmosphere of fear and emotion that encourages participation in the new regimes of hyper individualism. For those who resist these new regimes, choosing to dissent, ask for evidence, or request pubic documents, their actions are met with increased hostility and accusations of irrationality.

AT: Congress CP

2AC—Congress Doesn't Solve

Congress can't solve—they don't care and won't act uniformly on surveillance policy

Bendix and Quirk 15 (William – Assistant Professor of Political Science at Keene State College, and Paul J. – Phil Lind Chair in U.S. Politics and Representation at the University of British Columbia and a former research associate at the Brookings Institution, "Secrecy and negligence: How Congress lost control of domestic surveillance," in *Issues in Governance Studies*, Number 68, March 2015, pub. by the Brookings Institution, http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf)

After the relatively balanced and cautious provisions of the 2001 PATRIOT Act, Congress virtually absented itself from substantive decision making on surveillance. It **failed to conduct serious oversight** of intelligence agencies, **ignored government violations of law**, and worked harder to preserve the secrecy of surveillance practices than to control them. Even after the Obama administration made the essential facts about phone and email surveillance available in classified briefings to all members, Congress mostly ignored the information and debated the reauthorizations on the basis of demonstrably false factual premises. Until the Snowden revelations, only a handful of well-briefed and conscientious legislators—too few to be effective in the legislative process—understood the full extent of domestic intelligence gathering.

We describe and explain Congress's deliberative failure on phone and Internet surveillance policy. We show that along with a lack of consistent public concern for privacy, and the increasing tendency toward partisan gridlock, Congress's **institutional methods** for dealing with secret surveillance programs have **undermined its capacity to deliberate and act effectively** with respect to those programs. Although the current political environment is hardly conducive to addressing such problems, we discuss long-term goals for institutional reform to enhance this capacity. We see no easy or decisive institutional fix. But without some structural change, the prospects look dim for maintaining significant limitations on investigatory intrusion in an era of overwhelming concern for security.

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INTRODUCTION

In drafting the original PATRIOT Act mere weeks after the traumatic security failure of the September 11 attacks, Congress sought to expand and improve protections against terrorism. But, contrary to much of the political lore, it also showed serious concern for privacy safeguards. The House Judiciary Committee, controlled by Republicans, pushed for only a limited expansion of investigative powers and insisted that most surveillance provisions in the PATRIOT Act expire after four years unless reauthorized. The sunset provisions were intended to ensure a serious review of the new surveillance practices to determine whether sufficient privacy protections were in place. Yet, 12 years later, as documents made public by Edward Snowden revealed, the NSA was sweeping up and analyzing vast amounts of U.S. communication records, or "metadata," without observing significant constraints. The Snowden documents also showed that the Foreign Intelligence Surveillance Court (FISA) had radically reinterpreted the PATRIOT Act, in secret, to permit bulk collection of phone records. Paradoxically, while the incidence of terrorism has been much lower in the years after 9/11 than anyone expected, government surveillance has been much more intrusive than legislators authorized. What happened? Why did Congress so thoroughly fail to exercise control and ensure effective protection of privacy? What are the lessons for future policymaking?

During the last five years of legislative debates over the PATRIOT Act, Congress has **failed to define or control surveillance policy**. Prior to the Snowden leaks, most members had little awareness of NSA activities and Congress had little capacity to impose constraints. Now, more than 18 months after Snowden exposed the mass seizure of phone records, not much has changed. To a great extent, the source of difficulty has been the inadequacy of the institutional arrangements for legislative deliberation on secret programs. Some members have declined opportunity to learn about domestic-spying practices, while others have opposed placing restrictions on the NSA for fear of giving terrorists any tactical advantage.

If Congress had conducted thorough, informed deliberations at all stages, we suspect it would have endorsed extensive collection of communication records, but it would have also imposed limitations and constraints to minimize the harm to privacy interests. Instead, it gave the executive branch **essentially unfettered authority** to operate a massively intrusive program.

CONGRESS AND SURVEILLANCE POLICY: GENERAL CONSIDERATIONS

Our account of the development of the metadata surveillance programs centers on Congress and its interactions with several institutions—the president, the FISA Court, and the Justice Department, among others—and proceeds through several phases. We begin with brief theoretical remarks on the central institutional properties that drive the account.

We argue that Congress as an institution has **great difficulty acting in any consistent**, **balanced way to protect privacy interests** on surveillance issues. On one hand, when setting broad priorities in general terms, it attaches considerable weight to privacy interests. On the other hand, when faced with specific issues of investigatory authority, it readily makes sweeping, indiscriminate sacrifices of those same interests—even without distinct evidence of serious threat.

2AC—Congress Can't Oversee

The executive branch's insistence Congress can't consult its staffers makes their oversight ineffective

Clark 11 (Kathleen – Professor of Law and Israel Treiman Faculty Fellow at Washington University in St. Louis, "Congress's Right to Counsel in Intelligence Oversight," *University of Illinois Law Review*, Vol. 2011, p. 915, 2011, http://illinoislawreview.org/wp-content/ilr-content/articles/2011/3/Clark.pdf)

This Article examines Congress's ability to consult its lawyers and other expert staff in conducting oversight. For decades, congressional leaders have acquiesced in the executive branch's insistence that certain intelligence information not be shared with congressional staffers, even those staffers who have high-level security clearances. As a result, Congress has been **hobbled in its ability to understand and analyze key executive branch programs**. This policy became particularly controversial in connection with the Bush administration's warrantless surveillance program. Senate Intelligence Committee Vice Chair Jay Rockefeller noted the "**profound oversight issues**" implicated by the surveillance program and lamented the fact that he felt constrained not to consult the committee's staff, including its counsel. This Article puts this issue into the larger context of Congress's right to access national security-related information and discusses congressional mechanisms for protecting the confidentiality of that information. The Article also provides a comprehensive history of congressional disclosures of national security-related information. History suggests that the foremost danger to confidentiality lies with disclosure to members of Congress, not to staff. The Article identifies several constitutional arguments for Congress's right to share information with its lawyers and other expert staff, and explores ways to achieve this reform.

The executive branch abuses it's privilege to circumvent Congressional oversight by withholding information

Sessa 14 (Roseanne – J.D. Candidate, 2014, Seton Hall University School of Law, ""The culture of leaks has to change"1, but at what expense to congressional oversight of the Executive Branch? An examination of Title V. of the Intelligence Authorization Act for Fiscal Year 2013," Seton Hall Journal of Sports and Entertainment Law: Vol. 24: Iss. 1, Article 9, http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1356&context=facpub)

B. Congressional Oversight of the Executive Branch

While these unauthorized disclosures have the potential to jeopardize national security, Congress also utilizes the media to exercise oversight of the Executive Branch. Among Congress's responsibilities are creating legislation, appropriating funds for Executive Branch operations, and monitoring whether the Executive Branch carries out its responsibilities effectively and in accordance with the law. This type of monitoring of the Executive Branch is also referred to as congressional oversight. The Congressional Research Service defines congressional oversight as "the review, monitoring, and supervision of the implementation of public policy - of the Executive Branch," and this duty of oversight is embodied in Congress's implied powers under the Constitution. Congress oversees the Executive Branch through a wide variety of channels, organizations, and structures. Oversight techniques range from investigation and reporting requirements to more contemporary means, such as utilizing media outlets. Thus, "members of Congress, as the elected representatives of the American people, [have] the obligation to be the eyes and ears of the citizenry by closely watching over the policies of the President and executive officials." This holds true for policies dealing with intelligence and national security where the President is the "sole organ for the Nation in foreign affairs . . . carrying with it preeminent authority in [these two policy areas]."

Because the Executive Branch is traditionally responsible for intelligence and national security, it often uses its authority to limit the distribution of such information to the other branches of government. Some information, however, must be delivered to the Legislative Branch not only to help protect national security, but also to monitor the Executive Branch as a part of the system of separation of powers. Because the Executive Branch is able to select what intelligence and national security information makes its way to the Legislative Branch, Congress often utilizes means, such as the media, to exercise its oversight function.

Congress empowers the media with information it receives to help moderate Executive Branch policies and activities that require close scrutiny. With this information, the media attempts to influence executive behavior. This relationship, however, is not one sided. The media also equips Congress with information it may need in order to perform its own job, creating a symbiotic relationship whereby Congress has a chief ally in the mass media. If the Executive Branch deprives Congress of access to this to information, the public is in turn disposed of their power under the Constitution to ensure that the Executive Branch is not abusing its powers or using those powers poorly, and the system of checks and balances is then disrupted. What has further set this balance out of kilter has been the increase in executive power and privilege since the September 11th attacks.

No solvency- Congress is overly deferential to the executive- won't enforce the mandates of the CP.

Pirozzi-Attorney-97 27 Sw. U. L. Rev. 185

ARTICLE: THE WAR POWER AND A CAREER- MINDED CONGRESS: MAKING THE CASE FOR LEGISLATIVE REFORM, CONGRESSIONAL TERM LIMITS, AND RENEWED RESPECT FOR THE INTENT OF THE FRAMERS

2. Lack of Political Determination Although Congress has the options necessary to restrain presidential initiative in the area of foreign affairs, either through joint resolution or appropriations termination, Congress has historically been unwilling to implement either of these mechanisms. Although an argument could be made that Congress is hesitant to cancel appropriated funds committed to a military exercise for fear of stranding troops, the predominant reason is political. It appears that, quite simply, Congress would rather leave the war-making decision to the President and avoid the political fallout of an unpopular war. 156 "It may be preferable to accept presidential leadership and preserve the ability to criticize decisions that turn out wrong. That can enable a person to take credit for popular decisions and to criticize, gathering helpful publicity and stature, those that go awry." 157 Interestingly, when Congress's constitutional authority is at its highest (at the initiation of military hostilities), its resolve is at the lowest. Conversely, when Congress's constitutional authority begins [*218] to decrease (at the cessation of armed hostilities), it seems to gather courage to oppose the military action - especially in circumstances where the military exercise was not particularly successful. It is in this light that one can observe the agenda of Congress. First and foremost, Congress is a political body and its members seek to reflect and maintain a positive public persona. Therefore, the political interests of Congress logically lead to deference and discretion to the President concerning highly sensitive issues such as war and peace. Most assuredly, the most paramount of these political interests is re-election. 158

Partisan incentives undermine effective oversight

Kriner-prof polis sci, BU-9 89 B.U.L. Rev. 765

SYMPOSIUM THE MOST DISPARAGED BRANCH: THE ROLE OF CONGRESS IN THE TWENTY-FIRST CENTURY: PANEL VI: TOWARD A MORE RESPONSIBLE CONGRESS?: CAN ENHANCED OVERSIGHT REPAIR "THE BROKEN BRANCH"?

An extensive literature in political science has debated whether oversight in its various forms - from active congressional hearings to more passive "fire alarm" oversight - affords the legislature with a strong check on the actions of the President and executive agencies. 69 Often, these concerns focus on

whether congressional committees possess the necessary tools and political clout required to induce executive branch compliance. 70 While important, such debates overlook the initial problem with oversight - whether those who control the gavel have the personal and institutional incentives to use it. All too often, partisan incentives to support a President of the same party trump institutional incentives to defend Congress's institutional prerogatives by vigorously overseeing the actions of the executive branch. Scholars have long noted that the Framers of the Constitution did not anticipate the emergence of political parties. 71 They explicitly rejected the idea that political parties should promote intra-institutional organization and inter-institutional coordination. 72 As a result, the checks and balances system that the Founders erected in Philadelphia was based on the assumption that political ambition and the desire to accumulate as much power as possible for themselves would lead politicians to be institutional partisans, first and foremost. The essential feature of checks and balances, James Madison wrote in The Federalist No. 51, "consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others... . Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional [*784] rights of the place." 73 By giving the President and Congress different constituencies, and creating through the apportionment of enumerated powers an "invitation to struggle" in Edward Corwin's famous phrase, the Framers sought to ensure that congressional members' first loyalty would be to their institution. 74 To further their own power prospects, they must defend and seek to bolster that of Congress vis-a-vis the executive branch. Partisan incentives undermine this Madisonian logic. Particularly in our contemporary politics of intense partisan polarization and strong shared partisan electoral fates, it is no longer the case that many legislators feel that their personal political interests and ambitions are best served by defending the prerogatives and power of their institution. Rather, the President's co-partisans stand to gain little from attacking the policies of their partisan ally in the White House and instead risk electoral losses from a tarnished party label. Thus, in periods of unified government, the majority has few incentives to push back against a co-partisan president, even when his or her actions threaten majority party members' institutional prerogatives as legislators. Only in divided government do partisan and institutional incentives cleanly align; and only then does investigative oversight become an attractive option to serve both purposes.

Congress lacks political incentive to check President-especially in military affairs

Devins-prof law William and Mary-9 45 Willamette L. Rev. 395

PRESIDENTIAL POWER IN THE 21ST CENTURY SYMPOSIUM: ARTICLE: PRESIDENTIAL UNILATERALISM AND POLITICAL POLARIZATION: WHY TODAY'S CONGRESS LACKS THE WILL AND THE WAY TO STOP PRESIDENTIAL INITIATIVES

I. The Competing Incentives of the President and Congress 6 Thanks both to the singularity of the office and the power to execute, Presidents are well positioned to advance their policy agenda and, in so doing, expand the power of the presidency. In explaining how it is that Presidents are motivated to seek power and have the tools to accomplish the task, political scientists Terry Moe and William Howell put it this way: "When presidents feel it is in their political interests, they can put whatever decisions they like to strategic use, both in gaining policy advantage and in pushing out the boundaries of their power." 7 Most significant, when Presidents act, it is up to the other branches to respond. In other words, Presidents often win by default - either because Congress chooses not to respond or because its response is ineffective. Furthermore, by end running the burdensome and often unsuccessful strategy of seeking legislative authorization, unilateral presidential action expands the institutional powers and prerogatives of the presidency. In other words, the President's personal interests and the presidency's institutional [*400] interests are often one and the same. For this very reason, Presidents have expanded the reach of presidential power by advancing favored policies through executive orders, Office of Management and Budget review of proposed agency regulations, pre-enforcement directives (especially signing statements), and broad claims of inherent presidential power (especially the power to launch military strikes and the power to withhold information from Congress). Unlike the presidency,

the individual and institutional interests of members of Congress are often in conflict with one another. While each of Congress's 535 members has some stake in Congress as an institution, parochial interests will overwhelm this collective good. In particular, members of Congress regularly tradeoff their interest in Congress as an institution for their personal interests - most notably, reelection and advancing their (and their constituents') policy agenda. In describing this collective action problem, Moe and Howell note that lawmakers are "trapped in a prisoner's dilemma: all might benefit if they could cooperate in defending or advancing Congress's power, but each has a strong incentive to free ride in favor of the local constituency." 8 For this reason, **lawmakers have no incentive to stop presidential unilateralism** simply because the President is expanding his powers vis-a-vis Congress. Consider, for example, the President's use of executive orders to advance favored policies and presidential initiatives to launch military initiatives. Between 1973 and 1998, Presidents issued about 1,000 executive orders. Only 37 of these orders were challenged in Congress and only 3 of these challenges resulted in legislation. 9 Presidential unilateralism in launching military operations is even more striking - because it involves the President's willingness to commit the nation's blood without congressional authorization. Notwithstanding the clear constitutional mandate that Congress play a significant role in triggering military operations, Congress has very little incentive in playing a leadership role. Rather than oppose the President on a potential military action, most members of Congress find it more convenient to acquiesce and avoid criticism that they obstructed a necessary military operation.

2AC—Executive Circumvention

Congress doesn't have the necessary tools to prevent executive circumvention

Auerswald and Campbell 12 (David P. – Professor of Security Studies at the National War College, and Colton C. – Professor of National Security Strategy at the National War College, "Congress and National Security," in *Congress and the Politics of National Security*, p. 3-5 [modified for gendered language])

Having the constitutional authority is a necessary, but not sufficient, condition for congressional influence in national security policy. Congressional influence **depends on Congress having the ability and the will to become involved** in national security debates. The jury is **still out on both fronts**. Is the "first branch" of government adequately organized to deal with national security issues in an integrated and coordinated manner? And how have developments in Congress over the past few decades, such as heightened partisanship, message politics, party-committee relationships, and bicameral relations, affected topical security issues? These are important questions, as the United States cannot form alliances, agree to strategic arms control accords, procure weapons systems, or create new programs vital to national security matters without the explicit approval of Congress.

What explains the ebb and flow of congressional involvement? Theories of presidential-congressional interaction during military conflicts offer some clues. Scholars usually invoke at least one of three related arguments: that Congress lacks the means of restraining the president, that Congress lacks the will to do so, or some combination of the two. The first school of thought argues that for structural reasons Congress is usually ineffective at challenging the president once the president begins using force abroad. That is, Congress **lacks the means to constrain presidents**. The president is able to act in foreign conflicts due to his constitutional powers and the accrued prerogatives of his office while **Congress must often pass veto-proof legislation to constrain ~~him~~ [him or her]**. The executive branch, speaking with one voice, can articulate unified positions while Congress speaks with a multitude of voices, making agreement on executive constraints unlikely. The executive can respond to international conflicts in a timely manner, but Congress often takes **months or longer** to respond to a president's initiatives (Lindsay 1994, Milsman 1987, Krasner 1978, Dahl 1950). Congress is better suited to indirectly affect presidential behavior by manipulating public opinion, but even that gives Congress relatively little influence during military conflicts due to the rallv-around-the-flag phenomenon or the president's ability to take his case to the people directly (Levy 1989, Kernell 1986).

These executive powers, combined with past failures of congressional policy making and a more complex international world, led Congress to **abdicate conflict policy-making authority to the president** (Kellerman and Barilleaux 1991). Attempts at congressional resurgence, begun between the mid-1960s and 1970s, have continually failed to redress the balance between Congress and the president (Blechman 1992, Destler 1985, Sundquist 1981). From a structural perspective then, U.S. presidents retain substantial autonomy from legislative control in the realm of conflict decision making.

A second argument is that Congress lacks the will to act during military conflicts (Hinckley 1994, K0I1 1990a). Presidents have powerful incentives to take charge during military conflicts, incentives that Congress does not share. The president represents a national constituency, giving him an electoral motivation to confront international threats to the nation. Congressional districts have parochial interests that provide disincentives for congressional criticism. Members instead focus their energies 011 policies that more directly affect their districts (Mayhew 1974). At best, Congress engages in symbolic criticism of the president's performance in military conflicts without making a concerted effort to change national security policy.

A third and related school combines the first two arguments. Congress and the president compete for control over national security policy, but who wins control depends 011 the characteristics of the issue area under dispute (Rosner 1995). Borrowing from structural arguments, this school claims that Congress has greater direct influence over U.S. foreign policy when it has time to react to international events. Presidents thus have the most control over foreign policy during military crises and other time-sensitive negotiations. Borrowing from the motivations argument, this school of thought also argues that Congress will never realize its potential to act during military conflicts because action forces it either to support the troops in the field or to appear unpatriotic. The crux of this school of thought, as well as the other two arguments it is based on, is thus that Congress "cannot compel [the president] to follow any of the advice that members might care to offer" (Lindsay 1994,151). Analysts of U.S. foreign policy conclude that the presidents foreign policy tools and motivations simply **overwhelm the efforts of Congress to control security policy** (Schlesingcr 1973, Kellcrman and Barilleaux 1991).

AT: Constitutional Amendment CP

2AC—Solvency

Constitutional conventions are utterly irrelevant in changing law.

Strauss 1 (David A. – Harry N. Wyatt Professor of Law at the University of Chicago, "The Irrelevance of Constitutional Amendments," 114 Harv. L. Rev. 1457, http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2986&context=journal_articles)

One final implication is the most practical of all. If amendments are in fact a sidelight, then it will usually be a mistake for people concerned about an issue to try to address it by amending the Constitution. Their resources are generally better spent on legislation, litigation, or private-sector activities. It is true that the effort to obtain a constitutional amendment may serve very effectively as a rallying point for political activity. A constitutional amendment may be an especially powerful symbol, and it may be worthwhile for a group to seek an amendment for just that reason. But in this respect constitutional amendments are comparable to **congressional resolutions**, **presidential proclamations**, **or declarations of national holidays**. If they bring about change, they do so because of their symbolic value, **not because of their operative legal effect**. The claim that constitutional amendments under Article V are not a principal means of constitutional change is a claim about the relationship between supermajoritarian amendments and fundamental, constitutional change. It should not be confused with the very different claim that judicial decisions cannot make significant changes without help from Congress or the President; n25 and it certainly should not be confused with a global skepticism about the efficacy of political activity generally. The point is that changes of constitutional magnitude - changes in the small-"c" constitution - are not brought about by discrete, supermajoritarian political acts like Article V amendments. It may also be true that such fundamental change is always the product of an evolutionary process and cannot be brought about by any discrete political act - by a single statute, judicial decision, or executive action, or (at the state level) by a constitutional amendment, whether adopted by majoritarian referendum or by some other means. What is true of Article V amendments may be equally true of these other acts: either they will ratify (while possibly contributing to) changes that have already taken place, **or they will be ineffective until society catches up with the aspirations of the statute or decision**. Alternatively, it may be that majoritarian acts (or judicial decisions), precisely because they do not require that the ground be prepared so thoroughly, **can force the pace of change** in a way that supermajoritarian acts cannot. A coalition sufficient to enact legislation might be assembled - or a judicial decision rendered - at a point when a society for the most part has not changed, but the legislation, once enacted (or the decision, once made), might be an important factor in bringing about more comprehensive change. The difference between majoritarian legislation and a supermajoritarian constitutional amendment is that the latter is far more likely to occur only after the change has, for all practical purposes, already taken place. Whatever one thinks of these broader speculations, however, they certainly do not entail a general skepticism about whether political activity matters at all. On the contrary, legislation and judicial decisions - as well as activity in the private realm that may not even be explicitly political - can accumulate to bring about fundamental and lasting changes that are then, sometimes, ratified in a textual amendment. Sustained political and nonpolitical activity of that kind is precisely what does bring about changes of constitutional magnitude. **My claim is that such changes seldom come about, in a mature democracy, as the result of a formal amendment adopted by a supermajority**.

The bureaucracy that actually enforces the Constitution must change first, not the other way around

Strauss 1 (David A. – Harry N. Wyatt Professor of Law at the University of Chicago, "The Irrelevance of Constitutional Amendments," 114 Harv. L. Rev. 1457, http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2986&context=journal_articles)

This argument presupposes that there is a difference between what might be called the small-"c" constitution – the fundamental political institutions of a society, or the constitution in practice – and the document itself. This distinction (about which I say more below) is imprecise, but it is both coherent and useful. When people try to amend the Constitution –

that is, the document — they are not ultimately concerned about the document; they are concerned about the institutional arrangements that the document is supposed to control. If those institutions do not change, then the constitution in practice — the small-"c" constitution, which I also call the constitutional order or the constitutional regime — has not changed, even if the text of the Constitution has changed. Similarly, as I discuss below, it is coherent to say (as people often do) that certain changes are of a kind and magnitude that amount to changes in the constitutional order even though the text remains the same. The proposition I am considering is that amendments to the text of the Constitution have been, at most, peripheral to the process of change in the constitutional regime — to the point that the small-"c" constitution would look the same even if there were no provision for formal amendment of the text.

Society will evade a Constitutional amendment if they don't agree with it

Strauss 1 (David A. – Harry N. Wyatt Professor of Law at the University of Chicago, "The Irrelevance of Constitutional Amendments," 114 Harv. L. Rev. 1457, http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2986&context=journal_articles)

On these occasions the formal amendment will be relatively insignificant for a different reason. When there is no lasting social consensus behind a textual amendment, the change in the text of the Constitution is unlikely to make a lasting difference — at least if it seeks to affect society in an important way — unless society changes in the way that the amendment envisions. Until that happens, the amendment is likely to be evaded, or interpreted in a way that blunts its effectiveness. This is, in a sense, the other side of the fact that a mature society has a variety of institutions, in addition to the text of the Constitution, that can affect how the society operates. Those institutions can change society without changing the Constitution; but they can also keep society basically the same — perhaps with some struggle, but still basically the same — even if the text of the Constitution changes. This was, most notoriously, the story of the Fourteenth and, especially, the Fifteenth Amendment. The Fifteenth Amendment was somewhat effective in the short run, but within a generation it had been reduced to a nullity in the South. It does not follow that, owing to some kind of historical necessity, formal amendments cannot ever cause important changes. Rather the point is that the formal amendment process will be the means of significant change only in **certain limited circumstances** that **hardly ever occur** in a mature society. In particular, three conditions must be present for the amendment process to make a difference. First, a formal supermajoritarian amendment process is unlikely to be an important means of change unless the other usual means of change, such as legislation and judicial interpretation, are unavailable for some reason. If other means of change are available, they will probably have effected the change to a significant degree before a supermajority can be assembled to amend the Constitution. Second, a formal amendment process is likely to make a difference only when the supermajority that adopts the amendment is a temporary one that was assembled even though society had not fundamentally changed. Deep, enduring changes in society will find some way to establish themselves with or without a formal amendment — if not through legislation or changes in the composition of the courts, then through changes in private behavior. The formal amendment process will have its most significant effect when the supermajority sentiment does not persist. Finally, for an amendment to matter, it must be unusually difficult to evade. An amendment that specifies a precise rule, for example, is more likely to have an effect than one that establishes only a relatively vague norm. If its text is at all imprecise, an amendment that is adopted at the high-water mark of public sentiment will be prone to narrow construction or outright evasion once public sentiment recedes, as the Fourteenth and Fifteenth Amendments were. If all these circumstances occur together, a temporary supermajority's ability to adopt a formal amendment might bring about a permanent change that would not have occurred without the formal amendment. But this confluence of conditions is unlikely to happen very often. I suggest below one instance in which it might have happened — the Twenty-second Amendment, which limits presidents to two terms. Even that example is not entirely clear. But that may be the only occasion since the early days of the Republic when the formal amendment process seems to have made a substantial difference.

Federal bureaucrats actually control the direction of textual amendments

Strauss 1 (David A. – Harry N. Wyatt Professor of Law at the University of Chicago, "The Irrelevance of Constitutional Amendments," 114 Harv. L. Rev. 1457, http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2986&context=journal_articles)

Similarly, the text of the Constitution does not anticipate the growth of an enormous federal bureaucracy with the power to make rules and adjudicate cases. The Constitution does refer to "executive Departments," but the great expansion of the federal bureaucracy, particularly in the twentieth century, has to be considered a change of constitutional magnitude. In addition, the regulatory agency, a central feature of the modern federal government, came into being at the federal level about a hundred years ago: beginning in 1887 with the Interstate Commerce Commission, Congress established a number of agencies that combined, in some form, executive, legislative, and judicial functions. The New Deal is famous for having greatly increased the number of these agencies, but the administrative state was already well established by 1933: the Federal Trade Commission, the Federal Power Commission, the Federal Radio Commission, the Commodities Exchange Authority, and other agencies already existed. These agencies raised serious constitutional issues. They combined the functions of the different branches, in apparent contravention of the separation of powers; they engaged in adjudication, although their members were not judges appointed pursuant to Article III; and they assessed forms of civil liability without providing for a jury trial, ar-guably in violation of the Seventh Amendment. No constitutional amendment authorized either the expansion of the federal bureaucracy or the creation of the administrative state. But the expanded federal government is now a permanent part of our system, beyond any serious constitutional challenge. The constitutionality of administrative agencies has been settled at least since the Supreme Court's 1932 decision in Crowell v. Benson. In fact, because so many agencies were already well established by then, it seems fair to say that Crowell essentially ratified a fait accompli. This was a change of constitutional magnitude — one that is hard to reconcile with several provisions of the text — that took place without any formal amendment.

ConCon will simply devolve into bickering and get out of hand

Moulton 15 (Russ – leads the Conservative Fellowship in the Virginia Republican Party, "Why the Con-Con is a Bad Idea," in the Bull Elephant, 2-3-15, http://thebullelephant.com/why-the-con-con-is-a-bad-idea/)

Tomorrow the General Assembly votes on legislation for Virginia to call for an Article V Constitutional Convention. They should vote NO. Many of our long-time conservative leaders and rank-and-file activists across Virginia strongly oppose this — Senator Dick Black, Delegate Bob Marshall, Pat McSweeney, Campaign for Liberty, National Association of Gun Rights (NAGR), Phylis Schafly – just to name a few. But clearly there are some key conservatives supporting the ConCon. Although I have no doubt those promoting this idea have the best of intentions, I urge you to contact your Delegate and State Senator to encourage them to vote NO. I am convinced this isn't just a bad idea – it's a **very bad idea**. Here's why. Our Problem is political, not legal or constitutional. All conservatives agree our Republic is in serious trouble, and headed in a very bad direction. We must save it. The question is how. Let me be clear: our problem is a political one, and the ONLY way we will fix it is winning politically. That means making the Republican Party a true reform party. That means winning Party posts, and nominations and elections with reform candidates committed to bold action to save the Republic. There is no substitute. There is no silver bullet. It will take time and a lot of effort. There is no easy, elegant solution that allows us to sit on the sidelines or in ivory towers. (including putting our hopes in a risky ConCon). Some ConCon advocates argue that the fix for our Republic is revising the language of the Constitution, to stop liberal Federal and Supreme Court rulings, and to roll-back unconstitutional Federal legislation. In their arguments, the Courts and legislators are apparently "confused" by the wording of the Constitution. In ConCon thinking, if we only make the Constitution clearer, Federal judges would be forced to start interpreting the Constitution as the Founders intended, and the President and liberal members of Congress would find their legislation overturned by new judicial fiat (the other way). It can sound tempting, but … News Flash: There is nothing wrong with our Constitution. In fact, the left has been seeking to re-write it for the better part of century. They would LOVE the opportunity of a Constitutional Convention to get that chance. The left sees an Article V Convention as the means to roll back gun rights, and to limit political speech. The left opposes the Founders' real intent. They've gotten around that pesky Constitution by winning elections – with both Democrats and sadly some weak Republicans – who, over time, have stacked the courts with leftists that routinely distort or outright ignore the strict words of our sacred document. That won't change by tightening the wording of the Constitution – because they are ignoring those words now anyway. The only way we are going to turn this around is replacing Federal legislators, the President and ultimately the judges with strict constitutionalists. And you can't do that by changing the Constitution. Dangers of a Con-Con: GOP-control of State Legislatures Doesn't Equate to a Con-Con of Federalists. I've heard the election math on this. It goes, "so a majority of the state legislatures are Republican. These Republican legislatures would select the

delegates to the ConCon and vote to ratify anything that came out of it. No worries, it takes only 13 states to block anything bad." Let's be honest. Even though we are conservative Republicans, and support the Republican Party as the best vehicle to save the Republic, can we really count on these current bodies to send solid Founder-types to a ConCon? If our Republican legislatures are all so "limited-Government", why did so many of those GOP-controlled states accept Federal ObamaCare Medicaid dollars, contributing to a massive Federal debt ? And why did our GOP-controlled Virginia General Assembly just pass the biggest tax hike in the Commonwealth's history in 2013, expanding our state Government ? Many of these Republicans unfortunately LIKE big government and the spending that goes with it. There is no guarantee they will send true conservatives as delegates to a Con-Con. For example, who would Virginia send as it's ConCon Delegate? House Speaker Bill Howell or Senate Majority Leader Tommy Norment (each of whom was elected by majorities of Republicans in their respective caucuses)? And would these ConCon Delegates and GOP legislators be beyond the influence of a massive George Soros $1B advertising campaign to exert influence on them and their constituents, to get what the left wanted in this or a future ConCon? In the interest of "fairness," I can easily see current Congressional Republican leadership capitulating and allowing the ConCon to consider other things. I hear the pro-ConCon arguments that a Convention Call by Congress to a ConCon could be crafted so that only a specific amendment we conservatives want could be considered. Are we 100% sure about this? I am no lawyer or Constitutional scholar, but I read in Article V language like, "Congress … shall call a convention for proposing amendments which … shall be valid for all intents and purposes." This **sounds pretty broad to me**, and I'd think any liberal judge would jump to interpret it that way. Can we really ensure we don't see from the ConCon floor a proposal to add the words, "except in the case of reasonable state regulation," after "shall not be infringed" in Amendment 2 of the Constitution? Political Momentum on our side and Danger of Distraction I hear frequently from some ConCon advocates this basic argument: "We've lost. We've tried to win politically. It hasn't worked. This is the only way we have left." That defeatist approach dooms us to perennial minority status. First, it's not true. We haven't really organized the way we are capable of, the way the left has. And there are more conservatives than liberals in this country. Second, this defeatist thinking is unfortunately infectious. It will discourage conservative activists from PRECISELY the political engagement and organizing we CAN and MUST to do to win, at precisely the time we are starting to win politically as we head into 2016. Can you imagine what we could accomplish with a President Paul or President Cruz, and a wave of new change-agents in the House and Senate in 2016 ? This is what it will take to roll-back 8 years of Obama. I realize many of us are discouraged. But the political winds are now on our side if we we work to raise our sails. And our side is learning to organize more effectively than ever. Last year, Virginia's 7th Congressional District was a cauldron of revolutionary political change with national implications. First, GOP House Majority Leader Eric Cantor's District Chairman, Linwood Cobb, was upset by little-known Tea Party activist Fred Gruber at the May 10th Convention in a shocking upset. And just 30 days later, building on that momentum, Tea Party favorite Dave Brat toppled Cantor himself in the primary in an even more shocking upset. I know a little about this, having recruited Gruber, and run his all-volunteer grassroots campaign. I enjoyed putting together a team of grassroots leaders and activists and helping Brat's historic campaign. We united and mobilized our entire conservative base – traditional social and fiscal conservative Republicans, new Tea Party-inspired activists, and the liberty movement. I've seen the brush-fire this kind of united grass-roots engagement can bring, and the turnabout that is possible. Dave Brat is now one of our key rising leaders in the fight to restore our Republic. Yes, we need lots more Dave Brats and efforts like this. But this is the way we will save our Republic: conservatives organizing precinct-by-precinct, and seat-by-seat for state and local offices, the House of Representatives, U.S. Senate seats, and the Presidency. Ultimately, control of the Senate and White House for a prolonged period means establishing a constitutionalist Federal Judiciary. 2016 is our year to do it. Perhaps the biggest concern with a Con-Con is the division and distraction within our Conservative movement at this critical time when political momentum is on our side. We struggle frequently to get our conservative activists smartly focused on the big-impact things, like organizing to win nominations and elections. Some are easily distracted by policy debates and things that have no practical impact on winning. I see the potential for conservative activists unwittingly being sucked into this ConCon if it passes, losing a Soros-funded nationwide PR battle, while the left's activists stay focused organizing locally and winning elections. And just look at the heated debate and division within our conservative ranks in Virginia right now. The rhetoric has reached fever pitch, with some ConCon advocates calling opponents "liars" and threatening primary challenges. Not good. If I've learned anything over the years organizing our conservative ranks: if we are deeply split, it's probably a bad idea. It's counter-productive, and the establishment class and left lick their chops. I hope you'll join me in calling your Delegate and State Senator to demand they vote NO on this bad idea, however well intentioned.

2AC—Delay

Amendments take years to be implemented

Joyce 98 (Philip G. – Associate Professor of Public Administration School of Business and Public Management at The George Washington University, "The Rescissions Process After the Line Item Veto: Tools for Controlling Spending," Hearings of the Subcommittee on Legislative and Budget Process, http://archives.democrats.rules.house.gov/archives/rules_joyc07.htm)

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

The process takes forever

Duggin 5 (Sarah – Professor of Law at the Catholic University of America, and Mary Collins – Law Clerk, "Natural Born in the U.S.A.: The Striking Unfairness and Dangerous Ambiguity of the Constitution' s Presidential Qualifications Clause and Why We Need to Fix It," 85 B.U. L. REV. 53, 2005, http://scholarship.law.edu/cgi/viewcontent.cgi?article=1129&context=scholar)

The process of amending the Constitution is often a **lengthy** one – **the Twenty-seventh** Amendment **was adopted more than two hundred years after it was first proposed**. 513 **Recent Congresses have generally provided self-executing, seven-year sunset provisions in** the resolutions **proposing constitutional amendments**, 514 **but even an amendment on the fast track is likely to take several years to become part of the Constitution**. Preparations for Presidential elections begin long before the actual events, and the threat of a national crisis is all too immediate. Congress should take interim measures to decrease the impact of the uncertainty created by the natural born citizenship proviso over the eligibility of Congressional leaders and cabinet members to assume the office of Acting President.

2AC—Legitimacy

Constitutional conventions and their resulting partisan bickering weaken American legitimacy.

Schiafly 99 (Phyllis – American conservative activist, author, and speaker and founder of the Eagle Forum, "Is a Con Con Hidden in Term Limits?," in the The Schiafly Report, Vol. 29 No. 10, May 1999, http://www.eagleforum.org/psr/1996/may96/psrmay96.html)

Most of us have watched a Republican National Convention or a Democratic National Convention on television. We've seen the bedlam of people milling up and down the aisles. We've watched how the emotions of the crowd can be stirred, and we've felt the tension when thousands of people make group decisions in a huge auditorium. Now imagine holding the Republican and Democratic National Conventions together -- at the same time and in the same hall. Imagine the confrontations of partisan politicians and pressure groups, the clash of liberals and conservatives, and the tirades of the activists -- all demanding that their view of constitutional issues prevail. Imagine the gridlock as the Jesse Helms caucus tries to work out constitutional change with the Jesse Jackson caucus! No wonder Rush Limbaugh said that a Con Con would be the worst thing that could happen to America and that it might signal time to "move to Australia." That's what it would be like if the United States calls a new Constitutional Convention (Con Con) for the first time in 209 years. It would be a self-inflicted wound that could do permanent damage to our nation, to our process of self-government, and possibly even to our liberty. A Con Con would throw confusion, uncertainty, and court cases around our governmental process by opening up our entire Constitution to be picked apart by special-interest groups that want various changes. **It would make America look foolish in the eyes of the world**, unsettle our financial markets, and force all of us to re-fight the same battles that the Founding Fathers so brilliantly won in the Constitutional Convention of 1787. George Washington and James Madison both called our Constitution a "miracle". We can't count on a miracle happening again.

2AC—Court Circumvention

The Court's interpretation will circumvent the CP.

Segal and Spaeth 2 (Jeffrey A. – Professor of Political Science at SUNY Stony Brook, Harold J. – Professor Emeritus of Political Science at Michigan State University, "The Supreme Court and the Attitudinal Model Revisited," p. 5-6)

If action by Congress to undo the Court's interpretation of one of its laws does not subvert judicial authority, a fortiori neither does the passage of a constitutional amendment, for example, the Twenty-Sixth Amendment reducing the voting age to eighteen and thereby undoing the decision in Oregon v. Mitchell,' which held that Congress could not constitutionally lower the voting age in state elections. Furthermore, not only does a constitutional amendment not subvert judicial authority, courts themselves – ultimately, the Supreme Court – have the last word when determining the sanctioning amendment's meaning. Thus, the Court is free to construe any amendment – whether or not it overturns one of its decisions – **as it sees fit**, even though its construction deviates appreciably from the language or purpose of the amendment.

Constitutional amendments weaken the Court's legitimacy

Sullivan 96 (Kathleen – Professor of Law at Stanford Univeristy, "CONSTITUTIONAL CONSTANCY: WHY CONGRESS SHOULD CURE ITSELF OF AMENDMENT FEVER," 17 Cardozo L. Rev. 691, 1996, http://heinonline.org/HOL/Page?handle=hein.journals/cdozo17&div=30&g_sent=1&collection=journals)

How have we managed to survive over two hundred years of social and technological change with only twenty-seven constitutional amendments? The answer is that we have granted broad interpretive latitude to the Supreme Court. Narrow construction would necessitate more frequent resort to formal constitutional amendments. Broad construction eliminates the need. Thus, the Court has determined that eighteenth century restrictions on searches of our "papers and effects" apply to our twentieth century telephone calls, and that the command of equal protection forbids racially segregated schools even though such segregation was known to the Fourteenth Amendment's framers. Neither of these decisions—Katz v. United States and Brown v. Board of Education—required a constitutional amendment. Nor did the Court's "switch in time that saved nine" during the New Deal. In the early twentieth century, the Court struck down much federal economic legislation as exceeding Congress's power and invading the province of the states. Under President Roosevelt's threat to expand and pack the Court, the Court desisted, and started to defer to all legislation bearing some plausible relationship to interstate commerce. Some scholars have called the Court's decision to defer to national economic legislation revolutionary enough to count as an informal constitutional amendment, but most view it as within the broad contours of reasonable interpretive practice. Increasing the frequency of constitutional amendment would undermine the **respect** and **legitimacy** the Court now enjoys in this interpretive role. This danger is especially acute in the case of proposed constitutional amendments that would literally overturn Supreme Court decisions, such as amendments that would declare a fetus a person with a right to life, permit punishment of flag-burning, or authorize school prayer. Such amendments suggest that if you don't like a Court decision, you mobilize to overturn it. Justice Jackson once quipped that the Court's word is not final because it is infallible, but is infallible because it is final. That finality, though, has many salutary social benefits. For example, it allows us to treat abortion clinic bombers as terrorists rather than protesters. If every controversial Supreme Court decision resulted in plebiscitary overruling in the form of a constitutional amendment, surely the finality of its word would be undermined, and with it the social benefits of **peaceful conflict resolution**. The fact that we have amended the Constitution only four times in order to overrule the Supreme Court is **worth remembering**.

AT Courts CP

Court Fails

The court is the least informed branch on the question of surveillance

Michael **McGough** 9/26/**13** (Michael McGough is senior editorial writer for The Times, writing about law, national security, politics and religion "Scalia: What do I know about NSA spying?" http://articles.latimes.com/2013/sep/26/news/la-ol-scalia-nsa-science-20130926 accessed 7/7/15 BP)

During a Q&A after a speech to a Virginia technology group, **Scalia said that the legality of the programs detailed by uber-leaker Edward Snowden probably would come before him and his colleagues. He found it an uninviting prospect. "The consequence of that is that whether the NSA can do the stuff it's been doing ... which used to be a question for the people ... will now be resolved by the branch of government that knows the least about the issues in question, the branch that knows the least about the extent of the threat against which the wiretapping is directed**," Scalia said. **It's true that Supreme Court justices aren't the world's greatest experts on data mining and cyber surveillance. But neither are they experts on thermal imagers used to detect infrared radiation**. That didn't stop the court from ruling in 2001 that the use of that technology to detect the cultivation of marijuana inside a house was a search under the 4th Amendment and presumptively unconstitutional without a warrant. Scalia wrote the majority opinion in that case. Like it or not, advances in technology raise legal and constitutional questions, and the Supreme Court is paid to resolve them. Instead of complaining that he's not up on this newfangled technology, Scalia should stop the poor-mouthing and order his law clerks to get up to speed.

Court Fails—FISA

The Courts cant rule on FISA exec has the final say.

Max J. **Rosenthal 6/12/15 (**Max J. Rosenthal is a reporter at the Mother Jones DC bureau covering national security, surveillance "Government's Secret Surveillance Court May Be About to Get a Little Less Secret" http://www.motherjones.com/politics/2015/06/usa-freedom-act-fisa-court-transparency accessed 7/7/15 BP)

The law also requires the court to create an advisory panel of privacy experts, known as an amicus panel. **When a judge considers what she considers a "novel or significant" cases, she will call on that panel to discuss civil liberties concerns the surveillance requests brings up. Judges can also use the panel in other cases as they see fit**. The USA Freedom doesn't lay out how the amicus panel will work in detail. But privacy advocates say its mere existence will be an important step. "We know we will see the order and potentially that an amicus [a privacy panel member] is going to be there arguing against it. Those things are huge to us," Jaycox says. But while **the USA Freedom Act calls for important FISA court rulings will be made public, there's no guarantee they will be. For one, final say on declassification still rests with the executive branch rather than the judges themselves. And while the judges' input on the cases will still be important**—if not final—says Liza Goitein, co-director of the Liberty and National Security Program at the Brennan Center for Justice, they have already shown a "sort of reflexive deference" to the government. **While FISA court rulings have been leaked and occasionally declassified, the new law marks the first time Congress has attempted to make the court's decisions available to the public. In fact, advocates say, judges have always had the powers outlined in the new law—to bring in consultants or recommend declassifying their opinions. "This is something the FISA court could have done all along," says Amie Stepanovich, the US policy manager for privacy advocacy group Access. "They always could have chosen to be more transparent in their proceedings." Privacy advocates hope that having these pre-existing powers now written into law means that judges will actually use them, but even that isn't for certain. "I think the transparency provisions are going to be effective for the judges who are inclined to support them and are going to be ineffective for the judges who aren't,**" says Steve Vladeck, a professor at American University's Washington College of Law. There are other procedural moves the government could use to limit what information is made public. **The court could simply issue summaries of decisions that don't include their key parts, or the executive branch could heavily redact them. "In theory, the executive branch could comply with this part of the statute by redacting 99 percent—everything but one sentence, essentially—of an opinion," Goi**tein says. She admits that specific tactic is unlikely—it would be an obvious and public skirting of the law's intent—but stresses that even though the law makes important progress in disclosure, there are still many loopholes that could cut down on how much the public will get to see.

Links to Politics – Court

CP links to politics –gay marriage proves

Jack Hunter 7/2/15 (Jack Hunter is an American radio host, political commentator and current Politics Editor http://www.politico.com/magazine/story/2015/07/republicans-gay-marriage-angry-119711.html#.VZw0C-1Viko accessed 7/7/15

When the Supreme Court ruled same sex marriage legal in every state on Friday, millions cheered. Couples embraced. People cried. Facebook users changed their colors to rainbow. So did the White House. It was a landmark moment that so many Americans, gay and straight, never thought they'd see. **Sen. Ted Cruz said it was "the darkest 24 hours in our nation's history.**" Cruz said this on the same week South Carolina debated whether the Confederate flag had become too stained by slavery, segregation and Dylann Roof to remain flying on statehouse grounds. Most Americans would probably consider these dark times, too. I wish that Cruz's comments had been an anomaly, but **his harsh words were echoed in the official reactions of too many of the 2016 GOP presidential candidates. Yes, Cruz was referring specifically to the court's reasoning behind the same sex marriage and Obamacare rulings—something he and many other conservatives, with good reason, consider vast overreach. But this distinction is probably not what most Americans heard**. As a former conservative radio personality, who used to use the same kind of over the top rhetoric with the same recklessness, I cringed. I believe that libertarian and conservative Republicans have the best ideas for the country. But fewer people are going to listen to those ideas if millions continue to believe that Republicans are intolerant of large swathes of Americans. It's simple: Too many Republican leaders, regardless of their views on the constitutionality of the same sex marriage decision, did not come across as happy for gay Americans. The millions who cheered the ruling saw a GOP that was angry. While Obama was turning the White House rainbow, **too many Republican faces turned red.** And it didn't look good. Many Republicans for many years have tried to urge their party to be more inclusive. Over the past week, it has become more evident than ever this is now an ultimatum rather a suggestion. If the GOP doesn't change—in its tone, attitude and course—it risks becoming incompatible with America. *** You could argue that the most positive conservative statement about the Supreme Court's gay marriage ruling came from Chief Justice John Roberts' dissent, in which he argued that gay Americans have every right to be happy, but that right was not a constitutional one: "Many people will rejoice at this decision, and I begrudge none their celebration. **But for those who believe in a government of laws, not of men, the majority's approach is deeply disheartening**. Supporters of same-sex marriage have achieved considerable success persuading their fellow citizens—through the democratic process—to adopt their view. That ends today. Five lawyers have closed the debate and enacted their own vision of marriage as a matter of constitutional law.

Stealing this issue from the people will for many cast a cloud over same-sex marriage, making a dramatic social change that much more difficult to accept." How different this balanced rhetoric was from that of most of the 2016 GOP presidential candidates. On Friday, just after the ruling was announced, many of the Republicans running for president did not give the slightest hint they in any way sympathized with gay Americans. **Cruz, Mike Huckabee, Rick Santorum and Bobby Jindal often sounded unhinged.**

Judicial Activism DA

The Courts cannot access social change, Hobby Lobby proves.

Elias Isquith 7/5/14 (Elias Isquith is a staff writer at Salon, focusing on politics ""Something the Supreme Court is not supposed to do": Are Christians getting preferential treatment" http://www.salon.com/2014/07/05/something_the_supreme_court_is_not_supposed_to_do_are_christians_getting_preferential_treatment/ accessed 7/7/15 BP)

yet **despite the Court's modern reputation as a bulwark against government overreach and a protector of civil rights** — a reputation earned largely due to the historic and epoch-defining work of the Warren Court — **there's an argument to be made that the reactionary rulings handed down by the Court on Monday were, in truth, quite in keeping with its historical role in American politics**. (During his heyday, for example, Thomas Jefferson was generally seen as a leader of those in American politics who we'd today call progressives; and he hated the idea of judicial review.) Hoping to further explore the Court's historically complicated relationship with social change and progress, Salon called up University of Pennsylvania Law School professor Kermit Roosevelt, author of "The Myth of Judicial Activism," to discuss Monday's rulings and the "inherently conservative" nature of the Court. Our conversation can be found below, and has been edited for clarity and length. First off, did anything about Monday's decisions surprise you? I would say disappointed more than surprised. I sort of saw them coming; I think a lot of people did. **You know, this is a pretty conservative Supreme Court and we're getting conservative decisions. Some folks who oppose the Hobby Lobby ruling have argued that it's a form of right-wing judicial activism**. Do you think that's a fair description? It depends on what you mean by "judicial activism." **So, if by judicial activism people mean designing cases based on political preferences rather than the law or the Constitution, I think that's not typically a helpful way to frame the issue because in a lot of these cases, the law really isn't clear and it's possible to have disagreements. And sometimes — probably most of the time — which position you take will depend on a broader judicial philosophy or a broader conception of the appropriate nature and relation of the state and the federal government or the federal government and the people or something like that. And that's just legitimate Constitutional interpretation**. Occasionally, you'll find justices taking positions that seem to advance a partisan preference and that are contrary to everything they've said about broader Constitutional issues and that really does look like a politically motivated decision. Bush v. Gore is a great example of that. There aren't really any other such striking examples. In Bush v. Gore, the conservative justices were suddenly very aggressive in enforcing an equal-protection claim — and that's what the case was based on — against the state, which is totally at odds with what they usually do in equal-protection cases. And the liberals were advocating restraint and respect for the states, which is also not what they typically do in equal-protection cases. So there it looks like that decision was driven by

partisan politics. Most of the time, I think, decisions can be understood in less partisan terms and it's better to try and understand them that way

Using the courts to activate change is bad- it undermines the court itself
Eilzabeth Slattery 6/13/13 (Elizabeth Slattery is a legal fellow in the Heritage Foundation's Edwin Meese III Center for Legal and Judicial Studies. She researches a variety of issues such as the rule of law "How to Spot Judicial Activism: Three Recent Examples" http://www.heritage.org/research/reports/2013/06/how-to-spot-judicial-activism-three-recent-examples accessed 7/7/15 BP)

Since the late 1930s, **the courts have gradually abandoned their proper and essential role under the Constitution to police the structural limits on government and neutrally interpret the laws and constitutional provisions without personal bias**. Many judges refuse to interpret the Constitution and statutes according to their original public meaning (or perhaps lack the understanding of how to do so).[2] Instead, they seek to impose their personal preferences. But a judge who looks beyond the text of the Constitution "looks inside himself and nowhere else."[3] While **the Supreme Court of the United States should interpret the laws and constitutional provisions according to their original public meaning**, the lower courts—and state courts when dealing with federal constitutional rights—are bound by the precedents of the Supreme Court. To the extent that a case presents an unresolved question, lower courts should likewise give effect to the original public meaning of the text before them. Although attempts to define "judicial activism" are often criticized as too broad, too partisan, or simply "devoid of content,"[4] a simple working definition is that judicial activism occurs when judges fail to apply the Constitution or laws impartially according to their original public meaning, regardless of the outcome, or do not follow binding precedent of a higher court and instead decide the case based on personal preference. The proper measure is not whether a judge votes to uphold or strike down a statute in any given case. Adhering to an original understanding of the law is the only way to consistently "minimize or eliminate the judge's biases."[5] At times, this means that judges must strike down laws that offend the Constitution. Some scholars mistakenly argue that judges engage in judicial activism whenever they strike down a law,[6] but judges' subjective policy preferences could just as easily lead them to uphold unconstitutional laws that they favor as to strike down ones that they oppose. In either situation, **judges abdicate their duty of fidelity to the law. Judicial activism is therefore not in the eye of the beholder. In applying the law as it is written, judges may reach conclusions that are** (or may be perceived to be) **bad policy** but are nonetheless correctly decided. Judges are charged not with deciding whether a law leads to good or bad results, but with whether it violates the Constitution and, if not, how it is properly construed and applied in a given case.[7] Labeling as "activist" a decision that fails to meet this standard expresses

not policy disagreement with the outcome of a case, but disagreement with the judge's conception of his or her role in our constitutional system. Judicial activism can take a number of different forms. These include importing foreign law to interpret **the U.S. Constitution, elevating policy considerations above the requirements of law, discovering new "rights" not found in the text, and bending the text of the Constitution or a law to comport with the judge's own sensibilities, to name just a few.[8] Rather than succumb to these temptations, judges should strive to put aside their personal views and policy preferences in order to maintain impartiality and render sound judgments according to the laws as written.**

Surveillance rulings uniquely link to the DA

Paul Mirengoff 12/17/13 (Paul Mirengoff is a retired attorney in Washington, D.C. He is a 1971 graduate of Dartmouth College and a 1974 graduate of Stanford Law School "The NSA, Privacy, and Judicial Activism" http://www.powerlineblog.com/archives/2013/12/the-nsa-privacy-and-judicial-activism.php accessed 7/8/15)

J**udge Leon's response to Smith is, in essence, that things have changed considerably since 1979** when that case was decided. **He cites the vast increase in the government's surveillance capacity and changes in people's phone usage** habits. But these changes provide no sound basis for distinguishing Smith. That case rests on the view that, because of the nature of metadata, its collection by the government without a warrant isn't constitutionally problematic. This true no matter the quantity of metadata the government collects. It's possible that the Supreme Court would decide that changed circumstances warrant limiting the holding of Smith. **The Court has seen fit to limit or dispense with other old decisions in the name of striking down certain government policies intended to protect the nation from terrorism. But this isn't something that district courts or courts of appeals are supposed to do**. John Yoo and Max Boot are right to condemn Judge Leon's decision on this basis**. It is an egregious example of judicial activism**. I also agree with Yoo that even the Supreme Court shouldn't reconceive the rules of search and seizure in light of new Internet technologies. As Yoo explains: [T]hat is **the responsibility of our elected representatives. Only they can determine what society's "reasonable expectation of privacy" is in Internet and telephone communications. Judges are the last people to fairly claim they have their fingers on the pulse of the American people**. **Only our elected representatives can properly balance existing privacy rights (if any), against the need for information to protect the nation from terrorist attack. Judges are far too insulated and lack the expertise to make effective judgments on national-security and foreign affairs. Unfortunately, judges — even district court judges — are too immodest and/or too power hungry to recognize this reality.**

Judicial restraint not activism is key to liberties means they cant solve Activism means a zero sum tradeoff with congressional powers

Sandhya Bathija 2/7/14 (campaign manager of Legal Progress at the Center for American Progress. Previously, she worked in the national communications department of the American Civil Liberties Union, where she led media and communications campaigns on the organization's federal policy work, with a specific focus on immigrant rights, voting rights, racial justice, and criminal justice. "Why Judicial Restraint Best Protects Our Rights"

The federal government's powers are divided among Congress, the president, and the judiciary. None is superior to any other. **Whenever the U.S. Supreme Court rules a legislative act is beyond Congress's inherent powers, it second-guesses a constitutional determination made by Congress and expands the Court's power at Congress's expense. Not only does this assert judicial supremacy, it also discounts the fact that Congress is better-suited than the courts for protecting (and expanding) our rights.**[5] Consider that throughout history most victories protecting our liberties have been secured through the political process. During Reconstruction, **Congress passed the Thirteenth, Fourteenth, and Fifteenth Amendments** to abolish slavery and provide ongoing equal rights protections. In the 1930s, Congress passed New Deal legislation such as the Wagner Act, which created a right by statute for workers to organize into a union and engage in collective bargaining. It also passed the Fair Labor Standards Act, which included the right to earn a minimum wage. In the 1960s, **Congress passed the Civil Rights Act** of 1964 and the Voting Rights Act of 1965. Also in the 1960s, **Congress passed anti-poverty laws** such as Medicaid and Medicare. And most recently, **Congress passed the Affordable Care Act** and the Lilly Ledbetter Equal Pay Act. **The Court's proper role in a system of checks and balances isn't to strip Congress of its ability to pass laws that protect our rights and the public welfare. Rather, the role of the Court is to allow Congress the autonomy to do so. Otherwise, Congress, which has traditionally upheld our rights and expanded opportunity for all, will cease to be able to do so**. Democracy Informs Our Liberty Rights Sandefur defends his judicial philosophy by arguing that liberty, not democracy, is the "central constitutional value." **To argue that democracy and liberty are in tension discredits the fact that advocacy by the people, not through the courts, has led to the expansion of equal rights and liberty protections. The truth is, the will of the people impacts our definition of liberty, which is then interpreted and applied by the courts**. Therefore, liberty and democracy are not at odds; they are congruent. For example, scholars often argue that the Warren Court's "activist" decisions in protecting civil rights and civil liberties weren't activist at all, but rather followed the politics of the era.[6] The courts, just like the other two branches of government, are "influencing and influenced by American politics and its cultural and intellectual currents."[7] As the will of the people changes, so do our definitions of liberty, for better or worse.

(This is the only good card in the DA ^^)

Judicial activism undermines the law, destroys separation of powers, causes war
Robert H. Bork 2/24/10 (Bork served as a Yale Law School professor, Solicitor General, Acting Attorney General, and a judge of the United States Court of Appeals for the District of Columbia Circuit. "Keeping a Republic: Overcoming the Corrupted Judiciary" http://www.heritage.org/research/lecture/keeping-a-republic-overcoming-the-corrupted-judiciary accessed 7/8/15 BP)

The Court's performance strikes at the heart of the concept of a republic. **Without any warrant in law, nine lawyers split five to four, and the judgments of Congress, the President, state legislatures, governors, other federal judges, and the judges of all 50 states all are made instantly irrelevant**. **Whatever else it is, that is not democracy or a republican form of government. It is a robed oligarchy**. **So far, all attempts to tame it, to bring it back to democratic legitimacy, have failed**. So contemptuous of the electorate has the Court majority become that it routinely publishes opinions notable for their

incoherence and remains unperturbed by the most devastating criticisms. The best known, but hardly unique, example is Roe v. Wade, which invented a wholly fictitious right to abortion. Though they have tried desperately, nobody, not the most ingenious academic lawyers nor judges, in the 36 years since it was decided has ever managed to construct a plausible legal rationale for Roe, and it is safe to say nobody ever will. Roe is the premier example of what we now call judicial activism. You will hear it argued that to apply the term "activism" means no more than that you don't like a case's outcome. That is not true, and people who talk that way are, whether they realize it or not, implicitly saying that there are no criteria for judging the goodness or badness of a case other than personal or political sympathy. "Activism" has a real meaning, and it is an indispensable term in our debates. A judge is an activist when he reaches results or announces principles that cannot plausibly be derived from the actual historic Constitution. The historic Constitution is the set of principles that the ratifiers, who made the Constitution law, understood themselves to be enacting--the original understanding. **That approach is now called "originalism," and under no other approach can we have any semblance of the rule of law, which means in turn that no other approach is compatible with a republican form of government**. Activism means lawlessness, and it is rife among many judges and most professors of constitutional law. The rule of law requires that the principles announced and relied upon by judges be neutral in their application. Neutrality requires that a principle, once chosen, be applied according to its terms to all relevant cases without regard to the judge's personal views of the parties or issues before him. That is a powerful discipline, for in deciding Case A he must realize that he has committed himself to decisions in future cases that fall within the principle but whose particulars are at the moment unknown to him. That counsels great care in choosing and articulating the principle which he advances as dispositive in Case A. Should the principle prove unsatisfactory in Case B, the judge's only recourse is to reformulate it with a full explanation of his reasons. It is not sufficient, of course, that a principle be neutrally applied. That requirement would be met if the judge chose the principle that a labor union always loses and applied it neutrally, no matter the merits of a particular case. The principle chosen must also be neutrally derived, chosen without regard to the judge's individual preferences. The only source for principles that minimize or eliminate the judge's biases is the Framers' original understanding of the principles they were making into law. The morality and the policy enforced come from outside the judge. The judge who looks outside the historic Constitution looks inside himself and nowhere else. No judge can possibly avoid seeing a case without his own worldview coloring his vision. But **there is a chasm between a judge who knows that and consciously strives for objectivity and a judge who knowingly undertakes to impose his vision of justice** upon the parties before him and upon the society. Professor Lino Graglia of the University of Texas Law School summarizes what the Court has done in recent years to domestic policy, moving the nation to the cultural left: Virtually every one of the Court's rulings of unconstitutionality over the past 50 years--on abortion, capital punishment, criminal procedure, [school busing], prayer in the schools,...public display of religious symbols, pornography,...discrimination on the basis of sex, illegitimacy, alien status,...flag burning...have reflected the views of the elite. **In every case, the Court has invalidated the policy choice made in the ordinary political process, substituting a choice further to the political Lef**t.... Graglia observes that the thought that the making of policy should fall into the hands of the American people is the intellectual's nightmare. Maintaining a liberal activist judiciary is the only means of preventing that. Even more egregiously, the Court has forced itself into the conduct of our war against Islamic terrorists. Professor Gregory Maggs, of George Washington University Law School, points out that our current Supreme Court has overruled every precedent established in World War II, **and it has done so in defiance of the**

foreign affairs powers the Constitution entrusts to Congress and the President, as well as the President's role as commander in chief of the armed forces. The Court's incursions into areas best governed by the political branches are unprecedented as well as far beyond its competence. Detained enemy combatants, even those held abroad, are now for the first time in our history entitled to challenge their detention by claiming due process rights formerly available only to American citizens and lawful residents. The alternative system of justice, trial by military commissions, which goes back at least to George Washington and was ratified as recently as World War II by Franklin Roosevelt, has been made subject to new rules that seriously impair the effectiveness of the commissions. **Judges have interfered with the collection of intelligence about terrorists by electronic means even where there is no conceivable threat to any citizen's privacy. The threat to American lives and war aims by the American judiciary is real and serious.** Professor Jack Goldsmith warns **that our capacity to wage war "has been strangled by law"--the war has been "judicialized." So accustomed are Americans becoming to control by judges and legal processes that we are introducing law into areas where it is incapable of performing well and instead debilitates other vital national functions. Lawyers now oversee the conduct of war, often down to tactical levels**.

AT Congress CP

Fails—General

Congress fails—laundry list

Bedix and Quirk 15—assistant professor of political science at Keene State College, Phil Lind Chair in U.S. Politics and Representation at the University of British Columbia(William and Paul, Mar 2015, "Secrecy and negligence: How Congress lost control of domestic surveillance", Governance Studies,

http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf)

After the relatively balanced and cautious provisions of the 2001 PATRIOT Act, Congress virtually absented itself from substantive decision making on surveillance. It failed to conduct serious oversight of intelligence agencies, ignored government violations of law, and worked harder to preserve the secrecy of surveillance practices than to control them. Even after the Obama administration made the essential facts about phone and email surveillance available in classified briefings to all members, Congress mostly ignored the information and debated the reauthorizations on the basis of demonstrably false factual premises. Until the Snowden revelations, only a handful of well-briefed and conscientious legislators—too few to be effective in the legislative process—understood the full extent of domestic intelligence gathering. We describe and explain Congress's deliberative failure on phone and Internet surveillance policy. We show that along with a lack of consistent public concern for privacy, and the increasing tendency toward partisan gridlock, Congress's institutional methods for dealing with secret surveillance programs have undermined its capacity to deliberate and act effectively with respect to those programs. Although the current political environment is hardly conducive to addressing such problems, we discuss long-term goals for institutional reform to enhance this capacity. We see no easy or decisive institutional fix. But without some structural change, the prospects look dim for maintaining significant limitations on investigatory intrusion in an era of overwhelming concern for security.

Fails—Regulations

Congress won't make metadata regulatory policies—risks, lack of interest, exclusion

Bendix and Quirk 15 --assistant professor of political science at Keene State College, Phil Lind Chair in U.S. Politics and Representation at the University of British Columbia (William, Paul, "Secrecy and negligence: How Congress lost control of domestic surveillance", Brookings Institute, March 2015, http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pd)

By the time the PATRIOT Act came up for its second renewal in 2009, the executive branch had abandoned the strategy of secrecy and unilateralism on the metadata programs. Starting in 2007, after the dragnets had received court approval, the Bush administration provided full and regular disclosures to the Intelligence and Judiciary committees.27 Going further, the Obama administration made repeated efforts to provide all members of Congress, through secret briefings, with the essential information on the metadata programs.28 The reauthorization thus gave Congress the opportunity to respond to the vast executive branch expansion of phone and email surveillance. But Congress neither sought to reassert the privacy protections of the existing business-records provisions— forcing an end to the dragnet programs—nor attempted to establish legislative standards to regulate the collection and use of metadata. In effect, Congress surrendered control to the executive branch. Congress's passivity partly reflected the incentives of individual members to defer to the executive and avoid the security and political risks of imposing constraints on investigatory methods. But the restricted flow of information on secret intelligence capabilities and practices also contributed heavily. Most legislators did not attend classified briefings—some because they lacked interest in surveillance policy, others because they were intentionally excluded from meetings by congressional leaders. A few highly engaged members, mostly Democrats, made use of the executive briefings to become well informed. But these members could not speak publicly about the actual practice of bulk collection and, as a result, could not make an effective case for policy change. Meanwhile, leading members who wanted to protect the metadata program from legislative interference took advantage of the widespread ignorance to misrepresent business-records orders as narrowly-focused investigative tools. As the later reaction to the Snowden leaks made clear, most members remained serenely clueless about metadata collection. Congress in the end opted for two short-term extensions before reauthorizing the business-records provision, without change, until June 2015. The debates over renewal stretched over three years, from 2009 to 2011, giving the appearance of thorough deliberation. But that appearance was utterly false. While maintaining the secrecy of the metadata program, Congress failed to assess the security value of mass records seizures, to weigh the resulting harm to privacy interests, or to impose standards or requirements to minimize that harm.

No bills will go through congress—keeping of traditional surveillance methods

Siddiqui 13 (Sabrina, 6/28/13, "NSA Surveillance Prompts Several Bills But Little Action In Congress", Huffington Post, http://www.huffingtonpost.com/2013/06/28/nsa-bills_n_3516928.html)

Senate Majority Leader Harry Reid (D-Nev.) told reporters earlier this month that any legislation in response to the NSA surveillance must go through the Judiciary committee. Leahy's office was unable to provide information on if and when the bill might be marked up. Even then, Senate Majority Whip Dick

Durbin (D-Ill.) predicted the FISA declassification bill would be unlikely to pass Congress and even more unlikely to be signed into law by President Barack Obama. "I encourage this, though I think it is going to be ill-fated," Durbin said of the bill after its introduction. "I just don't see a freight train coming down the track." Part of the problem is that most members of Congress have shown little appetite to change the nature the surveillance methods. In an era of extreme partisanship that earned the legislative body its "Do-Nothing" label, the one issue bipartisan majorities seem to agree on is that the federal government can employ far-reaching measures in the name of national security. "It's not an issue of whether anyone cares or not," said Jim Manley, Reid's former top spokesman. "I think that the fact is, based on the intelligence briefings that they have received, that many members support the NSA programs because they honestly believe that the country faces some very real threats from individuals and organizations that want to do real damage to this country." The other roadblock to an NSA legislative fix is a combination of timing and the public's short attention span. The revelations preceded monumental Supreme Court rulings on gay marriage and the Voting Rights Act, and the passage of comprehensive immigration reform in the Senate. With formal federal charges issued against Snowden, discussions around the NSA are now focused on whether the contractor will be extradited or granted asylum by a sympathetic government.

Congress won't pass SSRA—Freedom Act

Washington Newsletter 13(11/23/13, "ACTION ALERT: Four Steps Congress Can Take to End the Endless Wars", Environmentalists Against War,

http://www.envirosagainstwar.org/know/read.php?Itemid=14291)

The Surveillance State Repeal Act was one of the earliest reform bills introduced after the Guardian revealed the NSA's mass collection of Americans' calling records in June 2013. The bill, put forth by Rep. Rush Holt, would completely repeal Section 215 of the Patriot Act (used to collect all of your calling records) and Section 702 of the FISA Amendments Act (used to collect content of Internet and phone communications on a massive scale). The bill had little prospect of being passed when first introduced, and will not be passed due to the House's vote on the altered USA Freedom Act.

AT: No FEAR Act CP

No FEAR Act can't Solve

Alt casuse: espionage Act used to justify persecution of whistleblowers

Kines 13 – Candice M. Kines, JD, West Virginia University College of Law, Class of 2014; BA, Christopher Newport University, 2010. 2013. ("DEFINING THE RIGHTS OF JOURNALISTS AND WHISTLEBLOWERS TO DISCLOSE NATIONAL SECURITY INFORMATION" West Virginia Law Review, num. 735, Winter. Available via LexisNexis. Accessed on 07-26-2015.)

The Espionage Act of 1917 n2 - a law originally created to fight acts of espionage n3 and treason n4 - is increasingly being used to prosecute whistleblowers who, in an effort to raise public awareness, disclose to the media questionable government activity. n5 Consequently, the government has used the Espionage Act to deter whistleblowers from disclosing any information involving national security. n6 However, not all national security disclosures have the purpose or effect of harming our country. In fact, placing substantial restrictions on the disclosure of this kind of governmental information may be even more harmful. Although secrecy is important in preserving the nation's security, public disclosure of certain information or conduct is necessary for a healthy democracy because it adheres to fundamental notions of democracy and significantly increases government accountability. n7 In contrast, nondisclosure of government information creates greater opportunity for the government to engage in activities that are illegal, immoral, and publicly unpopular. n8 Additionally, by substantially restricting disclosure, [*737] the government can conceal such conduct in order to avoid public criticism. n9 Thus, public disclosure of certain government information is also necessary to prevent governmental abuse.

The increased prosecutions of whistleblowers not only demonstrates the government's complete disregard for the benefits of certain disclosures, but also its failure to recognize the fact that whistleblowers are not the only participants of disclosure. In fact, by nationally publishing disclosed information, the media plays an even greater role than whistleblowers in the distribution of classified government information. Without national or world-wide publication - whether through newspapers, online, television, or radio - such information would pose little to no threat because the likelihood of unwanted readers acquiring the information would be slim. Despite this fact, the government prosecutes only whistleblowers but allows journalists to widely distribute without fear of consequence the same information that the government is attempting to protect, namely, information that it believes to be harmful to national security. n10

The Counterplan does not bolster legislation to protect whistleblowers from prosecution

Kines 13 – Candice M. Kines, JD, West Virginia University College of Law, Class of 2014; BA, Christopher Newport University, 2010. 2013. ("DEFINING THE RIGHTS OF JOURNALISTS AND WHISTLEBLOWERS TO DISCLOSE NATIONAL SECURITY INFORMATION" West Virginia Law Review, num. 735, Winter. Available via LexisNexis. Accessed on 07-26-2015.)

As stated above, there are no current laws - including the First Amendment - that provide protection to whistleblowers for disclosing governmental information. Instead, the laws currently recognized only enable greater prosecution of whistleblowers and they do so regardless of the [*758] circumstances surrounding the disclosure (e.g., regardless of the type, purpose, or effect of the disclosure). n167 Part III of this Note analyzes these laws. The first section discusses the adequacy of the reporter's privilege. While the purpose of the privilege is to preserve the confidentiality of reporters' sources n168 - many of

which are whistleblowers - it rarely accomplishes this goal. The second section discusses the Espionage Act, which is increasingly being used to prosecute whistleblowers. n169 The Act allows for the prosecution of any individual who discloses classified information to a journalist; however, the Act does not provide for the prosecution of a journalist who chooses to publish that material for the world to see. n170 Thus, the reporter's privilege and the Espionage Act provide no protection for whistleblowers, but instead only create an avenue for their prosecution.

By failing to provide protection to whistleblowers, these laws also fail to recognize the benefits that disclosure has to offer, particularly the generation of thoughtful public debate and the encouragement of government accountability. Furthermore, by providing an unlimited ability for journalists to publish classified government information, these laws cannot truly protect the nation's security. Therefore, because neither the benefits of disclosure - thoughtful public debate and government accountability - nor the benefits of nondisclosure - protection of national security - are satisfied here, these laws fail to promote the overall public good. n171

Obama Administration doesn't care. Prosecution of whistleblowers ensures circumvention

Kines 13 – Candice M. Kines, JD, West Virginia University College of Law, Class of 2014; BA, Christopher Newport University, 2010. 2013. ("DEFINING THE RIGHTS OF JOURNALISTS AND WHISTLEBLOWERS TO DISCLOSE NATIONAL SECURITY INFORMATION" West Virginia Law Review, num. 735, Winter. Available via LexisNexis. Accessed on 07-26-2015.)

Due to the inability of the reporter's privilege to effectively protect whistleblowers, as demonstrated by Sterling's case, the current Administration has **more than doubled the number of whistleblowers previously prosecuted under the Espionage Act**. n51 Further, while the government's interest in prosecuting whistleblowers is to prevent disclosure of information that could be harmful to the United States, no legislative method is currently in place to deter the media from widely publishing that same harmful information. Therefore, absent any regulation of information published by the media, prosecuting whistleblowers for disclosing national security information cannot adequately serve the government's interest of preventing harmful disclosure.

Nevertheless, the Obama Administration has been increasingly persistent in prosecuting whistleblowers and attempting to force journalists to [*744] testify against them. n52 This aggressive and "unprecedented crackdown over leaks" has been termed Obama's "war on whistleblowers" n53 or more commonly, the "war on leaks." n54 The Obama Administration's reaction to recent disclosures of national security information highlights the disparity that exists between journalists and their sources regarding the ability to disclose information. n55

WhistleBlower Protection Fails

Whistle blower laws decrease the amount of whistle blowing taking place

Martin 03 – Brian Martin (born 1947) teaches in the interdisciplinary area of Science, technology, and society at the University of Wollongong in Australia, where he became a professor in 2007.[1] He was president of Whistleblowers Australia from 1996 to 1999 and remains their International Director. 2003. ("Illusions of Whistleblower Protection" UTS Law Review, No. 5. Available via LexisNexis. Accessed on 07-26-2015.)

Thoms (1992: 83), using a Weberian analysis, argues that "Whistleblower legislation strives to control the agenda of whistleblowers and to contain their disclosures to channels which are under the purview of the state. Under regimes of authorized whistleblowing, the potential for criticism and review of the operations of the state by the public it is said to serve are virtually non-existent." The cynical explanation of whistleblower laws is that they are intended to encourage employees to speak out, revealing their identity and, rather than protecting them, instead making them easier targets for attack. This explanation is espoused by a few disillusioned whistleblowers. These explanations are actually compatible. Promoters of whistleblower laws may be quite sincere but the laws in effect can serve to give the illusion of protection. They may also lead employees to believe, mistakenly, that they are protected and thus to become easier targets than if the laws did not exist.

Whistle Blower protection laws will fail – lots o. warrants why

Martin 03 – Brian Martin (born 1947) teaches in the interdisciplinary area of Science, technology, and society at the University of Wollongong in Australia, where he became a professor in 2007.[1] He was president of Whistleblowers Australia from 1996 to 1999 and remains their International Director. 2003. ("Illusions of Whistleblower Protection" UTS Law Review, No. 5. Available via LexisNexis. Accessed on 07-26-2015.)

A fundamental problem with whistleblower laws is that they usually come into play only after disclosures have been made and reprisals have begun. As in the example at the beginning of this article, many employees make disclosures in good faith, not thinking of themselves as whistleblowers. As a result, they seldom have gathered sufficient evidence about the alleged problem to withstand a concerted cover-up. Not anticipating any adverse reaction, they may not be in a position to document reprisals. As a result, invoking whistleblower laws is seldom a practical proposition. Another problem is that there are many subtle ways for employers to undermine employees without providing clear-cut evidence of reprisals. Rumours and ostracism are two of the most common responses encountered by whistleblowers but are virtually impossible to document. Petty harassment is also potent. It might mean such minor things as unavailability of a company car, awkward rosters, slowness in processing claims, or requests for excessive documentation. Ostracism itself can cause the equivalent of petty harassment, as a worker is denied access to everyday information needed to do the job efficiently. At a more serious scale are job reassignments that reduce or increase work demands, either setting up the employee for failure or making the job tedious; in both cases it is often easy to camouflage the changes as necessary due to changes in the work environment or to a more general organisational restructuring. Ironically, it can be more difficult for an employee to deal with subtle undermining than with a more obvious attack such as demotion or dismissal. Subtle harassment can lead some employees to blame themselves whereas blatant attacks are more readily understood as reprisals. Another problem with whistleblower

laws is that they typically pit a lone employee against a powerful organisation. The organisation can pay for expensive legal advice and has little to lose by making the case as protracted as possible. Individuals in the organisation have little at stake; indeed, many of them may have moved on in the years it takes for a case to run its course. On the other side, the whistleblower is often alone in pursuing the case, sometimes without any income and seldom with dedicated backing from an organisation. Whistleblower laws put the focus on whistleblowers and what is done to them. An unfortunate feature of this focus is a relative neglect of the original issue about which the employee spoke out. Whistleblower laws do not and perhaps cannot require an investigation into an employee's allegations. During the drawn-out process of assessing whether reprisals have occurred, the original issue is not addressed. For a dismissed whistleblower, "success" usually comes in the form of a settlement, not a reinstatement; **success in terms of organisational reform is not part of the agenda of whistleblower laws.** These **shortcomings of whistleblower laws are so systemic that it is worth asking why anyone would bother with them at all.** Three types of explanations can be labelled sincere, symbolic and cynical. Undoubtedly most of those who promote whistleblower laws are completely sincere. This includes many whistleblower activists whose sincerity cannot be doubted, given that they themselves are victims of reprisals. But sincerity of intent is no guarantee of effectiveness in execution. The flaws in the vehicle - whistleblower legislation - are seen as unfortunate weaknesses, due to poor drafting, inadequate resources or ineffectual implementation. A different explanation is that whistleblower laws are a form of symbolic politics (Edelman, 1964), serving to give the appearance of political action without any substantive change in institutional dynamics. Symbolic politics is deployed when popular pressure becomes strong. A law gives the appearance of government concern even though it may not lead to any change in behaviour. For example, governments can placate concerns about crime by passing laws even though there is little evidence that longer prison sentences form a deterrent to violent crime or that more than a tiny proportion of corporate crime is ever prosecuted.

Whistle blower Protection Act offers no protection, and the plan will be circumvented by executive branch.

DW 14 – Deutsche Wells, is an German and American international news organization that runs but US and international news with collaboration in Europa, the US, Latin America, and Beijing. 2014. ("US whistleblower laws offer no protection", DW, January 28th. Available at: http://www.dw.com/en/us-whistleblower-laws-offer-no-protection/a-17391500, accessed 7-26-2015)

Some eight months before Edward bySnowden leaked classified NSA programs to the press, US President Barack Obama issued an order extending whistleblower protections to employees of America's intelligence agencies. The White House often cites this fact when addressing the three felony charges against Snowden, in total carrying a maximum sentence of 30 years in prison. Two of those charges fall under the 1917 US Espionage Act.

In his January speech on NSA reform, President Obama said that he did not want to "dwell on Mr. Snowden's actions or his motivations." But five months earlier, the US commander-in-chief had already made clear that he did not view the 30-year-old as a whistleblower or patriot, saying that Snowden had failed to use official, non-public "proper channels" to express his concerns about NSA surveillance.

But Snowden has said that Obama's extension of whistleblower protections to the intelligence community, under Presidential Policy Directive 19 (PPD-19), does not cover government contractors.

Before his disclosures, Snowden was an employee of the company Booz Allen Hamilton, which contracted with the National Security Agency.

"If I had revealed what I knew about these unconstitutional but classified programs to Congress, I could have been charged with a felony," Snowden said in a live, online question and answer session last Thursday.

'Death by a thousand cuts'

For years, would-be whistleblowers in the US intelligence community had no legal protections to shield them from retaliatory measures by their superiors**. The Whistleblower Protection Act of 1989 covered most of the federal government with the glaring exception of the intelligence agencies.**

In an effort to close this legal gap, Congress passed the Intelligence Community Whistleblower Protection Act (ICWPA) a decade later. The law covers employees and contractors at the Central Intelligence Agency (CIA), the National Security Agency (NSA), the Defense Intelligence Agency (DIA), the National Imagery and Mapping Agency (NIMA) as well as the National Reconnaissance Office (NRO).

But according to Thomas Drake, the act failed to adequately protect whistleblowers from retaliation. A former senior executive at the NSA, Drake blew the whistle on a failed surveillance program called Trailblazer. He used what the government calls "proper channels" to express his concerns about the program's exorbitant cost and its lack of privacy protections, reaching out to his immediate supervisor, the office of the inspector general, and the congressional intelligence committees.

"I was reprised against severely within the proper channels," Drake told DW. "I was identified as a troublemaker."

Thomas Drake at NSA demonstration

Drake used "proper channels," but still faced retaliation

Drake called the NSA's response to his whistleblowing activities "death by a thousand cuts administratively and bureaucratically," saying that the agency found ways to change his job and cut his responsibilities. Ultimately, the NSA re-organized the section he worked in, leaving him with nothing but a "paper title." Drake resigned from the agency in 2008.

"There's nothing within the act that actually protects you. I don't have cause of action - I can't go to the courts for redress," he said, adding that his only recourse was to file evidence with the Defense Department inspector general's reprisal unit. According to Drake, the unit agreed that he had suffered from reprisal, but the case still has not completely resolved itself.

Drake only went public, contacting the Baltimore Sun newspaper, when he felt that the proper channels had failed. The federal government indicted him under the US Espionage Act for supposedly taking classified documents illegally, an allegation that unraveled before the trial. In the end, the government dropped the charges in exchange for Drake agreeing to plead guilty to one misdemeanor count of misusing a NSA computer. He was sentenced to a year of probation and 240 hours of community service.

Murky legal framework

Although the ICWPA covered both employees and contractors, US whistleblower laws have been changed through legislative and presidential action since the Drake case. In 2012, Congress passed and President Obama signed the Whistleblower Protection Enhancement Act. But the law excluded the intelligence agencies from coverage.

Although Obama had issued his directive that same year extending whistleblower protections to the entire intelligence community, PPD-19 only covers intelligence agency employees. Contractors, such as Edward Snowden, are not explicitly protected by the directive. Even for legal experts, it's unclear how exactly all of these different regulations interact with one another, and whether or not contractors such as Edward Snowden are covered by the *whistleblower* laws.

"No one knows exactly how those pieces are supposed to fit together," William C. Banks, an expert on national security law at Syracuse University College of Law, told DW. "But I think the trump card is the criminal law. Regardless of whether the contractor or a regular employee of a US agency is blowing the whistle, **if he or she is** at the same time **violating a criminal law of the United States, the whistleblower protection is worthless."**

And, defendors don't even use the whistleblower protection laws.

DW 14 – Deutsche Wells, is an German and American international news organization that runs but US and international news with collaboration in Europa, the US, Latin America, and Beijing. 2014. ("US whistleblower laws offer no protection", DW, January 28th. Available at: http://www.dw.com/en/us-whistleblower-laws-offer-no-protection/a-17391500, accessed 7-26-2015)

Mark Zaid, an attorney in Washington, D.C., represents intelligence community whistleblowers. Zaid doesn't make use of the whistleblower protection laws when representing his clients, calling the provisions "inadequate." Obama's presidential directive, for example, is largely discretionary and doesn't actually guarantee whistleblowers protection. It only provides a process by which their claims of suffering from retribution can be addressed.

Nevertheless, Zaid said that Edward Snowden had a legal obligation to use the proper channels, even if the protection laws were insufficient.

Edward Snowden Filmstill WikiLeaks

It's murky, at best, whether or not a contractor like Snowden was covered by the whistleblower laws

"He has a legal obligation to do so, and I think he has moral obligation to do so, to at least try to work through the system, as futile as it might be, before taking the last resort, which is to provide the information to third parties without authorization," Zaid told DW.

But according to NSA whistleblower Thomas Drake, the whistleblower system has been corrupted from within, which discourages people from coming forward.

"The reporting chains themselves largely serve to protect the institution from those that would expose it, even from those within," Drake said.

"…Especially when they see what happens to people like me, they will choose to remain silent, they will ultimately censor themselves and not report the wrongdoing, although they're in the best position to do so."

AT: Accumulo CP

Accumulo Can't Solve

Accumulo can't solve due to architectural and security issues

Gupta 15 – Dr. S. R. Gupta, assistant Professor, Computer Science & Engineering, PRMIT 2015. ("A REVIEW ON HADOOP SECURITY AND RECOMMENDATIONS", itjer.com May 2015, Available at: http://www.ijtre.com/manuscript/2015020913.pd Accessed on 07-26-2015f)

Distributed nodes: —Moving computation is cheaper than moving data‖ is the key to big data. Data is processed anywhere resources are available, enabling massively parallel computation. This creates complicated environments with plenty of attack surface, and it is difficult to verify security consistency across a highly distributed cluster of possibly heterogeneous platforms. • ‗Sharded' data:Data within big data clusters is fluid, with multiple copies moving to and from different nodes to ensure redundancy and resiliency. A shard is a slice of data — horizontally segmented — shared across multiple servers. This automated movement to multiple locations makes it very difficult to know precisely where data is located at any moment in time, or how many copies are available. This runs counter to the traditional centralized data security model, where a single copy of data is wrapped in various protections until it is used for processing. Big data is replicated in many places and moves as needed. The containerized data security model is missing — as are many other relational database facilities.

( ) Accumulo's not responsive to our human intel internal link. Even if NSA can process a large quantity of data, the quality's low unless HUMINT's involved.

( ) Accumulo fails – Boston Marathon proves it doesn't find the needle.

Konkel '13

Frank Konkel is the editorial events editor for Government Executive Media Group and a technology journalist for its publications. He writes about emerging technologies, privacy, cybersecurity, policy and other issues at the intersection of government and technology. He began writing about technology at Federal Computer Week. Frank is a graduate of Michigan State University. "NSA shows how big 'big data' can be" - FCW - Federal Computer Week is a magazine covering technology - Jun 13, 2013 - http://fcw.com/articles/2013/06/13/nsa-big-data.aspx?m=1

As reported by Information Week, the NSA relies heavily on Accumulo, "a highly distributed, massively parallel processing key/value store capable of analyzing structured and unstructured data" to process much of its data. NSA's modified version of Accumulo, based on Google's BigTable data model, reportedly makes it possible for the agency to analyze data for patterns while protecting personally identifiable information – names, Social Security numbers and the like. Before news of Prism broke, NSA officials revealed a graph search it operates on top of Accumulo at a Carnegie Melon tech conference. The graph is based on 4.4 trillion data points, which could represent phone numbers, IP addresses, locations, or calls made and to whom; connecting those points creates a graph with more than 70 trillion edges. For a human being, that kind of visualization is impossible, but for a vast, high-end computer system with the right big data tools and mathematical algorithms, some signals can be pulled out. Rep. Mike Rogers (R-Mich.), chairman of the House Intelligence Committee, publicly stated that the government's collection of phone records thwarted a terrorist plot inside the United States "within the last few years," and other media reports have cited anonymous intelligence insiders claiming several plots have been foiled. **Needles in endless haystacks of data are not easy to find**, and the NSA's **current big data** analytics **methodology is far from** a **flawless** system, as evidenced by the April 15 Boston Marathon bombings that killed three people and injured more than 200. The bombings were carried out by Chechen brothers Dzhokhar and Tamerlan Tsarnaev, the latter of whom was previously interviewed by the Federal Bureau of Investigation after the Russian Federal Security Service notified the agency in 2011 that he was a follower of radical Islam. The brothers had made threats on Twitter prior to their attack as well, meaning several data points of suspicious behavior existed, yet no one detected a pattern in time to prevent them from setting off bombs in a public place filled with people. "We're still in the genesis of big data, we haven't even scratched the surface yet," said big data

expert Ari Zoldan, CEO of New-York-based Quantum Networks. "**In many ways, the technology hasn't evolved yet,** it's still a new industry."

Accumulo doesn't solve privacy – it can't keep info secure on its own
Pontius '14

Brandon H. Pontius. The author holds a B.S. from Louisiana State University and an M.B.A., Louisiana State University. The author wrote this piece in partial fulfillment of a MASTER OF SCIENCE IN COMPUTER SCIENCE from the NAVAL POSTGRADUATE SCHOOL. The thesis advisor that reviewed this piece is Mark Gondree, PhD. Gondree is a security researcher associated with the Computer Science Dept at the Naval Postgraduate School – "INFORMATION SECURITY CONSIDERATIONS FOR APPLICATIONS USING APACHE ACCUMULO" - September 2014 - http://calhoun.nps.edu/bitstream/handle/10945/43980/14Sep_Pontius_Brandon.pdf?sequence=1

NoSQL databases are gaining popularity due to their ability to store and process large heterogeneous data sets more efficiently than relational databases. Apache Accumulo is a NoSQL database that introduced a unique information security feature—cell-level access control. We study Accumulo to examine its cell-level access control policy enforcement mechanism. We survey existing Accumulo applications, focusing on Koverse as a case study to model the interaction between Accumulo and a client application. We conclude with a discussion of potential security concerns for Accumulo applications. We argue that Accumulo's cell-level access control can assist developers in creating a stronger information security policy, but Accumulo cannot provide security—particularly enforcement of information flow policies—on its own. Furthermore, popular patterns for interaction between Accumulo and its clients require diligence on the part of developers, which may otherwise lead to unexpected behavior that undermines system policy. We highlight some undesirable but reasonable confusions stemming from the semantic gap between cell-level and table-level policies, and between policies for end-users and Accumulo clients.

Accumulo won't solve privacy – security features fail
Pontius '14

Brandon H. Pontius. The author holds a B.S. from Louisiana State University and an M.B.A., Louisiana State University. The author wrote this piece in partial fulfillment of a MASTER OF SCIENCE IN COMPUTER SCIENCE from the NAVAL POSTGRADUATE SCHOOL. The thesis advisor that reviewed this piece is Mark Gondree, PhD. Gondree is a security researcher associated with the Computer Science Dept at the Naval Postgraduate School – "INFORMATION SECURITY CONSIDERATIONS FOR APPLICATIONS USING APACHE ACCUMULO" - September 2014 - http://calhoun.nps.edu/bitstream/handle/10945/43980/14Sep_Pontius_Brandon.pdf?sequence=1

We commented on potential security threats facing developers that build applications based on Accumulo. We used a hypothetical application to illustrate potential user management concerns. We identified injection attacks that have been carried out against other NoSQL databases and may be relevant to some uses of Accumulo. We commented on Accumulo's inability to enforce information flow policies. These examples serve to demonstrate that using Accumulo and it's cell-level security feature is not a full solution to access control problems unless Accumulo is paired with well-designed enforcement mechanisms in the client application. We believe that the combination of our technical discussion of Accumulo's cell-level access control enforcement, illustration of Accumulo integration in a larger application, and identification of potential security concerns may help future studies learn more about Accumulo information security and lead to development of more secure Accumulo based applications.

Accumulo Bad

[xkeyscore is built on top of accumulo. The cp adds more analysts so more insiders who threaten are getting and sharing info]

Xkeyscore vulnerable to insider attack

Boire 15 — Morgan Marquis-Boire, 7-1-2015 ("XKEYSCORE: NSA's Google for the World's Private Communications," Intercept, 7-1-2015, Available Online at https://firstlook.org/theintercept/2015/07/01/nsas-google-worlds-private-communications/, Accessed 7-20-2015)

The sheer quantity of communications that XKEYSCORE processes, filters and queries is stunning. Around the world, when a person gets online to do anything — write an email, post to a social network, browse the web or play a video game — there's a decent chance that the Internet traffic her device sends and receives is getting collected and processed by one of XKEYSCORE's hundreds of servers scattered across the globe.

In order to make sense of such a massive and steady flow of information, analysts working for the National Security Agency, as well as partner spy agencies, have written thousands of snippets of code to detect different types of traffic and extract useful information from each type, according to documents dating up to 2013. For example, the system automatically detects if a given piece of traffic is an email. If it is, the system tags if it's from Yahoo or Gmail, if it contains an airline itinerary, if it's encrypted with PGP, or if the sender's language is set to Arabic, along with myriad other details.

This global Internet surveillance network is powered by a somewhat clunky piece of software running on clusters of Linux servers. Analysts access XKEYSCORE's web interface to search its wealth of private information, similar to how ordinary people can search Google for public information.

Based on documents provided by NSA whistleblower Edward Snowden, The Intercept is shedding light on the inner workings of XKEYSCORE, one of the most extensive programs of mass surveillance in human history.

How XKEYSCORE works under the hood

It is tempting to assume that expensive, proprietary operating systems and software must power XKEYSCORE, but it actually relies on an entirely open source stack. In fact, according to an analysis of an XKEYSCORE manual for new systems administrators from the end of 2012, the system may have design deficiencies that could leave it vulnerable to attack by an intelligence agency insider.

XKEYSCORE is a piece of Linux software that is typically deployed on Red Hat servers. It uses the Apache web server and stores collected data in MySQL databases. File systems in a cluster are handled by the NFS distributed file system and the autofs service, and scheduled tasks are handled by the cron scheduling service. Systems administrators who maintain XKEYSCORE servers use SSH to connect to them, and they use tools such as rsync and vim, as well as a comprehensive command-line tool, to manage the software.

John Adams, former security lead and senior operations engineer for Twitter, says that one of the most interesting things about XKEYSCORE's architecture is "that they were able to achieve so much success

with such a poorly designed system. Data ingest, day-to-day operations, and searching is all poorly designed. There are many open source offerings that would function far better than this design with very little work. Their operations team must be extremely unhappy."

Analysts connect to XKEYSCORE over HTTPS using standard web browsers such as Firefox. Internet Explorer is not supported. Analysts can log into the system with either a user ID and password or by using public key authentication.

As of 2009, XKEYSCORE servers were located at more than 100 field sites all over the world. Each field site consists of a cluster of servers; the exact number differs depending on how much information is being collected at that site. Sites with relatively low traffic can get by with fewer servers, but sites that spy on larger amounts of traffic require more servers to filter and parse it all. XKEYSCORE has been engineered to scale in both processing power and storage by adding more servers to a cluster. According to a 2009 document, some field sites receive over 20 terrabytes of data per day. This is the equivalent of 5.7 million songs, or over 13 thousand full-length films.

This map from a 2009 top-secret presentation does not show all of XKEYSCORE's field sites.

When data is collected at an XKEYSCORE field site, it is processed locally and ultimately stored in MySQL databases at that site. XKEYSCORE supports a federated query system, which means that an analyst can conduct a single query from the central XKEYSCORE website, and it will communicate over the Internet to all of the field sites, running the query everywhere at once.

There might be security issues with the XKEYSCORE system itself as well. As hard as software developers may try, it's nearly impossible to write bug-free source code. To compensate for this, developers often rely on multiple layers of security; if attackers can get through one layer, they may still be thwarted by other layers. XKEYSCORE appears to do a bad job of this.

When systems administrators log into XKEYSCORE servers to configure them, they appear to use a shared account, under the name "oper." Adams notes, "That means that changes made by an administrator cannot be logged." If one administrator does something malicious on an XKEYSCORE server using the "oper" user, it's possible that the digital trail of what was done wouldn't lead back to the administrator, since multiple operators use the account.

There appears to be another way an ill-intentioned systems administrator may be able to cover their tracks. Analysts wishing to query XKEYSCORE sign in via a web browser, and their searches are logged. This creates an audit trail, on which the system relies to assure that users aren't doing overly broad searches that would pull up U.S. citizens' web traffic. Systems administrators, however, are able to run MySQL queries. The documents indicate that administrators have the ability to directly query the MySQL databases, where the collected data is stored, apparently bypassing the audit trail.

AppIDs, fingerprints and microplugins

Collecting massive amounts of raw data is not very useful unless it is collated and organized in a way that can be searched. To deal with this problem, XKEYSCORE extracts and tags metadata and content from the raw data so that analysts can easily search it.

This is done by using dictionaries of rules called appIDs, fingerprints and microplugins that are written in a custom programming language called GENESIS. Each of these can be identified by a unique name that

resembles a directory tree, such as “mail/webmail/gmail,” “chat/yahoo,” or “botnet/blackenergybot/command/flood.”

One document detailing XKEYSCORE appIDs and fingerprints lists several revealing examples. Windows Update requests appear to fall under the “update_service/windows” appID, and normal web requests fall under the “http/get” appID. XKEYSCORE can automatically detect Airblue travel itineraries with the “travel/airblue” fingerprint, and iPhone web browser traffic with the “browser/cellphone/iphone” fingerprint.

PGP-encrypted messages are detected with the “encryption/pgp/message” fingerprint, and messages encrypted with Mojahedeen Secrets 2 (a type of encryption popular among supporters of al Qaeda) are detected with the “encryption/mojaheden2” fingerprint.

When new traffic flows into an XKEYSCORE cluster, the system tests the intercepted data against each of these rules and stores whether the traffic matches the pattern. A slideshow presentation from 2010 says that XKEYSCORE contains almost 10,000 appIDs and fingerprints.

AppIDs are used to identify the protocol of traffic being intercepted, while fingerprints detect a specific type of content. Each intercepted stream of traffic gets assigned up to one appID and any number of fingerprints. You can think of appIDs as categories and fingerprints as tags.

If multiple appIDs match a single stream of traffic, the appID with the lowest “level” is selected (appIDs with lower levels are more specific than appIDs with higher levels). For example, when XKEYSCORE is assessing a file attachment from Yahoo mail, all of the appIDs in the following slide will apply, however only “mail/webmail/yahoo/attachment” will be associated with this stream of traffic.

To tie it all together, when an Arabic speaker logs into a Yahoo email address, XKEYSCORE will store “mail/yahoo/login” as the associated appID. This stream of traffic will match the “mail/arabic” fingerprint (denoting language settings), as well as the “mail/yahoo/ymbm” fingerprint (which detects Yahoo browser cookies).

Sometimes the GENESIS programming language, which largely relies on Boolean logic, regular expressions and a set of simple functions, isn’t powerful enough to do the complex pattern-matching required to detect certain types of traffic. In these cases, as one slide puts it, “Power users can drop in to C++ to express themselves.” AppIDs or fingerprints that are written in C++ are called microplugins.

[insert insider threat da impact cards]

Acccumulo illegal/PTX takeout

Accumulo is just not legal – Senate Arms Committee proves. At best it still links to politics. Senate committees hate it.

Metz 12 — Cade Metz is a WIRED senior staff writer covering Google, Facebook, artificial intelligence, bitcoin, data centers, computer chips, programming languages, and other ways the world is changing. 2012 ("NSA Mimics Google, Pisses Off Senate," WIRED, July 17th, Available Online at http://www.wired.com/2012/07/nsa-accumulo-google-bigtable/, Accessed 7-26-2015)

IN 2008, A team of software coders inside the National Security Agency started reverse-engineering the database that ran Google.

They closely followed the Google research paper describing BigTable — the sweeping database that underpinned many of Google's online services, running across tens of thousands of computer servers — but they also went a little further. In rebuilding this massive database, they beefed up the security. After all, this was the NSA.

Like Google, the agency needed a way of storing and retrieving massive amounts of data across an army of servers, but it also needed extra tools for protecting all that data from prying eyes. They added "cell level" software controls that could separate various classifications of data, ensuring that each user could only access the information they were authorized to access. It was a key part of the NSA's effort to improve the security of its own networks.

But the NSA also saw the database as something that could improve security across the federal government — and beyond. Last September, the agency open sourced its Google mimic, releasing the code as the Accumulo project. It's a common open source story — except that the Senate Armed Services Committee wants to put the brakes on the project.

In a bill recently introduced on Capitol Hill, the committee questions whether Accumulo runs afoul of a government policy that prevents federal agencies from building their own software when they have access to commercial alternatives. The bill could ban the Department of Defense from using the NSA's database — and it could force the NSA to meld the project's security tools with other open source projects that mimic Google's BigTable.

The NSA, you see, is just one of many organizations that have open sourced code that seeks to mimic the Google infrastructure. Like other commercial outfits, the agency not only wants to share the database with other government organizations and companies, it aims to improve the platform by encouraging other developers to contribute code. But when the government's involved, there's often a twist.

The U.S. government has a long history with open source software, but there are times when policy and politics bump up against efforts to freely share software code — just as they do in the corporate world. In recent years, the most famous example is NASA's Nebula project, which overcame myriad bureaucratic hurdles before busting out of the space agency in a big way, seeding the popular OpenStack platform.

That said, the Accumulo kerfuffle is a little different. In trying to determine whether Accumulo duplicates existing projects, the bill floated by the Senate Armed Services committee uses such specific language, some believe it could set a dangerous precedent for the use of other open source projects inside the federal government.

THE NSA AT 'INTERNET SCALE'

Originally called Cloudbase by the NSA, Accumulo is already used inside the agency, according to a speech given last fall by Gen. Keith Alexander, the director of the NSA. Basically, it allows the NSA to store enormous amounts of data in a single software platform, rather than spread it across a wide range of disparate databases that must be accessed separately.

Accumulo is what's commonly known as a "NoSQL" database. Unlike a traditional SQL relational database — which is designed to run on a single machine, storing data in neat rows and columns — a NoSQL database is meant for storing much larger amounts of data across a vast array of machines. These databases have become increasingly important in the internet age, as more and more data streams into modern businesses — and government agencies.

With BigTable, Google was at the forefront of the NoSQL movement, and since the company published its paper describing BigTable in 2006, several organizations have built open source platforms mimicking its design. Before the NSA released Accumulo, a search outfit called Powerset — now owned by Microsoft — built a platform called HBase, while social networking giant Facebook fashioned a similar platform dubbed Cassandra.

And this is what bothers the Senate Armed Services Committee.

The Senate Armed Services Committee oversees the U.S. military, including the Department of Defense and the NSA, which is part of the DoD. With Senate bill 3254 — National Defense Authorization Act for Fiscal Year 2013 — the committee lays out the U.S. military budget for the coming year, and at one point, the 600-page bill targets Accumulo by name.

The bill bars the DoD from using the database unless the department can show that the software is sufficiently different from other databases that mimic BigTable. But at the same time, the bill orders the director of the NSA to work with outside organizations to merge the Accumulo security tools with alternative databases, specifically naming HBase and Cassandra.

The bill indicates that Accumulo may violate OMB Circular A-130, a government policy that bars agencies from building software if it's less expensive to use commercial software that's already available. And according to one congressional staffer who worked on the bill, this is indeed the case. He asked that his name not be used in this story, as he's not authorized to speak with the press.

AT: Cybersecurity CP

No solvency

CP fails- doesn't stop agencies from imposing separate requirements

Susan B. **Cassidy,7/10**, partner of the National Law Review and a member of the Government Contracts Practice Group, "Competing Bills Focus on Cybersecurity Information Sharing But Final Language and Ultimate Passage Remain Unknown," http://www.natlawreview.com/article/competing-bills-focus-cybersecurity-information-sharing-final-language-and-ultimate-

Information sharing under these bills is intended as a voluntary process. All three bills contain an "anti-tasking restriction," which prevents the federal government from requiring private entities to share information about cybersecurity threats. The bills also prohibit the government from conditioning the award of the contract on the provision of information about cyber threat indicators by the offeror. Furthermore, all three bills contain a clause protecting from any liability connected to choosing not to share information pursuant to the bills. Presumably, however, this does not prevent agencies, such as DOD and the Intelligence Community from imposing separate reporting requirements on a regulatory and contractual basis as currently exists for certain defense related information. Nor do these bills appear to alter existing voluntary information sharing relationships such as the Defense Industrial Base voluntary sharing initiative.

CP cant solve- info sharing in SQ but attacks still happened

Greg **Nojeim, 2015,** Senior Counsel and Director of the Freedom, Security, and Technology Project at the Center for Democracy & Technology, "Cybersecurity Information Sharing Bills Fall Short on Privacy Protections,"https://cdt.org/blog/ecpa-reform-takes-a-giant-leap-forward/

https://cdt.org/insight/cybersecurity-information-sharing-bills-fall-short-on-privacy-protections/

Major cyber attacks represent an ongoing hazard to the financial and commercial sectors, with potential to harm both important institutions and individual online users. 2014 saw major attacks against companies such as Target, J.P. Morgan Chase, Home Depot, and Sony Pictures. In addition to direct harms – which are substantial – these large scale and highly publicized attacks threaten to chill use of online services. However, it is unclear that the information sharing legislation would have stopped any of these attacks. For example, the Target attack seemed to result from bad security practices, and most successful attacks can be stopped by basic security measures, such as frequently changing passwords, patching servers, detecting insider attacks, and educating employees about risks. Moreover, an influential group of technologists, academics, and computer and network security professionals have written that they do not need any new legal authority to share information that helps them protect their systems against attacks, and have come out in opposition to the pending bills. Privacy groups have also registered their opposition. Moreover, current law provides substantial authority to communications service providers to monitor their own networks and to share communications that traverse them for cybersecurity reasons. Under the Wiretap Act and the Electronic Communications Privacy Act, they can intercept, use, and disclose communications content and metadata in order to protect their own rights and property. However, they cannot intercept, use, nor disclose communications to protect others. A narrow exception may be needed to fill this narrow gap. However, the approach the bills take is not narrow. The bills operate by authorizing companies to monitor information systems (or conduct "network awareness") for "cybersecurity threats" or for "cybersecurity risks" or "incidents." Information that qualifies as a "cyber threat indicator" can be shared with the federal government or among private entities. The indicators are defined using broad, functional language, rather than technical language, because of concerns that technical language would become outdated quickly. To compensate, partially, for the breadth of the information that can be shared, the bills impose some restrictions on the use of cyber-threat indicators and some obligations to strip out personal information before they are shared. The bills also authorize

countermeasures against cybersecurity threats, risks, or incidents. All of this conduct – monitoring, information sharing, and countermeasures – is authorized "notwithstanding any law," so if an existing privacy or security law would prohibit a particular action, it wouldn't matter. Monitoring and information sharing conduct is given strong liability protection, but countermeasures – because they can harm others — are not given specific liability protection. Proponents of the legislation argue that it is needed to respond to and prevent cyber attacks.

Public private partnership fails- too many barriers

Peter **Garvin et al, 15,** Pete is a member of the District of Columbia Bar (Government Contracts and Litigation Section). He is a past chairman of the ABA Committee on Public Contracts, Section of Administrative Law and Regulation Practice, "Doing Business with the Government? What You Should Know about Cybersecurity," http://www.jonesday.com/Doing-Business-with-the-Government-What-You-Should-Know-about-Cybersecurity-06-02-2015/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=View-Original

Contractors must also carefully weigh their options in seeking to partner with the government concerning breaches. While assistance in combating an attack will likely prove useful (if not essential), companies must consider whether they are creating exposure by opening the door to enforcement agencies. The government has indicated (informally and in the rule-making process) that it will limit use of information gathered during defense of cyber attacks. Recently, the Department of Justice has emphasized that it is not interested in prosecuting victims of hacking as incompetent protectors of data but, rather, on preventing breaches from occurring. In addition, pending legislation contains protections for companies for liability that may arise from the act of sharing information relating to a cyber threat. This is a developing area, **however**, and there are no guarantees that the government will not pursue leads it discovers through breach reports or activities it undertakes with companies that have been subject to a cyber attack.[xi] In addition, the interests of companies will not always align with the government. For example, while most companies will simply want the attack to stop, the government may be more interested in tracking down the perpetrators. For many companies, reporting will not be an option due to mandatory provisions and for some companies, the benefits may outweigh any risks. Despite this, companies should carefully consider how far beyond mandatory reporting they wish to go.

The bill empowers the government to take more info

Jennifer **Steinhauer, 15,** American reporter for The New York Times who has covered the United States Congress since February 2010, "House Passes Cybersecurity Bill After Companies Fall Victim to Data Breaches," http://www.nytimes.com/2015/04/23/us/politics/computer-attacks-spur-congress-to-act-on-cybersecurity-bill-years-in-making.html?_r=0

Privacy advocates continued to express anger legislation Wednesday on the House floor, creating unlikely alliances between some conservatives and left-leaning members." We've seen before that the federal government has a poor track record of safeguarding our information when entrusted with it," said Representative Jared Polis, Democrat of Colorado, on the House floor. "The last thing we should be doing," is empowering them with more information access, he said. His comments were echoed by Representative Darrell Issa, Republican of California. "Since 9/11 the government has begun to know more and more about what we are doing, where are, where we sleep, who we love," he said, while consumers, "have known less and less." At the same time, some feel the bill does not go far enough on national security. "I do believe we will see a cybersecurity bill enacted and signed into law," said Senator Susan Collins, Republican of Maine who has worked on the issue for years. "But it won't be as strong as it should be to protect critical infrastructure."

AT: Cooperation

Companies would be hesitant to share info with the government

Tyler **Pager, 15,** Breaking News Intern at USA TODAY, "Private sector remains wary of government efforts to increase cybersecurity collaboration," http://nationalsecurityzone.org/site/private-sector-remains-wary-of-government-efforts-to-increase-cybersecurity-collaboration/

President Barack Obama and lawmakers have announced plans to increase information sharing between the government and the private sector following data breaches at major companies. But companies are hesitant to join these initiatives because of liability and privacy concerns – and sharing information could put them at a competitive disadvantage. Experts agree information sharing is essential in preventing and responding to cyber attacks, but the government and private sector bring different perspectives and strategies to mitigating the threats.

The private sector doesn't want to cooperate with the government

Tyler **Pager, 15,** Breaking News Intern at USA TODAY, "Private sector remains wary of government efforts to increase cybersecurity collaboration," http://nationalsecurityzone.org/site/private-sector-remains-wary-of-government-efforts-to-increase-cybersecurity-collaboration/

Companies fear sharing information with the government could reveal corporate secrets or consumers' private information, said Martin Libicki, a senior management scientist at the RAND Corporation. He added sharing information with the government could also pose legal risks if the information shows companies did not follow federal regulations. Germano, who also runs a law firm focused on cybersecurity issues, says cybersecurity collaboration comes down to a matter of trust. The private sector, she said, is weary of the government. "On one hand [the government is] reaching out as a friend and collaborator to work with companies," she said. "On the other hand, the same government has an enforcement arm outstretched with the FTC, the SEC that if you do not comply, there can be repercussions, possible lawsuits and other regulatory action taken against you."

Links to PTX

The counterplan is massively unpopular with privacy lobbies – they have substantial influence for internet legislation

Cameron 4/22 Dell Cameron, Daily Dot reporter, 4-22-2015, "Privacy supergroup aims to kill 5 cybersecurity bills at once," http://www.dailydot.com/politics/cyber-fail-bills-cisa-pcna-ncpa/

A coalition of digital-rights and civil-liberties **organizations** have founded a campaign under the hashtag #CyberFail that aims to shed light on five cybersecurity bills presently under consideration in Congress.¶ The privacy supergroup says the bills, which are ostensibly intended to address the nation's growing computer-security concerns, will only heighten the risk to consumers while providing federal law enforcement and intelligence agencies new authority to gather users' personal information.¶ "These bills create brand new privacy-invasive surveillance powers," said Access, one of the organizations involved, in a statement on Wednesday. "Every single one of these proposals would reward companies that send user information to the government, including the NSA and FBI, without adequately protecting user privacy."¶ The campaign is supported by several organizations that have played an **integral role in defeating unpopular Internet-related legislation in the past**, such as the Stop Online Piracy Act (SOPA). The coalition includes Demand Progress, the Electronic Frontier Foundation (EFF), Fight for the Future, and the American Civil Liberties Union (ACLU), among others.¶ The five bills opposed by the coalition are (via Access): ¶ The Cyber Intelligence Sharing and Protection Act (CISPA), introduced in the House of Representatives and referred to the House Judiciary Subcommittee on the Constitution and Civil Justice.¶ The Cyber Information Sharing Act (CISA), which passed the Senate Intelligence Committee and is expected to be voted on by the full Senate as soon as this week.¶ The Protecting Cyber Networks Act (PCNA), which passed the House Intelligence Committee and is expected to be voted on by the full House on April 22.¶ The Cyber Threat Sharing Act (CTSA), which was introduced in the Senate and referred to the Senate Committee on Homeland Security and Governmental Affairs.¶ The National Cybersecurity Protection Advancement Act (NCPA), which passed by the House Intelligence Committee and is expected to be voted on by the full House on April 23.

AT: *Cyber Security – Cyber Treaty CP

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Cyber security treaties fail – US Russia treaty proves

Simon 6/21/13 – member of the Young Leaders Program at The Heritage Foundation

(Elizabeth Simon, "The U.S.–Russia Cybersecurity Pact: Just Paper", The Daily Signal, http://dailysignal.com/2013/06/21/the-u-s-russia-cyber-pact-just-paper/)

The U.S. and Russia announced the completion of a joint cybersecurity agreement, two years in the making, intended to promote international peace and security and improve cyber relations between the two countries. The agreement, however, amounts to little more than a piece of paper, as such policies will scarcely improve U.S. cybersecurity. In a joint statement, the White House outlined confidence-building measures that would increase transparency and improve relations between the two countries. In addition to creating a cyber "hotline" to facilitate communication and "reduce the risk of misperception," the agreement announced the formation of a bilateral working group. The group will focus on the threat from cyber-attacks to international security, consider emerging threats, and will act to coordinate a collaborative response. Although sharing some basic information on cybersecurity threats is beneficial, a cybersecurity working group and other cooperative activities promise more than they can deliver. For example, instead of getting Russia to work with the U.S., President Obama's appeasement-based "reset with Russia" has failed to resolve disagreements over Syria's civil war and Iran's nuclear program. Furthermore, Russia actively engages in Internet censorship, and aggressively shuts down websites the Russian government believes are "harmful." The implementation of a cyber-working group provides Russia with access to U.S. cyber defense plans, while ignoring and legitimizing Russia's bad cyber behavior. After all, in 2007 Russia was accused of launching a cyberwar on its neighbor Estonia, with whom Russia was having a diplomatic dispute. A similar situation occurred before the 2008 Russian invasion of Georgia, when the Georgian government became the victim of an organized cyber-attack. Experts are unclear as to whether the Russian government orchestrated the attacks, or merely assisted and allowed them to occur. The attacks may have originated from the Russian Business Network, a cyber-crime syndicate. The network is reportedly responsible for facilitating hacking operations against the U.S. and stealing billions of dollars through cyber scams and phishing operations. Cyber theft has reached epic proportions in recent years. According to a recently released IP Commission Report, the American economy loses approximately $300 billion to intellectual property theft each year. The sheer scale of cyber-attacks on American companies, and the corresponding loss of vital information, has raised the issue to a critical national security concern. Moreover, Russia has a record of being unwilling to pursue cyber-crime and property-theft violations that originate within its borders. Particularly, due to the lack of rule of law and criminal business connections to government, no legal action is taken against organizations such as the Russian Business Network for cyber security violations. International cyber-engagement by the U.S. government is critical to a successful cybersecurity strategy, and together with allied nations, the U.S. should seek to deter bad cyber actors by raising the cost of malicious cyber behavior. Instead of naively cooperating with these actors, such as Russia, the U.S. should internationally name and shame the offenders. Additionally, the U.S. should create diplomatic and legal penalties for those companies and foreign officials who use stolen information or intellectual property. The U.S. must not engage in military or national security cooperation, such as the cybersecurity working group, with a country that would use such collaboration to further their attacks against the U.S. Instead, the Administration and Congress should implement a responsible and effective international cybersecurity policy that defends U.S. national security and actively confronts countries that harm U.S. companies and interests.

AT: *Democracy – Campaign Finance Reform CP

2AC

Donations are happening on both sides of the political fence, so it doesn't negatively impact democracy.

Super political action committees are good and help democracy – the counterplan bans them

Smith, No date. Professor Bradley Smith, Center for Competitive Politics. "*Super PACs"* http://www.campaignfreedom.org/external-relations/super-pacs/

Recent election cycles have brought an unprecedented amount of attention to Super PACs and their role in American politics. Unfortunately, much of the information circulated in the media was either misleading or entirely untrue. The Center hopes to improve public understanding about the role and legal status of Super PACs. One major misconception about Super PACs is the incorrect belief that they do not disclose their donors. In fact, all Super PACs are required by law to disclose their donors. This disclosure includes the name of the individual, group, or other entity that is contributing, the date on which the contribution occurred, and the amount given. Additionally, Super PACs must report all of their expenditures. Significant media coverage of Super PACs focused on their ability to spend unlimited amounts, but few journalists took the time to explain why that is. Americans, whether they act individually or in voluntary associations, have the right to spend unlimited amounts of their own money promoting political speech. According to the Supreme Court, limits on contributions to candidates are only constitutionally permissible because of the potential corrupting effects of such contributions. Independent spending, on the other hand, cannot be corrupting due precisely to its independence, and therefore cannot be limited. Contributions to PACs are limited because they can donate money directly to candidates; contributions to Super PACs are unlimited because they cannot donate to candidates and must comply with special rules when interacting with candidates. These rules prohibit acting at the request of a candidate or engaging in substantial discussion with a candidate or her agents regarding the specifics of Super PAC communications, including their content, intended audience, and timing. Because of these restrictions, and the fact that independent communications might not be welcomed by the candidates these groups may support, the courts have ruled that contributions to Super PACs do not pose the same risk of corruption as contributions directly to candidates. As the Supreme Court has said corruption or its appearance is the only legal justification for limiting political fundraising, Super PACs are able to raise and spend unlimited amounts. Pro-regulation advocates have repeatedly claimed that the ability of Super PACs to spend unlimited funds allows them to decide who wins races. This is a shamefully anti-democratic viewpoint, and one that doesn't fit with the evidence. For example in 2012, while Super PACs certainly made many races more competitive, votes are still what count, and a lot of Super PAC money went to losing candidates. American Crossroads, the Super PAC backed by Karl Rove, and Restore Our Future, which promoted Mitt Romney, learned the hard way that in America, money does not buy votes. In short, Super PACs are far from the bogeyman that many media reports make them out to be. Super PACs cannot give money to candidates and there are strict regulations limiting the ability of such groups to coordinate their activities with candidates or their campaigns. Super PACs must disclose their donors and the amounts they receive from each contributor. Additionally, there is no evidence to suggest that the influence of Super PACs has "bought" any elections whatsoever. Far from an evil entity, Super PACs are responsible for more political speech in elections, makings races more competitive in the process.

AT: *Economy – OSW CP

2AC

Wind not key to manufacturing jobs—less than 1%
Platzer '11

Michaela D. Congressional Research Service, "U.S. Wind Turbine Manufacturing: Federal Support for an Emerging Industry" 9/23/11 Cornell University ILR School, http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1871&context=key_workplace, 8/21/12

> Wind turbine manufacturing is responsible for a very small share of the 11.5 million domestic manufacturing jobs in 2010, well under 1%. It seems unlikely, even given a substantial increase in U.S. manufacturing capacity, that wind turbine manufacturing will become a major source of manufacturing employment. In 2008, the U.S. Department of Energy forecast that if wind power were to provide 20% of the nation's electrical supply in 2030, U.S. turbine assembly and component plants could support roughly 32,000 full-time manufacturing workers in 2026.82 AWEA's more optimistic projection is that the wind industry could support three to four times as many manufacturing workers as at present if a long-term stable policy environment were in place, which implies a total of 80,000 jobs.83 Further employment growth in the sector is likely to depend not only upon future demand for wind energy, but also on corporate decisions about where to produce towers, blades, nacelles, and their most sophisticated components, such as gearboxes, bearings, and generators.

Clean energy doesn't boost manufacturing—developed overseas
ASBC '11

American Sustainable Business Council, "American Sustainable Business Council White House Briefing: Creating Jobs and Building a Sustainable Economy," 6/2/11 http://www.community-wealth.org/_pdfs/news/recent-articles/10-11/paper-asbc.pdf AD 8/19/11

> Despite its hardships, American manufacturing still represents a considerable share of the U.S. economy. The sector's gross output in 2005 was $4.5 trillion, and it still supports nearly 13 million jobs, or nearly 10 percent of total non-farm employment. The clean energy sector is projected to reach $226 billion annually by 2016. Demand for solar and wind power will continue to expand over the next twenty years, and upwards to 80% of these new jobs will be in the manufacturing sector. Clean energy manufacturing offers an opportunity to strengthen and expand America's middle class. But there's one big problem: we don't make most of these systems here in the U.S. Fully half of America's existing wind turbines were manufactured overseas. We rank fifth among countries that manufacture solar components, even though the solar cell was born in America. The fact that other countries are prepared to deliver these products — and we are not — means that every new American bill creating demand for renewable energy systems and energy efficiency services actually creates new jobs overseas, even though we the US has a robust manufacturing infrastructure and skilled workforce.

N’Dolo concludes neg

N’Dolo 2/16 (Michael N’Dolo – Vice President of Camoin Associates, email to Jacob Hegna, “Offshore Wind's Potential Economic Benefits” 2 February 2015)//JHH

Jacob: In 2010, you published an article that described the possible economic benefits of offshore wind power. Myself and many other nationally competitive debaters read that article to make the argument that without offshore wind, the United States manufacturing sector will face a significant decline, however offshore wind production can completely reverse this. Would you agree or disagree with this claim?¶ Michael: **Disagree. No way is offshore going to completely reverse the manufacturing decline**.¶ Jacob: Would you mind if I quoted this email in a debate round, assuming I use a proper citation?¶ Michael: Sure. No problem.

AT: *EU Relations – OSW CP

2AC

Just make fun of how stupid this adv CP is and say aff is key to relations. If you don't have a card in your 1AC that says spying is key to solve relations… you should probably lose anyway

AT: Grid Collapse - Mexican Renewables CP

2AC

No transmission capacity

Wood 12 - PhD in Political Studies @ Queen's, Professor @ ITAM in Mexico City

(Duncan, et al, Wilson Center,
http://www.wilsoncenter.org/sites/default/files/Border_Wind_Energy_Wood.pdf)//BB

For the state of Baja California, this ¶ problem is made even more acute because ¶ there is no interconnection between ¶ the state and the national grid, making ¶ export of electricity to private consumers ¶ in other states impossible at the present ¶ time. Mexico's national grid is in fact three ¶ grids, with Baja California Norte and ¶ Baja California Sur each having their own ¶ independent system.¶ A further level of difficulty is found ¶ with cross-border transmission. A quick ¶ survey of the above map shows that there are ¶ only a limited number of interconnections¶ across the border. Furthermore, only 5 of ¶ these connections are bi-directional. In ¶ Baja California, the Miguel-Tijuana and the ¶ Imperial Valley-Rosarita interconnections ¶ (both 230kV AC) have a combined capacity ¶ of 800 MW, in Coahuila the Eagle PassPiedras Negras interconnection (138kV ¶ HVDC) has a capacity of only 38 MW, and in ¶ Tamaulipas the Laredo-Nuevo Laredo (138kV ¶ VFT) and McAllen-Reynosa (138kV HVDC) ¶ interconnections have a combined capacity of ¶ 250 MW. These **interconnections are maxed ¶ out** and therefore cannot be considered ¶ for future cross-border electricity trade. In ¶ addition to these lines operated by CFE, there ¶ are two privately owned transmission lines of ¶ 310 MW (owned by Intergen) and 1200 MW ¶ (owned by Sempra).¶ The problem of cross-border ¶ transmission has been identified in a number ¶ of previous reports on wind and renewable ¶ energy in Mexico,5¶ and in 2010 the two ¶ countries set up a task-force to address ¶ the issue.6¶ Although this group has met a ¶ number of times, **there appears to be little ¶ momentum** behind the initiative, **with each ¶ side blaming the other for lack of progress**.

AT: Hegemony – OSW CP

2AC

Wind not key to manufacturing jobs—less than 1%
Platzer '11

Michaela D. Congressional Research Service, "U.S. Wind Turbine Manufacturing: Federal Support for an Emerging Industry" 9/23/11 Cornell University ILR School, http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1871&context=key_workplace, 8/21/12

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Clean energy doesn't boost manufacturing—developed overseas
ASBC '11

American Sustainable Business Council, "American Sustainable Business Council White House Briefing: Creating Jobs and Building a Sustainable Economy," 6/2/11 http://www.community-wealth.org/_pdfs/news/recent-articles/10-11/paper-asbc.pdf AD 8/19/11

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*Internet Freedom – Online Gambling

2AC

Online gambling hurts the economy

Grahmann '9

Kraig P., Northwestern University School of Law, Published in the Northwestern Journal of Technology and Intellectual Property, Vol. 7, Issue 2, Spring, "Betting on Prohibition: The Federal Government's Approach to Internet Gambling", http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1083&context=njtip

B. Financial¶ **Internet gambling** does not just hurt society personally—it also **hurts society financially.**24 **This** harm **affects individuals—in the form of debt accumulation and bankruptcy—and the economy as a whole—through a lack of jobs and decrease in tax revenue.**25 At an individual level, **Internet gambling causes personal financial ruin through debt accumulation and bankruptcy.**26 **Legalized gambling**, which is subject to extensive restrictions and safeguards, **is already one of the leading causes of bankruptcy in the U**nited **S**tates.27 **The government's inability to effectively regulate virtual casinos and the ease of accessing them will only make this financial problem more severe.**2(1 ¶ **At the aggregate level, online gambling drains the economy and does not provide many of the financial benefits associated with conventional gaming.**24 **For example, Harrah's** Entertainment **built its New Orleans hotel and casino at a cost of S345 million dollars; the construction created 4,259 new jobs** in the multi-county metropolitan area **and boosted household earnings** by a total of SI07.5 million.30 **Internet Casinos**, Inc. **spent just $I.5 million establishing a virtual casino and created only seventeen new jobs.**31 **Not only are the economic benefits of Internet gambling miniscule compared to traditional brick-and-mortar casinos, all operations occur outside the U**nited **S**tates, **resulting in no domestic benefit**.32¶ Though traditional gambling causes societal and financial harm, the resulting tax revenue often compensates for the damage done.33 **Land-based gambling generates tax revenue from a wide variety of sources**: casino profits, tourism dollars, employment income, and property value increases.34 **Virtual casinos provide no such benefit because they operate outside the U**nited **S**tates.35 **Even if they did operate within the government's jurisdiction, the gain from online gambling is disproportionately smaller because of its business model.** 36

*Multilat – Offshore Drilling

2AC

CP version of multilat fails

Calkins 10 – associate at Susman Godfrey LLP, magna cum laude BA in political science at Wake Forest University, minor in international studies (Audrey M., "Multilateralism in International Conflict: Recipe for Success or Failure?", 1/15/10; http://www.thepresidency.org/storage/documents/Calkins/Calkins.pdf)//Beddow

The modern debate between multilateralism and unilateralism has raged prominently in international politics since the terrorist attacks of 9-11. Lisa Martin believes that the "institution of multilateralism consists of three principles: indivisibility, meaning that an attack on one is an attack on all, nondiscrimination, denoting that all parties are treated similarly, and diffuse reciprocity, indicating that states rely on long term assurances of balance in t heir relations with each other." 6 Martin also argues that the "concept of multilateralism provides a language with which to describe variation in the character of the norms governing international cooperation and the formal organizations in which it occurs." **Because multilateralism requires states to sacrifice substantial levels of flexibility in decision making and resist short term temptations in favor of long term benefits, it is unrealistic to expect states to engage in pure multilateralism**. 7 One problem with multilateralism is the difficulty of collaboration. **States are often tempted to defect from multilateral policies because payoffs for multilateral action are not immediat**e; states tend to prefer the more accessible benefits provided by unilateral action. For multilateralism to work, states must search for a way to assure that the immediate costs of cooperation can be offset by the long-term benefits of mutual assistance. The problem of collective action is also present in multilateral systems. **The indivisibility of multilateralism results in a high potential for free riders;** it is nearly impossible to punish one entity of a multilateral system without somehow harming other m embers of the system. 8

CP fails to tackle true issue behind multilat

Haass 7/24/**13** **Accessed Online** 2/4/14

Richard N. Haass, President of the Council on Foreign Relations, previously served as Director of Policy Planning for the US State Department, Project Syndicate, July 24, 2013, "What International Community?", http://www.project-syndicate.org/commentary/the-broken-tools-of-global-cooperation-by-richard-n--haass

NEW YORK – Whenever something bad happens – Iran moving closer to acquiring nuclear weapons, North Korea firing another missile, civilian deaths reaching another grim milestone in Syria's civil war, satellites revealing an alarming rate of polar-ice melt – some official or observer will call upon the international community to act. There is only one problem: **there is no "international community." Part of the reason stems from the absence of any mechanism** for "the world" to come together. The United Nations General Assembly comes closest, but little can be expected from an organization that equates the United States or China with, say, Fiji or Guinea-Bissau. To be fair, those who founded the UN after World War II created the Security Council as the venue in which major powers would meet to determine the world's fate. But even that has not worked out as planned, partly because the world of 2013 bears little resemblance to that of 1945. How else could one explain that Britain and France, but not Germany, Japan, or India, are permanent, veto-wielding members? Alas, there is no agreement on how to update the Security Council. **Efforts like the G-20 are welcome, but** they **lack authority and capacity**, in addition to **suffer**ing **from** excessive **size**. The result is "multilateralism's dilemma": the **inclusion of more actors increases** an organization's **legitimacy at the expense of** its **utility**. No amount of UN reform could make things fundamentally different. Today's **major powers do not agree on** the **rules** that ought **to**

govern the world, much less on the **penalties for breaking them**. Even where there is accord in principle, there is little agreement in practice. The result is a world that is messier and more dangerous than it should be. Consider climate change. Burning fossil fuels is having a measurable impact on the earth's temperature. But reducing carbon emissions has proved impossible, because such a commitment could constrain GDP growth (anathema to developed countries mired in economic malaise) and impede access to energy and electricity for billions of people in developing countries, which is unacceptable to China and India. Stopping the spread of nuclear weapons would seem a more promising issue for global collaboration. The Nuclear Non-Proliferation Treaty (NPT) limits the right to possess nuclear weapons to the Security Council's five permanent members, and then only temporarily. But agreement is thinner than it appears. The NPT allows countries the right to develop nuclear energy for purposes such as electricity generation, a loophole that allows governments to build most of what is necessary to produce the fuel for a nuclear weapon. The inspection regime created in 1957 under the International Atomic Energy Agency (IAEA) is a gentlemen's agreement; inspectors can inspect only those facilities that are made known to them by the government in question. Governments (such as Iran's) can and do carry out illegal nuclear activities in secret sites that international inspectors either do not know about or cannot enter. At least as important, there is no agreement on what to do when a country violates the NPT, as Iran and North Korea (which withdrew from the treaty in 2003) have done. More international cooperation exists in the economic realm. There has been real progress toward reducing tariff barriers; the World Trade Organization has also established a dispute-resolution mechanism for its 159 members. But progress on expanding free trade at the global level has stalled, as many countries disagree on the treatment of agricultural goods, the elimination of subsidies, and trade in services. Meanwhile, cooperation in the realm of cyberspace is just getting started – with difficulty. The US is most concerned about cyber security and the protection of intellectual property and infrastructure. Authoritarian governments are more concerned about information security – the ability to control what is available on the Internet in order to maintain political and social stability. There is no agreement on what, if anything, constitutes an appropriate target for espionage. The prevalence of non-state actors is further complicating efforts. Another area where there is less international community than meets the eye is human suffering. Governments that attack their own people on a large scale, or allow such attacks to be carried out, expose themselves to the threat of outside intervention. This "Responsibility to Protect," or R2P, was enshrined by the UN in 2005. But many **governments are concerned** that **R2P raises expectations that they will act,** which could prove costly in terms of lives, military expenditure, and commercial priorities. Some governments are also worried that R2P could be turned on them. Russian and Chinese reticence about pressuring governments that deserve censure and sanction stems partly from such concerns; the absence of consensus on Syria is just one result. In short, **those looking to the international community to deal with the world's problems will be disappointed**. This is not reason for despair or grounds for acting unilaterally. But so long as "international community" is more hope than reality, multilateralism will have to become more varied.

*Tech Competitiveness – H-1B

2AC

This is about tech comp jobs – not tech comp itself

*Tech Leadership - OSW

2AC

This is about clean tech leadership, not tech leadership – not the aff

*Warming – OSW

2AC

Doesn't scale – each turbine reduces the strength of wind – also disrupts climate patterns and worse for the climate than ***doubling co2***

Science Daily 3/25

Rethinking Wind Power, http://www.sciencedaily.com/releases/2013/02/130225121926.htm

People have often thought there's no upper bound for wind power -- that it's one of the most scalable power sources," says Harvard applied physicist David Keith. After all, gusts and breezes don't seem likely to "run out" on a global scale in the way oil wells might run dry.¶ Yet the **latest research** in mesoscale atmospheric modeling, published February 25 in the journal Environmental Research Letters, suggests that the generating capacity of large-scale wind farms has been **overestimated**.¶ Each wind turbine creates behind it a "wind shadow" in which the air has been slowed down by drag on the turbine's blades. The ideal wind farm strikes a balance, packing as many turbines onto the land as possible, while also spacing them enough to reduce the impact of these wind shadows. But as wind farms grow larger, they start to interact, and the regional-scale wind patterns matter more.¶ Keith's research has shown that the generating capacity of very large wind power installations (larger than 100 square kilometers) **may peak** at between 0.5 and 1 watts per square meter. Previous estimates, which ignored the turbines' slowing effect on the wind, had put that figure at between 2 and 7 watts per square meter.¶ In short, we may not have access to as much wind power as scientists thought.¶ An internationally renowned expert on climate science and technology policy, Keith holds appointments as Gordon McKay Professor of Applied Physics at the Harvard School of Engineering and Applied Sciences (SEAS) and as Professor of Public Policy at Harvard Kennedy School. Coauthor Amanda S. Adams was formerly a postdoctoral fellow with Keith and is now assistant professor of geography and Earth sciences at the University of North Carolina at Charlotte.¶ "One of the inherent challenges of wind energy is that as soon as you start to develop wind farms and harvest the resource, you change the resource, making it difficult to assess what's really available," says Adams.¶ But having a truly accurate estimate matters, of course, in the pursuit of carbon-neutral energy sources. Solar, wind, and hydro power, for example, could all play roles in fulfilling energy needs that are currently met by coal or oil.¶ "If wind power's going to make a contribution to global energy requirements that's serious, 10 or 20 percent or more, then it really has to contribute on the scale of terawatts in the next half-century or less," says Keith.¶ If we were to cover the entire Earth with wind farms, he notes, "the system could potentially generate enormous amounts of power, well in excess of 100 terawatts, but at that point my guess, based on our climate modeling, is that the effect of that on global winds, and therefore on climate, would be **severe** -- perhaps **bigger than the impact of doubling CO2**."¶ "Our findings don't mean that we shouldn't pursue wind power -- wind is much better for the environment than conventional coal -- but these geophysical limits may be meaningful if we really want to scale wind power up to supply a third, let's say, of our primary energy," Keith adds.¶ And the climatic effect of turbine drag is not the only constraint; geography and economics matter too.¶ "It's clear the theoretical upper limit to wind power is huge, if you don't care about the impacts of covering the whole world with wind turbines," says Keith. "What's not clear -- and this is a topic for future research -- is what the practical limit to wind power would be if you consider all of the real-world constraints. You'd have to assume that wind turbines need to be located relatively close to where people actually live and where there's a fairly constant wind supply, and that they have to deal with environmental constraints. You can't just put them everywhere."¶ "The real punch line," he adds, "is that if you can't get much more than half a watt out, and you accept

that you can't put them everywhere, then you may start to reach a limit that matters."¶ In order to stabilize Earth's climate, Keith estimates, the world will need to identify sources for several tens of terawatts of carbon-free power within a human lifetime. In the meantime, policymakers must also decide how to allocate resources to develop new technologies to harness that energy.¶ In doing so, Keith says, "It's worth asking about the scalability of each potential energy source -- whether it can supply, say, 3 terawatts, which would be 10 percent of our global energy need, or whether it's more like 0.3 terawatts and 1 percent."¶ "Wind power is in a middle ground," he says. "It is still one of the most scalable renewables, but our research suggests that we will need to pay attention to its **limits** and **climatic impacts** if we try to scale it beyond a few terawatts."

Offshore wind doesn't reduce GHG---only a risk backup power sources increase emissions

Tuerck et al 11

David Tuerck, PhD, Paul Bachman, MSIE, Ryan Murphy, B.S. (PhD candidate), The Cost and Economic Impact of New Jersey's Offshore Wind Initiative, Beacon Hill institute, June

When wind power reduces fossil fuel use, it also indirectly contributes to cleaner air through lower emissions of sulfur oxides (SOx), nitrogen oxides (NOx) and carbon dioxide (CO2). The reduced emissions of CO2 are believed to reduce the greenhouse effect and thereby moderate the effects of global warming, although the strength of these effects is a matter of considerable debate.¶ The main benefit of lower emissions of SOx, NOx and CO2 is a reduction in human mortality and morbidity. It is not easy to put a dollar value on these effects, and so estimates vary widely. We use the numbers reported by Muller et al. and value CO2 using the most recent futures auctions from the Regional Greenhouse Gas Initiative (RGGI) for New Jersey, or $2.04 per tonne of CO2.16¶ However, coal is the largest marginal producer for the mid-Atlantic region, according to the market report for the PMJ. In this case, it is unclear that the use of renewable energy resources, especially wind, significantly reduces GHG emissions. Due to their intermittency, wind requires significant backup power sources that are cycled up and down to accommodate the variability in their production. As a result, a recent study found that wind power could actually increase pollution and greenhouse gas emissions when coal represents a large portion of the marginal electricity produced for New Jersey.17 Thus the case for the heavy use of wind to generate "cleaner" electricity is undermined in terms of replacing coal.¶ Therefore, we assume that the resources used as the marginal producer will only reduce emissions for the portion of the marginal production from natural gas and oil and not from coal. Table 4 displays the calculations.